

30 April 2021

## Final report by the Complaints Commissioner

### Complaint number PRA00019

#### *The complaint*

1. On 14 March 2021 you complained to me about the PRA's 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 Bank of England’s actions were ill-informed and caused Bank A to renege on a contractual obligation as Bank A had not only declared its interim dividend but was also willing and in a position to be able to pay that dividend.” You believe that Bank A is now in default as a result. We note that the remedy you are seeking is full redress for the losses incurred, at £6873.54. In your email of 18 May 2020, you have also highlighted that Bank A advised you “that its balance sheet is in a robust position and is able to survive the pandemic crisis”. You feel this highlights that the decision by Sam Woods “to force Bank A to cancel its declared dividend to its shareholders was not only preposterous but will prove to be incorrect and gravely damaging not only to the reputation of Bank A but also to the reputation of the wider banking industry - an unnecessary action caused by the PRA.”

#### *Element Two*

You felt that the tone used in the letters by Sam Woods to Mr X of Bank A, sent on 31 March 2020, was “disgusting rather than firm”. You also noted that, in your opinion, “it would have been better if the PRA had exercised its

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authority and actually ordered the banks not to pay their dividends in the first instance rather than having these institutions do its own dirty work.” You said this was “both bullying and cowardice of the highest order.”

*What the regulator decided*

3. The PRA did not uphold your complaint.
4. The PRA stated in its final response letter that they did not find any evidence supporting your allegation of ‘mistake’. The PRA also stated that the findings of their investigation showed that it acted in accordance with its general statutory objective and that its request to Bank A was lawful.
5. The PRA informed you that 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 and the engagement with banks, it appears that the PRA acted in accordance with its published Approach to Supervision.

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

6. In your email dated 14 March 2021 you told me about your complaint against the PRA which is in relation to ‘...the PRA’s actions relating to the suspension / cancellation of the 2019 final dividend payments of a number of financial institutions including Bank A...’ You also state that ‘...The cancellation affected you directly to the extent of £6,873.54...’
7. You included several attachments for me including a PDF document setting out your complaint which I have summarised as follows:
  - a. There was a 9 month delay in replying to your complaint which you originally found reasonable, but given the PRA’s response to you when the report is analysed there is a severe lack of quality and substance;
  - b. The PRA categorised your complaint as a mistake under their own complaints scheme, however you feel it was not a mistake rather a deliberate action undertaken by the deputy governor of The Bank of England and others;
  - c. The PRA’s approach to investigation and subsequent provision of information; you mention a significant amount of irrelevant information

provided in the PRA's response. You also refer to the PRA supplying a link to the Bank of England's annual cyclical scenario stress test (ACS) and have expressed interest in which crisis the report compiled in 2019 is referring. You state Bank A had not yet cut their dividend at the time of the report and there was no indication of a world-wide pandemic at that point;

- d. Lack of transparency; you make the point that the PRA responded to you and confirmed that minutes were taken at the Executive level meeting but would not be made available on the PRA's website. You have doubts that minutes were taken and the decision was made unilaterally without consideration;
- e. Lack of transparency; you also enquired as to whether the Deputy Governor of The Bank of England held any equities in Bank A or any other companies and the PRA's response did not address the issue per se;
- f. Inconsistency; you have highlighted the PRA's response to your query regarding the '...reasoning behind dividend cancellation request...' You also state, '...the FCA (B of E) did not really do much to protect Building Society B and Building Society C in the 2007/2008 credit crisis despite being the 'Lender of the Last Resort' it did not lend in the last resort';
- g. Inconsistency; You also mention in relation to inconsistency, '...the dividend due to be paid in April 2020 could have been suspended rather than cancelled and paid in 2021 before the 2020 dividend is paid in 2021...'
- h. Use of non-relevant information and reports to justify PRA's decisions; you refer to the PRA's response to you where they informed you of the approach taken by international regulators in response to Covid-19 uncertainties. You also comment on the UK leaving the European Union and the European Central Bank's recommendation on 27 March 2020 having no relevance in the UK and question the PRA's reference to it. You provide commentary on the PRA's response to you regarding dividends that were not finalised. You have also referred to Andrew Bailey's comments about the EU and derivatives;
- i. Consideration of legality of decision; in relation to this you have provided as follows,

Presumably the PRA must have had some degree of doubt concerning the legality of its decision otherwise it would not have sought external, independent legal advice. I believe a good barrister would be able to contest this decision as the very fact you had doubts in your own mind are obvious and a high court judge would probably find against you;

j. Misrepresentation; you mention the PRA shared LSE rule 5340 with you and state, '...I believe it is intentionally misrepresenting this rule which would apply in such circumstances as perhaps a company experiencing financial difficulties which Bank A are not...'

k. Coercion; you state,

I had complained to the PRA that the letter to the CEO's of the 7 largest systemically important UK deposit takers was of a bullying nature and how I now believe it amounts to coercion;

l. Agreed wording – A potential sham; specifically you mention in relation to the PRA's comments regarding the tone and wording of their letters,

The whole process would appear a sham from the outset with the PRA and the 7 largest systemically important deposit takers pre-agreeing the texts privately yet demonstrating their opposition publicly. This is collusion and if this is correct interpretation it demonstrates absolute dishonesty.

#### *Preliminary points*

8. You have made continued reference in your complaint to the PRA's 'report'. In other words, this is the PRA's final response letter to you. Whilst I have addressed and cited your testimony where I think it appropriate, I will be referring to the PRA's 'response' to you as opposed to 'report' in my investigation.
9. 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.
10. 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.

11. 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.’

12. You have mentioned in your complaint,

the FCA (B of E) did not really do much to protect Building Society B and Building Society C in the 2007/2008 credit crisis despite being the ‘Lender of the Last Resort’ it did not lend in the last resort.

13. I can look at issues which may have directly impacted somebody such as an individual complainant. However, in this instance, you have not informed me of any issues in relation to the PRA and credit crisis in 2007/2008 that directly impacted you personally, so I will not be investigating ‘Part F’ of your complaint.

14. Section [3.1 Coverage and scope of the Scheme](#) provides:

‘The Scheme covers complaints about the way in which the regulators have acted or omitted to act, including complaints alleging:

- a) mistakes and lack of care;
- b) unreasonable delay;
- c) unprofessional behaviour;
- d) bias; and
- e) lack of integrity.

15. The Scheme does not provide for an individual’s commentary to issues and as such, I will not be investigating this aspect of Part H in this report, regarding Andrew Bailey’s commentary.

## *My analysis*

### *Part A*

16. You have told me that there was a nine month delay with the PRA responding to your complaint. I've looked into this and can see that you first contacted the PRA on 2 April 2020 by telephone and raised your concerns during this call. In-between this time there was some back and forth between the PRA and yourself and you received a final response letter from the PRA on 18 December 2020. As such, it took the PRA eight months to investigate your complaint and provide you with a final response.
17. 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 significant delay caused. I am disappointed that the PRA did not offer you this in its final response letter.
18. I would highlight to the PRA as I have previously in another investigation [PRA00016](#), 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.

### *Part B*

#### The categorisation of your complaint:

19. In Part B of your complaint you highlight your thoughts that deliberate action was undertaken by the Deputy Governor of The Bank of England, rather than the PRA's categorisation of your complaint as a 'mistake'. Whilst I understand your view that you feel deliberate action was taken, it is important to mention that 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 think the PRA acted quickly to ensure the stability of the financial system and any adverse effects in the pipeline.

## Part C

### The PRA's approach to investigation and subsequent provision of information:

20. You have informed me of irrelevant information provided to you and specifically highlighted the Bank of England's annual cyclical scenario stress test (ACS) which can be accessed here <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability-report/2019/december-2019.pdf> This report was one of many, that the PRA factored into their decision making.
21. I do not consider the analysis of this report as irrelevant in the PRA's decision making. I think consideration of this report allowed the PRA to look at the banks' resilience, thereby making sure it was advancing its objectives, whilst at the same time, ensuring it was adhering to its relevant functions. 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 do not rule out the use of the financial stability report.
22. You have also questioned which crisis the report compiled in 2019 is referring and state, '... Bank A had not yet cut their dividend at the time of the report and there was no indication of a world-wide pandemic at that point...'. It is for the PRA to explain which crisis it was referring to exactly in this report. I invited the PRA to respond to this point for clarity in my preliminary report. The PRA did respond to this point and confirmed that the crisis that was referred to throughout the 2019 Financial Stability Report (which incorporates the results of the 2019 stress tests of UK banks) was the global financial crisis of 2007-2009, to which comparisons were made.
23. I note you have found some of the other information the PRA provided to you irrelevant. It is often helpful to be provided with where possible, the literature and resources in response to a complaint. I am glad to see the PRA did this as a means to being transparent and explaining the rationale behind their decision making. As such I can't conclude that the PRA was wrong in providing this information to you.

## Part D

### Lack of transparency

24. With regards to whether the PRA took minutes at Executive level, you have raised doubts over this. 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.
25. Based on the information that has been provided to me and what I have seen, I am satisfied that the PRA took minutes at the meeting at Executive level and do not have any doubts on this.

### Part E

### Lack of transparency

26. You mention that the PRA did not address the issue per se concerning whether the Deputy Governor of The Bank of England held any equities in Bank A or any other companies. The PRA have provided their response to your query as follows:

Lastly, you asked whether Sam Woods held equities in Bank A or any other companies. All Bank of England staff must adhere to a code of conduct and, within that, are required to declare an interest they have to ensure there are not conflicts.

27. It is not for me to investigate under the scheme the personal financial business of individuals. In my preliminary report I invited the PRA to respond to this point. The PRA responded and confirmed that information on personal financial relationships is declared internally only. As this information is confidential the PRA is unable to divulge to complainants whether Sam Woods held equities in Bank A. The PRA have conduct rules in place which is accessible on their website <https://www.bankofengland.co.uk/-/media/boe/files/about/human->

[resources/ourcode.pdf](#) The PRA highlighted pages 9-11 of this document regarding 'Personal financial matters' and specifically 'Prohibited transactions' on page 11 which prohibits the acquisition or active management of debt or equity interests (for example bonds or shares in any bank regulated firms), or their financial holding companies.

## *Part G*

### Inconsistency

28. You have informed me of your view that rather than the PRA cancelling the dividend due in April 2020, this could have been suspended and paid in 2021. 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 to cancel the dividend that was due in April 2020. The possible risk that lurked 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. I think it is also useful to note PRA's most recent announcement here <https://www.bankofengland.co.uk/prudential-regulation/publication/2020/pr-a-statement-on-capital-distribution-by-large-uk-banks>

29. I have also looked at the relevant parts of the Treasury Committee meeting of 6 January 2021. 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 in respect of the cancellation of the 2019 dividend. This was received well by the committee and I am also satisfied from this meeting, that the PRA did what was necessary specifically in relation to the cancelled dividends to meet its 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/>

## *Part H*

### Use of non-relevant information and reports to justify PRA's decisions:

30. You mention the PRA's use of non-relevant information and reports to justify its decisions and refer to the PRA informing you of the approach taken by

international regulators, in response to Covid-19 uncertainties. Consideration as to how other countries and international regulators were tackling the pandemic in essence, was a sensible move by the PRA. The PRA acted with a level of careful and persistent consideration based on the uncertainty at hand for all involved and I do not think it was wrong to factor this into its decision making.

31. You state, ‘...Most importantly this report makes no reference to dividends that were not finalised. The Bank A dividend was finalised and was cancelled two days before due payment date...’. I understand you feel the PRA missed this in its final response letter however I can see that the cancellation of 2019 dividends has been addressed at pages 2, 3, 4, 5, 6 of the PRA’s final response letter. So, I think the PRA has substantiated and addressed the issue of the 2019 Bank A dividends that were cancelled and do not think it needs to do anymore with its rationale here.

32. You also state in your complaint testimony,

It is quite clear that the PRA just makes things up as it goes along – using a non-relevant document to underpin its ridiculous decisions while Andrew Bailey clearly disagrees with the EU. Thus, the EU is not always right rather only when it suits the PRA/ Bank of England

33. The document you have referred to here is the European Central Bank (ECB) published recommendation in response to Covid-19 uncertainties. I note your concerns regarding this document and that you view this as non-relevant. I am unable to agree that on this occasion the PRA has, ‘...made things up as it goes along...’. I have looked at the steps the PRA took and careful planning. Based on what I have seen in the evidence provided to me, I cannot say that the PRA has acted in such a way. In fact, my conclusions are that rigour was applied in this scenario.

### *Part I*

#### Consideration of legality of decision:

34. You have commented on the PRA seeking legal advice as follows,

Presumably the PRA must have had some degree of doubt concerning the legality of its decision otherwise it would not have sought external,

independent legal advice. I believe a good barrister would be able to contest this decision as the very fact you had doubts in your own mind are obvious and a high court judge would probably find against you

35. The PRA's decision to seek legal advice was a responsible move. The unpredictability of the Covid-19 pandemic at the time and inability to foresee what may happen was indeed a scenario where legal advice needed to be considered. I therefore think it was appropriate for the PRA to do so in order to look at the wider impact and long-term implications, in ensuring financial stability. Covid-19 posed a new challenge for everyone and I would be concerned had the PRA decided that legal advice was unnecessary.

#### *Part J*

##### Misrepresentation

36. You mention that the PRA sharing of LSE rule 5340 is being intentionally misrepresented. I do not think it is appropriate nor my role to determine how the LSE rule 5340 should be interpreted. However, based on everything I have seen overall, I cannot see that there has been any misrepresentation on the PRA's part.

#### *Part K*

##### Coercion

37. You have mentioned in your complaint testimony in addition to coercion and bullying that there was undue pressure thus coercing the banks to make a decision against their own true wishes. 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.
38. It is important to note 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. 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.

39. I appreciate you feel that there was an element of coercion, bullying and undue pressure on the banks, however I am unable to see that the banks were left with no option but to choose to make a decision in line with the PRA's request.

#### *Part L*

##### Agreed wording

40. You have mentioned,

the whole process would appear a sham from the outset with the PRA and the 7 largest systemically important deposit takers pre-agreeing the texts privately yet demonstrating their opposition publicly. This is collusion and if this is correct interpretation it demonstrates absolute dishonesty

41. I have looked at the PRA case file and analysed all communications that took place behind the scenes. As I have mentioned earlier on in my report the PRA took steps to liaise and work with the banks by seeking their views and/or concerns to the proposals. Parties collectively worked together and so there is nothing that I have seen which demonstrates dishonesty or that the process was a sham.

42. I note that you have asked for your £6,873.54 due to you in relation to the cancelled 2019 dividend. As I agree with the PRA's actions taken in relation to the cancelled and suspension of dividends, I am unable to agree that the PRA need to do anything in relation to the cancelled dividend.

##### *My decision*

43. I do not uphold Parts B to L of your complaint.
44. I have upheld Part A 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. In response to my preliminary report the PRA have stated that they will ensure my recommendations including an apology and ex-gratia payment of £75.00 are taken forward in order to apologise for the length of time taken to investigate your complaint.
48. 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 a review
49. I welcome the PRA's response in light of my recommendations
50. 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

30 April 2021