Complaints Commissioner

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Final report by the Complaints Commissioner

The FCA's oversight of MoneyThing Capital Limited

What the complaint is about

1. I have received several complaints about the FCA's regulation of MoneyThing Capital Limited ("MoneyThing" or "firm") from a number of different complainants.

2. I have taken the decision to issue one report addressing the complaints I have received. This means I will cover aspects of the FCA's regulation of the firm which individual complainants may not have complained about directly. However, in providing this additional information I hope to create a fuller picture of relevant matters which will provide useful context. I have looked only at the issues raised in the complaints sent to me rather than the wider issues affecting the peer to peer (''P2P'') market.

3. Complainants have raised a large number of allegations about failings on the part of the FCA in relation to MoneyThing. These fall broadly into the following three categories.

Element One

4. The FCA should not have authorised MoneyThing.

Element Two

5. The FCA did not supervise MoneyThing adequately after authorisation and before the firm went into administration.

Element Three

6. The FCA did not supervise the administration of MoneyThing adequately.

What the regulator decided

7. The FCA reviewed various allegations with respect to its regulation of MoneyThing but did not uphold any complaints. It did not accept that it had acted inappropriately in relation to any of the complaint points above.

My decision

8. I have identified some issues for consideration regarding the FCA's oversight of MoneyThing, however, in the context of the complaints referred to me on the whole I find the FCA's authorisation and supervision of MoneyThing and its administration was reasonable. I do not, therefore, uphold the complaints.

Preliminary points

9. Like the FCA, I am restricted in the information I can provide to outside parties by the operation of section 348 of the Financial Services and Markets Act 2000 and also because of to certain internal FCA policies on the sharing of information.

10. The FCA's engagement with MoneyThing spanned a number of years, from when it received interim permissions in 2014 until after it went into administration in 2020 (''the Relevant Period''). Complainants have raised numerous issues connected to the FCA's regulation of MoneyThing. I have considered all of the issues raised in the context of the parameters of the Complaint Scheme, which aims to deliver quick, efficient and cost effective outcomes for complainants. Given this, the approach I have taken is a high level review of the FCA's actions during the Relevant Period. I may not have looked into each and every detail brought to me by complainants, especially where I determine that it is unlikely to have a bearing on the overall outcome.

My analysis

Element One: The FCA should not have authorised MoneyThing.

11. The FCA has explained that:

> "As MoneyThing had been regulated by the OFT, its regulation by the FCA came under interim permission: as of 1 April 2014, MoneyThing's regulation moved to the FCA without the FCA first having the opportunity to authorise MoneyThing (or assess its activity). This was the agreed

approach at the time and all firms moving from the regulation of the OFT to the FCA followed this process.

MoneyThing then carried out peer-to-peer activity without the appropriate authorisation. As such there was an overlap of the FCA's supervision of an existing firm on the Interim Permission Register (IP Register) and the authorisation of its ongoing peer-to-peer activity. It was in this under these circumstances that the FCA had to assess MoneyThing's application for peer-to-peer permissions and supervise its existing peer-to-peer activity, at the same time as minimising any risk to those investors and borrowers already tied into MoneyThing's peer-to-peer activity".

12. Complainants have raised concerns that the FCA authorised MoneyThing despite the fact the firm had been operating without permissions covering its P2P activity. This should, they say, have alerted the FCA to the fact that the firm were not fit and proper and should not, therefore, have been authorised.

13. MoneyThing had held an Office of Fair Trading (OFT) licence in respect of its consumer credit activity and it registered with the FCA for interim permissions to continue carrying out those activities. Neither arrangement covered P2P lending. MoneyThing was therefore acting outside of its (consumer credit) permissions by undertaking P2P activity. It had not, at that point, informed the FCA that it was undertaking P2P activity, although it did notify the FCA voluntarily at the start of 2015 as part of its application to become authorised.

14. Having reviewed the circumstances above, along with other confidential material on file, I do not think there are any reasonable grounds to expect that the FCA could have known the firm was acting outside its permissions before it applied for authorisation.

15. The FCA did become aware of the P2P activity during the authorisation process. I can see that the FCA authorisations team gave detailed consideration to the arguments for and against authorisation of the firm in light of the lack of P2P permissions. Some key points in their considerations were as follows.

    - "There was considerable existing P2P activity on the firm's books and refusing authorsation at this point risked detriment to clients.

- MoneyThing recognised that it had been non-compliant, and had provided a solution to enable it to become compliant.
- Loan performance had been good and that MoneyThing had reasonable security in place on its back-book.
- MoneyThing had adequate resources and an investor on standby to provide additional funding if needed.
- the firm had worked extensively with the FCA to make sure that, among other things, its loan book was being converted to a compliant format, had undertaken improvements to its marketing and financial promotions and that it had evidenced that it was placed to meet threshold conditions for authorisation".

16. There are a number of other areas where the FCA engaged with the firm prior to authorisation to ensure it had made the necessary changes to meet the conditions for authorisation. For example, the FCA liaised with the firm to make sure its communications with investors were clear, including certain risk warnings on its website. The FCA appears to have reviewed the firm's loan documentation, although I have not seen the specific documents reviewed. There is, however, no record of the FCA discussing the inclusion of the risk of insolvency related costs in the terms and conditions or the website messaging.

17. Complainants have said to me that the insolvency costs risk were not communicated clearly to investors. In my view platform communications explicitly reference the protections afforded lender funds in an insolvency, and it seems appropriate that this is counterbalanced to some degree by reference to the platform insolvency risks in order to provide a more balanced and fair view. The FCA has told me that new rules came into force via PS19/14 - these strengthened rules were published in June 2019 but took effect on 9 December 2019. Included was COBS 18.12.28 'Information concerning platform failure' that sets out what a firm must do to prepare for and communicate clearly with investors. It also said that it has also communicated in a Dear Portfolio Letter (in May 2021) that firms need to be very clear on transparency of fees for loans in default. It is clear that the FCA has taken action to communicate its concerns to firms in the P2P sector on the transparency of fees/charges to investors.

18. However, it is also clear that the firm's communications to investors at the time they invested were not explicitly clear on this point. I do think the FCA could have focused earlier on ensuring communications from the firm were clearer about this risk.

19. I now turn to the issue of how long it took the FCA to authorise the firm. I note that it took the FCA over two years of engagement with the firm to regularise the position such that it could grant it authorisation. This meant that formally the firm continued to act outside its permissions during this period with respect to P2P business, although in practice the FCA worked very closely with the firm in the background to ensure it was compliant and ready for authorisation. It appears that the firm was willing and co-operating in this.

20. I am aware that the FCA considered requesting the firm to cease trading during this period but it took the view that this would be less likely to result in a positive outcome for both borrowers and lenders.. I invited the FCA to comment on the options it considered and it has said that a range of options was reviewed and this one decided on as the best possible outcome. I have seen the FCA consideration of options and the decsion made at the time was not unreasonable.

21. On the whole, I consider that the FCA's decision to authorise the firm cannot be said to have been unreasonable. The decision was reached after careful analysis of the relevant factors involved. In my view, it was legitimate to think existing investors were likely to benefit from better protections as a result of the firm's authorisation.

Element Two - The FCA did not supervise MoneyThing adequately after authorisation and before the firm went into administration

FCA Supervision of the firm

22. The FCA's decision letter addressing the complaint about inadequate supervision highlights that ''the FCA supervises over 58,000 firms…. However, the FCA does not have the resources to supervise all firms to the extent that they are constantly monitored to ensure compliance with the Principles". The FCA have also said that, during this period, they made the decision to focus their resources on ''high cost consumer credit'' rather than P2P. I believe their

general approach is well known. The FCA goes on to say that it considers that they did supervise MoneyThing adequately. Some complainants have said that they find the FCA's position contradictory: the question asked was if the FCA does not have the resources to monitor that firms comply with rules and principles, how can it assert it is satisfied it supervised MoneyThing appropriately.

23. The FCA does indeed monitor over 58,000 firms and it supervises them using a risk based approach. Therefore it does not actively monitor each aspect of compliance by regulated firms as it has explained above. It would not, therefore, have known, unless it had been made aware that MoneyThing was operating outside its permissions until the firm itself notified the FCA in early 2015. I have seen no evidence it was.

24. However, once the firm applied for authorisation in 2015 and it became clear to the FCA that they had been conducting P2P activities without the relevant permissions, the FCA took a co-ordinated and detailed supervisory approach towards the firm until its authorisation on 27 March 2017.

25. After that, in accordance with its approach to supervision set out above, there was only sporadic contact between the firm and the FCA until early 2019. Nothing in the communications between the firm and the FCA during this period caused the FCA to have any material concerns about the firm.

26. Complainants have alleged that, during the post-authorisation period, the firm manipulate lender terms and conditions, procured fraudulent valuations and engaged in market abuse. Defaulted loans have been described as scams. I appreciate lenders' concerns. However, my role is to look at the actions of the FCA rather than those of the firm itself. It appears that the FCA had no reason to have been aware of such allegations against the firm.

27. In early 2019, however, the FCA became aware of potential issues at the firm with respect to due diligence and source origination in connection with property development loans. It contacted the firm and ascertained that MoneyThing had stopped making development loans in January 2018, and that between October 2015 – February 2018 they had facilitated £29.5m in development loans and

that £20.3m had been fully repaid. £6.5m of loans relating to 3 borrowers was in the process of recovery.

28. The FCA did not pursue the line of enquiry about due diligence and source origination of the loans in default. I understand that this was largely on the basis that the firm had stopped all P2P activity. I **invited** the FCA to comment on whether had it pursued this, it would have resulted in better outcomes for lenders, and I am satisfied that the FCA decision to focus on the arrangement for the recovery of loans was reasonable given that over 75% of loans had been recovered and considerable efforts were placed by company management to recover the outstanding loans. I discuss this further below.

29. On 5 December 2019 the firm notified the FCA it would be winding down and signed a voluntary requirement (VREQ) whereby it agreed stop accepting new business and wind-down existing business.

30. The FCA consented to the living will and wind-down plan provided by the firm on 5 December 2019 and was in touch with the firm thereafter during the wind down process which lasted until 21 December 2020. See further below.

FCA's supervision of MoneyThing during its Wind-down period (5 December 2019 – 21 December 2020).

31. I have reviewed a number of allegations connected to the wind-down plan and the fees which the firm started applying to lenders during its wind-down period. These are as follows:

    a. Neither the wind-down plan nor the terms and conditions specified that the lenders' funds could be subject to insolvency related costs. This makes them unclear and unfair in breach of principle 7. The FCA failed to ensure that the firm complied with principle 7.

    b. The lender terms and conditions were vague, and charges were imposed during windows which were not specified explicitly in the terms and conditions.

Wind-down plan

32. Complainants have made the point that the wind-down plan submitted by the firm on 5 December 2019 did not make explicit reference to the risk of

insolvency costs being applied to the lenders' funds. A case can be made that the FCA could have potentially taken a more robust approach in ensuring that the wind-down plan for the firm was made clearer.

Terms and conditions

33. Complainants are unhappy that the firm changed the terms and conditions of their loan agreements during the relevant period without consulting, or obtaining the consent from lenders. On 5 October 2020 the FCA became aware for the first time of the changes that the firm had made to its terms and conditions over time.

34. I have seen no evidence that the FCA was aware of the changing terms and conditions prior to 5 October 2020. The FCA does not usually review or approve firms' terms and conditions, and unless it becomes aware about specific issues, or is otherwise undertaking a review, it will not normally review such matters.

35. However, during this period the FCA became aware that the firm was changing the terms of loan agreements in a way which enabled the firm to charge new and higher fees to lenders funds. Complainants have alleged that the FCA ought not to have allowed this as the imposition of higher charges was both unfair and in breach of the loan agreement terms. I **invited** the FCA to answer this allegation, and it has replied that "In this instance the firm felt that the increase in charges would lead to a better outcome for all investors than the alternative option of administration, so we did not consider it unfair. When we deal with firms in difficulty, we do ask them to consider all potential options available and take the best course of action that delivers the best outcome overall for investors". The loans would not have been recoverable without the increase in charges/fees. This means that even if the firm had breached its account terms (which I have not formally investigated or established) the outcome for you under the winddown plan was deemed better than what would have happened if the fees had not been charged. Therefore, I do not consider that the FCA's decision was unreasonable.

Element Three - The FCA did not supervise the administration of MoneyThing adequately.

36. As a result of complications connected to certain litigation issues, the firm appointed an administrator on 21 December 2020. The FCA has commented that “The administrator also identified their costs for working on behalf of investors in recovering funds from borrowers are not covered by the fee/income due to the insolvent firm from the recovered funds. In this case, the Administrator applied for a Court Order to allow a deduction to cover their costs and payment for the work done in acting for the investor (they will not work for free). Courts agreed that Administrators needed to be paid for their work. If they were not paid the loan would likely be written off as they would not pursue the recovery if it incurred them in cost for their time. It is clear that without the court order enabling them to be paid and for their costs to be covered, the administrators would not have pursued recovery of loans and it is likely that you would have recovered less. So, with regards to any questions about what MoneyThing were saying to their customers about wind down plans (and FCA’s oversight of this), in this case it is somewhat irrelevant because unfortunately, once a firm enters Administration, the previous plan for a solvent wind-down is unlikely to viable and Insolvency Laws then take priority”.

37. Therefore, the position as I see it, is that:

    a. The complainants’’ terms and conditions were changed by the firm over time.

    b. On 5 October 2020 when the FCA became aware of the developments above, it queried whether the new fee structure was reasonable and ascertained that, at that point, the costs of recovering funds from borrowers could not be met from fee income from the recovered funds without increasing charges, Eventually even these new charges proved insufficient as costs increased. After this date, the FCA took steps to ensure the firm communicated costs related to the wind-down and administration more clearly to investors.

    c. When the administrator was appointed, they went to Court which ultimately approved the administrator’s costs. The FCA can not override a court decision.

d. I have seen evidence that the FCA has sought explanations from both the firm's directors and the administrators about the level of fees applied. Complainants have said it was unfair for the firm and administrators to apply the fees they did to recover loans given these fees were not made explicit in their terms and conditions. Whilst I appreciate this point, it has to be counterbalanced by the fact that without these additional charges, the firm and the administrators would not have worked to recover loans and the investors would have received less as a result.

The appointment of the administrator of MoneyThing

38. Money Thing appointed Moorfields as administrator on 21 December 2020.

39. Complainants have raised a number of points which include:

a. *The FCA should not have allowed a P2P platform to go into Administration, unless the FCA were prepared to cover the costs of administration, as it failed to ensure that the Wind-Down Plan was properly funded.* The FCA can not prevent firms from going into administration and is not responsible for its costs. There are many reasons why firms fail. Furthermore, the FCA does not operate a zero failure regime (https://www.fca.org.uk/news/speeches/outlining-fca-approach-authorisation#:~:text=The%20third%20is%20that%20we,would%20stifle%20innovation%20and%20competition.) Whilst I have made a finding that insolvency related costs could have been better communicated to lenders in the wind-down plan, the fact that MoneyThing went into administration does not automatically mean that the FCA is at fault. Ultimately it was the firm itself which decided to close to new business and, following consultation with the FCA, commenced a managed run off plan (covering loan recovery and distribution to lenders) in December 2019. I see no evidence that the FCA failed to supervise the firm appropriately in this respect.

b) *The FCA should have objected to the appointment of Moorfields as administrator due to an alleged conflict and, connected to this, if the FCA had insisted on alternative administrators, these would not have gone to court for higher fees and lenders' interests would have been protected.* The

FCA has addressed the perceived conflict with respect to the appointment of Moorfields by saying that in this regard it considered the following:

- "Any conflicts that might arise due to Moorfields' existing involvement with MoneyThing and its work on specific loan collections. And that Moorfields' renumeration for pre-administration recoveries work had, at the time of administration, already been agreed. [4.186, 4.627]
- About the existing relationship between MoneyThing and Moorfields, and that MoneyThing's preferred administrator was Moorfields, and the potential savings that might lead to.
- That if MoneyThing's directors were to continue with day-to-day operations and assist M in the administration it would lead to further savings; the directors having existing knowledge of the loans and being cheaper to employ than the administrators.
- Recovery action and strategy in relation to a number of loans – i.e. not just those already being handled by Moorfields".

40. It is not my role to say what I would have decided had I been the regulator. My task is to assess whether or not the decisions were within the range of decisions which the regulator could reasonably have taken, in the light of its statutory duties and policies.

41. I think the FCA's considerations above were within that range. I recognise that a case could have been made to the effect that the FCA ought to have objected to the appointment of Moorfields, but I think that the actions the regulator took were within a reasonable range of actions available to it.

42. In any event, the FCA did make enquiries about the charging structure regarding the administrator with a view to protecting lenders' interests.

My Conclusion

Element One

43. I consider the FCA's decision to authorise the firm was not unreasonable. The FCA undertook a considerable review of the firm to ensure it met the ''Threshold conditions'' to enable it to be authorised, however, I have identified that:

a. It took a very long time to authorise the firm (over two years) during which time P2P clients were being onboarded. I have not determined that there was any detriment to these clients due to the delay, however, I raise this point to highlight that prolonged authorisation processes have the potential to lead to consumer detriment, although I have not found that this happened here.

b. Although the FCA reviewed the firm's communications to lenders, I have not seen that it highlighted to the firm that it ought to be clearer on the insolvency risk costs which might arise as part of its risk warning. Complainants have said to me that had they known about the risk of insolvency costs they would not have invested, and request that I recommend the FCA return their capital on the basis that it did not ensure the firm communicated clearly enough. I do not think it is appropriate for me to make such a recommendation. I do find the FCA could have required firms at an earlier stage to be explicit and clear about insolvency cost risks (something it eventually did through issuing new guidance). However, it is the firm's responsibility in the first instance to ensure its communications are clear; further investors were aware that their investments were at risk not least due to borrower default, therefore it is the case that risk to capital was a known embedded element of the investment. Whilst insolvency costs were added in some circumstances to lender funds through increased fees, this was ultimately a decision made by a court order which supersedes any previous documentation. Given these circumstances, I do not find at this stage that any compensation is due complainants on the basis that insolvency cost risk occurred.

Element Two and Three

44. I consider the FCA's supervision of the firm on the whole not to be unreasonable, although I have identified that:

a. The FCA had sight of the firm's wind-down plan but did not highlight to the firm that it ought to be clearer on the insolvency risk costs which might arise as part of its risk warning.

b. The FCA became aware during the wind-down process that the firm had varied the terms and conditions of its loans documentation over time. In the event, increased fees were necessary to be levied due to worsening business conditions, so the level of fees applied can be justified. It is not clear why the FCA did not insist the communications were made clearer by the firm about historic fees, although I note that the FCA has undertaken considerable work since 2019 to ensure risks are communicated much more clearly in the p2p sector

c. There are competing arguments about whether the FCA ought to have, or not, appointed Moorfields as administrators. A case can be made for both arguments. The FCA has considered the position and made a decision which I consider falls within the range of reasonable decisions a regulator can make.

45. In my view, the issues I have raised above are ones which it would behoove the FCA to consider in terms of best practice, however, I do not find that they have a direct bearing on any alleged investor losses and for this reason I do not recommend that any remedy is awarded to investors.

46. The FCA's regulation of the P2P industry has evolved over time, and with the passage of time more rules and guidance have been introduced to strengthen the consumer objective in this area. I appreciate some complainants have raised examples of how things are 'done now', however, I have reviewed the FCA's regulation of MoneyThing in the context of the regulatory approach at the relevant times.

47. I note investors are disappointed with my decision and have raised objections, the crux of many of these being difficulty in reconciling the fact that I have found the FCA not to have acted unreasonably with respect to its supervison of Moneything when ultimately they have incurred losses. I have sympathy for those investors who have incurred losses, however, they are not attributable to the FCA, and although I have carefully considered all comments submitted to me my view remains the same for the reasons outlined in my report. Some complainants have said that their questions about aspects of the FCA's regulation of Moneything remain unanswered to their satisfaction. I appreciate

that complainants may continue to have questions about specific actions the FCA undertook during its oversight of Moneything, which I have considered, but as I have explained my view remains the same and I do not think that any further review into the matters raised will have a bearing on this conclusion, and I am conscious of the need to be proportionate and efficient in undertaking my investigation. For the avoidance of doubt, my decision will not disadvantage complainants.

Rachel Kent
Complaints Commissioner
21 June 2024