

28 June 2018

Final report by the Complaints Commissioner**Complaint number PRA00011***The complaint*

1. On 31st March 2018 you emailed me with a description of your complaint about the Prudential Regulation Authority's (PRA) handling of a complaint you made in 2013.

What the complaint is about

2. This complaint stems from your dissatisfaction with the regulation of the Co-operative Bank, in which you held shares. Your overall complaint is wide-ranging, including matters which are now going to be looked at by the independent review into the prudential supervision of the Co-operative Bank between 2008 and 2013, which was announced by the Economic Secretary to the Treasury in March, and other matters which concern the regulation of the conduct of business by the Co-operative Bank which are now being investigated by the Financial Conduct Authority. The investigation of these matters has been seriously delayed because enforcement action by the FCA was not concluded until earlier this year.
3. This particular complaint has a narrower focus. It is about the way in which the PRA responded to a complaint you made on 16 August 2013. Your complaint centred upon the bank's proposal for the treatment of preference shares in the recapitalisation process. You were seeking the PRA's intervention in what you considered to be improper behaviour by the bank, and complained about what you considered to be the PRA's failure to respond to questions from those representing shareholders.

What the regulator decided

4. In its decision letter of 22 August 2013, the PRA told you that it would not formally investigate your complaint, on the grounds that

It appears to us the issues you have raised amount to dissatisfaction with the PRA's general policy, or with the exercise of, or failure to exercise, discretion where no unreasonable, unprofessional or other misconduct is alleged. It is also our view that the issues raised in this type of complaint (i.e. dissatisfaction with PRA policy) would be more appropriately dealt with outside of the Scheme e.g. by legal proceedings, if so required.

5. The PRA did, however, give you a reasonably detailed explanation about its position in relation to some of the events at the Co-operative Bank.

Why you are unhappy with the regulator's decision

6. You describe the PRA's response to your complaint as inadequate. You draw attention to instances where you feel that the PRA did not properly consider the points you had made, or understand them. You also say that the PRA did not respond to some follow-up points which you made.

Preliminary points

7. Your underlying concerns are with the behaviour of the Co-operative Bank, and with what you see as the failure of the regulators (the Financial Services Authority (FSA) up to 31st March 2013, and the PRA thereafter), to regulate effectively. Those questions are being looked at in the investigations referred to in paragraph 2 above. This report looks only at the adequacy, or otherwise, of the PRA's response to your complaint in August 2013.
8. Your complaint is well out of time (generally, I consider complaints made within three months of the regulator's decision letter). However, I am sympathetic to the points you make about how depressing you found your attempts to make progress in this matter; and in the light of the very long time which it has taken the authorities to get to the point of beginning to investigate the various complaints about the Co-operative Bank affair, it seems to me that it would be unacceptable to rule your complaint out of time. For that reason, I have decided, exceptionally, to accept it.
9. In your response to my preliminary report, you asked me to confirm that this report does not preclude your making a further complaint about other wider matters, at a later stage. I can confirm that.

My analysis

10. I start with an analysis of your original complaint. In my view, the principal elements in that complaint were:
 - 1) The FSA had been incompetent in regulating the Co-operative Bank;
 - 2) The PRA had approved a recapitalisation exercise which included irredeemable preference shares, despite the concerns which had been raised about the propriety of this course of action, and despite the existence of other options;
 - 3) The bank had failed to take legal action against its auditors, thus leaving shareholders to shoulder a greater burden (and by inference, the FSA/PRA should have intervened to stop this);
 - 4) The PRA had failed to respond adequately to representations made on behalf of shareholders.
11. The PRA's decision was that your complaint should not be investigated for the reasons given in paragraph 4 above. I have to say that I am not convinced by those reasons, which are simply a recital of the grounds on which a decision not to investigate *may be made*, rather than a justification for the decision. Your complaint was made in rather general terms, but I think that it was at least arguable that you *were* alleging unreasonable or unprofessional behaviour by the regulator. Furthermore, the PRA's conclusion that legal action might be a more appropriate route seems to me questionable – while I can see that legal action might well have been the appropriate means to challenge the behaviour of the bank, it does not seem to me that legal action would have been the appropriate means for challenging the regulator's exercise of its duties.
12. Having said that, I consider that the PRA's letters did you give you explanations for its actions, so I do not think that, in practice, its decision not to investigate your complaint under the Scheme had much of a practical effect upon the outcome.

13. That takes me to your criticisms of the quality of the decision letter. You say that you “got the distinct impression that this was a proforma response to most enquiries about the Co-op at the time...there was little attempt to address most of the issues I had raised – and even when they were addressed, the response was either wrong technically or completely inadequate. Subsequent attempts on my part to point this out to elicit proper responses were also generally fruitless.”
14. Fundamentally, there was a difference of opinion between you and the PRA about how interventionist the regulator should be. The PRA’s decision letter was, in my view, a generally well-intentioned attempt to explain the PRA’s overall approach, including explaining those issues which were, in its view, properly a matter between the bank and its shareholders and creditors, rather than a matter for the regulator.
15. I do, however, have some sympathy with your view that parts of the letter were not sufficiently tailored to your particular circumstances, and that it did not address all of the points which you had raised. In particular, the failure to distinguish between preference shares (which you held) and bonds, the suggestion that you contact the Co-op Group to raise your concerns when it was clear that you had already done so unsuccessfully, and the statement that “the PRA cannot comment on behalf of the Co-operative Bank’s auditors” when you had not asked it to do so (and were making a different point), understandably gave you the impression that your points had not been adequately considered.
16. That impression was exacerbated by the delays in following up the points you made in response to the decision letter. You were promised a response at the start of the week beginning 2nd September, and you had to chase for a reply on 6th and 9th September. You received a partial response on 10th September, to which you replied on the same day expressing your dissatisfaction, but that email was not acknowledged.

My decision

17. In my view, there were some shortcomings in the response to your complaint, and in the follow-up correspondence, which I have described above. Your complaint was not as well handled as it should have been, and I uphold it on that basis.
18. Those shortcomings did not, however, affect the outcome of your complaint: fundamentally, you disagreed with the PRA’s (and FSA’s) regulatory approach. The questions about the adequacy of that approach are, as I described earlier, being pursued elsewhere.
19. In my preliminary report, I **recommended** that the PRA consider the lessons to be learned from my analysis, and issue you and me with a response. I am pleased to say that the PRA has accepted my recommendation, and will write to explain the process improvements which it has put in place since the events about which you complained.

Antony Townsend

Complaints Commissioner

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