

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 2 May 2025

**Public Authority:** Financial Ombudsman Service  
**Address:** Exchange Tower  
London  
E14 9SR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information on the use of side letters by the Financial Ombudsman Service (FOS) and the Independent Assessor (IA). FOS stated the information wasn't held.
2. The Commissioner's decision is that, on balance, FOS doesn't hold the information requested and has complied with section 1(1).

#### **Request and response**

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3. The complainant made a clarified request for information to FOS on 17 September 2024. The request asked:

"What is the maximum/average award made by the IA in the last 6 years

If/when the IA has ever notified the FOS executive team, FOS Board and the FCA Oversight Committee regarding:

- (i) the practice of issuing side letters notifying of concerns excluded from her review even though the FOS advises such concerns can be escalated to the IA;
- (ii) (ii) the lack of transparency, integrity and accountability in the IA's Opinions and Annual Reports that omit reference to the

side letters to ensure that those responsible can take effective action, including addressing failures within case allocation processes without requiring a costly independent review to highlight such failings; and

- (iii) (iii) the FOS's misrepresentation of the IA's review to ensure the impropriety is stopped and concerns over non-compliance with the FOS's statutory duties are not ignored, including bias from an uncorrected error that favours the wrong party.

If time permits, please, provide the data for 6 years or for as many years as time permits, however, the information re question 2 is more important."

4. FOS responded on 14 October 2024 stating that for the years 2019-2020, 2020-2021 and 2021-2022 it would exceed the cost limit to provide the awards information. FOS stated it would provide the maximum/average award made by the IA for the 2022-2023, 2023-2024 and 2024-to date. For the parts numbered (i) to (iii) FOS stated no information was held.
5. The complainant requested an internal review on 15 October 2024 asking for the information from 2022 – to date to be provided. In terms of the other parts of the request the complainant queried the 'not held' response expressing they were asking if/when the IA has ever notified the FOS executive team/board about the issues listed in the request.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 19 March 2025 to complain about FOS' response to the request.
7. The Commissioner considers the scope of his investigation is to determine if FOS holds any information in scope of parts (i) to (iii) of the request.

## **Reasons for decision**

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### **Section 1 – information held**

8. Section 1 (1) FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

9. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If the public authority does hold relevant information, FOIA also requires that it communicates that information to the requestor, subject to any exclusions or exemptions applying.
10. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
11. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or held any at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
12. In order to reach a decision in this case the Commissioner asked FOS to explain the role of the IA in more detail.
13. FOS explained that it was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA) to resolve disputes that consumers and business cannot resolve themselves. The rules for how to handle complaints are published in the Financial Conduct Authority's (FCA) [Handbook](#).
14. If a customer of FOS want to complain about the service they receive there is a [three-step complaints process](#) that they must engage in. The IA is the final step in the FOS complaints handling process. The [IA](#) can look into concerns an individual or business may have regarding customer service issues including communication, timeliness and whether an individual received a fair and impartial service.
15. FOS explained that if the IA finds the service given by FOS was not satisfactory, she will communicate her recommendations to the Chief Executive and Chief Ombudsman. Recommendations can be that FOS should pay compensation or apologise to the customer.
16. The IA is appointed by and reports to the Board of FOS. However, the IA is independent from FOS.

17. Turning to the request itself, FOS understood this to be asking for written information held by FOS concerning if or when the IA has ever notified the FOS executive team, Board or Oversight Committee about:  
  
"the practice of issuing side letters notifying of concerns excluded from her [The Independent Assessor's] review"  
  
"the lack of transparency, integrity and accountability in the IA's Opinions and Annual Reports that omit reference to the side letters"  
  
"the FOS's misrepresentation of the IA's review to ensure the impropriety is stopped"
18. The Commissioner agrees this is an objective reading of the request.
19. FOS explained that it consulted with the IA's Office when it received the request to determine if any information was held. The IA's office responded and advised they were not sure what was wanted or meant by 'side letter' as generally all feedback is provided in the review and data is not held forever so the IA could not answer if they had **ever notified** FOS about any of the issues.
20. FOS has since conducted further searches to determine if any information on the use of side letters or information on misrepresentation of the IA's review is held.
21. It explained that the IA's Office holds quarterly reviews with the FOS' Executive Team and publishes annual reports to the FOS Board of Directors. If FOS held information in relation to the request it would be held in one of two locations – the electronic folder where records of quarterly reviews with the Executive Team are held, or the IA's annual reports. FOS also identified information could be contained in electronic correspondence sent by the IA or the IA's office shared mailbox.
22. FOS therefore searched these locations and ran a search of internal emails involving the IA to see if any information was held. The search terms used to look for documents or correspondence were "side letters", "misrepresentations of the Independent Assessor's Review", "misrepresentation of my review" and "misrepresentation of the IA's review".
23. In relation to the IA's quarterly meetings with FOS' Executive Team it explained that records relating to these meetings are retained for six years. There is a corresponding folder for each of the last six financial years. Each of these folders contain a corresponding folder for each quarter of the financial year. Contained in each folder for the financial quarter, is the IA's quarterly review to the Executive Team as well as, where relevant, notes of the quarterly meeting.

24. FOS searched each folder for each quarter for the above key words and phrases. These searches returned no results for documents which contain the above key words or phrases.
25. With regard to the IA's annual report FOS explained that the IA reports annually to the FOS Board. There is a corresponding folder for each annual report from 2014 to 2024/25. Searches were conducted in each of these folders for the keywords and phrases and again no results were returned.
26. Electronic correspondence is retained for two years. FOS searched for any electronic correspondence (emails) involving the IA and the IA's shared mailbox using the keywords and phrases with one result returned. This was an email sent to the IA by the complainant.
27. In summary, FOS found no specific documents that would resemble a "side letter" or any written information which would allow FOS to confirm "if/when the IA has ever notified the FOS executive team/board about the issues listed in the request".
28. The complainant believe that the IA has used side letters and may still be doing so, to report issues to the FOS Board outside of the review and the process of doing this without any transparency is not compliant with FOS' statutory duties. The complainant was seeking to establish if the IA still uses side letters and, if so, does not include reference to this in her annual report.
29. FOS has explained that it has found no such side letters when conducting it's searches nor any reference to side letters in any documents. The searches conducted by FOS seem to the Commissioner to be reasonable and proportionate and likely to have returned relevant results if information were held. The IA herself has confirmed that she is not sure what 'side letter' refers to as outcomes are communicated to all parties in the review.
30. The Commissioner has no reason to dispute this assertion. There is no evidence he is aware of that points to the use of 'side letters' by the IA, whether in the form of a document titled as such or in the form of a communication providing outcomes not contained in her reviews.
31. The Commissioner is only required to make a decision on the balance of probabilities and does not need to prove beyond doubt that information is held (or not held). He makes his decision based on consideration of the arguments provided and whether the steps taken by a public authority would have reasonably found information if it were held and, in this case, he considers FOS has provided clear and detailed arguments explaining how it reached its position.

32. The Commissioner therefore finds on balance that FOS does not hold the information requested in parts (i) to (iii) of the request.

### **Other matters**

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33. In this case, the complainant asked for an internal review on 15 October 2024 and despite chasing this several times an internal review response was not forthcoming until 19 March 2025.
34. Under the Act, there is no obligation for an authority to provide a complaints process. However, it is good practice (under the section 45 code of practice), and most public authorities choose to do so.
35. The Commissioner reminds FOS of the need to conduct internal reviews in timely manner in order to comply with best practice under the section 45 code.

## **Right of appeal**

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36. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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