

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2016

Public Authority: Financial Ombudsman Service

Address: South Quay Plaza
183 Marsh Wall
London E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information concerning complaints raised with the Financial Ombudsman Service (FOS) and FOS' scheme rules. FOS released some information. FOS said it was not obliged to comply with part of the request under section 12(1) of the FOIA as to do so would exceed the appropriate cost limit. Finally, FOS said that some of the requested information is exempt from release under section 21 of the FOIA because it is already reasonably accessible to the complainant.
2. The Commissioner's decision is that:
 - On the balance of probabilities, FOS has released all the relevant information that it holds with regard to one part of the request, and holds no further information.
 - FOS breached section 10(1) of the FOIA because it did not respond to the request within 20 working days.
 - FOS is not obliged to respond to part of the request as to do so would exceed the appropriate limit under section 12(1). It has complied with its obligation under section 16(1) to offer advice and assistance with regard to this part.
3. The Commissioner does not require FOS to take any steps.

Request and response

4. On 19 July 2016, the complainant wrote to FOS and requested information in the following terms:

"[1] Please provide me with the following information for as far back as the FOS hold these records:

- The total number of complaints raised with the FOS against private health insurance providers, per year, split by provider;*
- The split of these complaints by upheld, rejected and dismissed, by year and provider;*
- For those that were dismissed, please specify under which DISP rule they were dismissed under by year and provider.*

[2] Please also provide the following breakdown from my previous FOI request 1561:

- For the period where records go back to, the total and breakdown (by DISP) for all cases dismissed without its merits being reviewed across sectors and types of complaint;*
- The top 20 sectors plus private health insurance would suffice.*

[3] I'd also be grateful if you could send me the terms and conditions of the FOS scheme rules from 2010 to present (ie, all published versions since then to present day). I attach the equivalent document from the Legal Services Ombudsman for your perusal."

5. Following the Commissioner's intervention, FOS responded on 5 September 2016. FOS provided the complainant with links to a website where it said information on how it handles complaints, and documents that underpin its statutory powers – how it handles and how it investigates complaints – are published.
6. FOS released to the complainant information about complaints concerning medical/dental insurance since 2009: the number of complaints received, the number resolved and the outcome of the complaints. FOS also released information on the reasons cases are dismissed and the number of cases dismissed.
7. On 5 September 2016, the complainant asked FOS to clarify its response. FOS clarified an aspect of its response on 12 September 2016 and provided an internal review on 3 October 2016.

8. In its internal review, FOS acknowledged that it had not responded to the request within 20 working days and apologised for the delay. FOS also apologised that some data had been missing from its response of 5 September 2016, which it had then provided to the complainant on 12 September 2016.
9. FOS released information under the particular headings that the complainant had requested on 5 September 2016.
10. FOS told the complainant that, under section 12(1) of the FOIA, it is not obliged to provide specific information about DISP (Dispute Resolution) rules under which particular cases were dismissed as the cost/time of providing this information would exceed the appropriate limit.
11. Finally, FOS said that other information the complainant had requested regarding DISP scheme rules was exempt under section 21 of the FOIA as it is already accessible to him and it had provided him with a link to this information in its original response.

Scope of the case

12. The complainant contacted the Commissioner on 22 August 2016 because he had not received a response to his request. The complainant is dissatisfied with the response and internal review with which FOS subsequently provided him.
13. The complainant says he has requested the full statute remit that FOS says it is abiding by. He does not consider that the published information to which FOS has directed him is sufficient. In addition, the complainant is concerned about how FOS applies the Financial Conduct Authority's (FCA) DISP rules and considers that FOS should provide him with the numbers of dismissals using these DISP rules.
14. The Commissioner's investigation has focussed on two matters. First, with regard to section 1(1) of the FOIA, whether FOS holds additional, relevant information that it has not disclosed to the complainant and second, whether FOS is correct not to comply with part of the request under section 12(1) of the FOIA. The Commissioner has also considered the length of time it took FOS to respond to the request.

Reasons for decision

Section 1 – right of access to information

15. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled to be told whether the authority holds the information and, if it does, to have the information communicated to him or her.
16. The complainant has requested '*...the terms and conditions of the FOS scheme rules from 2010 to present...*'. Referring to a document that he received from the Legal Ombudsman, the complainant considers that there is an equivalent complaints dispute scheme specific to FOS that would define FOS' remit in statute. Consequently, he considers that the web links that FOS has provided to the FCA's DISP rules are insufficient.
17. In its submission, FOS has acknowledged that the complainant considers that there should be a document specific to FOS that sets out and explains its DISP rules, like the Legal Ombudsman's document. FOS has explained to the Commissioner that it is a separate organisation from the Legal Ombudsman and has confirmed that it does not hold a separate document explaining dispute resolution rules that are particular to FOS. It has confirmed that its scheme rules – those which outline both FOS's jurisdiction and complaint handling procedures – are set out in the FCA's Handbook in the section called *Dispute Resolution: Complaints* (known as DISP).
18. The Commissioner accepts that FOS does not hold its own scheme rules but follows those set out in the FCA's Handbook. She is therefore satisfied that FOS does not hold this information and that it has complied with its obligations under section 1(1) in respect of this part of the request.

Section 10 – time for compliance

19. Section 10(1) says that an authority must respond to a request no later than 20 working days following the date of receipt.
20. In this case, the complainant submitted his request on 19 July 2016 and FOS did not provide a response until 5 September 2016, and consequently breached section 10(1).

Section 12(1) – cost exceeds the appropriate limit

21. Section 12(1) 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:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
22. 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.
23. Where a public authority claims that section 12(1) of the FOIA is engaged it should provide advice and assistance, so far as it would be reasonable, in order to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16(1) of the FOIA.
24. In its submission to the Commissioner, FOS has said that in its internal review it had tried to be helpful by providing all the information that it could except for the information which it would take too long to provide. FOS says that the only information it couldn't provide, due to the time it would take to locate the information, was a list of all the cases that it had dismissed by dismissal rule.
25. FOS has told the Commissioner that its case handling system stores all information about complaints brought to its service. It is unable to search its case handling system using a specific word or phrase. FOS can only search for information and run reports by specific categories that have been set up in the system. FOS's reports show that it can obtain information about cases it has dismissed as far back as 2009.

26. When FOS issues its findings about a complaint it sends a letter or email to the consumer or business setting out its reasons. If FOS cannot consider the complaint, its case handling staff will explain why and likely refer to one of the DISP rules. FOS's case handling system will then record the date of the opinion or decision, the author of the document, the outcome of the complaint and the reason why it was dismissed. FOS says these are all pre-populated categories and that the categories are phrases such as 'Complaint brought outside of 6 months' or 'frivolous and vexatious', not the set dismissal rules in DISP.
27. FOS has confirmed that it communicated this to the complainant in its initial response but that the complainant was dissatisfied as he wanted the specific DISP rule number. The information that FOS released to the complainant showed that since 2009 it has dismissed 292 private medical/dental insurance complaints without consideration of the merits, and in the last two financial years FOS has dismissed 10,397 complaints across all product areas without consideration of the merits.
28. FOS has explained that the reasons it can dismiss a complaint also changed in July 2015 with the implementation of the Alternative and Online Dispute Resolution Directive. Consequently, the reasons it might dismiss a complaint now are also different to why it may have dismissed a complaint in 2009.
29. FOS says that the only way it could provide the complainant with the DISP rule applied to each dismissed complaint would be to manually go through each complaint file and review the opinion/decision letter or email to see if its case handling staff referred to a specific DISP rule.
30. FOS has not undertaken a formal sampling exercise but argues that, given that it has dismissed 10,397 cases in the last two years alone, it is reasonable to estimate that the time taken to review each of these cases would vastly exceed the appropriate limit of £450 or 18 hours.
31. Having considered FOS's submission, and noted how FOS manages its case management system, the Commissioner is satisfied that complying with this part of the request would exceed the appropriate cost and time limit under section 12(1). Even if just the two years' of cases above took only 30 seconds each to manually review, this would still take in excess of 80 hours.
32. In line with its obligation under section 16(1) of the FOIA, FOS says it considered whether it could provide the complainant with any advice and assistance to help him to refine his request so that it could be handled within the section 12(1) cost and time limit. Because it does not record the information he has requested in a searchable form, FOS

considers that it is unlikely that the request can be refined sufficiently enough to bring it within the limit.

33. FOS has told the Commissioner that it tried to be helpful by providing all the information that it could so that the complainant could receive most of the information he had requested.
34. Given the breadth of the request and the way information is recorded on FOS's case management system, the Commissioner accepts that complying with a refined request, one that still provided the complainant with a broad range of the information – if such a request were possible – would still be likely to exceed the cost limit. Consequently, the Commissioner is satisfied that FOS met its obligation under section 16(1).

Right of appeal

35. 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

36. 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.
37. 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
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