

03 May 2024

Final report by the Complaints Commissioner

Complaint number 202300537

Complaint to the FCA

1. You made a complaint to the Financial Conduct Authority (FCA) on 19 May 2022 about the FCA's Enforcement Division's actions or lack thereof in relation to Premier FX (PFX) and Bank A. The FCA issued a decision letter to you dated 13 July 2023.

Complaint to my office

2. This complaint is in addition to the previous complaint you submitted to my office about the FCA in connection to PFX. The first complaint was made by you as a member of the PFX Liquidation Committee, which my predecessor considered and published a report about. This report can be accessed [here](#). There is some overlap of the issues raised in the two complaints.
3. The FCA summarised your second complaint, being considered now, in 13 parts, as set out in the attached decision letter.
4. You are not satisfied with the outcome of this investigation and have written to my office on two occasions to explain why.
5. On 12 October 2023 you wrote to say:
 - a. *"The excuses given and reasons for not upholding my complaint appears spurious, inadequately investigated and unprofessional." **Inadequate investigation.***
 - b. *The complaint was made on 19 May 2022 and answered 13 July 2023. The information resided predominantly within the FCA and could have been*

easily checked: it did not require more than a year to answer my complaint.

Delay.

- c. *An important part of my complaint was the behaviour of the FCA Enforcement Director (Mark Steward) which on multiple occasions was directed at me and was accusational, excessively aggressive, unpleasant and bullying in nature.”* ***Conduct of an FCA Director.***
6. On 14 November 2023 you emailed again to say you wished to add two more points which I summarise as follows:
- a. You provide the background to your relationship with PFX and say: *“The FCA have responsibility for their failings and failure to apply administrative and regulatory laws and put things right. Simply persuading the Bank to return my principal is not adequate for the harm and distress caused.”* ***Lack of appropriate compensation.***
 - b. Your second point is detailed and sets out the compensation you request from the FCA, which is *“[£]52,000 plus statutory interest and interest of £169,000 (8%) on my principal sum for the time I was separated from my property which deprived me of the human right to live in my home, peacefully enjoy my property and live and work in the USA i.e. where I choose to live and work.”* You say, among other things, *“The FCA could have chosen to deal with the fallout of the Premier FX scam faster and indeed has powers to resolve the banking and regulatory failings of Premier FX without putting me through such distress and financial poverty.”* ***Lack of appropriate compensation.***
 - c. You also talk about the FCA’s *“approach to payment institutions”* and the need for *“stricter regulations”*. ***Insufficient regulation.***

Preliminary points

Like the FCA, I also express sympathy for your position and realise the failure of PFX had a huge impact on your life: financially and because of the great deal of distress caused by the initial loss and the amount of time it took to recover your lost capital funds, partially via the distribution in the liquidation and then the voluntary payment made by Bank A.

7. In response to my Preliminary Report you submitted a number of comments and set out your view that you were raising new concerns in this complaint that were not covered by my predecessor's report (linked above), and stated that in your view I did not address your complaint points in my report either.
8. Having carefully reviewed your reasoning for the above assertions, it remains my view that all the complaint points raised by you and investigated by the FCA had been covered either in the previous Commissioner's report or in this report.
9. I upheld your complaint about the way in which you were treated by the Director of Enforcement and recommended a payment of compensation for the distress and inconvenience this had caused, which the FCA has accepted.
10. My predecessor also upheld certain elements of your complaint related to the actions or lack thereof the FCA in regulating PFX and Bank A (submitted on behalf of the PFX Liquidation Committee) and made a recommendation that the FCA should pay compensation to affected eligible complainants in respect of these failures. However, recommendations made by the Commissioner are not binding on the FCA and it rejected her recommendations to pay compensation. The FCA's response, dated 18 December 2023, to the previous report in which it rejects the recommendation can be found [here](#). Unfortunately there is nothing further I can do about this under the Scheme.

My analysis

Conduct of an FCA Director

11. You have made a complaint about the alleged behaviour of enforcement director Mark Steward, highlighting his alleged behaviour towards you in PFX liquidator meetings. You complained about four occasions (it is unclear if they occurred during one meeting or at four separate meetings) when you allege Mr Steward criticised you. The FCA Complaints Team widened the scope of your complaint to include not just a review of the meetings with the liquidators, but also seemingly all contact you have had with the FCA (including Mr Steward and others) over a number of years.
12. The FCA did not uphold this complaint. You have made this specific point to me:

- a. *“It took place in Premier Fx Liquidation Committee Meetings and was embarrassingly public with 10 members present. Despite my repeated offer to take the issue off line and discuss it privately, and remonstrations from other members to return to the agenda, Mr Steward continued to lambast me and attempt to hold me accountable for various actions by Premier FX claimants for which as others pointed out I could not be responsible for. Mr Graham Dyke also said to Mr Steward that where large amounts of money have been stolen emotions will run high and none of the committee members could be held responsible for what other claimants did or said.*
 - b. *One of the liquidators said we should get back to the agenda and Mr Steward still continued to rant and express his rage at me for reasons which at the time were not entirely clear but became more apparent later. He was attempting to create a narrative to explain the Premier FX fraud which allowed the Bank A staff to avoid prosecution or fines or barring from working in financial services due to complicity or facilitating fraud through careless negligence. It was a truly appalling situation made worse by the reality that I was the sole female member. The investigator claims he “spoke with people present at the meeting.”*
13. I have carefully read and considered what you have told me. As you did not specify the date of the meeting when this alleged behaviour took place, I have reviewed the FCA notes on file which minute the meetings with the liquidators. I have not been able to identify the incidents you point to above and despite several requests to the FCA, it appears it does not have the relevant information on file either. I note the FCA did not seek the views of anyone who attended the meeting.
 14. There is nothing on record which identifies the behaviours you describe you have been subjected to at any of the meetings, but the FCA confirmed that the minutes had not been shared and agreed with you. Sharing the minutes with you might have given you the opportunity to comment on these events.
 15. In its Decision Letter, the FCA said *“I also comment that some of the evidence about the interactions with you I have seen while investigating this part of the complaint is not what I would expect to see in the normal course of events.*

However, as I have said earlier, I think it only right to take into account the particular circumstances of this case. So while I believe your description of the meetings you had with Mark Steward and Enforcement and I empathise with how you felt, taking into account the particular circumstances in this case, on balance I do not uphold this aspect of the complaint.”

16. As the FCA “believe[s] your description of the meetings”, and as some of the interaction the investigator had seen is “not what [the FCA] would expect to see”, and irrespective of the “particular circumstances of the case” I **uphold** this element of your complaint.
17. I **recommend** that the FCA apologises to you, both for the initial experience you went through, and for its failure to uphold the complaint. Additionally, I **recommend** that an offer of an ex gratia payment of £250 is made by the FCA in recognition of the distress and inconvenience you would have experienced as a result of this, in addition to an already difficult situation you were in, having lost a significant amount of money and all the consequences of that.
18. The FCA confirmed in its response to my Preliminary Report that it accepts these recommendations. It will make a payment to you following the issuing of this Final Report.
19. You told me in your response that “*the FCA refused to agree minutes for the Meetings between the Liquidation Committee, FCA and Liquidators. This reflects my concern about why there was no agreed record and overall a lack of good business practice and conduct at these meetings and interactions.*”
20. I suggest, in addition to the above recommendations, that the FCA takes on board your comments about keeping accurate and agreed records of meetings where appropriate. Where no agreement can be reached, this may be reflected on the record.

Delay

21. Whilst you have not asked for additional compensation in relation to this point, you have complained about delay on the part of the Complaints Team in providing you with a decision. The FCA has agreed that its decision letter was delayed: it apologised to you for this delay and offered you £250 ex gratia payment for the distress and inconvenience as a result. I note that you say that

you have not received this amount and I suggest the FCA makes arrangements to pay this amount when it pays the £250 compensation recommended by me.

22. I agree with you, there was delay by the FCA, and I also agree that it was right to offer you a distress and inconvenience payment in recognition of this. I have noted your comments about the delay and how long it took for you to receive the Decision Letter from when you were told by the investigator that it had been completed. My predecessors have made comments about complaints investigation delays at the FCA, which had been taken on board by the FCA. As previously stated, I will monitor FCA delays in general so that I may highlight if there are systemic issues with regard to delay on the part of the FCA complaint handling Team in my annual reports.

Lack of appropriate compensation

23. I turn to the next point you make to me, which is that: *“The FCA have responsibility for their failings and failure to apply administrative and regulatory laws and put things right. Simply persuading the bank to return my principal is not adequate for the harm and distress caused”*, and your request for consequential loss payment: I consider that these are complaints which I have already reviewed in my report [“Final Report into the Financial Conduct Authority’s Oversight of Premier FX Limited”](#).
24. Having reviewed your comments on my Preliminary Report, it is still my position that I do not propose to review this point again and would refer you to the findings in the report lined above.
25. As you said in your response, *“The former complaints commissioner recommended a 4% payment of compensation, however, the FCA have refused to pay which they publicly announced on 18 December 2023.”* You also *“ask that [I] re-consider the impact of [my] harsh judgement and do more for a victim traumatised by the theft which arose from regulatory negligence and lack of enforcement.”*
26. However, the only power available to my office is to make a recommendation for compensation, which the previous Commissioner has done. The Scheme, as set up based on legislation enacted by Parliament, does not allow me to enforce recommendations. I suggest that you contact your local Member of Parliament

to raise any concerns you have about the powers afforded to my office by the legislation, as it is only Parliament that may change the rules by which my powers are defined.

Insufficient regulation

27. I am unable to review this complaint about the FCA's publication on "*approach to payment institutions*", which you claim the Register does not link and is too long and complicated for the average consumer to read. This is not an issue which the FCA has reviewed in the decision letter you have referred to me, and I also note it appears to relate to rule making, which is outside of the scope of the Scheme, however, I invite the FCA to take onboard any comments you have made as feedback.
28. In your comments in response to the Preliminary Report you state that you are concerned with the FCA's lack of application of existing rules. However, the question of the FCA's application, or lack thereof, of existing rules in relation to PFX had been considered in the previous Commissioner's Final Report, linked above, and there is nothing further I can usefully add on this point.

Inadequate investigation

29. Whilst I understand your distress, I think that your broad allegation that in the FCA decision letter dated 13 July 2023 "*The excuses given and reasons for not upholding my complaint appears spurious, inadequately investigated and unprofessional*" expresses general dissatisfaction with the FCA decision letter.
30. I note your comments in your response to my Preliminary Report, but except in so far as the points identified under the heading "*Conduct of an FCA Director*", where I disagree with the conclusion reached by the FCA, I find that the complaint investigation undertaken was reasonable and professional. I do not uphold this element of your complaint.

My decision

Conduct of an FCA Director

31. I **uphold** this element of your complaint as the FCA accepts your account of events and the FCA found evidence of conduct it would not expect to see.

32. I am **recommending** the FCA apologises to you and offers an ex gratia payment of £250 for the distress and inconvenience caused, not just by the initial conduct itself, but by the fact that the FCA accepted your account of events and accepted that the conduct complained of was below the standard it would expect, but it still did not uphold your complaint, citing the “*particular circumstances of the case*”.

Delay

33. The FCA upheld this complaint point and offered an ex gratia payment in recognition of the delays you experienced through its handling of the complaint. I agree that there was delay but I also find that the compensation offered by the FCA for the delay itself is adequate. I do not uphold this element of your complaint.

Lack of appropriate compensation

34. I am not reinvestigating this element of the complaint as it was addressed under the report referred to in paragraph 2 and compensation in respect of the FCA’s failings had been recommended. It is unfortunate that the FCA had not accepted this recommendation, but I am unable to enforce recommendations under the current Complaints Scheme.

Insufficient regulation

35. I am not investigating this complaint point as this was not part of the complaint to the FCA and it did not have an opportunity to comment on it, and it seems to be a complaint about rule making, which does not fall under the scope of the Scheme. I do however invite the FCA to take your comments onboard.

Inadequate investigation

36. I am not upholding this element of your complaint, as except for the decision related to the “*Conduct of an FCA Director*” element of your complaint, I find the FCA’s investigation was reasonable and not unprofessional. All additional points raised in your response to my Preliminary Report relate to the conduct of the FCA in relation to the firm and the bank, which had been dealt with in the previous report.

Rachel Kent
Complaints Commissioner
03 May 2024