

Written evidence submitted by the Premier FX Liquidation Committee (Financial Services Fraud Victims/Members of the Public) (FSMB12)
Response to Financial Services and Markets Bill: Call for Evidence

EXECUTIVE SUMMARY

1. We would like to submit our evidence to the Public Bill Committee on the Financial Services and Markets Bill 2022-23. The FCA have informed us they are unable to prosecute or seek the prosecution of authorised firms who commit criminal activity in violation of the current FSMA or Fraud Act 2006 which has led us to conclude there is very little purpose or point to the FCA, as they currently interpret their role and this has to change. We had to learn how to engage or battle with an obstructive bureaucracy who appears to detest consumers and fails to protect them but can be relied upon to impose maximum opposition to victims who dare to complain.
2. We are the Premier FX Liquidation Committee (LC) who represent 200 victims of a Ponzi-style scheme operated by a fully FCA authorised and registered payment services company called Premier FX (PFX) who operated through Barclays Bank as a Barclays money services firm. We would like to offer the following as evidence to your enquiries.
3. The value of misappropriated monies is £11.2m which we recognise is a small number in the world of finance but many victims have lost large sums of money resulting in some being made homeless and others losing their pension funds.
4. We have a financial services and regulatory system run by negligence and this has to change. The sole reason we got our money back from a Payment Services Firm Regulated by the FCA who misappropriated client money unlawfully for 12 years and was repeatedly reauthorised by the FCA was our unwavering determination to inform MPs and Parliament of the injustice and damaging consequences of failures in due diligence by the Financial Conduct Authority and Barclays Bank. After a campaign of three years and 7 months by the victims' committee, the FCA traded enforcement action for a negotiated 'private settlement agreement' with Barclays. This deal exonerated the bank from culpability and wrong-doing in return for an ex-gratia payment refunding the principal sums to the victims, however, the money was paid without interest or compensation for the deprivation of our funds for almost 4 years.
5. The FCA Complaints Scheme gave an unreserved apology for failing to act on "data held within the FCA" which showed all was not well with PFX, including reports from the Central Bank of Portugal who had advised the FCA in 2016 and 2017 of financial irregularities in PFX and failings to comply with anti money laundering law. Barclays were fined £1.1m for "poor oversight, due diligence and lack of care". Is this an adequate deterrent to stop this happening again? We do not think it is. Barclays is the prime UK bank for money services businesses who handle billions of pounds of consumer cash and these firms remain easy vehicles for fraud. **Until banks and the regulator are unambiguously liable for poor due diligence, nothing will change for the better.**
6. The FCA stated "We are very sorry for the mistakes we made prior to the collapse of PFX. We are a very different regulator today than we were during the period that these complaints cover. We strive to continuously improve and learn lessons and have been transforming the way in which we operate. Complaints, like those received about our regulation of PFX, provide a vital source of

insight which has led to improvements to our processes and working practices, and has enabled us to become a more assertive, adaptive and innovative regulator”. (FCA Press release 14 August 2022)

7. Should victims’ committees have to do the regulators’ work for them and why were we not compensated for doing their work and giving up 4 years of our lives to fight for the return of our much needed funds? If we had not read the laws and submitted vast amounts of evidence to the FCA, the Treasury and the Treasury Select Committee, nothing would have happened and we would have been left broke, homeless and without our retirement funds. Would you want this to happen to you or your parents?

8. Some minor tweaks in the regulatory rules may have been introduced but the oversight by banks and FCA over payment services firms / money services businesses, who handle billions of consumers’ cash, is still far from robust and effective. The misappropriation of client funds will continue to prevail unless the FCA stops slumbering or ducking its legal responsibilities and is forced to exert its powers over the firms and the banks who transact their business.

9. We support a strong financial services industry, however, this could be done more effectively with a vigilant regulator enforcing the laws and rules rather than allowing a wild west style of unregulated industry to do what it wants. The FCA’s complacent and self-assured regime of slow and lazy regulation needs to be brought to an end. It systematically harms consumers by default and is unacceptable to the public for the reasons summarised below:

a. DISAPPOINTMENT

- **At the realisation of the failures of Financial Laws, Regulation and Enforcement** and deliberate negligence of Barclays Bank tolerated by the Regulators.
- That organisations such as a UK Regulator and a UK Bank can operate in such a non-regulatory fashion, paying no attention to consumer safety and protection.
- With the Treasury Select Committee’s unwillingness to challenge the FCA whose responses to the TSC questioning raised more questions than answers. The bank has never been questioned by the TSC.

b. DISBELIEF

- That an organisation such as the FCA is permitted to operate with such autonomy. The FOS cannot investigate the FCA! The Financial Regulators Complaints Commissioner can only intervene and investigate when the FCA have completed their own investigations which may take years or never be completed! The FRCC decisions are not binding and can be ignored!
- The high and unreasonable charges associated with the insolvency administration and liquidation (a process the victims have no control over) which take the remaining client funds and deliver no recovery of client funds nor benefits for the claimants.

c. DISGUST

- At Barclays Bank, the Treasury and the FCA’s unwillingness to accept responsibility for their failings. The FCA may be financed by the financial industry but they are still a public agent of the Treasury and responsible and accountable to Parliament for their “light touch regulation” and negligent application of their powers.
- The total lack of empathy shown by all parties (Barclays Bank, Police, FCA and Treasury) towards the victims.

d. DISILLUSIONMENT

- With the UK authorities and the lack of honesty and integrity within it.

10. **Recommendations.** The Financial Services & Markets Bill currently being debated is a once in a lifetime opportunity to put this right. To help prevent the stress and anguish the PFX claimants went through, as well as other victims of “light touch” or unsupervised deregulation, it is crucial that MPs make 5 modest and influential amendments to the Financial Services and Markets Bill being debated this session. Our recommendations are as follows:

- a.** Civil liability for the FCA should be introduced i.e. the removal of the broad exemption from civil liability. This would bring the FCA into line with the NHS, Police, Home Office, Dept for Work & Pensions and other public bodies tasked with public safety, consumer duties and good and fair practice.
- b.** The Complaints Scheme dealing with regulatory failure cases should perform in a timely way, giving proper compensation for negligence /failings. If this fails, claimants can take the FCA to court without having to prove the FCA were deliberately negligent.
- c.** The Financial Regulators Complaints Commissioner's findings should be made binding, not just advisory.
- d.** Financial Firms should owe a duty of care to consumers. This would have made Barclays unambiguously liable to us, without the need for the FCA to negotiate and trade enforcement rights for partial redress. The introduction of a statutory duty of care to be owed by authorised firms to consumers was passed by Parliament (<https://www.legislation.gov.uk/ukpga/2021/22/section/29/enacted>) which required the FCA to consult on such rules last year but the regulator chose instead to consult on and create lesser rules (<https://www.fca.org.uk/publications/policy-statements/ps22-9-new-consumer-duty>), which is why we believe the matter must now be taken out of its hands and dealt with by statute.
- e.** The perimeter of the FCA should include all fraud, malfeasance and misfeasance by registered firms.

These moderate but impactful changes will help ensure we have a genuinely transformed, more agile and adept regulator. It will reduce financial crime by FCA registered and authorised firms and provide better protection for the public. The FCA executive directors have told us on more than one occasion that we should ask our MPs to bring clarity to their powers and remit so the FCA could better apply and enforce UK financial laws. It is therefore key for the regulators to have civil liability to help prevent them being subsumed by industry lobbying which reduces their effectiveness. This is an important opportunity to bring in a new FS&M act and regulatory authorities with teeth which will work for the public and curb the excess of the fraudsters and money laundering in the City of London.

With thanks

Premier FX Liquidation Committee

30 September 2022

Pauline Creasey, Graham Dyke, Keith Carre

The following pages provide further detail.

FURTHER EVIDENCE

11. The current regulatory perimeter excludes too many high-risk products and the FCA supervision focuses on very large large firms and misses the rest. This resonates well with our own circumstance of which both such failings are resulting in our downfall and the exponential escalation in the number of scams in the industry where financial crime caused by regulatory negligence is the crime which most affects the public and is 55% of all UK crime. The Annual Assessment of UK Policing Report, 10 March 2022 by Sir Thomas Winsor summarised the dire state of affairs by stating that 99% of financial crime is not investigated as it requires financial forensic resources which are in short supply and are expensive for the public purse. This stressing how essential it is to have a financial regulator which proactively uses its powers to police the industry effectively, constantly and coherently.

12. PFX was declared insolvent in July 2018 and went into Creditors Voluntary Liquidation in October that same year. Since then we (the LC) have established factual evidence of the levels of chosen neglect shown by both the FCA and Barclays Bank, all at the expense of the innocent consumer. Such levels of neglect make it so easy for fraudulent operators to scam the consumer, even under the regulatory authorisation of the FCA which simply gives the fraudsters added credence, “the gold standard of being authorised by the FCA” in the eyes of the innocent consumer. The situation has become so bad in terms of ‘light touch’ or zero regulation for the majority of firms that one seriously wonders *what is the point and purpose of the FCA*, other than being a captured regulator by the leaders of the industry who lobby for minimal or self-regulation. **We support a strong industry, however, it can be achieved and be more sustainable with a regulator who uses its powers, is obliged statutorily to uses its powers and is held accountable for its civil liability if it fails to perform.**

13. We would like to give you just a few examples of the neglect shown by both the FCA regarding PFX, which perfectly supports your statement regarding the importance of the UK taking back its powers from the EU and using the opportunity to draft a modern finance law which builds and regulates a world leading industry. If consumer protection is built in to the new FSMA and statutory in an unambiguous way this will attract investment and re-establish the UK as a global financial centre for all the right reasons and not as a centre for money laundering and crime.

14. FCA Failings to Act and Decisions to Neglect Supervision of Money Services Firms

a. Authorisation of PFX

(1). Mr Andrew Bailey has replied to MPs letters that PFX were asked in 2018 “*if anything had changed from their previous authorisation*” (in 2011 & 2013) and said no further FCA verification/ checking took place.

(2). In November 2018 Andrew Bailey and Maha El Dimachi stated that “*Due to pressure to complete all the authorisations and re-authorisations of payments service institutions by January 2018 when the EU PSR 2017 came into effect, the re-authorisations were done online with one question asked ‘Has anything changed?’ Nothing else was checked*”. No checks or validation were done. This is a significant and a deliberate decision to dispense with due legal process, contrary to UK legislation. **The FCA first authorised PFX in 2013** when they were already trading insolvent and skimming off customers’ remittances, **so prime responsibility for the Ponzi-style scam rests here.**

(3). **The issue of re-authorisation is also central.** It was granted on 23 May 2018, eight weeks before the firm collapsed insolvent and £11.2M of customers' funds

were stolen. If the FCA had intervened at this point during their legal verification of the firm's suitability to be a Payments Institution, the founder director would still have been alive to answer questions and the FCA could have prevented the large out flow of money which exceeded £28M in June and July 2018. Andrew Bailey told Helen Grant MP on 29 May 2019 that PFX did produce evidence that it met the five requirements for re-authorisation. Clearly, just saying "*Yes, we meet the five requirements*" is not the same as producing evidence and, given the state of the company at that time, it is hard to see that it could have provided genuine evidence.

(4). **We have asked the FCA to please explain how the authorised and re-authorised PFX was safely checked and verified as expected by the public and by parliament.** Customers were persuaded to hold their retirement funds in PFX when the FCA authorised firm did **not** have permission nor safeguarding guarantees to hold client money other than for onward remittance.

(5). The fraudsters knew the FCA were not performing any verification or monitoring, whereas the unsuspecting consumers followed the FCA Scam Smart advice and were misled by the FCA to believe that if the firm was *authorised* and *approved*, robust checks were taking place! The FCA legal authorisation process is described in the FCA document "Our Role under the Payment Services Regulations 2017 November 2021 V5".

b. FCA Register

(1). On the 29 January 2019 Andrew Bailey made the following statement to the Her Majesty's Treasury Select Committee when questioned about PFX and the FCA's Register:

"It was a legal requirement that the register exists, but it had been fairly neglected and did not seem to have a high priority in the institution and things like Premier FX have come out of the woodwork that are not good. Historically the register has not had the priority it should have had."
(Transcripts from HMTSC meetings with FCA)

(2). The FCA Register is the all important information link that gives the public an opportunity to check a company's legitimacy and confidence in who to deal with and not to deal with. **We followed this advice and, as a result of its neglect, we were still the victims of fraud.**

(3). On the authorisation certificate for PFX it simply stated they are authorised and regulated for 'Money Remittance services', with no explanation as to what this meant and what restrictions and impact it may have had on the consumer. Significantly, it did not state that the firm was not authorised to hold client money beyond 4-5 business days. **This was a glaring omission which could have prevented the scam.**

c. FSCS Statement

(1). The recognition by the FCA's CEO of the fact that the Register has been so neglected has had a significant impact on PFX clients in that the PFX certificate confirmed PFX's authorisation but stated that "*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”.

(2). The FCA has since confirmed to the TSC that **it did know** that payment service providers (such as PFX) are **not** covered by the FSCS scheme. This is confirmed in an email from Nikita Patel 31 July 2018, ref: FCA Query 205446052 and also in a letter from the Treasury, from Mr J Glenn to Barbara Keeley MP, 23 October 2018 ref: MC2018/16568. **Therefore why did it not state that on the Register’s PFX page?**

d. FCA Supervision

(1). As the Regulator, there is a requirement for the FCA to supervise authorised companies and ensure they operate within their authorisations. The following is the FCA’s defence for not actively supervising companies:

“The FCA is responsible for supervising the regulated activities of 58,000 firms with permission to undertake regulated activity in the UK. Our approach to the supervision of individual firms depends on their size, activity and the potential harm posed to consumers. The majority of firms, including Premier FX, are supervised on a reactive basis in response to evidence or intelligence of harm to consumers”. (Email dated 22 September 2018 from Nikita Patel, Consumer Contact Centre)

Yet they still failed to act on several significant ‘red flag’ pieces of intelligence:

- (a). Financial irregularities reported by the Portuguese Financial Authorities.
- (b). A customer of PFX, who was also an ex-employee, alerted the FCA in relation to severe concerns he had about the operations of the company.

(2). We now know that PFX had neither segregated accounts nor any professional indemnity insurance which suggests that PFX were not submitting their annual reports, or they were fake/dishonest. Both of these elements are an integral part of ten operational requirements for FCA authorisation.

(3). Clearly PFX and other similar companies are not supervised at all, not even on a reactive basis and this opens the floodgates for fraud and money laundering!

e. FCA Complaints Scheme

A significant number of the PFX victims have made written complaints to the FCA’s Complaints Commissioner who issued a monthly statement throughout the whole of 2019/21 until 18 August 2022 simply stating:

“I am writing to update you on your complaint. We are making progress with our investigation of the matters raised, but are not yet able to conclude the investigation and provide you with our final response. I would like to apologise that our investigation has taken longer than we would like”.

Clearly the complaints system is either not working or is being influenced or suppressed.

15. Similar examples of neglect and lack of regulatory control have been identified with PFX's bankers, Barclays Bank, and we would like to give you a few examples.

16. Barclays Bank Failings and Complicity with its Money Services Business client, AML & KYC Responsibilities

a. Response received by Barbara Keely MP from Barclays Customer Service Associate, Lisa Lines

(1) The Bank's general statement was:

"Barclays simply operated the bank accounts of an FCA authorised business."

Surely no bank should 'simply operate' a bank account, particular one that can be used so easily for money laundering or fraud, and processing upwards of £30M per month through their accounts.

(2) In response to the following statement in PFX's marketing literature:

"Further security is provided by the fact that these accounts act as ESCROW accounts within Barclays Bank so are therefore protected up to £80K under the Financial Services Compensation Scheme."

Barclays responded:

"As regard Premier FX's claim that the segregated accounts were guaranteed by Barclays, Barclays is not aware of all communication between customers and their clients and did not approve or endorse this statement by Premier FX, as it is inaccurate."

The statement Barclays deny is a statement within the PFX marketing material, information readily available in any due diligence process!

(c). In that same letter, Barclays also state they carry out 'adequate' client due diligence to meet their financial crime and regulatory obligations under the money laundering regulations. We would very much like to know what standard 'adequate' is and what documentary evidence exists that such a customer due diligence check was ever undertaken. Such statements of denial clearly confirms the total lack of any, or even adequate, due diligence undertaken on PFX, and probably any other similar PI company. Clearly Barclays did not practice the principles of KYC (Know Your Customer).

b. Barclays reluctance to support the Administrator and the Liquidator

(1). Throughout both the administration process (PKF Geoffrey Martin & Co, Administrator Peter Hart) and the liquidation process (Menzies LLP), Barclays proved extremely obstructive and reluctant to help or support the investigations carried out by the Administrators and the Liquidators.

(2). Of greatest concern is Peter McMahon, the Barclays Relationship Director and Account Manager, a key witness whose role it was to interface with PFX and ensure regulatory requirements were being maintained and adhered to. Immediately after the announced insolvency of PFX, Barclays placed him on 'indefinite sick leave' and

prohibited access to him by the Administrator and the Liquidator, issuing the following statement to the Liquidator:

“Information associated with Peter McMahon is the property of Barclay’s Bank.”

(3). Surely this questions Barclays’ integrity, transparency and willingness to support the detection of money laundering and fraud when it occurs?

17. Based on such evidence we believe the consumer deserves better from a regulator and major UK and global bank, and victims such as ourselves have a valid claim against both the FCA and Barclays Bank for full compensation for our losses. Had both organisations applied the correct regulatory standards, companies such as PFX would not be operating and the consumer would be better protected.

18. We have been informed by the Treasury that they cannot interfere with the workings of the FCA yet the FCA is an agent of the Government, given public duties, responsibility with accountability by Parliament and we cannot accept that any Government would be happy for a representative organisation such as the FCA to behave so badly and perform so poorly, leaving consumers so exposed to financial fraud.

19. A further example of the protections offered to the banking industry by the regulator is the situation with Authorised Push Payments (APP). The Payment Systems Regulator (PSR) has chosen to ignore the recommendations of the TSC to retrospectively compensate from September 2016 (the date of the Super Complaint by the consumer body Which). The PSR simply agreed retrospective payment from January 2019, another significant favouring of the Banks at the expense of the consumer.

20. We believe compensation should be mandatory on the FCA and City firms. They should compensate the victims of a crime which may measure low on the Financial Industry scale but extremely high to those who have lost their homes, life savings and retirement money. A dedicated City of London fund should and could be financed and maintained by the industry which automatically compensates victims of malfeasance/misfeasance by UK authorised firms within 3 months.

21. Based on the above, are you and the committee willing to add your voice of support to our justified cause for stricter regulatory standards and full compensation for victims which are *actually applied* by both the regulator and the banks? It is a win-win as the UK industry will become more robust and sustainable.

22. The current practice of the bankers and the FCA is to ignore regulations or apply due legal process so slackly, it is merely a cost of doing business for the banks and their client fraudsters. The consumer is unprotected and simple prey under such a lawless regime which is completely contrary to what Parliament has legislated and what the unsuspecting public has been led to believe. The FCA is facilitating fraud and pensions scams by default and is too close to the City institutions to be effective.

23. Appeals to the former City Minister John Glen led nowhere. The SFO and Police refused to investigate despite Police Commissioners saying they should. A senior Treasury civil servant advised us (off the record) that a policy decision has been taken within Treasury and the FCA to ignore fraud unless it is large and international, and falls under obligations of the British government to comply with international finance agreements. After four years, we realise we are wasting our time and money reporting and registering complaints to the FOS, Police and insolvency agents as they all ultimately take their direction from the FCA and the Treasury/UK Government,

and the decisions by the Financial Regulators Complaints Commissioner are not binding and are ignored by the FCA. **This is a bleak situation for the public who deserve mandated statutory protection and financial laws which are used and enforced. The FCA tells us it has no powers under the Fraud Act 2006! Moreover, despite PFX engaging in criminal activity by taking deposits and stealing them, which is contrary to the FSMA (2000, 2012), the FCA still failed to prosecute any PFX director or Barclays employee. Where is the deterrence?**

24. The Treasury argue they cannot interfere with the FCA because the FCA is “independent” of government. The FCA, who are tasked with a serious public duty to protect consumers and ensure financial markets work efficiently for the benefit of the consumer, are influenced by the City’s interests and preference for lazy or minimal regulation. They should be influenced by the consumer who needs the regulator to protect them from malfeasance and misfeasance which is rampant and unchecked in the industry.

25. What can be done in the face of such blatant compliance with fraud? British citizens are unable to retire and are forced into poverty late in life as their retirement money and life savings have been stolen by FCA authorised firms.

26. We are happy to discuss further and provide further evidence to your enquiries.

With thanks,

Premier FX Liquidation Committee

Pauline Creasey, Graham Dyke, Keith Carre

September 2022.