

The FCA's response to the Complaints Commissioner's Final Report into our oversight of Premier FX Limited

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1. The collapse of Premier FX Limited (PFX) resulted in a period of serious uncertainty and worry for its customers. Through over 12,000 hours of investigation, we looked thoroughly at the failure of PFX. Our work and the successful enforcement cases we brought, ensured [all 167 affected PFX customers](#) with accepted claims received back 100% of the money they had paid in. However, we recognise there are things we could have done better in our regulation of PFX and we reiterate our sincere apology to those affected.
2. This document sets out our response to the Complaints Commissioner's Final Report on our oversight of PFX. The Final Report was published on the Commissioner's website today and Appendix 2 contains extracts from our response to the Commissioner's Preliminary Report.
3. We have published our full response to the Preliminary Report in the interests of transparency and completeness at Annex 1 to this document. This sets out our consideration of the substantive issues contained in both Preliminary and Final reports. Where the Commissioner's Final Report has changed in some respects to the Preliminary Report, we have responded to the additional points below.
4. We appreciate the opportunity to respond to the Commissioner's findings and recommendations.
5. Under the [Complaints Scheme](#) that was in force when these complaints were made¹, there are 4 factors that the FCA will normally take into account when responding to a report from the Commissioner (paragraph 7.14). Our assessment of these factors and other relevant considerations can be found in our response to the Preliminary Report in Annex 1 at paragraphs 29- 57. In light of the Commissioner's Final Report, we have given further consideration to our response to the Preliminary Report and the additional matters which have now been raised by the Commissioner.

¹ In effect for complaints made to the FCA before 1 November 2023.

The Commissioner's Recommendations regarding the Financial Services Register (the Register)

6. The Commissioner recommends that the FCA hyperlink the terms defined in the FCA's [Handbook Glossary](#) to the relevant entries on the Register at paragraph 109(a) of her Final Report.
7. Having considered the Commissioner's additional comments in her Final Report, we do not accept this recommendation for the reasons we have already set out at paragraphs 11 to 17 in our response to the Preliminary Report (Annex 1).
8. We have invested heavily in the development of the Register over recent years and carried out consumer research. This research indicates that the volume of information currently displayed on the Register, along with the technical legal language, is perceived as being overwhelming by consumers. As the Commissioner recognises at paragraph 91 of the Final Report, *'it [the Handbook] is a regulatory tool aimed at firms to assist them in understanding the rules, their obligations and responsibilities.'* Inclusion of a link to the FCA's [Handbook Glossary](#) is likely to exacerbate this view as it is, by necessity, technical and legalistic.
9. Although we do not accept the recommendation to hyperlink to the FCA's Handbook Glossary, we accept the recommendation at paragraph 109(e) and will update the Complaints Commissioner early in 2024 on our plans for continued investment in the Register and how we can work to assist consumers in better understanding the definition of the activities that firms are authorised to undertake.
10. In paragraph 111, the Commissioner recommends that complainants be directed to the Financial Ombudsman Service (Financial Ombudsman) and/or the FSCS to determine if the firm has their protections. In our response to the Preliminary Report, at paragraph 22, we explain that it is generally not possible to provide such clarity at a firm level given the complexity of permissions held by most authorised firms, the products they sell and the regulated activities they undertake. We additionally highlight that the Register *'communicates the potential limitations of Financial Ombudsman and FSCS coverage and advises consumers to seek written confirmation from the firm as well as directing consumers to the Financial Ombudsman and FSCS websites.'*
11. Following the Commissioner's observations in her Preliminary Report, we have now also updated the relevant FCA [webpage](#) on "Using the Financial Services Register" to ensure alignment with the wording contained on the Register with effect from 14 December

2023. In addition to directing consumers to ask the firm they are dealing with to check what protections they have; the webpage also says that consumers should check with the Financial Ombudsman Service and FSCS to get a better idea of how they would be covered if something went wrong.

12. As we have set out in paragraph 26 of our response to the Commissioner's Preliminary Report, we consider this strikes the appropriate balance between a firm's responsibility to inform consumers of the activity they are carrying out and if they consider this to be covered by the FSCS or the Financial Ombudsman Service and signposting these organisations clearly for consumers to seek further information on whether cover applies. Whether protection applies depends on the regulated activity being carried out and the Financial Ombudsman Service and FSCS are the final decision makers about whether the cover they provide applies.
13. We will also consider what further changes we can make to the Register to ensure this is clear throughout the consumer journey, completing our assessment by end January 2024, with changes then to follow.

The FCA's authorisation and supervision of PFX

14. At paragraph 117 of the Final Report, the Commissioner recommends the FCA writes to the complainants involved in this case separately with a brief note to explain what steps have been taken as a result of PFX to strengthen our authorisation and supervision processes.
15. We accept this recommendation and will write to complainants and the Commissioner by the end of January 2024.

Ex-gratia compensation for distress, inconvenience and consequential loss

16. In paragraph 158 of the Final Report, the Commissioner recommends that *'the FCA pays 4% simple interest in total (not per year) on the capital recovered from the Liquidator and Barclays per complaint (of which there are 33). This is subject to the money lost and recovered having been paid to PFX after 25 February 2011.'*
17. We believe the most appropriate remedy in this case is an apology and a payment to recognise our complaint handling delays, which we made in line with our published approach when first responding to the complaints.

18. We have also sincerely [apologised](#) to all PFX customers for the mistakes we made prior to the collapse of PFX and we reiterate that apology.
19. In considering our response to the Final Report, we have taken into account the Commissioner's further comments, including those relating to the factors under the Complaints Scheme at paragraph 7.14 (as outlined in paragraph 155 of the Final Report), and considered our analysis at paragraphs 29 - 57 of our response to the Preliminary Report afresh.
20. Having done so, our view remains that an apology and a payment to recognise our complaint handling delays is the most appropriate remedy and we do not accept the Commissioner's recommendation.

Additional findings made by Commissioner in Final Report

21. The Commissioner makes additional findings regarding compensation in her Final Report which we respond to below.
22. In paragraph 165, the Commissioner states *'The FCA acknowledges that if it may have intervened sooner and in not doing so we may have contributed to the distress and inconvenience for some complainants who subsequently deposited money.'* So clearly there are some complainants it agrees could be eligible for a further *ex gratia* payment'.
23. In paragraph 165 of the Final Report, the Commissioner also says *'The FCA also appears to query whether an ex-gratia payment should be calculated on amounts deposited/invested over the FSCS limit.'*
24. In paragraph 164, the Commissioner states: *'In my view it is not possible to take the binary approach as in (b) as to what constitutes direct dealings' as defined by the Complaints Scheme. I do not agree that recommending an ex gratia payment for the FCA failings in re-authorising and supervising PFX calls into question the legislative framework. I also note that it has not been investigated when the amounts were transferred to PFX or dissipated by PFX so it cannot be determined with accuracy that these amounts would have been gone' by the time the FCA became aware of issues in 2017. This is mere speculation on the part of the FCA.'*
25. In paragraph 168 of the Final Report, the Commissioner notes that *'de facto, compensatory payments on an ex-gratia basis due to supervisory or regulatory failings on the part of the FCA (and possibly the other Regulators) will never be available to*

complainants despite the FCA saying there are exceptional circumstances where it might be'.

26. In response to these points we would highlight the following:

- a. The direct cause of customer losses were the actions of PFX and its sole director. As a result of the extensive enforcement actions taken by the FCA, the complainants received back all of the money they had paid to PFX.
- b. As explained in our response to the Preliminary Report, PFX was operating a 'Ponzi scheme' and it was highly likely that funds were dissipated shortly after they were 'deposited' with it. This view is based on careful analysis of the information gathered through over 12,000 hours of investigation into PFX's failure.
- c. In our response to the Preliminary Report at paragraphs 36 and 37, we explain that it is difficult to determine the time it would have taken to achieve a successful regulatory intervention regarding PFX following receipt of adverse information about the firm. This is because we would have needed to investigate to establish the facts before intervening. The Commissioner also concludes in paragraph 171 of her Final Report that she is *'not able to say what would have happened had the FCA acted differently, given the complexities of this case.'*
- d. For the reasons set out in this response, including the Annex, we have concluded that it would be difficult to ascertain what may have happened and by when, had the FCA started to investigate the information it started to receive in 2017.
- e. In relation to payments above the FSCS limit, we highlighted in our response to the PR that 42% of the complainants party to this Stage 2 complaint had accepted claims by PFX's Liquidator in excess of the FSCS limit of £85,000 for deposits, with some having paid significantly in excess of this amount to PFX. This may suggest that FSCS cover was not an important factor for these customers in their decision to use PFX.
- f. We think it is reasonable to take the view that the Register does not constitute direct dealings with the FCA under paragraph 7.14(b) of the Complaints Scheme. As set out in Annex 1, in considering the application of this factor we also took into account the general nature of our relationship with

the complainants. We also think it is appropriate to take into account the overall legislative structure, along with other relevant considerations, in considering our response.

- g. For the reasons outlined in the response to the Preliminary Report and those outlined above, we do not consider it is appropriate to make an ex-gratia payment in recognition of distress, inconvenience or consequential loss to PFX consumers. This includes those customers who 'deposited' funds after 2017, regardless of the size of deposit made at that time. We therefore do not accept the Commissioner's recommendation.
- h. In relation to the comments made by the Commissioner in paragraph 168 of her Final Report around '*... de facto, compensatory payments on an ex-gratia basis due to supervisory or regulatory failings on the part of the FCA (and possibly the other Regulators) will never be available to complainants...*' we would highlight that we assess individual complaints on a case-by-case basis, after careful consideration and analysis of relevant evidence in accordance with the Complaints Scheme which applies when the complaint was made, as we have done in this case. We have made ex-gratia payments in the past for our failings. Details regarding the levels of payments we have made are explained in our Policy Statement when we concluded our [consultation](#) on the revised Complaints Scheme.

27. We hope this response provides further clarity about the approach we have taken in this case and the rationale for our decision under the Complaints Scheme.

Annex 1: Our response to the Commissioner's Preliminary Report on our oversight on Premier FX (PFX).

Dear Amerdeep

1. Thank you for your Preliminary Report (PR) in relation to the Premier FX (PFX) Liquidation Committee's (LC) complaint about the FCA. In your report, you invite us to respond with our views, before you reach a final decision. We have considered the matters you have highlighted and set out our response below for you to consider in preparing your Final Report.
2. We firstly want to take this opportunity to recognise that we made mistakes in our regulation of PFX as highlighted in our Stage 1 response. While our successful enforcement actions meant customers with accepted claims have been repaid all of their capital, we also recognise that this was a very worrying period for PFX's customers.

Your recommendations in relation to the Financial Services Register (FS Register)

3. In paragraph 105 of your PR, you summarise your findings on the Register, saying that 'my view is that the Register was not misleading about the information it provided about the firm: so, I do not uphold that narrow point of complaint. The Register was however, inadequate and potentially unfit for purpose. The FCA needs to address the embedded potential for wrongdoing or fraud in referring consumers to firms, and it needs to clarify its messaging so consumers are told that a firm may not always be providing accurate information.'
4. We would like to highlight that in paragraph 92, you quote from the LC that the Register entry said '*it cannot be determined if FSCS cover would apply to this firm. Please contact the firm directly to understand whether their products/services would be covered by FSCS.*' This quote is consistent with our understanding of what the Register displayed for PFX before March 2020².
5. You then state in paragraph 95 that '*the assertion that FSCS cover **may** be available and that it was not possible to determine if protections were available to the clients of the firm are simply not correct.*' According to the testimony provided by the LC and our own understanding of what the Register said, the Register did not assert that '*FSCS cover **may** be available*'. The Register said '*It cannot be determined.*'

² PFX was shown on the previous version of the Register which was operational from April 2015 to March 2020. We do not hold an audit trail of any changes which were made to PFX's record on the Register during this time period.

6. As you point out, we have made several improvements to the Register since PFX's collapse in 2018. The FCA has a permanent resource (the FCA's Register Team) that works on maintaining and improving the Register, making over 30 changes in the last year across 10 releases. Changes are made to support identified improvements, new legislation or policy, remediation activity, and your recommendations. Changes in the last year have covered items such as:

- a. More visible links to support from our Supervision Hub;
- b. Increased prominence of firm-specific notices;
- c. Clearer, more understandable language in several sections (such as firm details attestation, waivers, client money); and
- d. Improved cookie management for users.

7. Historically we have made a range of changes to the Register, including in response to your and your predecessor's suggestions:

- a. July 2020 – We launched a re-designed Register focused on helping consumers understand and use the Register.
- b. March 2021 – we added a 'banner message' on the Register to make it clear that firms we regulate may carry out both regulated and unregulated activities.
- c. July 2021 – At the request of the Financial Ombudsman Service (Financial Ombudsman) and the FSCS, we introduced some changes to the Financial Ombudsman and FSCS protection wording.
- d. May 2022 – We updated the banner message and protections wording to make them clearer and more prominent (prompted by a recommendation included in a Complaints Commissioner Report from February 2022³).
- e. July 2022: We made further changes to the protection wording in response to comments you made at the TSC (June 2022). We added additional items including new triangle

³ Our response to the Commissioner's Final Report on our handling of London Capital & Finance plc sets this out. <https://www.fca.org.uk/publication/corporate/response-to-complaints-commissioner-final-report-fca-oversight-lcf-15-march-2022.pdf>

warning sign and text explaining “*some activities by this firm may not be protected*”

8. In the longer term, we are also considering a new Register architecture that would make it easier and quicker to make changes such as these and support better consumer testing, and a new version of the Register specifically for consumers.
9. We are always keen to hear suggestions for improvement. It is also important that we try and test changes with consumers to understand the effects before making changes, as well as ensuring legal and policy impacts are properly considered.
10. You make 2 recommendations in your PR. We have provided our response below for you to take into consideration before making your final decision.

Recommendation (a) at paragraph 107

11. You recommend that the FCA takes steps to assist consumers in their due diligence by hyperlinking the FCA’s Handbook Glossary in the relevant entries of the Register.
12. We have carefully considered this recommendation by consulting with the Register team who are tasked with maintaining and improving the Register. Having done so, we do not believe it is practical to accept this recommendation based on the considerations outlined below.

Consumer Understanding and Information Overload
13. Extensive consumer research has indicated that the current volume of information displayed on the Register, coupled with the technicality of legal language, is already perceived as overwhelming by consumers.
14. The definitions found in the Handbook Glossary are often technical and legalistic, potentially exacerbating the challenge of consumer comprehension. As the spirit of your recommendations leans towards improved consumer understanding, introducing complex legal terminology may not align with this goal.
15. The Register Team would, of course, be happy to discuss this consumer research with you in more detail if you would find this helpful.

User Experience Concerns

16. Introducing hyperlinks to an external site, such as the Handbook Glossary, raises concerns about potential disruptions to the user journey within the Register. The aim of providing a simple and user-friendly experience for consumers is paramount, and the introduction of external links could adversely impact consumer satisfaction, potentially leading to them abandoning their Register search, which, of course, is the opposite aim of what we are trying to achieve.
17. We hope that, based on the considerations outlined above, you understand our rationale for not accepting this recommendation. We will continue to engage with you (and your successor) around our work on the Register and we continue to welcome your suggestions.

Recommendation (b) at paragraph 107

18. You recommend that consumers are advised to contact the FSCS and/or the Financial Ombudsman to verify the cover available to them rather than asking the consumer to verify with the firm.
19. You find in paragraph 104 (d) that asking consumers to check with a firm if the activity they are carrying out has '*embedded potential for wrongdoing by firms, or fraud, and this wrongdoing/fraud happened to crystallise with respect to PFX.*' As a result of this, you have recommended that consumers be advised to contact the FSCS (and/or the Financial Ombudsman) directly to verify the availability of cover of the schemes, rather than consumers contacting the firms themselves.
20. For the reasons outlined below, we consider we have already met this recommendation as a result of the changes made to the Register over recent years. We have already implemented related changes to the Register to direct consumers to the FSCS and Financial Ombudsman regarding the protections which may be offered. We would like to point out the following:

Consumer protection wording on the Register

21. The FCA has invested significantly in the Register over recent years making changes to increase its clarity. As stated in your PR at paragraph 97, where FSCS protection categorically does not apply, the Register now says this. However, as you accept in paragraph 83, we cannot create and maintain individualised Register pages for over 50,000 firms.

22. Given the complexity of the permissions held by an authorised firm, the products it sells and the regulated activities it undertakes there are, in fact, very few cases when we can be definitive about Financial Ombudsman and FSCS cover on the Register, given the very fact specific nature of determining if cover is available. Where this is the case, the Register communicates the potential limitations of Financial Ombudsman and FSCS coverage and advises consumers to seek written confirmation from the firm as well as directing consumers to the Financial Ombudsman and FSCS websites.
23. Additionally, consumers are cautioned that the ultimate determination of Financial Ombudsman or FSCS coverage rests with those respective independent organisations.
24. It is worth noting that the FSCS says on its website *'It is not always easy to determine if a regulated activity is being carried out, as there are many exceptions and it is very fact dependent. You can ask your particular firm whether the work they are carrying out for you constitutes a regulated activity'*⁴.

Your letter to the Treasury Select Committee (TSC)

25. In your letter to the TSC on 29 June 2022, you stated that *'The FCA should require Firms to give clarity on their own website about whether each product or activity is regulated by the FCA. This way sufficient risks are highlighted in a simple and concise way that all investors can understand.'*
26. As outlined above, whether a product or activity is regulated, and whether it is protected by the Financial Ombudsman or FSCS is fact specific, and as you are aware, can require litigation to determine in certain circumstances. Consequently, the current consumer protection wording seeks to achieve a balance between a firm's responsibility of informing consumers of the activity they are carrying out and if they consider this to be covered by the Financial Ombudsman or the FSCS, signposting consumers to the FSCS or the Financial Ombudsman for further information and making consumers aware that these organisations are the final decision makers about whether the cover they provide applies.
27. In paragraph 88 of your PR, you have hyperlinked to the 'Using the Financial Services Register' webpage⁵. We note that under the heading *'how to check a firm is authorised'* it says at step 4 *'If the firm is authorised but you're not sure what protections you have, ask the firm using the details on the FS Register. If you're*

⁴ <https://www.fscs.org.uk/making-a-claim/claims-process/eligibility-rules/>

⁵ <https://www.fca.org.uk/consumers/using-financial-services-register>

struggling to check the FS Register, find out how to contact us' which matches the language used in your recommendation.

28. We have spoken with the Register team and we can confirm we will look to update this webpage to ensure alignment with the existing consumer protection wording on the Register itself as outlined above.

Your recommendation that the FCA make an ex-gratia compensatory payment

29. In paragraph 152 of your PR, you recommend the FCA makes an ex-gratia compensatory payment of 4% simple interest in total of the amount of capital recovered from the Liquidator and Barclays to each of the 33 complainants party to this Stage 2 complaint. You set out that this is subject to the money lost and recovered having been paid to PFX after 25 February 2011.

30. As set out at paragraph 7.14 of the Complaints Scheme (in force at the time these complaints were made), in deciding how to respond to a report from the Complaints Commissioner, we would normally consider 4 factors. We have considered your recommendation in light of these factors individually and cumulatively. We have also considered whether, more generally, the circumstances relating to PFX and your recommendations mean that it is appropriate to make an ex gratia compensatory payment. On balance we still consider that it is not appropriate to make such a payment in addition to that previously offered by the FCA for complaint handling delays. Our assessment of the relevant considerations is set out below for you to consider in preparing your Final Report.

Factor (a) the gravity of the misconduct which the Complaints Commissioner has identified and its consequences for the complainant.

31. In your PR you say *'The FCA failed to appropriately supervise and re-authorise PFX. PFX acted in breach of their permissions and the rules. As a result of these two elements (and failure on the part of Barclays), consumers lost access to their money for three years and eight months.'*

32. You go on to say in paragraph 153 that *'I am mindful as set out above, the FCA, whilst a significant factor, was not the only party as fault in you losing access to your funds.'*

33. First and foremost, it is important to recognise that the direct cause of customer losses and therefore the distress and inconvenience caused by not having access to funds was the actions of the firm and its sole director. As explained in the FCA's Final Notice⁶ about PFX, the firm seriously misled its customers.
34. When we responded to complaints about our actions or inactions in relation to PFX at stage 1, we upheld or partially upheld 5 allegations (of the overall 31 allegations raised). These allegations related to concerns over how information was handled and not actioned and the reauthorisation of PFX just prior to its collapse in 2018. We accept we made mistakes prior to the collapse of PFX and it does not appear from your PR that you disagree with our findings about our actions or inactions.
35. Therefore, turning to the consequences of our actions or inactions for complainants, we think it is important to consider the timeline of events. We say this because PFX was first authorised by the Financial Services Authority (FSA) as an authorised payment institution and given permission to provide the payment service of money remittance on 25 February 2011, the date you use as the starting point in your recommendation to pay compensation. Neither our investigation nor your PR have identified any failings by the FCA when PFX was first authorised, and we had no intelligence in 2011 to suggest that PFX was acting outside of its permissions. If your recommendation reflects a finding on your part that our actions or inactions have caused distress, inconvenience or consequential loss to all of PFX's customers who may have provided funds to the firm from 25 February 2011 and whose money was still held by the firm when it became insolvent, we disagree with that conclusion.
36. In our Stage 1 investigation report, we set out when we started to receive information regarding PFX acting outside of its permissions. Materially, this is from March 2017 onwards, approximately 16 months before PFX's collapse.
37. By this time, we believe it is highly likely that many customers had already 'deposited' funds with PFX and those funds had highly likely been dissipated by the firm shortly after deposit, as we have highlighted previously. Given the money for many customers was likely already gone, it does not automatically follow that swifter

⁶ <https://www.fca.org.uk/publication/final-notices/premier-fx.pdf>

action would have prevented losses for all complainants. It is possible that some customers may not have made payments to PFX had we intervened more quickly after we received specific intelligence in March 2017. However, it is difficult to determine the time it would have taken to achieve a successful intervention as we would need to investigate to establish the facts prior to such intervention. Nevertheless, we accept that we could have intervened sooner and in not doing so we may have contributed to the distress and inconvenience for some complainants who subsequently 'deposited' money.

38. In addition, we consider it likely that it would have taken a similar period (ie 3 years and 8 months) to conclude our Enforcement investigations into PFX and Barclays irrespective of the date they commenced. Therefore if we had acted earlier, customer losses would have crystallised earlier, but the period without access to their funds would have remained the same.

39. We therefore disagree with the premise of your argument that our mistakes were a significant contributory factor to the detriment suffered by all customers of PFX who paid money to PFX after 25 February 2011.

40. In your PR at paragraph 145, you say *'I have found, and the FCA accepted, numerous failures by it. These failures include failure to undertake appropriate checks before deciding to reauthorise PFX, inadequate supervision of PFX and the failure to display clear and accurate information on the Register at the relevant time...'*

41. For clarity, as outlined above, we do not accept that the Register failed to display clear and accurate information at the relevant time. The Register contained accurate information regarding the permission held by PFX. The absence of the definition of 'money remittance' is not in itself misleading or inaccurate. It may prompt users to conduct further investigations of their own, but the information on the Register was not misleading or inaccurate. The Register did not indicate that FSCS cover would be applicable, rather that FSCS cover could not be determined.

42. We would also highlight that 42% of complainants party to this complaint, had claims accepted by PFX's Liquidator in excess of the FSCS limit of £85,000 for deposits⁷, with some paying significantly

⁷ The FSCS limit for deposits also varied during the period PFX operated, with £85,000 being the maximum. We note that the maximum limit for investments for the date when PFX failed was only £50,000.

in excess of this limit. Where consumers are willing to deposit/invest more than the FSCS limit applicable at the time, it may suggest that for these customers the protection offered by the FSCS was not an important factor in their decision to use PFX.

43. Finally, in considering the consequences for complainants, we think it is highly relevant that because of the FCA's Enforcement action, all PFX customers with accepted claims recovered the principal sum they paid to PFX. The voluntary payment made by Barclays totalled £10,076,943.75 represented the difference between the distribution made by the liquidator and accepted claims. Enforcement proceedings are complex and often lengthy but, in this case, FCA Enforcement action ensured PFX customers did not suffer any loss of their initial capital.

Factor (b) the nature of the relevant regulator(s)' relationship with the complainant and the extent to which the complainant has been adversely affected in the course of their direct dealings with the relevant regulator(s).

44. We are not aware of any complainants who are party to this complaint having direct dealings with the FCA prior to using PFX, for example by contacting the Supervision Hub. Our understanding is that the relationship with the FCA was an indirect one, in that they were customers of a firm whom the FCA authorised and supervised.

45. The LC says that complainants followed FCA guidance from the ScamSmart campaign⁸, which included checking if PFX was registered with the FCA via the Register. We would highlight that ScamSmart was first launched in October 2014 and related to investment fraud. Further, we do not consider that interaction with the Register constitutes 'direct dealings' with us. Whilst checking the Register will confirm if a firm is authorised and what permissions it has, it is part of a number of steps that can be taken to reduce risk as outlined on our ScamSmart pages⁹. The list of steps is not exhaustive and checking the Register does not act as a guarantee against fraud.

46. PFX customers had direct dealings with PFX, who according to the FCA's Final Notice¹⁰, '*seriously misled customers by informing them that it was able to hold their funds indefinitely without the need for*

⁸ ScamSmart was launched in October 2014: <https://www.fca.org.uk/news/press-releases/national-campaign-will-target-those-most-risk-investment-fraud-says-fca>. The campaign was to warn people about investment fraud and how to spot a potential scam.

⁹ <https://www.fca.org.uk/scamsmart>

¹⁰ <https://www.fca.org.uk/publication/final-notice/premier-fx.pdf>

a payment order for onward transfer; their funds would be held in secure, segregated client accounts; and their funds would be protected by the Financial Services Compensation Scheme ("FSCS").'

47. However, we do recognise the Register could have been more helpful in making clear where FSCS cover does not apply, a change we have now made, as outlined above.

Factor (c) whether what has gone wrong is at the operational or administrative level.

48. The original consultation in November 2000 (CP73) on the Complaints Scheme expanded on the meaning of this factor to refer to '*whether what has gone wrong is at the operational or administrative level (rather than in relation to matters of policy or where the FSA's actions have necessarily had to reflect a balancing of conflicting interests and complex issues)*'. In our view the purpose of this factor is to distinguish between cases where there were operational or administrative failures (where compensatory payments may be more appropriate) and cases where we have exercised our discretion to balance conflicting interests and complex issues.

49. In this case, we accept that the mistakes we made were at an operational level.

Factor (d) the impact of the cost of compensatory payments on firms, issuers of listed securities and indirectly, consumers.

50. The FCA is funded by the firms we regulate, and ultimately consumers, so we need to consider the costs of compensatory payments, not solely in this case, but more broadly.

51. In this case, the cost of accepting the recommendation for the 33 complainants party to this complaint would amount to around £133,000. However, we believe we would, as a matter of fairness, need to consider providing the same level of payment to all 167 customers of PFX, who 'deposited'/invested funds with the firm after 25 February 2011. Whilst we do not have the exact figure, we note that making the recommended compensatory payment to all 167 customers of PFX would cost over £400,000.

52. This cost would fall on regulated firms, the vast majority of which are legitimately carrying out activities and also contributing to the FSCS levy to protect consumers when a regulated firm undertaking relevant regulated activity fails.
53. We also need to consider the implications in this particular case. The firm was undertaking unauthorised activity and through this dissipated the funds 'deposited'/invested with the firm, probably shortly after they were paid to it (in effect the firm was operating a 'Ponzi scheme'). As such, swifter action by us, which could only reasonably have been made on the basis of material, relevant information and detailed investigation, (noting that our resources do not enable us to investigate every piece of information we receive on a firm), would likely not have prevented the losses, distress and inconvenience caused for most complainants. We also note the considerable resources we expended in enforcing against the firm and Barclays, which resulted in all consumers with accepted claims getting their principal sum returned. Further, this would also call into question the legislative framework, which sets out that the FSCS, not the FCA, provides protection in certain circumstances for customers of financial services firms that have failed.

Other considerations

54. In addition to the factors raised above, we consider the following is relevant to our consideration about an ex-gratia compensatory payment to complainants:
55. It is unclear how you have reached the compensation methodology and concluded that we should make a compensatory payment of 4% simple interest in total on the capital recovered from the Liquidator and Barclays, provided the complainant sent the funds to PFX after 25 February 2011. The rationale behind your recommendation for a percentage figure of the capital sum paid to PFX as opposed to the more usual approach of a fixed-sum payment for distress and inconvenience is also not clear.
56. Further, it is the responsibility of a customer to carry out their own due diligence, as you recognise, and to make sure that the firm they are using is authorised to carry on the regulated activity they intend to use. At para 137 of the PR, you acknowledge "*I am mindful that investors should perform their own due diligence in dealing with firms and they have to accept that the FCA does not*

operate a zero- failure regime.” In this case, customers used PFX as a deposit taker notwithstanding the Register entry which indicated its permissions were limited to money remittance. Consumers were also directed to the firm for further information. Although we recognise the Register could have been more helpful in making clear where FSCS cover does not apply, which change we have now made, you have agreed that consumers were not misled by the Register.

57. We have also considered the FCA’s statutory immunity against damages; Parliament has tasked the FCA with making judgements in good faith regarding our oversight and regulation of firms, and for which it has specifically excluded liability for paying damages for acts or omissions in the course of carrying out its functions. We note, however, that the statutory regime for the Complaints Scheme also envisages that the regulators will make compensatory payments in some circumstances.

Conclusion

58. Taking all of these factors into account both individually and cumulatively and having considered your recommendation more generally, our view remains that an apology and payment to recognise the complaint handling delays is the most appropriate remedy under the Complaints Scheme. We have apologised to all PFX customers for the mistakes we made prior to the collapse of Premier FX and offered an ex-gratia payment to recognise our complaint handling delays.

59. It therefore follows that, if it is included in the Final Report, we will not accept the recommendation that the FCA makes an ex-gratia compensatory payment of 4% simple interest in total of the amount of capital recovered from the Liquidator and Barclays to each of the 33 complainants party to this Stage 2 complaint.

60. We are grateful to have the opportunity to respond to your PR and we hope that our letter is helpful. Should you require any further information please let us know.