Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 April 2019

Public Authority: Financial Ombudsman Service (FOS)
Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information relating to disputed final decisions. The FOS refused to comply with the request under section 12 FOIA.

2. The Commissioner's decision is that the FOS was correct to apply section 12 FOIA and that it was not therefore obliged to comply with the request. The Commissioner also considers that the FOS provided the complainant with appropriate advice and assistance in accordance with its obligations under section 16 FOIA.

3. The Commissioner requires no steps to be taken.

Request and response

4. On 2 November 2018 the complainant requested information of the following description:

   1. How many Final Decisions have been disputed, per month for the past 5 years?

   2. What is the claim value of these disputed cases?

   3. What are the top five reasons why Final Decisions issued by the FOS are disputed? What is the percentage breakdown of those disputing the Final Decision: Complainants or Respondents?

4. Where Final Decisions have been disputed, what is the breakdown of the number of disputed decisions per ombudsman, by ombudsman name?

5. List the case numbers of each and every anonymised disputed Final Decision over the past 5 years.

6. How many of the disputed cases resulted in an escalation of the complaint to the so-called Independent Assessor?

7. What are the case numbers of these disputed anonymised Final Decisions that were escalated to the Independent Assessor by Complainants?

8. How many of those escalated cases to the Independent Assessor resulted in the Independent Assessor upholding the complaint?

9. What are the case numbers of the disputed anonymised Final Decisions that were escalated to the Independent Assessor by Complainants and that were upheld by the Independent Assessor?

10. What is the salary pay band of Case Investigators? Do they qualify for any additional income benefits or bonuses (and if so, on what basis), other than standard pension or medical cover benefits? How many Case Investigators are employed (Full time/FTE) by the FOS?

11. What is the salary pay band of Ombudsman? Do they qualify for any additional income benefits or bonuses (and if so, on what basis), other than standard pension or medical cover benefits. How many Ombudsman are employed (Full time/FTE) by the FOS? How many ombudsmen are funded by the FOS but do not involve themselves with issuing Interim or Final Reports?

12. What is the break down of other employment categories (and related head counts) other than Case Investigators and Ombudsmen in the FOS?

5. On 28 November 2018 FOS responded. It refused to comply with the request under section 12 FOIA as it said that it would exceed the cost limit to do so. It provided the complainant with some advice under section 16 FOIA as to how he may wish to refine his request.

6. The complainant requested an internal review on 12 December 2018. FOS sent the outcome of its internal review on 15 January 2019. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 27 August 2018 to complain about the way the request for information had been handled.

8. The Commissioner has considered whether the FOS was correct to apply section 12 FOIA to the request in this case.

Background

9. The FOS was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA) to resolve disputes that consumers and businesses aren't able to resolve themselves. It looks at each case on its individual merits.

10. It has a two-stage process for investigating complaints. When a consumer or their representative brings a complaint to its service it investigates it and tells the parties what it thinks the outcome should be. If either party to the complaint disagrees with the outcome they can ask for the complaint to be passed to an ombudsman who will make the final decision. The ombudsman will then take a look at all the information afresh and issue a decision setting out their findings, as the final stage in its process. It reaches conclusions on each complaint based on its view of what is fair and reasonable in the circumstances of that individual complaint.

11. If the consumer accepts the final decision it becomes legally binding on the financial business. If the consumer doesn't accept the final decision, it is not binding. Once it has reached a final decision its involvement comes to an end and it cannot look into the complaint further. As it is an alternative dispute resolution service consumers can choose to pursue their complaints by other means if they wish, but FOS cannot help them with this.

12. If a consumer is unhappy about the service they receive, they can complain to a manager and then to an Independent Assessor. The Independent Assessor is appointed by its board and looks at the service the consumer has received. They cannot consider any matters about the merits of the dispute against the financial business. If the Independent

Assessor identifies any service failings she can make recommendations to the service and ask FOS to award compensation.

Reasons for decision

Section 12 – cost exceeds appropriate limit

13. 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 cost limit to:

    - either comply with the request in its entirety, or
    - confirm or deny whether the requested information is held.

14. 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 - 24 hours work for central government departments; 18 hours work for all other public authorities. 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.

15. The appropriate limit for the FOS is £450 or the equivalent of 18 hours work.

16. FOS explained that the complainant has asked a number of questions about the number of final decisions, their value, the reasons they weren't accepted, the number of consumers who didn't accept and escalated to the Independent Assessor and received compensation. The complainant also asked questions about its case handlers, ombudsmen and other staff members, including salary bands, headcount and benefits.

17. FOS said that when it received the request it identified that the information the complainant was asking for was likely to be held within its case handling system and some of the information would transfer

into its management information system. Its management information system can run reports based on certain fields created in the case management system. If a certain field doesn't exist then the only way to locate the information is to manually review each case file. Depending on the information requested, the information could sit in one document or in a variety of documents. The size of a case file can vary from 100 pages to more than 5,000 pages depending on the nature of the complaint. Its case files also cover a wider range of financial products from credit cards to buildings insurance to pensions.

18. It went on that the complainant's questions are around final decisions. In the last five years FOS has produced over 185,000 final decisions. It also explained that the complainant's questions tend to focus on individuals who weren't happy with the final decision therefore it could limit the search to consumers who hadn't accepted the final decision, which was 31,000 cases/decisions.

19. FOS does not record a reason for rejecting a decision, so the only way to determine whether it holds this information would be to review each individual file and look at all post-decision correspondence to see if the consumer had mentioned why they didn't want to accept the decision. FOS would then need to collate these and provide them to the complainant. The time taken to review 31,000 decisions would vastly exceed the appropriate limit.

20. For example, it explained that in order to review all 31,000 decisions and their correspondence in 18 hours it would have to review 1,722 decisions and their relevant correspondence in one hour or 29 decisions and the relevant correspondence in a minute. It confirmed that it is not possible to review one file in a minute.

21. FOS said that similarly, it does not record the value of a claim in its system. This is because the value of a claim is often not quantifiable as the recommendation may be to process a claim, issue an apology or repair an object. Because of this the only way to determine whether it holds this information would be to review each individual file and look at a wide variety of correspondence to see where the value of the claim may be mentioned. It could be mentioned in the consumer submissions or the business submissions or it may not be mentioned at all if it hasn't been calculated yet. The time taken to review the correspondence on all 31,000 cases would vastly exceed the appropriate limit.

22. Again it explained, for example, in order to review all 31,000 cases in 18 hours, it would have to review 1,722 cases in one hour or 29 cases in a minute. It is not possible to review one file in a minute. Because of this it is satisfied that the time taken to locate the information for one part of

the request would exceed 18 hours and that section 12 of the Freedom of Information Act applies. In line with ICO guidance once FOS established that part of the request would exceed 18 hours we didn't go on to consider the rest of the request.

23. Based upon the FOS's submissions, the Commissioner would agree that the request can be considered to be broad in nature. Furthermore given that the work described would still not cover the whole request, the Commissioner does consider that it would exceed the cost limit under section 12 FOIA to comply with the request in this case.

Section 16 – Advice and Assistance

24. Under section 16 FOIA the FOS is obliged to provide the complainant with advice and assistance to help the complainant refine the request to fall within the cost limit or explain why this would not be possible.

25. The FOS confirmed that in line with its obligations under section 16 it provided the complainant with a variety of ways to narrow the scope of this request including:

- asking only one or two questions rather than all 12 questions; or
- narrowing the number of cases it would need to search through to locate the information by time period, financial business or financial product.

26. The Commissioner is not aware that the complainant has made a refined request, for example limited to one or two questions of the twelve or narrowing the time period, financial business or financial product, as suggested by FOS.

27. The Commissioner does consider that the FOS has complied with its obligations under section 16 FOIA in this case.

Right of appeal

28. 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

29. 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.

30. 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 .....

Gemma Garvey
Senior Case Officer

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