

25 March 2020

Final report by the Complaints Commissioner

Complaint number PRA00016

The complaint

1. On 6 January 2021 you complained to me about the PRA's investigation of your complaint. My preliminary report was issued on 4 March 2021 and both you and the PRA have had the opportunity to comment

What the complaint is about

In its final response letter to you dated 18 December 2020 the PRA described your complaint as follows:

Element One

You alleged that the PRA abused its position as a regulator by putting pressure on banks to cancel dividends, and that it exerted inappropriate influence over the firms' directors when it wrote to the banks regarding the cancellation of 2019 dividends. Your concern is that the PRA crossed the boundary between appropriate and inappropriate regulatory intervention and that the regulator acted improperly or beyond its regulatory mandate.

Specifically, you outlined that the banks had strong capital positions and therefore considered the PRA's intervention was unwarranted.

Element Two

You feel that the tone used in the letter by Sam Woods to the banks was equivalent to a direct order from the PRA to the banks to comply with this so-called 'request' or face consequences.

What the regulator decided

2. The PRA did not uphold your complaint.

Case Ref

3. The PRA informed you that it acted in accordance with its general statutory objectives and that the PRA's request was lawful. It also stated that it had found no evidence to suggest the PRA '*crossed the boundary between appropriate and inappropriate regulatory intervention.*'
4. With regards to element two of your complaint the PRA stated it did not find any evidence supporting the allegation of 'unprofessional behaviour'. In reviewing the decision-making process leading up to the PRA's statement and letters to the relevant banks on 31 March 2020 as well as the wording of the letters themselves, the PRA state that it acted in accordance with its published approach to supervising banks.

Why you are unhappy with the regulator's decision

5. In your letter to me dated 6 January 2021, you requested a review of the response you received from the PRA, particularly in relation to its final response letter dated 18 December 2020.
6. The background and crux of your complaint relates to the PRA's action at the end of March 2020, in relation to seven UK banking institutions whereby the PRA requested they cancel their dividend payments. You informed me that you hold shares in two of those banks and you believe that the PRA acted inappropriately in its intervention with the banks.
7. The main points of your complaint can be summarised as follows:

Element One

Nature of the PRA - you state,

the PRA cannot intervene in the affairs of the firms under its jurisdiction without that intervention by its nature being an exercise of the regulatory authority it possesses and ask, why did it choose those particular firms?

Element Two

Regarding the PRA's objectives you quote [Section 2B of the Financial Services and Markets Act 2000](#) and mention the following in relation to the PRA,

Both of these statements focus the work of the PRA on the business of the authorised persons...it does not directly have a function, for example, of promoting the good or stability of the UK economy.

Element Three

In relation to the PRA's remit you state,

it cannot be and, indeed, is not a part of the PRA's remit to require the banks to promote the public interest *per se*. To do so would be an inappropriate use of its authority and an infringement of the rights and interests of the banks' owners

Element Four

You mention,

On this occasion, the PRA did not identify potential for harm, suggesting only that the action was a sensible precautionary step... [that] should help the banks support the economy through 2020. In the context of the PRA's own assessment that the banks were well-capitalised and the PRA having no solvency concerns pertaining to individual institutions

Element Five

You have told me,

The decision to review dividend payments, share buy-back programmes and staff bonuses should rightly be made by the directors of the companies concerned. The important matter is whether or not such a cut was necessary in the circumstances existing at the time of the PRA's intervention in March 2020.

Element Six

You disagree with the PRA's explanation of their intervention and state, '...The PRA attempts to present its intervention at that time as merely a 'request' made to the stated banking institutions...and the actions of the directors of the banks as 'voluntary'...'

Element Seven

You state of the differentiation in the PRA's letters to the banks and insurers the following,

This was a very different letter, requiring the directors of the insurance companies to review their decisions concerning distributions but with no obligation to cancel dividends and no threat of regulatory intervention if they made such distributions; in other words, the insurers, unlike the banks, were left free to choose whether or not to make distributions (pay dividends)

Element Eight

Damage – you allege that the PRA's action, '...had a deleterious effect on the stock market valuation of the shares of the banks concerned...'

Element Nine

You have mentioned in your complaint that the PRA's response to your complaint was 'private and confidential', specifically you say '...the PRA is accountable to the public and so cannot insist that its response to a complaint is private and confidential...'

Element Ten

8. You state, '...it took the PRA over 8 months to respond to my complaint. given the serious nature of the complaint, this is excessive...'

9. When looking at redress you informed told me,

I would like to see a public statement by the PRA that it should not have acted on that occasion in the manner that it did and will in future act only in accordance with the terms of its public remit.

Preliminary points (if any)

10. I have reviewed all the material you have provided to me. I have also been provided with the PRA case file. My intention in this investigation is to look at what is appropriate under the Complaints Scheme.

11. It is important that I highlight from the outset matters which are excluded under the Complaints Scheme and therefore issues I am unable to look at and comment on any further.

12. Section [3.2 of the Complaints Scheme](#) provides:

‘Complaints can be made by anyone who is directly affected by the way in which regulators have carried out their functions, or anyone acting directly on such a person’s behalf, provided that the complaint meets the requirements of the Scheme. To be eligible to make a complaint under the Scheme, a person must be seeking a remedy (which for this purpose may include an apology) in respect of some inconvenience, distress or loss which the person has suffered as a result of being directly affected by the regulators’ actions or inaction.’

13. You have mentioned in your complaint the deleterious effect on the stock market of the shares of the banks concerned. I am unable to look at issues such as the effect on the stock market resulting from the actions or inactions of the PRA. However this does not stop me from being able to look at issues which may have directly impacted somebody such as an individual complainant. In this instance, you have not informed me of any issues that directly impacted you personally, so I will not be able to investigate Element Eight of your complaint.

My analysis

Element One

Nature of the PRA:

14. You have told me first that, ‘...the PRA cannot intervene in the affairs of the firms under its jurisdiction without that intervention by its nature being an exercise of the regulatory authority it possesses and ask, why did it choose those particular firms?...’
15. A general review of your complaint shows your disagreement with the PRA’s intervention and approach to dividend payments, in response to Covid-19. I understand you feel the PRA did not hold the necessary regulatory authority to intercede into the events of the firms. However, having looked at all the information that has been provided to me, it appears the PRA did exercise its authority appropriately. Chapter two of the [Financial Services and Markets Act 2000](#) sets out the general objectives of the PRA. The Covid-19 pandemic was and still is, an unprecedented issue providing continued uncertainty. I can see the PRA aimed to meet its statutory objectives, by ensuring it was delivering the maximum benefit possible, to ensure the safety and soundness of firms. So, I am

unable to agree that the PRA's intervention was outside of their regulatory authority.

16. You ask why the PRA chose those particular firms. My understanding is that those specific firms are the UK's largest banks and thus likely to have the most wider impact concerning the UK's financial stability. Subsequently I can see why the PRA chose to act on those firms in particular and the PRA released a statement to this effect here: www.bankofengland.co.uk/prudential-regulation/publication/2020/pra-statement-on-deposit-takers-approach-to-dividend-payments-share-buybacks-and-cash-bonuses.
17. I would expect in such a scenario the PRA to exercise its relevant functions relating to the largest UK firms and cannot see it has have done anything wrong by doing so. Essentially, I would be more concerned had the PRA omitted to act as the stability of the UK financial system came into question. Given the inability of the PRA to apply pre-emptive measures regarding the uncertainty Covid-19 brought on a global scale, I think the PRA was right in primarily looking at the seven firms, the stability of the financial system and any adverse effects. So, I believe the PRA acted within its authority to fulfil its duties.

Element Two

18. You have brought to my attention [Section 2B of the Financial Services and Markets Act 2000 \(FSMA\)](#). You state in relation to this legislation that the focus of the work of the PRA is on the business or authorised persons and, '...it does not directly have a function, for example, of promoting the good or stability of the UK economy...' The relevant parts to mention of Section 2B of the Financial Services and Markets Act 2000 are as follows:

The PRA's general duties

2B The PRA's general objective

- (1) In discharging its general functions the PRA must, so far as is reasonably possible, act in a way which advances its general objective.
- (2) The PRA's general objective is: promoting the safety and soundness of PRA-authorised persons.
- (3) That objective is to be advanced primarily by—

(a) seeking to ensure that the business of PRA-authorized persons is carried on in a way which avoids any adverse effect on the stability of the UK financial system

(b) seeking to minimise the adverse effect that the failure of a PRA-authorized person could be expected to have on the stability of the UK financial system

19. It appears your main focus in relation to this point, has been on this particular wording of the legislation and comparing this wording to the wording in the PRA's letter to you. You mention in your letter to me, '...statements focus the work of the PRA on the business of the authorised persons... Subsection 2 limits the role of the PRA to promoting the safety and soundness of PRA-authorized persons..'
20. You also reference the PRA's response to you, '...the PRA's general objective is to promote the safety and soundness of the firms it regulates... by focussing on the stability of the UK financial system...' You mention that the response of the PRA is misleading as it, '...does not conform with the statutory provisions that define the PRA's function...'
21. You have made the distinction between the PRA making use of the word of 'firms' as opposed to 'authorised persons' as mentioned in the legislation.
22. Whilst section 2B of FSMA does refer to PRA authorised persons, this does not mean that the PRA's work is limited to PRA authorised persons only. The PRA are responsible for the prudential regulation and supervision of around 1,500 financial institutions including banks and insurance companies. Section 2B subsection (1) also stipulates the PRA '...advances its general objective...'
23. FSMA also goes on to provide in Section 2I,

2I Guidance about objectives

- (1) The PRA must give, and from time to time review, guidance about how it intends to advance its objectives in discharging its general functions in relation to different categories of PRA-authorized person or PRA-regulated activity.

24. This sets out the wider context of the legislation looking at the PRA advancing its general objective, but also defining the extension from PRA authorised persons to PRA-regulated activity detailing its wider objectives. I am also satisfied based on what I have seen, that the PRA fulfilled its duties and took steps to explain to the relevant parties, how it was going to advance its objectives in this specific case of the cancellation of dividend payments. I therefore am unable to agree that it is not the role of the PRA to promote the safety and soundness of the UK economy.
25. Having said this, from a communications perspective, I think the PRA could have made the above distinction clearer in its correspondence to you. I can see the PRA have cited on page three of its final response letter, Section 2B of FSMA. However, it has replaced the wording of Section 2B subsection (2), by not quoting the actual words in the legislation. Instead of quoting the legislation as 'PRA authorised persons' I can see it has replaced 'authorised persons' with 'firms'.
26. I can understand why this may have caused some confusion. It would have been more helpful if the PRA was clearer in its decision letter and went on to explain the legislation in more detail, rather than focusing on Section 2B and simply replacing words of the legislation in order to explain its objectives. Whilst I am unable to agree with your view regarding the PRA's objectives, I recommend the PRA to be clearer in its communications with complainants going forward, specifically in its final response letters, so to not cause confusion.

Element Three

27. You mention the remit of the PRA and disagree with the requirement of the banks to promote the public interest, stating that this would be an inappropriate use of authority and an infringement of the rights and interests of the banks' owners.
28. I refer you to the aforementioned paragraphs detailing the relevant legislation conveying the requirement for the PRA to advance its general objective. Given the serious risk Covid-19 posed and the unforeseeable disruption this may have had to the global economy in its early stages, I understand and agree with the PRA's decision making and approach.

29. In order to promote safety and soundness and further advance this PRA objective, I am satisfied that this inevitably extended to the PRA's supervision of the UK's largest banks. I have looked at the steps the PRA took, particularly their liaison with the banks, careful planning, consideration as to how other countries and international regulators were tackling the pandemic and also the legal advice sought. I believe the PRA used its authority appropriately and cannot see, that it acted outside the realm of its authority or that there was an infringement of the rights and interests of the banks' owners. In fact, I can see the PRA acted with a level of careful and persistent consideration based on the uncertainty at hand for all involved.

Element Four

30. You have made observations about the PRA not identifying potential for any harm and quote the PRA stating that it was a '...a sensible precautionary step...' You have also stated that the banks were well-capitalised and the PRA having no '...solvency concerns pertaining to individual institutions...'

31. Whilst you have highlighted that the PRA confirmed it did not have any solvency concerns regarding the banks, this is only one element and alone, it does not signify that the PRA did not need to take any action. Subsequently, I think it was difficult for the PRA to predict with absolute certainty, that there would be no harm caused on the financial stability of the firms, as a result of Covid-19. Therefore, I think it was a sensible approach for the PRA to act in relation to the seven banking institutions, to ensure financial stability for the banks through the unpredictable pandemic.

Element Five

32. You allege that the decision surrounding the dividend payments, share buy-back programme and staff bonuses should be made by the directors of the companies concerned. You also question in relation to this, whether or not such a cut was necessary in March 2020. In response to my preliminary report, you informed me that you questioned the authority behind this decision and was not directly questioning the necessity of the cut in dividends.

33. As I have explained earlier in this report, given the uncertainty that Covid-19 provided, I think it was appropriate for the PRA to look at the more long-term

implications, in ensuring financial stability. In such a rare scenario, I think it was appropriate and within the remit of the PRA to act and take measures relating to the dividend payments, share buy-back and staff bonuses.

34. As such, I think the PRA's necessity to act the way it did, was a sensible move whilst adhering to and acting within its advanced general objectives.

Element Six

35. You disagree with the PRA that merely a request was made to the banking institutions and that the actions of the directors of the banks was voluntary.

36. I have looked at all of the evidence the PRA has provided to me and analysed the steps it took, prior to publishing its statement of 31 March 2020 and the letters from the Deputy Governor Sam Woods, to all seven of the banking institutions. Like the PRA, I am required to respect confidentiality. This means that sometimes I cannot report fully on the confidential material to which I have access. However, as part of the Complaints Scheme, I have access to all the PRA's complaints papers, including confidential material. This is so that I, as an independent person, can see whether I am satisfied that the PRA has behaved reasonably. Sometimes this means that all I can say to complainants is that, having studied the confidential material, I am satisfied that the PRA has (or has not) behaved reasonably – but I am unable to give further details. This can be frustrating for complainants, but it is better that I am able to see the confidential material.

37. Looking at the information I have access to, I am of the view that where possible, the PRA took appropriate steps to work with the banks in considering possible views and/or concerns to the proposals surrounding the dividend payments, share buybacks and cash bonuses. It is positive to see the liaison that took place between the PRA and the banks, collectively working together, given the levels of uncertainty. The Bank of England prudentially regulates and supervises financial services firms through the PRA and therefore has the right, to remind firms of their powers when they are trying to ensure banks are kept well capitalised. There is nothing that I have seen that leads me to believe the banks did not voluntarily act in this regard. I can see the banks were in regular contact with the PRA and chose to take a decision in line with the PRA's request.

Element Seven

38. You have brought to my attention the PRA's letters to various insurers which were written at the same time the PRA wrote to the banking institutions. You have highlighted the difference in these letters, mainly the insurers were free to choose whether or not to make distributions (pay dividends).
39. Looking at the information that is available to me, I can see that the PRA considered the distinction between banks and insurers. The PRA looked at the positioning of the insurers and highlighted the difference in their thought process and decision making. For instance, the PRA looked at the fact that insurers were not a source of short term credit nor do insurers create money. So I can see why insurers were treated differently on this occasion and therefore were not subject to the same letters and communications as the banks. I appreciate that you may feel differently on this, but I cannot see that the PRA did anything wrong.

Element Nine

40. You have mentioned in your complaint that the PRA's response to your complaint was 'private and confidential', specifically you say '...the PRA is accountable to the public and so cannot insist that its response to a complaint is private and confidential...' Having looked at this aspect of your complaint and the PRA's final response letter, I agree I do not think the PRA should be specifically marking their final response letters in this way. This goes against the principles of transparency and public accountability. I recommend that the PRA are mindful of this in its final response letters going forward. It is also important to highlight that other financial regulators such as the Financial Conduct Authority (FCA) (whom we receive most of our complaints from) do not mark their decision letters as 'private and confidential' and recommend the PRA follow suit.

Element Ten

41. I empathise with your frustrations that it took over 8 months for the PRA to respond to your complaint. This is certainly too long a wait. I would have expected the PRA to offer an apology and a gesture of goodwill such as an ex-gratia payment at the very least, due to the delay caused. I am surprised that the PRA did not offer you this in their final response letter.

42. I would highlight to the PRA, the importance of recognising the need to offer an apology for delays caused with their complaint handling and the importance of ex-gratia payments in the PRA's final response letters. The PRA may also want to consider putting in place an indicative scale of ex gratia payments it offers for delays caused on complaints.

My decision

43. I do not uphold elements one to eight of your complaint.

44. I have upheld element nine and element ten of your complaint.

45. I recommend the PRA offer you an apology and an ex-gratia payment of £75.00 for the delay caused with your complaint.

46. I recommend the PRA consider putting in place an indicative scale for ex-gratia payments for delays caused with complaints.

47. I recommend that the PRA are mindful of its future final response letters and that these not be marked as 'private confidential', to ensure this does not go against the principles of transparency and public accountability.

48. In response to my preliminary report the PRA have stated that they will ensure my recommendations including an apology and an ex-gratia payment of £75.00 are taken forward in order to apologise for the length of time taken to investigate your complaint.

49. The PRA have stated they will ensure my recommendation to implement an indicative scale of ex-gratia payments for delays, will be considered as part of their review

50. The PRA have informed me that they will consider whether it is appropriate to continue to mark final response letters as 'Private and Confidential' on a case by case basis going forward. It will also now add wording to such letters to clarify to the addressee that they can of course choose to share the final response letter as they wish.

51. I welcome the PRA's response in light of my recommendations.

52. I realise you may not be fully satisfied with the outcome of my investigation, however I thank you for bringing this matter to my attention.

Amerdeep Somal

Complaints Commissioner

25 March 2020