Complaints Commissioner

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Dear Complainant,

Complaint against the Prudential Regulation Authority
Reference Number: PRA008

Thank you for your email of 5 March 2016. I have completed further inquiries of the Prudential Regulation Authority (PRA), and have reviewed all the papers you and the regulator have sent to me. My decision on your complaint is explained below. Before finalising this decision, I invited comments from you and the PRA on my preliminary decision. You sent in some further comments which were sent to the PRA for response. I enclose a copy of the PRA's response for your information. I have considered both these sets of comments in detail and made some reference to them in this final decision. However, they have not significantly changed my preliminary decision.

How the complaints scheme works

Under the complaints scheme, I can review the decisions of the PRA's Complaints Team. If I disagree with their decisions, I can recommend that the PRA should apologise to you, take other action to put things right, or make a payment.

Your complaint

From your email correspondence and the papers submitted to me by the PRA I understand that your concerns arise from the PRA's decision to give the LBG Banking Group (LBG) permission to redeem its Enhanced Capital Notes (ECNs) under Articles 77 and 78 of the European Union Capital Requirements Regulation.

Your complaint is that the PRA failed to provide you with adequate or accurate information to explain its decision to grant permission to LBG. You argued that this was in breach of its statutory obligation to exercise its functions transparently. In particular you wanted the PRA to disclose its buffer/capital requirements margin as quantitative evidence in support of its decision.

The PRA investigated your complaint as 'lack of care' and a breach of Regulatory Principles contained in Section 3B of the Financial Services and Markets Act 2000 (FSMA) as amended by the 2012 Financial Services Act. It noted that Principle (h) states that the regulators should exercise their general functions as transparently as possible. The PRA concluded that this principle did not actually apply to the specifics of your complaint because, in this section of FSMA, the duty to be transparent does not apply to firm-specific decisions. However, the

PRA told you that it did not wish to take a narrow approach. It said that it "chose to investigate the requirements and opportunities for transparency in this instance and challenge whether the PRA could have acted differently".

The PRA concluded that its decision was taken in accordance with its own decision-making framework. It also said that the financial information provided to the PRA by LBG was for the purposes of the exercise of its functions and is subject to the statutory restrictions on disclosure set out in section 348 of FSMA. The specific margins or 'buffers' considered necessary by the PRA are also not published information but are confidential to each firm.

The PRA said that it has published its approach to banking supervision and capital setting and has also been transparent about publishing the decisions taken on the Financial Services Register, as required. It said that it would have been misleading to use the published information to explain the rationale for its decision, as that was not what was used; rather it was the protected confidential information. The PRA concluded that it would be inappropriate for it to disclose the underlying financial information used to take the decision to allow redemption.

You consider that the PRA investigation was "thorough, looked at the complaint in a commendably broad and flexible way, and usually kept me well informed of progress". However, you are dissatisfied with the outcome and disagree with the PRA's interpretation of what transparency means. You consider that the Bank of England/PRA is culturally used to secrecy and that transparency means "explaining as far as possible the rationale for [its] decisions", not merely publishing them. You would like me to "examine the PRA claim that confidentiality prevented it from providing any quantified rationale of its decision-making process".

My position

The PRA says that buffers are never disclosed and that it has no plans to disclose them. It says that this would be inappropriate, not least for reasons of financial stability. I can understand why this is frustrating for you and why you seek further disclosure in order to understand the decision that the PRA made. However, s348 of FSMA contains confidentiality restrictions that limit the information that can be placed in the public domain. This is the way that Parliament, rather than the regulators, has decided that the system will operate.

In response to the preliminary decision you said that in your view s348 has been used to justify a lack of transparency, although the main reason is the PRA's decision to keep buffer size and methodology secret. You are correct to say that the PRA has taken a policy decision that it believes the quantum of PRA buffers should be confidential. It is the information it receives to set the PRA buffer that falls within the scope of s348. In its complaint response to you the PRA explained that it does publish its approach to setting capital for banks, but does not provide specific methodology to enable others to calculate the size of the buffer, which it believes should be confidential. You also said that the PRA made no effort to avoid the s348 barrier by asking LBG for its permission to release information. The PRA has pointed out that this, and some other points you made, did not form part of your initial complaint. However, based on its policy view that the PRA buffer should remain confidential, the PRA says that it did not consider it appropriate to request that LBG disclose its buffer. Finally, you made a number of suggestions about the type of "information conducive to public understanding and confidence in the decision process" that the PRA could have released. The

PRA considers that these suggestions would require either the release of information in breach of FSMA s348 or information relating to the PRA buffer which it believes should remain confidential.

The PRA's policy approach on these matters is one which it is entitled to adopt. Nevertheless, I accept that there is a difficult balance to be struck between on the one hand protecting confidential information to enable the regulator to do its job and encourage firms to disclose, and on the other the need to give the public sufficient information to judge whether or not the regulatory system is operating effectively. It is a question of judgement in each case, taking account of the legal requirements of confidentiality. I have set out my views about aspects of how this has worked in practice in relation to LBG and ECNS in a decision about the FCA http://fscc.gov.uk/wp-content/uploads/FCA00053-FD-publish-25-11-15.pdf to which the PRA referred you. I have not found any grounds to criticise the PRA's general policy approach or its conclusion that the information you sought was subject to s348 and on that basis I consider that it was correct not to uphold your complaint.

Conclusion

For the reasons set out above, while I sympathise with your wish to understand more fully the rationale behind the PRA's decision to grant LBG permission, I do not uphold your complaint. Although I appreciate that you will be disappointed with my decision, I hope that you will understand why I have reached it.

Yours sincerely

Antony Townsend
Complaints Commissioner