

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 November 2014

Public Authority: Financial Ombudsman Service

Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information setting out the procedures followed by the Financial Ombudsman Service (the FOS) when handling financial complaints together with any information relating to the change in the language used in a leaflet. The FOS's initial response was to provide a limited amount of information in respect of information on its complaint handling procedures and to advise the complainant that it did not hold any information about the changes to the leaflet. During the Commissioner's investigation the FOS disclosed additional information regarding its complaints procedures. However it maintained its position that it did not hold any information on the change of language in the leaflet.
2. In respect of the request for information on its complaint handling process the Commissioner's decision is that the FOS has now complied with the request. In respect of the request for information on the change of language used in a leaflet the Commissioner's decision is that the FOS does not hold this information. However the FOS failed to inform the complainant that no information was held in respect of the leaflet within 20 working days. Nor did it provide the information it did hold on its complaint handling process within 20 working days. This is a breach of section 10.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 17 March 2014, the complainant wrote to the FOS and requested information in the following terms:

"Would you please provide me with a document or link to a document that sets out, in detail, the procedures you use for handling complaints? Would you please also provide any documents that the Service holds that relate to the change in language to refer to adjudicator "assessments" and "appeals" in the re-drafting of the "Your complaint and the ombudsman" leaflet?"

5. The FOS responded on 19 March 2014. It provided some information in respect of the first element of the request; a document entitled 'how we deal with your complaint'. In respect of the second element of the request the FOS explained that it did not hold any information on the change of language used in the leaflet.
6. The complainant requested an internal review the same day at which time he suggested that the information he sought on the complaints procedure would be held in an internal guidance document. However rather than treat this as an internal review the FOS appears to have regarded it as the first occasion that the complainant had made a formal request under FOIA. It responded on 15 April. The FOS again provided the fact sheet titled 'how we deal with your complaint' together with links to additional information available from its website. It again explained that it did not hold any information regarding the change of language in the leaflet specified by the complainant.

Scope of the case

7. The complainant contacted the Commissioner on 22 April 2014 to complain about the way his request for information had been handled.
8. The Commissioner will first look at whether the FOS has provided the complainant with a document which sets out, in detail, the complaint handling process. This will be dealt with by reference to whether the FOS has complied with its obligations under section 1 of FOIA.
9. The next issue to be considered is whether the FOS holds information on the change in language used in the specified leaflet. This is also a section 1 issue.

10. Even if the Commissioner is satisfied that the FOS complied with its obligations under section 1 he must consider whether it was provided within the statutory time limit provided by section 10.

Reasons for decision

Section 1

The request for a document that sets out, in detail, the procedures the FOS use for handling complaints.

11. Section 1 of FOIA obliges a public authority to communicate the information it holds on request.
12. Before determining whether the requested information has been provided it is first necessary to consider the objective interpretation of the request.
13. The complainant made his request on 17 March 2014 during an exchange of emails concerning the progress of a financial complaint that he had made to the FOS. In particular he was concerned with the process followed after one party to a complaint rejected the assessment of the adjudicator who initially looked at it, leading to the complaint being passed to an ombudsman. In this context the FOS interpreted the request as focussing on this final part of the process.
14. However the request itself does not limit the information it seeks to any particular part of the process. Therefore during his investigation the Commissioner asked the complainant to clarify the scope of his request. The complainant made it clear that he was seeking information about all parts of the complaint handling process.
15. In light of this, and while still having regard for the context in which the request was made, the Commissioner considers that an objective interpretation of the request to be that it seeks a document which maps out, in detail, the process followed as a complaint progresses through the FOS from its initial receipt to, where necessary, a decision by an ombudsman.
16. The Commissioner has considered the 'how we deal with your complaint' leaflet to which the complainant was initially directed. It is likely that this information would have satisfied a narrower interpretation of the request. However the Commissioner is not satisfied that this would satisfy the broader interpretation of the request.

17. The Commissioner has also considered the information available from the FOS's website which it directed the complainant to when responding to him on 15 April 2014. The information linked to includes a webpage offering advice to businesses on how the FOS handles complaints and a news article from the fourth edition of Ombudsman News dated April 2001 which briefly outlines the complaint handling process. More detailed information was also provided via a link to an online technical resource which set out the FOS's usual approach to disputes involving the financial products and service most commonly complained about.
18. Although the information does provide detailed information on how the FOS tackles specific issues it does not provide a detailed explanation of the overall process followed when handling complaints. The information which did relate to the overall process only provided an outline of that process. Therefore this information does not satisfy the description of the information requested, ie for information which sets out the process "in detail".
19. During the course of the Commissioner's investigation the FOS identified an internal document titled 'case-handling process'. This was provided to the Commissioner on 8 August 2014. It sets out the process followed from an initial enquiry being received from a member of the public, the information that has be collected before such an enquiry is accepted as a complaint, the complaint handling process and ultimately the process followed by the ombudsman when making a decision. The process is described using, in part, bullet points and with the aid of flow diagrams. It is clearly an internal facing document, and reflects the requirements of the computerised case management system used by FOS. Being created for an internal audience it is not as immediately comprehensible as a document intended for the public. Nevertheless it can be understood and does set out the entire complaint handling process from start to finish.
20. The complainant has argued that the document is better described as a summary of the process and that there are clear references to further guidance. The Commissioner accepts that the document does refer to other information, including for example, guidance notes. Although it may be possible to drill down to more detailed information by accessing additional information, the Commissioner is satisfied that the document does provide a coherent explanation of the complaints handling process and does so in a significant level of detail. The document satisfied the description of the information as set out in the request. The Commissioner finds that by providing this information the FOS has complied with its obligations under section 1.

The request for information on the change in language in the leaflet

21. As well as obliging a public authority to communicate any information it holds to the requestor, section 1 also obliges the public authority to confirm whether the information is held in the first place.
22. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
23. Throughout its handling of this request the FOS has maintained that it does not hold any information on the change in language used in the 'Your complaint and the ombudsman' leaflet. It has advised the Commissioner that such leaflets are periodically reviewed by the Director of Communications. The FOS has carried out a manual and electronic search of the records held by the Communications department and has confirmed that it does not hold any records of the edits made to the leaflet, apart that is from retaining a copy of the previous version.
24. The FOS has explained that the review of such leaflets does not follow any set process and that the decision to make the changes would have come from informal discussions around the clarity of the message being conveyed. The FOS does not consider that there is any business need to minute such discussions or keep a formal record of the reason for the changes.
25. The Commissioner has considered the actual leaflet. It is one side of A4 comprising of well spaced out text. There are only around 300 words used in the leaflet. Its style is informal rather than technical. The Commissioner finds it totally plausible that a public authority would not require a formal process to review such a leaflet. In light of this, and having received assurances that a search of the relevant business area did not locate any information, the Commissioner finds that, on the balance of probabilities, the FOS does not hold the requested information. It follows that the FOS complied with its obligations under section 1 to confirm the information was not held.

Section 10

26. Section 10 provides that a public authority shall confirm whether it holds the requested information promptly and in any event not later than the twentieth working day following the date of its receipt. If the public

authority does hold the information, that information must also be communicated within the twenty working days.

27. The request was received on the 17 March 2014. This means the FOS would have had up to the 14 April 2014 to respond. The information on its case handling process was finally provided to the complainant on 11 September 2014. This is clearly a breach of section 10 of FOIA.
28. In respect of the information about the leaflet, when initially responding to the complainant on the 19 March 2014 the FOS simply advised the complainant that it could not provide him with the information. It was not until it responded to his request for an internal review that it formally explained that it did not hold this information. This explanation was provided on the 15 April 2014 and so is outside the twenty working days allowed.
29. The Commissioner does not require the FOS to take any further action in respect of this particular case. However the Commissioner does record breaches of section 10 and should a pattern of late compliance emerge he will consider what action it is appropriate to take.

Other matters

30. Although not forming part of the formal decision notice the Commissioner wishes to comment on the following issue that has arisen from his investigation. The complainant was in correspondence with the FOS regarding an outstanding financial complaint which the FOS was considering when he made his request. Therefore initially the FOS treated his request of 17 March 2014 as part of the normal course of that complaint process, rather than dealing with it as a formal FOI request.
31. The Commissioner recognises that, where a public authority is in a position to provide the requested information, dealing with the request through the normal course of business is usually the most efficient way of providing information to an applicant. However the complainant's request was still a valid freedom of information request. Therefore, when it subsequently became apparent that the complainant was unhappy with the response he had received through the normal course of business, FOS should have recognised this as a request for an internal review and dealt with it accordingly. Unfortunately on this occasion FOS treated the complainant's expression of dissatisfaction as his first formal request under FOI.

Right of appeal

32. 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

33. 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.
34. 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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