

20 October 2020

**Final report by the Complaints Commissioner****Complaint number PRA00015***The complaint*

1. On 20 August 2020 you wrote to me to complain about the outcome of a complaint you had made to the Prudential Regulation Authority (PRA).

*What the complaint is about*

2. The PRA described your complaint as follows:

*We understand that you were not satisfied with the extent of the PRA's review of the application of [Friendly Society X] to convert to [Company Y]. More specifically, you find that the PRA's conclusion that the "Challenges we face" section of the Member Booklet "was reasonable" was not in any way supported by the facts of the case, particularly as regards the true importance to [Friendly Society X's] survival of the volume of with profits business being written. You feel that the supposed threat was considerably exaggerated, so as to persuade Members to vote for the conversion, as [Friendly Society X] Management clearly wanted. If as a result of the current analysis, the PRA still conclude that the "Challenges we face" section was reasonable, then you want them to explain in detail how that conclusion has been reached.*

*In addition you feel that the PRA should have disclosed to you in advance "the extremely limited nature of its review", since it had been represented in the Member Booklet that as a member you have the right to tell the Prudential Regulation Authority about any thoughts or objections that you might have about our proposals. As a consequence of the PRA's failure to make the true position clear in advance, you*

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*were inconvenienced by spending many hours of time preparing your representations, which ran to 4 sides of closely typed A4 paper, and which you feel were not given due consideration.*

*Finally, you feel that the PRA's decision on 14th June to decline your request to defer the 19<sup>th</sup> June "oral representations" meeting was wholly unreasonable. It is your view that the PRA's representation that its decision was because "it remains open for other individuals to provide oral representations should they wish" was disingenuous. In your view, the reality was that by 29<sup>th</sup> May, PRA knew that the only future "oral representation" which had been flagged to it in compliance with its own publicly stated timetable was your own, and that "other individuals" could not legitimately intervene in that process in mid June. In your view, throughout the proceedings the PRA have shown a marked preference for form over substance. In your view, the PRA were unwilling to analyse the Conversion Proposal in an objective manner, but were quite willing to field up to ten representatives at the meeting on 19th June, had it gone ahead. ([Ms Z's] email of 17<sup>th</sup> June confirms this point).*

3. On the basis of this description of your complaint, the PRA characterised your allegations as follows:
  - a. bias in respect of its review of the application;
  - b. a lack of care in respect of its dealings with you as an interested party;
  - c. a lack of integrity in respect of its stated reasoning to not defer a timetabled event.

*What the regulator decided*

4. The PRA did not uphold any of your allegations. It sent you a ten-page letter setting out the background to the matters which led to your complaint, and its reasons for rejecting it.

*Why you are unhappy with the regulator's decision*

5. You have asked me to review two elements of your complaint: bias, and lack of care. I analyse both points below.

*My analysis*

6. Your allegation of bias relates to the way in which the PRA dealt with Friendly Society X's application to convert. In essence, you consider that the Society's members were misled by the members' booklet into concluding that unless they agreed to the conversion, the Society was at risk of closure; and that the PRA failed to deal with this. You have drawn the PRA's attention, and mine, to the sections in the booklet which relate to the declining market in 'with profits' policies, which Friendly Society X cited as a reason for applying for conversion (given that friendly societies are required to operate with a meaningful level of 'with profits' business).
7. In its response to you, the PRA said that neither it, nor the FCA which also reviewed the members' booklet, agreed with you that the booklet exaggerated the threat to the Society caused by the decline in 'with profits' policies. The PRA makes the point that other similar organisations in the sector were also having to deal with this problem.
8. I have looked carefully at the sections of the members' booklet to which you have drawn my attention. The booklet described a 'real risk' that, if the 'with profits' market continued to decline, the Society would be forced to close. The extent of that risk if, of course, a matter of opinion; but it clearly existed, and it does not seem to me that the way in which that risk was described was obviously unreasonable. It follows that I do not think that the PRA's actions were unreasonable.
9. In response to my preliminary report, you drew my attention to a number of matters. First, you commented that the members' booklet did not exactly follow the PRA's wording in respect of the matters which the booklet needed to cover. It is true that the wording in the members' booklet used the term 'important information' whereas the PRA's wording used the term 'some material information', but I am not convinced that there is any real difference between the two. My view remains that it was not unreasonable for the PRA to conclude that the members' booklet was sufficient.
10. Second, you say that the Society at the time was continuing to write a significant amount of with profits business, and that it was misleading for the Society to give

the impression that the adoption of its proposal was 'imperative'. For the reasons I have given in paragraph 8, I do not agree with you on that point.

11. Third, you argue that the omission of the with profits issue from the Society's risk register, and the fact that the booklet referred to the possibility of Society entering the reinsurance business which did not then materialise, are significant in showing that the booklet was biased. It does not seem to me that the omission of the with profits issue from the risk register demonstrates that the booklet was misleading, nor does the fact that the Society chose not to enter the reinsurance market. You have interpreted these points as meaning that the Society misled members, but I have seen no evidence to support that.
12. For those reasons, I do not uphold your complaint of bias.
13. Turning to your allegation of lack of care, your complaint is that the members' booklet misled you into believing that you could make wide-ranging comments about the conversion proposal, but that in reality the PRA's ability to consider representations was constrained by the law; and that, as a result, you spent a considerable time preparing representations which were not going to be entertained.
14. The PRA's response to this was that the matters which the PRA could or could not consider were set out pages 9 and 10 of the members' booklet; and that the committee of the PRA which considered the conversion application looked carefully and comprehensively at the representations which were received.
15. I have looked at the members' booklet, and I can confirm that the matters which the PRA could consider in making its decision were clearly set out in the members' booklet. I sympathise with your point that many members reading the 20-page members' booklet would be unfamiliar with the technicalities of the conversion process, but it seems to me that the booklet was arguably a reasonable way of conveying complex information in sufficient detail.
16. I have also considered confidential papers relating to the PRA's decision. Although I cannot disclose those papers, I can say that it is clear from them that the PRA committee which considered Friendly Society X's application was given extensive details of the written representations made by members, and discussed them before making its decision.

17. For those reasons, I do not uphold your complaint about lack of care.
18. As a supplementary point, you have raised with me a query about the provisions of the Friendly Society Act 1992 under which the PRA operates. The point you make is that the provisions appear to allow the PRA to reject an application if relevant material has not been made available to members, but do not appear to allow the PRA to reject on the grounds that the material which has been made available is a misrepresentation.
19. This [Complaints Scheme](#) does not cover complaints about the law, so I cannot consider the matter; but I invited the PRA to comment on this point when it replied to this preliminary report. Disappointingly, the PRA replied that 'It is for the Courts...to provide a definitive interpretation of the law', which seems to me to miss the point, which was that the law itself was defective. I therefore **invite the PRA** to consider whether or not there is a lacuna in the provisions which needs to be addressed.
20. Finally, although you have only drawn two particular points from your original complaint to my attention, I should say that I have looked carefully at all the points made in the PRA's decision letter, which was very comprehensive. Although I think that the response was somewhat delayed, in my view the PRA's investigation was thorough; and I am satisfied that its arguments were reasonable.
21. I recognise that you have strong views about what happened in the conversion of Friendly Society X, but my investigation supports the PRA's conclusion that the application was dealt with thoroughly.

*My decision*

22. I am sorry to disappoint you, but I do not uphold your complaint.

Antony Townsend  
Complaints Commissioner  
20 October 2020