

21<sup>st</sup> May 2015

Dear Complainant,

**Complaint against the Prudential Regulation Authority  
Reference Number: PRA00007**

Thank you for your email of 5<sup>th</sup> February 2015 in connection with your complaint about the Prudential Regulation Authority (PRA). I am sorry that it has taken so long for me to complete my consideration of your complaint, but I have needed to make further inquiries. The circumstances leading to the crisis with Bank C's funding, and your losses, are – as you will be well aware – complicated ones.

In considering this case, I have carefully reviewed both your complaint and the regulator's arguments for not considering it under the scheme. As the rules of the scheme under which I consider complaints can be found on our website at [www.fsc.gov.uk](http://www.fsc.gov.uk), I shall not repeat them here.

**Your complaint**

From your email I understand that you are unhappy that the PRA has “decided not to make any direct investigations, and whitewash or brush under the carpet my complaint and claim for a £40,000 loss, under the auspices of Section 3.6 of the Complaints Scheme. A matter better dealt with by the independent investigation into Bank C matters ordered by the Treasury”.

You add that the PRA has also “refused to identify the date the regulators first had knowledge of the one and a half billion black hole in the Bank C accounts and how they created a false market for Bank C bonds from December 2012 until mid-April 2013 when the newly formed PRA released the information to the media and a complete collapse in the capital values of the Bank C bonds and my incurred capital losses. Had the regulators not sat on the information and in so doing created a false Market, I would not have purchased my £100,000 Bank C bond and suffered my enforced capital loss”.

**My assessment of your complaint**

I should start by saying that I can understand why you are so concerned about this matter, given the losses which you have suffered, and I have every sympathy for your situation. No one could dispute that there were serious failings in Bank C with serious consequences for a large number of people, including you.

My role in this matter is to consider whether the PRA were right to decline to investigate your complaint on the grounds that the complaint would be more appropriately dealt with in another way. The PRA's correspondence with you has explained that the Treasury has announced that there will be a statutory inquiry into events at Bank C, and that that investigation is the most appropriate way of considering the matters raised in your complaint.

The background to this matter is complicated, but can be summarised as follows. In early 2013 the Bank of England and Financial Services Authority, as the then regulator, undertook an assessment of the capital position of a number of UK banks based upon the banks' positions at the end of 2012. The results of this assessment were released in general terms by the Financial Policy Committee on 27<sup>th</sup> March 2013<sup>1</sup> before Bank C made its own announcement in April 2013 and the PRA made a formal announcement about capital assessment on 20<sup>th</sup> June 2013<sup>2</sup>.

The principal responsibility for disclosure in such circumstances falls upon the bank, not the regulator. The disclosure of a bank's capital position is for the bank to do in its annual report (following the auditing of its accounts), or when it becomes aware of a significant change in its reported capital position. The auditors also have responsibilities in this matter.

Whilst the Bank of England and the PRA are responsible for ensuring that banks are able to meet their capital requirements, the identification of a shortfall would not immediately warrant a disclosure by them (indeed, premature disclosure might have serious consequences for investors). Where a shortfall is identified, the Bank of England and PRA would be expected to work with the bank to address the shortfall. Unless it was clear that the bank would be unable to address the shortfall and the bank's failure was imminent and immediate action was therefore needed in the form of funding support, nationalisation or enforced merger (as occurred with a number of financial institutions at the height of the financial crisis), there would be major dangers in the regulator making an early announcement. Furthermore, Section 348 of the Financial Services and Markets Act 2000<sup>3</sup> contains confidentiality restrictions which limit what information the PRA and Bank of England could disclose in such circumstances.

These facts mean that it is not possible to make a simple judgement about the adequacy or otherwise of the regulatory decisions made in the run-up to the announcement of Bank C's problems. As you are aware, Bank C remains subject to enforcement investigations being undertaken by the PRA and FCA (I have received an assurance that these are progressing), and the Treasury's statutory inquiry will follow any enforcement proceedings.

In the light of all that, I have considered the options. I recognise that, from your point of view, it must be very frustrating to be told that nothing can be done pending the outcome of a statutory inquiry which in turn depends upon the completion of enforcement action. On the other hand, having considered all the material it is clear to me that there is no prospect of resolving your complaint before any enforcement proceedings, and the subsequent statutory inquiry, have been completed. In the absence of clear evidence that the regulators were wrong in their judgements about the release of information – and I do not have such evidence – I cannot make a recommendation. I therefore uphold the PRA's decision.

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<sup>1</sup> <http://www.bankofengland.co.uk/publications/Pages/news/2013/013.aspx>

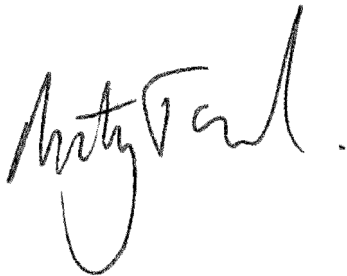
<sup>2</sup> <http://www.bankofengland.co.uk/publications/Pages/news/2013/081.aspx>

<sup>3</sup> as amended by provisions contained within ss16 to 24 of Part 2 of the Financial Services Act 2012

However, in one respect I recommend that the PRA's response to you should be clarified or amended. In my view, the PRA should ask HM Treasury (who are responsible for the statutory inquiry) to ensure that that inquiry looks at the position of people who, like you, incurred losses before the outcome of the Liability Management Exercise was known so that consideration can be given whether any redress is due and, if so, who should be responsible for it (I must stress that at this stage I am not in a position to say whether any redress would be justified). Additionally, I recommend that the PRA should make it clear that, in the light of the results of the statutory inquiry, it would be prepared to reconsider your complaint. Finally, I wish to make it clear that this Office would look at your complaint again in the light of the outcome of the statutory inquiry.

I appreciate that you will be disappointed with my decision, and fully accept that this does not provide a swift remedy for the loss you incurred when you sold your bonds. However, I hope that you will understand why I have reached my decision. .

Yours sincerely

A handwritten signature in black ink, appearing to read 'Antony Townsend', with a large, stylized flourish at the end.

Antony Townsend  
Complaints Commissioner