

28 April 2021

Final report by the Complaints Commissioner**Complaint number PRA00018***The complaint*

1. On 4 March 2021 you complained to me about the Prudential Regulation Authority's (PRA) investigation of your complaint.

What the complaint is about

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

Element One

You alleged that the action by Bank A to cancel the 2019 dividend after it had gone ex-dividend was illegal, and that the PRA misled Bank A in the letter sent by Sam Woods by encouraging it to take a decision that was neither legal nor necessary. You felt strongly that the PRA should explain to Bank A that it misinterpreted the letter, and that the request was not intended to instruct them to breach their legal obligations. You set out that at the recent AGM, Mr X (Group Chairman, Bank A) made a comment that Bank A had been financially able to make the dividend payment. You believed this demonstrates that the payment should have been made and that the action was not necessary.

Element Two

You alleged that the action taken by the PRA to write to banks asking them to cancel their dividends was discriminatory to you as a shareholder who relies on dividends as your source of income. You highlighted that you do not have access to government support provided to protect employed and self-employed people from the economic effects of Covid-19. Those (self) employed may be eligible to claim furlough and may also be able to

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supplement their income through schemes such as Pick for Britain, to harvest UK crops. You alleged this inconsistency in support available to replace income lost due to Covid-19, is discriminatory. For this reason, you believed the PRA was wrong to ask Banks to cancel their dividends, and you believed it did so without assessing the impact on shareholders such as yourself.

Element Three

You felt that the tone used in the letter by Sam Woods placed “pressure” on banks which you consider to be “bullying or market manipulation”.

What the regulator decided

3. The PRA did not uphold your complaint.
4. The PRA stated that having regards to the PRA’s statutory objectives and assessing the legality of the request, the findings of their investigation showed that the PRA acted in accordance with its general statutory objective and that the PRA’s request to Bank A was lawful.
5. The PRA informed you that it gave due consideration to the potential impact the non-payment of dividends could have on retail shareholders (including co-ordinating with the FCA). However, the PRA’s decision to request the cancellation of outstanding 2019 dividends, and to welcome the consideration of the suspension of dividends until the end of 2020, was driven by the need to act in accordance with its general statutory objective.
6. The PRA stated that they did not find any evidence to support your 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 stated that it appeared it acted in accordance with its published approach to supervision.

Why you are unhappy with the regulator’s decision

7. In your email to me dated 4 March 2021 you asked me to consider the cancelled dividend with Bank A’s 2019 final payment.
8. You have told me the following in relation to your complaint,

a. My argument is that the PRA have admitted in writing, that if Bank A had not pulled their investors dividends, "at the last minute" 48hrs to be precise. Then the PRA would have enforced its regulatory powers/ pressure upon them.

b. You state,

It is and always has been a clear common knowledge, with all investors that dividends can be stopped for 2 reasons prior and post dividend announcement and ONLY 2. The first is if the company in question cannot afford to pay, and if the dividend was paid it would cause financial distress if it was paid. Neither applied in this matter.

c. You have asked me to investigate '...the fact that I personally invested in Bank A to receive the dividend, so I could afford to live as it was my income...'

d. You have asked me to investigate

the financial guidance rules, where a PLC can promise to pay in written format, web format, verbal format, confirming categorically it will pay every investor on the said dividend date. Then knowingly deceive millions of investors who bought into the company and refuse to pay. Just because the PRA instructed them not to.

e. You have told me in relation to Bank A,

This was and is, nothing but breach of agreement, contract, between Bank A and its investors. Bank A were legally under commercial advertising laws, obliged to pay the 2019 Final dividend to its shareholders.

Not once were all its shareholders asked their views as I can prove from forums, public were not able to attend the AGM as it was held over the web, anyone who wanted to discuss the fraudulent act of cancelling the dividend payment at such short notice, were not given access to speak on their link.

Preliminary points (if any)

9. In response to my preliminary report you mentioned the following:

As for listening to Mr Andrew Baileys word on such matters, is Mr Bailey not the same Mr Bailey who failed to mention a conflict of interest whilst accepting his position of great trust as England's Head at Thread Needle Street!

Failing to disclose a "Conflict of Interest" with his dealings over the Bank B scandal which cost me £50,000 alone a few years ago.

10. The appointment of the Bank of England Governor is not something that my office is able to deal with and this is not a matter for the Complaints Scheme. The Chancellor of the Exchequer with the approval of the Prime Minister and the Monarch appoint the Bank of England.

My analysis

11. The first part of your complaint concerns the PRA's enforcement and regulatory powers/pressure upon the banks. The Covid-19 pandemic was and still is, an unprecedented issue providing continued 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 or that the PRA acted outside its regulatory powers. 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.

12. The PRA also 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. I appreciate you feel that there was an element of pressure on the banks, however I am unable to see that the banks were left with no option but to choose.

13. In your complaint you explained the two instances where you believe dividends could be stopped and that neither of those instances applied in this matter. 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 buybacks and cash bonuses.
14. 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 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 banks, the stability of the financial system and any adverse effects. So, I believe the PRA acted appropriately in this matter.
15. You told me about your personal position and that you invested in Bank A to receive dividends to live as it was your income. I appreciate that this was a level of income that was important for you. Given the serious risk Covid-19 posed and the unforeseeable disruption this may have had to the global economy in its early stages, I also understand and agree with the PRA's decision making and approach. I am not suggesting that one is more important than the other, however the possible risk that lured ahead at the start of the Covid-19 pandemic meant the PRA needed to act quickly as a necessary precautionary step, in order to reduce the possibility of an unsafe depletion of banks' capital in the face of a risk of unknown dimensions.
16. 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 the legal advice sought. I am satisfied the PRA acted with a level of careful and persistent consideration based on the uncertainty at hand for all involved.
17. You have asked me to look at the financial guidance rules in your complaint. The relevant law to mention here is [Section 2B The PRA's general objective](#) which

sets out the PRA's general duties and [Section 21 Guidance about objectives](#) which sets out the wider context of the legislation looking at the PRA advancing its general objective. An analysis of the PRA's actions and the law, which is relevant to its powers, shows me that the PRA acted within their powers and it is highly unlikely that any action was illegal when looking at the suspension of the dividends.

18. I have also reviewed the relevant parts of the Treasury Committee meeting of 6 January 2021 in concluding my report. In this meeting both Andrew Bailey Governor of the Bank of England and Sam Woods Deputy Governor for Prudential Regulation, gave oral evidence to the Treasury Committee. I am also satisfied from this meeting that the PRA did what was necessary to meet their relevant functions, by ensuring the safety of the largest banks. The full transcript of the meeting can also be accessed here:

<https://committees.parliament.uk/oralevidence/1473/pdf/>

19. You have mentioned in your complaint issues surrounding the legalities between Bank A and paying the 2019 final dividend to its shareholders. You also mention breach of agreement, contract and shareholders not being able to share their views.

20. Disputes between an individual and a bank are not matters which I will be able to investigate. This is a matter for the Financial Ombudsman Service (FOS) who are best placed to deal with this issue. I cannot see that you have been directed towards the FOS regarding this aspect of your complaint and as such details of the FOS you can access here <https://www.financial-ombudsman.org.uk/contact-us>

21. In response to my preliminary report you have stated the following,

I also feel you are missing the point that Bank A, PROMISSED to pay every share holder on its register when I and others invested for that sole purpose. So legally someone is liable to refund the loss / invested to gain the dividend.

22. As I have explained earlier in my report, I am satisfied the PRA took appropriate measures given the uncertainties. Bank A took the step to suspend and cancel the dividends as necessary. The PRA was required to advance its general

objective and I am satisfied they fulfilled it in this instance. The unknown risk and uncertainty were undoubtedly outweighed and Bank A agreed with the PRA, by choosing to cancel and suspend dividends.

23. You have mentioned in response to my preliminary report,

Bank A's Chairman publicly announced that Bank A "WANTED TO PAY THE DIVIDEND AND COULD FINANCIALLY AFFORD TO" as he also addressed the point "WE BANK A HAD THE FUNDS, WAITING TO BE TRANSFERRED" when the decision was made to cancel the payment.

24. Whilst you have highlighted that Bank A could financially afford to pay 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, 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 all banking institutions, to ensure financial stability for the banks through the unpredictable pandemic.

My decision

25. I understand you may be disappointed with my report, but for the reasons outlined above, I am afraid I cannot uphold your complaint.

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Complaints Commissioner

28 April 2021