

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2017

Public Authority: Financial Ombudsman Service
Address: South Quay Plaza
183 Marsh Wall
London E14 9SR

Decision (including any steps ordered)

1. In a two part request, the complainant has requested information about complaints to the Financial Ombudsman Service (FOS). FOS says that section 12(2) of the FOIA applies to part 1 of the request as the cost of confirming whether it holds the requested information would exceed the appropriate limit. FOS released information in response to part 2 of the request.
2. The Commissioner's decision is that FOS has correctly applied section 12(2) to part 1 of the request. The Commissioner also considers that FOS has complied with its obligation under section 16 to offer advice and assistance to the complainant.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 25 March 2016, the complainant wrote to FOS and requested information in the following terms:

"1) With regards to your response [1] to ref: FOI 1936:

"We'll provide the business with the consumer's information and the reasons why they're unhappy. At the same time we ask the financial business to let the consumer know they're dealing with the complaint

and that they should send a final response letter to the consumer within eight weeks of receiving our letter or within eight weeks of the date the consumer complained to them, if this was earlier."

specifically the part: "...that they should send a final response letter to the consumer within eight weeks of receiving OUR letter ..."

a) Number of occasions you asked a financial institution to issue a final response letter because they failed to issue one within 8 weeks of the customer contacting them. [2]

b) The name of the financial institution, the date you contacted them, and the method of contact. e.g. postal letter, phone, fax, email etc...

2) Please provide all information [3] where you mention the procedure stated in (1). i.e. that if a business fails to respond to a customer complaint within 8 weeks, and the customer lodges a complaint with you, you will contact the business and request that they sent a final response letter to the customer within 8 weeks of YOUR letter.

[1] - available at:

https://www.whatdotheyknow.com/request/complaint_handling_procedure_2#incoming-787706

[2] - for each calendar/financial year from 2008 up to now. Please take the date you contact the financial institution for calculation purposes. For this part, include all instances where the customer has contacted the bank/financial institution, and the bank/financial institution has failed to respond within the 8 weeks, the customer then contacts you, you contact the bank to say they should send a final response within 8 weeks of receiving YOUR letter.

[3] - specifying the source of the information. e.g: Ombudsman Service leaflet, handbook, guide to businesses etc".

5. FOS responded on 22 April 2016. It explained its complaints process to the complainant and released some relevant information: internal guidance and what it described as a 'spreadsheet' showing the number of times FOS has asked a business to issue a final response to a customer after eight weeks has lapsed.
6. Following an internal review, FOS wrote to the complainant on 29 July 2016. It acknowledged that the complainant considered that some of the

information with which he had been provided was not relevant as FOS had already provided this information to him in response to one of his separate requests for information. FOS said that if a request is linked to another request, it may include or repeat similar information so that the requester has all the information available in one place and knows that FOS has addressed their questions in full.

7. FOS clarified its procedures regarding final responses from businesses and how investigation cases are progressed. It confirmed that the guidance it had provided to the complainant is just that – guidance – and explained that some cases will have been managed differently, depending on the circumstances.
8. FOS said that it does not routinely record cases where it has specifically asked a financial business to tell FOS when it has or has not been able to issue a final response within eight weeks. Consequently, FOS was not able to provide a response to part 1 without individually searching through each enquiry and complaint it has received. To comply with the specifics of this request would exceed the cost limit under section 12 of the FOIA.
9. Finally, FOS re-sent, as an Excel document, the spreadsheet it had previously released to the complainant. This had originally been converted to a pdf document so that it could be sent externally.

Scope of the case

10. The complainant contacted the Commissioner on 11 August 2016 to complain about the way his request for information had been handled.
11. FOS has confirmed to the Commissioner that, from the complainant's request for an internal review, it appeared that he was satisfied with its response to part 2) of the request and that what is in dispute is parts 1a and 1b. Having reviewed the internal review request, in which the complainant writes: *"2) This part has been covered adequately by forwarding the internal guidance document..."* the Commissioner considers this was an appropriate conclusion to draw.
12. The Commissioner's investigation has therefore focussed on whether FOS has correctly applied section 12(2) of the FOIA to part 1 of the request and has complied with its obligation under section 16.
13. In addition to FOS's application of section 12(2) to part 1, the complainant is also dissatisfied that: FOS re-sent information it had previously sent to him in response to a separate request; it used his

personal information in its internal review; and that the information he was sent was in an unusable format, which FOS did not acknowledge.

14. The Commissioner has considered these technical aspects of FOS's handling of the request, in 'Other Matters'.

Reasons for decision

15. FOS has provided a background in its submission to the Commissioner. FOS was set up by Parliament under the Financial Services and Markets Act 2000 to resolve disputes that financial services providers and their customers aren't able to resolve themselves. FOS says it looks at each case on its individual merits.
16. Before FOS can accept a case for investigation it has to be satisfied that the financial business has had an opportunity to respond first. A financial business has *eight weeks* from the date the consumer complains to it to respond to a complaint. FOS can only investigate the complaint after these eight weeks are up, or once the business has issued its 'final response' letter.
17. As a result, a consumer may get in touch with FOS in one of the following three scenarios:
 - a. A consumer contacts FOS and explains they have complained to the financial business and received a final response which they are unhappy with. In these cases FOS will usually take on the case for investigation.
 - b. A consumer contacts FOS and explains they have complained to the financial business but have not received a response. In these cases FOS will usually take the case on for investigation, which it refers to internally as a 'deadlock' process. However, where appropriate, FOS sometimes first checks with the business what the current situation is and gives it a further 21 days to issue a final response, which can resolve things.
 - c. A consumer contacts FOS before they have complained to the financial business. In these cases, FOS will get in touch with the business on their behalf and instruct it to investigate the complaint and respond to the consumer directly.
18. In its original response to the request, FOS says it provided the complainant with a list of occasions in 2015 where it had applied the 'deadlock' process, together with the names of the financial businesses it had contacted on those occasions.

19. However, when FOS had completed its internal review, it realised that this was not the information that the complainant was looking for. Rather, he had confirmed that his request was actually focussed on the number of cases which had gone through the deadlock process but where it had first contacted the business to ask it to issue a final response. At this point, FOS explained to the complainant that the information he was looking for would exceed the appropriate cost limit.

Section 12 – cost exceeds the appropriate limit

20. Section 12 of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:

12(1) either comply with the request in its entirety, or

12(2) confirm or deny whether the requested information is held.

21. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to FOS. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:

(a) determine whether it holds the information

(b) locate the information, or a document which may contain the information

(c) retrieve the information, or a document which may contain the information, and

(d) extract the information from a document containing it.

22. Where a public authority claims that section 12 of the FOIA is engaged it should, *where reasonable*, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

23. FOS has explained that its case handling system stores all correspondence about complaints brought to its service. It is unable to search its case handling system for a specific word or phrase – it can only search for information and run reports by specific categories that have been set up in the system.

24. One of the specific categories set up in FOS's case handling system is called 'final response enforced' (sometimes referred to as 'enforced deadlock'). This category is applied to cases where the eight-week time period has passed and either a final response letter has not been issued, or FOS does not know whether a final response letter has been issued. In such situations, this category (that is 'final response enforced') has to be applied in order to allow the case handler to move the case to the next stage of the process.
25. FOS says that since 2008, it has run the enforced deadlock process on 521,380 occasions and, in 2015, it ran the enforced deadlock process on 40,258 occasions. The complainant has specifically asked for the number of occasions FOS asked a financial institution to issue a final response letter because it had failed to issue one within eight weeks of the customer contacting them, specifically in cases where FOS applied the deadlock process.
26. According to FOS, it may contact a business in these circumstances in a number of ways – by writing a letter, sending an email or making a phone call. Because its case handling system does not allow it to extract the number of occasions where it has made contact in each of these different ways, the only way to obtain this information would be to individually review each complaint file which has been categorised as "final response enforced".
27. FOS has completed a sampling exercise and estimates it would take approximately two minutes for a member of staff to extract the relevant information from each file. Given the sheer volume of cases that FOS would have to look through, even if the request was narrowed to the last year (ie 2015) FOS is satisfied that the time taken to complete this would vastly exceed the appropriate limit. FOS says section 12(2) applies because it would exceed the appropriate limit of £450 to confirm or deny it holds the requested information.
28. The Commissioner is prepared to accept FOS's submission as credible and considers that the time estimate of two minutes per file is reasonable. For 2015's files alone, extracting information in order to confirm whether the requested information is held would take in excess of 1300 hours. The Commissioner is therefore satisfied that section 12(2) applies to the request and that FOS is not obliged to comply with it.

Section 16 – advice and assistance

29. FOS has told the Commissioner that, in line with its obligation under section 16, it considered whether it could provide the complainant with any advice or assistance to refine his request – such as refining his request to a particular product or narrower time period. However, because it does not record the information the complainant has requested in a searchable form, FOS considers it is unlikely the request can be refined sufficiently enough to bring it within the 18 hour time limit.
30. Having considered the scope of the request, FOS's case management system and the way it records its information, the Commissioner is satisfied that the request could not be meaningfully refined and that FOS has complied with section 16.

Other matters

31. The procedural matters with which the complainant is dissatisfied have not been included in the Commissioner's formal investigation. This is because they either concern the internal review (provision of which, although good practice, is not a requirement of the FOIA) or because they concern the broader information that FOS provided in order to be helpful. FOS's position is that it is not obliged to comply with the complainant's specific request for the reasons discussed in this notice.
32. However, the Commissioner will note here that she considers FOS's re-sending of particular information to the complainant to have been an entirely reasonable attempt to be helpful. Regarding the complainant's personal data, having reviewed FOS's internal review the Commissioner cannot identify where his personal data has been used in a way that is inappropriate.
33. Finally, in his request for information, the complainant did not specify the format in which he wanted the information to be provided. FOS, quite reasonably, sent the general information it was able to provide as a pdf document, which it had described as a 'spreadsheet'. In the complainant's view, which he expressed in his request for an internal review, this was not a 'spreadsheet'. FOS then provided the complainant with an Excel version of the document. The Commissioner's opinion is that FOS handled this matter and its internal review, entirely satisfactorily.

Right of appeal

34. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
36. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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