

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2021

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

Decision (including any steps ordered)

1. The complainant has requested information associated with the Financial Service Ombudsman's handling of a complaint submitted to it. The position of the Financial Ombudsman Service ('FOS') is that it does not hold the specific information requested.
2. The Commissioner's decision is as follows:
 - FOS has directed the complainant to published information broadly within scope of their request – the Financial Conduct Authority's Handbook. On the balance of probabilities, FOS does not hold any other relevant information and has complied with section 1(1) of the FOIA.
3. The Commissioner does require FOS to take any remedial steps.

Background

4. In its submission to the Commissioner, FOS has provided the following background and context.
5. FOS 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. FOS 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 (FCA) Handbook - in the section called DISP Dispute resolution: Complaints.

6. Each year over one million people contact FOS about problems with financial disputes on:
 - bank accounts, payments and cards
 - payment protection insurance
 - home, car, travel and other types of insurance
 - loans and other credit, like car finance
 - debt collection and repayment problems
 - mortgages
 - financial advice, investments and pensions
7. In addition to the above, FOS can also consider complaints against Claims Management Companies, and it can consider disputes brought to it by small and medium enterprises.
8. FOS has a two-stage process for investigating complaints. When a complainant or their representative brings a complaint to its service, FOS 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 FOS' process. FOS reaches conclusions on each complaint based on its view of what is fair and reasonable in the circumstances of that individual complaint.

Request and response

9. On 1 December 2020 the complainant wrote to FOS and requested information in the following terms:

"Under what authority does the FOS refuse to respond to complaints from independent third parties involved by an ombudsman in an ombudsman's decision despite such involvement being a breach of the law and its own rules?"
10. FOS responded on 5 January 2021. It advised that it does not hold the requested information in recorded form.
11. Following an internal review FOS wrote to the complainant on 9 February 2021. It confirmed that it does not hold the information the complainant has requested.

Scope of the case

12. The complainant contacted the Commissioner on 1 May 2021 to complain about the way their request for information had been handled.
13. The Commissioner's investigation has focussed on whether, on the balance of probabilities, FOS holds the information the complainant has requested.

Reasons for decision

14. 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 them if it is held and is not exempt information.
15. In its submission to the Commissioner, FOS explained that, in its view, the request stems from a complaint the complainant's spouse had with its Service some time ago. That case has now been deleted in line with FOS' retention policy.
16. The complainant had wanted FOS to discuss their spouse's complaint case with them although they were not party to that complaint. Therefore, FOS says, it interpreted their request as the complainant asking what authority it relied on to refuse to respond to complaints from "independent third parties ...". FOS confirmed that its response to the request focused on whether or not it held the information the complainant is seeking in a recorded format.
17. FOS has noted that in its response to the request, it had explained to the complainant that the FCA, which is the financial regulatory body, publishes the rules on how the Service and financial business should handle complaints in the FCA's Handbook – specifically in the section referred to above, titled 'DISP Dispute Resolution: Complaints'.
18. In its internal review response, FOS' submission then notes, it had explained that under section 1 of the FOIA it was obligated to confirm whether it held the information requested, but that if it did not hold the information, the Act did not require FOS to create new information. FOS explained to the complainant that because of this, it would not be providing any commentary in response to their request. In its internal review response, FOS says it had also again explained that the Service is a statutory dispute resolution scheme set up under the FSMA, and that it was regulated by the DISP rules in the FCA Handbook.

19. FOS' submission has next discussed the searches it carried out for any relevant information it may hold. It has noted that the request is very specific, being for information on the authority that FOS can rely on to refuse to "respond to complaints from independent third parties".
20. FOS has confirmed that the relevant authority which governs how the Service approaches a complaint are the rules set out in the FCA Handbook – specifically the DISP rules. It had advised the complainant of this previously and provided them with a link to where the Handbook is published.
21. If it did hold any formal guidance internally (rather than "authority" as phrased by the complainant), FOS says this would be held on its online internal knowledge database – 'Discovery'. This database is available to FOS' case handlers and ombudsmen to refer to and can be used by them as a guide to its general approach for a number of different topics. FOS says it is important to note that it is a guide only, rather than authority, and that whilst it has a guide, FOS considers complaints on a case-by-case basis.
22. FOS has provided the Commissioner with 'screenshots' of the searches of Discovery that were carried out to determine if it held any information within the scope of the request. FOS found, as the screenshots evidence, that it does not hold any information on Discovery that falls within scope of the complainant's request.
23. FOS has explained that it has also consulted with relevant and appropriate colleagues as to whether any relevant information is held, and it was confirmed that FOS does not hold related information.
24. FOS concludes its submission by confirming that it is satisfied that it has conducted reasonable searches, that the relevant authority for how it handles complaints can be found in the FCA Handbook, and that based on the searches it has carried out, FOS does not hold the specific information the complainant has requested in a recorded form.

The Commissioner's conclusion

25. The Commissioner considers that FOS has carried out adequate and appropriate searches for relevant information it may hold. In the circumstances of this case, he is satisfied, on the balance of probabilities, that the only information within scope of the complainant's request is contained in the FCA's Handbook, to which FOS has directed the complainant. As such, the Commissioner finds that FOS has complied with section 1(1) of the FOIA.

Right of appeal

26. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF