

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2021

Public Authority: Financial Ombudsman Service

Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainants requested information on senior level discussions in 2018 about the specialist re-mortgage process. The Financial Ombudsman Service (FOS) refused to comply with the request as it considers to do so would exceed the appropriate cost limit under section 12 of the FOIA.
2. The Commissioner is persuaded that it is unlikely that FOS holds the specific information that has been requested. But her decision is as follows:
 - Under section 12(2) of the FOIA, FOS is not obliged to confirm whether or not it holds information falling within the scope of the request as the cost of doing so would exceed the appropriate limit.
 - FOS offered the complainants adequate advice and assistance and no breach of section 16(1) occurred.
3. The Commissioner does not require FOS to take any remedial steps.

Request and response

4. On 17 December 2019 the complainants wrote to FOS and requested information in the following terms:

"We're obliged to write again following the IA's input and further detailed discussions with FOS Investigator [Redacted] and the banks. We notify you of the following illegality and request a serious case review.

Firstly, in his final decision, Ombudsman [Redacted] tries to force us to accept the banks' ongoing information rights abuses in order to have our residential mortgage extended. The internally nominated complaint handling organisation at the banks still can't access or even locate the documents we've complained about. No bank or FOS service user should ever be placed in the position of having to accept such illegality before it is unequivocally rectified.

We understand that senior level FOS discussions took place in May 2018 about the specialist remortgage process which in our case has gone badly wrong and is currently impossible to rectify. We're putting in an FOI request to you now for all the information FOS has about that to assist our own investigations..."

5. FOS responded on 17 January 2020. FOS told the complainants that its casework team had advised that its senior colleagues had carefully considered the "specialist remortgage process" issue the complainants had referred to. They had decided it was something that could be dealt with routinely, on a case by case basis, by colleagues in casework.
6. FOS confirmed that, because of this, it does not hold central, formal records that the complainants had asked for. FOS went on to say that it may be the case that its case handlers and senior colleagues had informal discussions about how to progress individual complaints. They may have had face-to-face meetings, and telephone or email discussions about individual cases. So the requested information could be held in a number of different places, for example in individual mailboxes, written notes, or held in individual case files.
7. FOS explained that because the information is not held in an easily searchable format or a central location, in order to provide the complainants with more details about discussions relating to the 'specialist remortgage process', it would have to carry out extensive searches. These searches would include searching through the mailboxes of case handlers and ombudsmen working on mortgage complaints, for any emails containing the information the complainants had asked for. It would also be necessary to get in touch with individual ombudsmen and case handlers to ask for any notes or records they may hold about such discussions. FOS said that, in addition, it would have to search through all of the complaints it has received about Bank of Scotland in relation to mortgages, to see if the information is held on individual case files.

8. Because the information is not held in an easily searchable format and that it is not held in a central location, FOS advised the complainants that it was reasonable to estimate that searching for any relevant information would take longer than 18 hours. As such, FOS relied on section 12 of the FOIA to refuse to comply with the request.
9. FOS advised how the complainants might refine their request to bring complying with it within the cost limit. But it also advised that information about other people's complaints [to FOS] would be exempt from disclosure under section 40(2) of the FOIA, which concerns personal data.
10. Following an internal review FOS wrote to the complainants on 18 March 2020. It provided them with evidence – the written recollection of the ombudsman who had dealt with their original complaint to FOS – that suggested recorded information relevant to their request was not held. FOS upheld its position that to confirm this was the case would exceed the cost limit under section 12 of the FOIA.

Scope of the case

11. The complainants contacted the Commissioner on 9 June 2020 to complain about the way their request for information had been handled.
12. The Commissioner's investigation has focussed on whether FOS is entitled to refuse to comply with section 1(1)(a) of the FOIA in respect of the request, under section 12(2). She will also consider whether FOS complied with its duty under section 16(1) to offer the complainants advice and assistance.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

13. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
14. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.

15. Section 12(2) states that subsection (1) does not exempt the public authority from its obligation to comply with section 1(1)(a) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
16. 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:
 - determine whether it holds the information
 - locate the information, or a document which may contain the information
 - retrieve the information, or a document which may contain the information, and
 - extract the information from a document containing it.
17. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
18. In its submission to the Commissioner, FOS has first provided her with general information about its service. It says that the Financial Ombudsman Service was set up by Parliament under the Financial Services and Markets Act 2000 to resolve certain disputes that customers and businesses are not able to resolve themselves. It looks at each case on its individual merits. The rules setting out how it should handle complaints are published as part of the Financial Conduct Authority's Handbook - in the section called Dispute Resolution: Complaints.
19. FOS says it has a two-stage process for investigating complaints. When a consumer or their representative brings a complaint to its service, in most cases, a case handler will initially provide their assessment of the complaint. If either party to the complaint disagrees with the initial assessment, they can ask for the complaint to be passed to an ombudsman who will make a final determination. The ombudsman will look at all the information afresh and issue a decision setting out their findings. This is the final stage of FOS' process and the complainant will be asked whether they accept or reject the final decision by a specified date. If it is accepted, the final decision becomes binding. A complaint is determined by what is, in the opinion of the ombudsman, fair and

reasonable in the circumstances of that individual complaint. 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.

20. If a consumer is unhappy about the level of service they have received, as opposed to the outcome of the complaint they can raise a complaint with the relevant manager/senior manager. If they remain unhappy with that response, FOS has an Independent Assessor (or referred to as IA) who can consider the service provided. The Independent Assessor is the final stage of this process.
21. FOS has explained that the complainants in this case disagreed with the decision reached by the investigator and the ombudsman on their case. Their request for information was, FOS considers, likely related to an email from the investigator to the complainants on 30 April 2018 which said "part of your complaint is about you being asked to complete a specialist re-mortgage from Birmingham Midshires to Bank of Scotland in order to extend the term on your residential mortgage account. Our approach to these types of applications is currently being considered at a higher level within our service".
22. When it received the complainants' request, FOS' data protection and FOI adviser contacted the investigator who handled the complaint. It also contacted lead of the practice group to ask for information about high level discussions about the specialist re-mortgage, and also where this information was likely to be held.
23. FOS says it aims to maintain a high level of quality in how it handles complaints. Its investigators work closely with its ombudsmen, who support them with specialist knowledge and experience of finding fair answers to complaints. And its ombudsmen work together in professional practice groups to make sure they are consistent in their thinking and approach.
24. It contacted the lead of the relevant practice group and asked them for information about the request. The lead explained that high level discussions had not taken place on this topic and, as such, the information was not held. He also recalled the complaint and provided the following information:

"... [investigator name] flagged this up to me around this time as something that he hadn't seen before and might merit wider policy consideration. I had a look at it to consider whether it was something the practice group needed to take further and thought that, in fact, it was something we could deal with on a case by case basis as part of routine casework. So it's likely that at the time of [investigator

name]'s email to [complainants] he'd discussed it with me and was waiting for me to get back to him. As this was the sort of routine thing that happens in practice groups all the time – leads have issues flagged to them, look at the cases, and decide whether or not they are wider / policy issues, in this case not – there aren't any formal records.”

25. Based on this information FOS says that it is satisfied that it does not hold high level discussions and it explained this to the complainants in its response to their request for an internal review. FOS says it also went on to explain that whilst there were no high level discussions, it is possible that other investigators may have sought advice from its ombudsmen on similar topics and received ad hoc advice on a case by case basis. FOS had explained that this information would likely be held on individual complaint files or perhaps over email.
26. FOS noted that it went on to explain to the complainants that, given the number of case handlers who could have worked similar cases and the number of individual mailboxes it would need to search, that finding any discussions around the topic would be likely to vastly exceed 18 hours.
27. The investigator on the complainants' complaint [to FOS] explained that part of the complaint was about a specialist re-mortgaged process. In its case handling system, FOS says it can categorise a complaint by financial business, product complained about and complaint issue. The complainants' complaint is categorised as follows:

Product Group: Banking Services Loan & Other
Product/Service: House Mortgages
Complaint Type: Administration
Complaint Issue: Under Funding/Term Extension

28. However for complaint issues, case handlers can only select a single option and FOS says it often finds that complaints are multi-faceted. Where this happens its case handlers have to select the complaint issue which is best reflective. This means that where a complaint might have more than one issue, the complaint issue filter may not always be accurate, and it has to search wider, by complaint type or by product/service.
29. FOS has told the Commissioner that its case handling system shows that since 2011 it has resolved over 95,000 complaints where the product was categorised as house mortgages. Of these more than 1,100 had the complaint issue categorised as 'underfunding/term extension'.
30. FOS says that it would need to review each of the 1,100 within less than a minute to identify if relevant information was held, in order to comply with section 1(1)(a) of the FOIA within the cost/time limit. The size of

each complaint files varies and the only way to see if a discussion was had or advice had been sought from any ombudsman or senior leaders would be to review each file. The complainants' case file [as an example] is made up of approximately 795 documents and 3,471 pages. It would therefore take considerably longer than one minute to read through each document and identify whether a discussion had taken place.

31. In addition to this, FOS says, it could be that advice was obtained generally rather than in relation to a specific complaint. If this was the case, then it is likely that the information might be held in emails. Emails from individual mailboxes are deleted after two years and it is not able to search across its mailboxes in one search; instead each mailbox needs to be searched individually. As a result of working remotely during the pandemic and given the size of some individual mailboxes, FOS says it knows from previous searches that it can take the system over 24 hours to bring back search results for a single mailbox. Given that any case handler could have handled a complaint about mortgages, FOS has advised that it would need to run this search on the mailboxes of approximately 1,395 case handlers and then review each email retrieved. Doing so would greatly exceed the appropriate limit.

Conclusion

32. The Commissioner has reviewed the complainants' correspondence to her about their FOIA complaint. Their correspondence tends to focus on the wider matters associated with their original complaint to FOS about a mortgage. The complainants also refer to the public interest but section 12 of the FOIA is not subject to the public interest test. The crux here is whether FOS can rely on section 12(2) of the FOIA to refuse to confirm whether it holds any information within the scope of the complainants' request, because the cost of doing so would exceed the appropriate limit.
33. The Commissioner appreciates that the complainants have not found FOS' response to their request to be satisfactory. However, the Commissioner finds it, and FOS' submission to her, to have been thoughtful, thorough and convincing.
34. The complainants have requested recorded information about senior officers' discussions two years earlier about the specialist remortgage process. The ombudsman who had originally dealt with their complaint case and the lead of the associated practice group have explained why this specific information was unlikely to have been held in recorded form – because, as was the practice, senior colleagues were likely to have (verbally) discussed the matter and decided it was something that case

handlers could deal with routinely, on a case by case basis. The Commissioner finds this explanation credible. However, to confirm whether or not it holds any relevant information FOS has explained the following:

- It is possible investigators may have sought and received advice from its ombudsmen on similar topics and that, if held, any such information would be in individual complaint files or emails.
- Complaint 'issues' can only be categorised in FOS' case management system by one option. In reality a complaint could involve several issues. Its complaint issue filter may therefore not be accurate, and it would be necessary to carry out wider searches for information within the scope of the complainants' request.
- Since 2011 FOS has resolved 95,000 complaints, 1,100 of which concerned the issue that is broadly the same as the complainants' complaint to FOS. FOS would need to review each of these complaint files in under a minute to complete the search within 18 hours. In reality this is not feasible as files contain many pages; in the complainants' case over 3,000. If it took 30 minutes to review each file, it would take 550 hours to complete the search. But the Commissioner agrees that it is likely to take longer than half an hour to carry out each file review.
- FOS has conjectured that a case handler may have received advice that it is relevant to the complainants' request more generally, ie not in relation to any specific case. To retrieve any such recorded advice, if held, from one case handler's emails could take its systems over 24 hours. FOS says there are 1,395 case handlers and each case handler's mailbox would need to be searched separately with each email retrieved reviewed individually.

35. The Commissioner has considered FOS' correspondence with the complainants, their concerns and FOS' submission to her. In her view, FOS has given the matter sufficient thought and its reasoning is credible. The Commissioner is therefore satisfied, for the above reasons, that the complainants' request engages the exemption under section 12(2) of the FOIA and that FOS is not obliged to comply with it.

Section 16 – advice and assistance

36. Under section 16(1), a public authority has a duty to provide an applicant with advice and assistance, so far as it would be reasonable to expect the authority to do so. Applied to section 12, section 16(1) creates an obligation for a public authority to provide advice and assistance on how the scope of the request could be refined or reduced to avoid exceeding the appropriate limit.
37. The Commissioner is satisfied that in its correspondence to them of 17 January 2020, FOS offered the complainants adequate advice and assistance because it suggested how they might narrow down the scope of their request. FOS also advised them that, if it was able to confirm whether it holds relevant information, any information about other people's complaints would be exempt under section 40(2) of the FOIA. As such, the Commissioner finds there was no breach of section 16(1).

Right of appeal

38. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. 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.
40. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF