

CONFIDENTIAL

26 November 2020

Final report by the Complaints Commissioner

Complaint number PRA00012 and FCA00652

The complaint

1. You complained to my office in September 2019 because the Financial Conduct Authority (FCA) had decided that a complaint which you had made was out of time.
2. You also complained to the Prudential Regulation Authority (PRA) about the same matter. For that reason, the previous Commissioner suggested – and you agreed – that he should wait until the PRA had made a decision on your complaint before he investigated the matter.
3. The PRA issued its decision on your complaint on 24 July 2020, following which you asked my predecessor to investigate. I am the newly appointed Complaints commissioner and I have investigated your complaint.

What the complaint is about

4. On 9 August 2019, you described your complaint to the FCA as follows:

Brief details of your complaint: In 2013 the Cooperative Bank issued 250 million shares in swap for their 1 billion debt to bondholders. In 2016 the majority shareholder issued themselves 9 billion new shares for only 250 million cash in. The regulators sanctioned this absurd, self serving transaction. It should never have been sanctioned.

Brief details of the steps you have taken so far to try and resolve the matter (including any compensation received to date): Contacted the Cooperative Bank, they told me you had approved all their actions. Contacted the FCA, PRU and B of E, they all told me they felt the Cooperative had acted properly. I propose the regulators were acting in accordance with political pressure as the Cooperative actions were clear manipulation of the capital base for gain.

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Misconduct alleged: Condonation of financial misconduct by the Cooperative Bank as acts of political expediency. The hedge funds clearly gained complete ownership of the bank by diluting the bond holder's stake to essentially zero. At best mistakes and lack of care, at worst in conspiracy with [sic] the hedge funds.

Remedy sought: Restoration of my rightful share of the Cooperative Bank.

5. You complained to the PRA on 30 July 2019. The PRA described your complaint as follows (a description with which you agreed):

we understand that in 2013 you purchased Co-operative Bank backed senior secured notes which, following default by the firm, you exchanged for shares in, and new bonds from, the Co-operative Bank later that year. You informed us that these shares have not been listed on the stock market and are therefore apparently illiquid. You advised us that subsequent recapitalisations, funded by US hedge funds who hold a controlling interest in the Co-operative Bank, have had a considerable dilutive impact on your shareholding, due to the extensive number of new shares that have been issued.

You have said that these events have caused you financial loss and you allege that the PRA is at fault as it has failed in its prudential regulatory oversight responsibilities. We believe your complaint is therefore an allegation of a lack of care on the part of the PRA.

What the regulators decided

6. In its decision letter of 9 September 2019, the FCA said that, because the events about which you complained occurred in 2013 and 2016, you were outside the usual 12-month limit for bringing complaints. The FCA went on to say: 'However, we can look at complaints after this 12-month time bar if you have reasonable grounds for the delay in complaining. However, from the information I have seen, I can see no reason why this complaint couldn't have been brought sooner.'
7. In its decision letter of 24 July 2020, the PRA said that your complaint was out of time but that, 'because of the ongoing nature of the Co-operative Bank's restructuring resulting in complaints to us over an extended period of time, we have made an exception to investigate.'

8. The PRA did not uphold your complaint. In essence, it said that it had undertaken a careful review of the PRA's actions in the light of its primary objective, which is 'to promote the safety and soundness of the firms it regulates, and it is required by statute to advance this objective by focusing on the stability of the UK financial system.' Its review was 'unable to find evidence of a failure in our prudential oversight responsibilities or a lack of care on our part.'

Why you are unhappy with the regulator's decision

9. You say that the PRA has spent ten months investigating your complaint, and then told you that much of your complaint falls under the remit of the FCA rather than the PRA; 'that the FCA and other regulatory groups under the Treasury Department have failed in their remit to protect a primary creditor'; and that you are 'seeking appropriate compensation which should be calculated from my direct loss of 530,000 pounds and the loss of income of income during the past 7 years.'

Preliminary point

10. Although in procedural terms you have made two complaint to two regulators, in reality you have a single complaint about what you see as the failures of the whole regulatory system. For that reason, much of what follows treats your complaint as a single one, although my conclusions address the PRA and FCA separately where that is appropriate.

My analysis

11. I should start by saying that the underlying cause of your complaint is the well-publicised crisis which engulfed the Co-operative Bank around 2013. The prudential regulation of the Co-operative Bank up to 2013 (which at the time was the responsibility of the Financial Services Authority) was the subject of the independent review by Mark Zelmer which was commissioned by HM Treasury. His published report can be found at <https://www.gov.uk/government/publications/independent-review-of-the-prudential-supervision-of-the-co-operative-bank-plc>. The Co-operative Group also commissioned an independent review into the failings at the bank. That review was done by Sir Christopher Kelly, and can be found at <https://www.co-operative.coop/investors/kelly-review>.

12. While those two reviews give a comprehensive picture of the events leading up to the crisis, they do not cover your particular concern, which relates to the treatment of your bonds and shares in the Co-operative Bank.
13. In common with many other people, you suffered a loss as a result of the mismanagement of the Co-operative Bank. Your view is that the regulators were complicit in that loss by condoning the dilution of your stake in the bank.
14. The FCA has declined to investigate your complaint because it is out of time. The PRA agreed to investigate your complaint even though it was out of time.

The 2013 Liability Management Exercise

15. Because I have documentary evidence from both the FCA and PRA in relation to the 2013 exercise, I am able to provide the following explanation.
16. The Bank's offer, to exchange your bonds for shares and new bonds, arose from its need to raise sufficient capital to meet the Bank's capital requirements. The Bank's capital requirements had increased because of updated valuations of the corporate loan book, the write-off of an IT project, and other factors. The Bank's plans were considered by the Regulators at a number of meetings and ultimately it was decided that the recapitalisation plan was acceptable.
17. The Regulator considered whether there were any potential mis-selling or any other concerns from the point of view of protecting retail investors who would be affected by the plan. It found that overall, there were no concerns, especially in light of the fact that this was a voluntary recapitalisation exercise, done in the manner suggested by the Bank. The affected bondholders and preference shareholders voted overwhelmingly in favour of the plans, with 99.89% of the votes in support.
18. It is clear from the documentary evidence that the Bank made it clear to the Regulator that the Exchange Offer was the only viable option available to it to raise the required capital.
19. It seems to me that on balance, and in light of the facts set out above, the Regulator decided to allow the Bank to carry out its own plan for recapitalisation, supported by the overwhelming majority vote of its bondholders and shareholders, as without this plan of action the Bank most likely would have

failed, which would have resulted in a complete loss of investments and caused larger problems in the UK financial system.

The 2017 exercise

20. In relation to the Bank's 2017 exercise, I have considered the actions taken by both the PRA (in relation to the prudential supervision of the Bank) and the FCA (in relation to the conduct supervision).
21. The PRA's decision letter of 24 July 2020 explained to you that the Bank's recapitalisation proposals had been through the usual approval processes, and that from the evidence that the PRA had seen it was clear that, without such an exercise, the Bank was in danger entering into resolution procedures in which shareholders might recover nothing.
22. The PRA also drew your attention to the fact that the Bank had been open about the dilution of stakeholders' holdings, and that the matter had been put to shareholders who had approved the proposals, which were then sanctioned by the Court.
23. In relation to the FCA, while it is not my role to substitute my regulatory judgement for the regulator's, from the documents I have seen I am satisfied that proper consideration was given to the position of retail investors.
24. Although unfortunately the documents which I have seen contain confidential information, what I can say is that it is clear that both regulators gave very careful consideration to the Bank's proposals; and that the treatment of institutional and retail investors was included in that consideration.

My decision

25. For the reasons I explain above, I do not consider that the regulators' actions in relation to the two recapitalisation exercises were unreasonable. For that reason, I do not uphold your complaint.
26. I understand you do not agree with my decision and continue to feel that the dilution of your holding was disproportionate and unfair, as was the lack of a public listing of the new shares. I recognise that you were badly affected by the problems at the Co-operative bank, but this was not due to the regulators' actions

Amerdeep Somal
Complaints Commissioner
26 November 2020