

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2018

Public Authority: Financial Ombudsman Service

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

Decision (including any steps ordered)

1. In two requests, the complainant has requested guidance from the Financial Ombudsman Service (FOS). FOS refused to comply with the requests which it has categorised as vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is as follows:
 - FOS is entitled to rely on section 14(1) to refuse to comply with the complainant's two requests.
3. The Commissioner does not require FOS to take any steps.

Request and response

Request 1 – FS40769614

4. On 13 March 2018 the complainant wrote to FOS and requested information in the following terms:

"...Under the FOI Act please provide a copy of the FOS's internal guidance which explains how it reviews an Ombudsman's decision after it was made and the process in which a member of the public can apply for this."

5. FOS responded on 12 April 2018. It categorised the request as vexatious under section 14(1) of the FOIA.
6. The complainant requested an internal review on 4 June 2018. FOS provided an internal review on 13 July 2018. It maintained its position that the request was vexatious under section 14(1).

Request 2 – FS50758270

7. On 7 May 2018, the complainant made the following request for information under the FOIA.

"Under the Freedom of Information Act, please provide the following information:-

If an Ombudsman's determination fails to comply with section 228 of FSMA, what would be the consequence? I note that this is very similar to the one raised on 26 October 2017 but I feel that the relevant information may have surfaced given the length of time that has passed."

8. FOS responded to this request on 5 June 2018. It again refused to comply with the request under section 14(1) of the FOIA. FOS said that under section 17(6) it would not enter into any further correspondence or respond to future requests for information on the same or similar topics.

Scope of the case

9. The complainant contacted the Commissioner on 25 July 2018 and 21 June 2018 to complain about the way his requests for information had been handled.
10. The Commissioner's investigation has focussed on whether FOS can rely on section 14(1) to refuse to comply with the complainant's two requests.

Reasons for decision

Section 14 – vexatious and repeat requests

11. Under section 14(1) of the FOIA a public authority is not obliged to comply with a request if the request is vexatious.
12. The term 'vexatious' is not defined in the FOIA but the Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance and, in short, they include:
 - Abusive or aggressive language
 - Burden on the authority – the guidance allows for public authorities to claim redaction as part of the burden
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
13. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
14. The Commissioner's guidance goes on to suggest that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
15. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
16. In its submission to the Commissioner, FOS has first provided a background to the complaints. It has explained that it was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA) to resolve disputes that consumers and businesses are not able to resolve themselves. It looks at each case on its individual merits.
17. FOS says 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.

18. Once FOS 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.
19. In its submission FOS goes on to advise the Commissioner that there are a number of pieces of correspondence that predate the complainant's latest FOI requests. It says that the complainant brought a complaint to its service about his car insurance premiums in October 2016. One of its case handlers looked into the complainant's concerns but felt that the business had acted reasonably and as such it would not uphold his complaint. The complainant was unhappy with this and his case was considered by one of FOS' ombudsmen in February 2017. The ombudsman issued a final decision explaining that it would not uphold the complaint.
20. The complainant was unhappy with the final decision made by the ombudsman and made a number of complaints against FOS about how it handled his complaint. These were looked into by a senior manager who responded to his concerns but also let him know that as a final decision had been issued FOS would not be able to look into his complaint about his insurance premiums any further.
21. FOS says that the complainant remained dissatisfied and wrote to his MP and FOS' chief executive's office. He asked numerous questions about FOS rules, particularly around whether a decision is final and whether a decision can be void. FOS considers that this all stemmed from his unhappiness on his case and that he disagreed with the decision and wanted it overturned. After speaking to the complainant on a number of occasions FOS says it let him know in September 2017 that it would not correspond with him any further about his complaint or these issues so anything he sent would be added to his file and not responded to.
22. FOS has told the Commissioner that in October 2017 the complainant made his first FOI request about the validity of FOS' ombudsmen's final decisions and its rules. The complainant made another four requests about these topics. FOS has provided the Commissioner with a timeline of the complainant's communications, which she has reviewed.
23. With regard to its application of section 14(1), FOS says it appreciates that in answering any request, it is inevitable that it will experience a

certain level of disruption, but says it needs to be certain that this is not too great. Answering long, frequent and interlinked requests for information places an enormous strain on its resources. So it had to think carefully about the complainant's requests for information.

24. When considering whether the complainant's requests are vexatious FOS says it weighed up the purpose and value of the requests against the impact and disruption it would have on its organisation. It also took into account the complainant's other communications with its service. FOS considers that the requests have resulted from the complainant's general dissatisfaction with its service.
25. FOS says that the complainant is unhappy with how it looked into his individual complaint in February 2017. It says the two FOI requests in question are two of many emails he has sent to its service questioning and complaining that the ombudsman's decision was in breach of the rules FOS follows because, FOS says, the complainant disagrees with how the ombudsman came to her decision.
26. Several staff members have previously explained to the complainant that FOS is satisfied that the ombudsman who looked into his individual complaint; that she considered all of the information before reaching a decision; that the ombudsman was clear about why she came to the decision and that it is satisfied that she exercised her powers in accordance with the rules FOS follows.
27. FOS says it has also provided the complainant with further commentary about its rules and provided him with links to them. It has also applied section 12 to his separate requests for any documents held that discuss the validity of ombudsman decisions as this could be held in numerous locations. Responding to all of these requests takes a considerable amount of time and FOS says it has previously told the complainant that it will not correspond with him about his case any further. In FOS' view, the complainant's requests are clearly borne out of a grievance he has against its service.
28. FOS does not feel that individuals should be able to use FOI requests to express grievances or prolong a complaint which has already been concluded. For these reasons it believes that the complainant's requests place a disproportionate burden on the ombudsman service. FOS says it also believes that the behaviour exhibited by the complainant, both with its general casework departments and with the stakeholder team, has caused significant disruption and will continue to do so if it was to comply with his requests.
29. FOS has acknowledged that it is important to provide people with information about how it works, its remit and the rules under which it operates. It says this is why it publishes information on its website and

directs people to the complaint handling rules it follows on the Financial Conduct Authority's website. FOS says this is also why it responded to a number of the complainant's earlier requests to try and help him understand its processes.

30. However, taking into account the complainant's wider communications with its service, the emotive language of his requests, and the links between the requests and the complaint issues he has raised – namely the ombudsman's interpretation of the rules – in FOS' view it is clear that the complainant's requests for information stem from his unhappiness with the service and that FOS has told him it would no longer be able to correspond with him about his complaints.
31. Taking all of this into account, FOS therefore believes it is not unreasonable to conclude that these requests appear to be part of a continuation of behaviour which is intended to cause unjustified disruption to the ombudsman service. FOS says it applied section 14(1) to the requests because it does not consider that the public interest lies in diverting its resources in order to disclose the information that has been requested, nor does it believe that this level of disruption and irritation would be justified or warranted by the limited purpose and value of the requests.
32. The Commissioner has also considered the complainant's position, which he has communicated to her. The complainant's central concern is how a member of the public can seek to have a decision made by FOS regarding their complaint, reviewed. He says this information is not currently published but would be helpful to people who consider that FOS may not have followed FSMA rules in reaching their decision.
33. The Commissioner agrees that the complainant's two requests can be categorised as vexatious, for the following reasons. First, from a quick internet search she understands that a consumer has the right to have a final decision made by FOS 'judicially reviewed' – this would seem to address the complainant's concern. If he is not satisfied with the ombudsman's decision he should, at this point, seek his own legal advice.
34. Second, the timeline of FOS' correspondence with the complainant from 2016 to the time of the requests details the volume of correspondence, the nature of the complainant's questions and queries and FOS responses to these. FOS has explained its service and processes to the complainant, more than once, including the fact that an ombudsman's decision is final and will not be reviewed by FOS. The Commissioner is therefore satisfied that there is now nothing to be gained for the complainant by pursuing this line of enquiry with FOS. She must assume that he is doing so with a view to deliberately cause annoyance to FOS.

35. In addition it is the Commissioner's view that, because FOS will no longer correspond with him about his service complaint, the complainant is now using the FOIA as a channel through which to pursue his general dissatisfaction with the service FOS provided and the decision it reached in his case. FOS has already addressed and concluded these matters through its service complaint process. Finally, FOS publishes relevant guidance about its service and the options consumers and complainants have. The Commissioner therefore does not consider that the requests have any wider public interest and do not justify even the small degree of burden that complying with the requests is likely to cause to FOS. Having considered all the circumstances of this case, the Commissioner is satisfied that the complainant's requests can be categorised as vexatious under section 14(1) of the FOIA.

Right of appeal

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: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: 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.

Signed

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