



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

Case No. EA/2014/0293

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50547467
Dated: 13 November 2014**

Appellant: SHEILA WALTERS

1ST Respondent: INFORMATION COMMISSIONER

2ND Respondent: FINANCIAL OMBUDSMAN SERVICE

**On the papers: LIVERPOOL CIVIL AND FAMILY JUSTICE
CENTRE**

Date of hearing: 16 APRIL 2015

Date of decision: 22 May 2015

Before

ROBIN CALLENDER SMITH
Judge

and

ANNE CHAFER and MICHAEL JONES
Tribunal Members

Written representations:

For the Appellant: Sheila Walters

For the 1st Respondent: Helen Wrighton, Solicitor for the Information Commissioner

For the 2nd Respondent: Heather Emmerson, Counsel instructed by Financial
Ombudsman Service

**GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS**

Subject matter: FOIA 2000

Whether information held s.1

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 13 November 2014 and dismisses the appeal.

REASONS FOR DECISION

Background

1. Mrs Sheila Walters (the Appellant) believed that an annuity set up by her late husband should provide a small pension for her to be paid throughout her lifetime after his death.
2. Lloyds TSB ceased payments on the annuity on the basis that its terms only allowed for payment for a period of 10 years which, it maintained, ended in August 2012.
3. The Appellant disputed the position generally and questioned the 10 year expiration period. She complained about this to the Financial Ombudsman Service (FOS).
4. On 13 June 2013 an FOS Adjudicator did not uphold her complaint and on 24 April 2014 she received a final decision from an FOS Ombudsman (Mr Terry Connor) who also rejected her complaint.
5. On receiving that rejection, the Appellant wrote to FOS as follows:

.... I am writing to request information under the Freedom of Information Act 2000. In order to assist you with this request, I am outlining my query as specifically as possible.

With all the copies sent, of original Scottish Widow's contract my husband negotiated, and copy of death certificate, I would require an explanation of your investigation where Scottish Widow's contract stated that his payment of £80 a month was for life and upon his death, the widow received his pension, as the law states any organisation who takes over a corporation must honour existing contract to the letter.

On studying my husband's payments, Lloyds TSB decreased the payments month after month, they were also out a year, claiming his death 10 years ago, when it was nine....

.... I would be interested in any information held by your organisation regarding my request as to how? [sic] you investigated all paperwork sent of original documents....

6. FOS responded on 3 June 2014 and, on 5 June 2014, the Appellant replied making, among others, the following point:

.... I did not make a complaint, I made a FOI request to Terry Connor dated 28/4/14.... I have all documentation regarding my husband's pension, I do not want to be sent a file, I want answers to the FOI 2000 request.

7. On 18 June 2014, FOS wrote to the Appellant providing information and Internet links to pages on its website which explained how it dealt with complaints. In relation to the Appellant's information request it commented:

.... Information about how your paperwork was considered and investigated and what information was relied upon is set out in the Adjudicator's opinion letter and the Ombudsman's final decision. You should already have copies of these documents....

.... We hold no other information on how your paperwork was investigated.

The complaint to the Information Commissioner

8. On 20 June 2014 the Appellant complained to the Commissioner.
9. There were further contacts between the Commissioner, FOS and the Appellant.
10. In his decision notice dated 13 November 2014 the Commissioner found that, on the balance of probabilities, FOS did not hold any further information about

how it had reached its decision other than the information already set out in the Adjudicator's opinion letter of 13 June 2013 and the Ombudsman's final decision on 24 April 2014.

11. The Appellant appealed on 29 December 2014 arguing, in summary, the following:
 - FOS had not investigated her complaint that Lloyds TSB erroneously stopped payments before the end of the 10 year guarantee period.
 - FOS failed to investigate the reduction in the payment she had received.
 - FOS had failed to refer specifically to each document provided by her in its decisions. FOS had failed to explain at all why the document she provided did not go to prove either that she was entitled to a pension for life or at least for a period of 10 years.
 - Terry Connor (at FOS) had not personally responded to her request for information.
 - The Commissioner had not investigated the matters summarised above.
12. In particular the Appellant clearly disagreed with the Commissioner's Decision Notice on the basis that Lloyds/TSB had not honoured the contract with her late husband made through them with Scottish Widows when they stopped payments to her after 8 ½ years stating that she was entitled to 10 years only when the original contract did not state that. That contract had stated that her husband would be paid £80 a week and it had dropped to £60 a week.

Evidence

13. Among the evidence considered by the Tribunal in this appeal – and all the evidence is open, none of it being closed or confidential – there was a witness statement from Curtis Robert McCluskey who is a solicitor employed as Legal Counsel by the FOS.
14. In the witness statement he set out the role of FOS, summarised procedures and commented on the factual background of the Appellant's request.

15. He noted that the Ombudsman who issued the Final Decision on 24 April 2014 [evidenced at CRM1/4-6] had concluded that TSB/Lloyds was acting within the terms of the annuity originally agreed with the Appellant's late husband because:

- (i) The annuity was set up on a single life basis to provide income for Mr Walters only.
- (ii) Mr Walters selected a 10-year guarantee period for his annuity and therefore the Appellant received the income Mr Walters would have received for the duration of guarantee period.
- (iii) When the guarantee period ended in August 2012, the bank had fulfilled its obligations under the annuity contract.

16. The Ombudsman had included in that decision the following explanation:

I have considered all the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator and for the same reasons.

17. The Ombudsman pointed to further correspondence which the Appellant had provided to FOS in his final decision stating, in particular that the Appellant had provided:

.... Further documentation, specifically the schedule and explanatory notes for the original policy and an illustration of pension benefits issued on 24 June 2002 and a further illustration and preferred choices document, dated 26 June 2002 and signed and returned to Lloyds.... on 1 July 2002.

Both the 24 and 26 June 2002 annuity illustrations were on a single life basis with a guarantee – five or ten years in the 26 June 2002 one and five years only in the 24 June 2002 one. Neither provided for a spouse's pension. The preferred choice illustration, which Mr A signed and returned to Lloyds on 1 July 2002, indicated that he wished to purchase a single life annuity, with a 10 year guarantee period and no spouse's pension. This was the basis on which the annuity was established.

The schedule and the literature provided by Mrs A for the original pension plan which commenced in September 1988 are not relevant to the terms under which the annuity was eventually set up by Mr A in 2002. Rather, these documents explain the terms of the pension policy, the proceeds of which were eventually used by Mr A to purchase his annuity from Lloyds. None of these documents support Mrs A's contention that Mr A's annuity should

continue to be paid after the expiry of the guarantee period, that is beyond 5 August 2012.

Conclusion and remedy

18. The Tribunal has some sympathy with the Appellant because issues relating to pensions and annuities are rarely straightforward.
19. It is not the function of the Tribunal to determine whether Lloyds/TSB was correct to do what it did or whether the FOS decisions taken by the Adjudicator and the Ombudsman was correct. What the Tribunal can do, however, is to observe that the summary set out above in Paragraph 15 appears accurately and practically to reflect the contract law in relation to this particular annuity.
20. What the Tribunal has to consider in this appeal, as a matter of law, is whether on the balance of probabilities FOS has provided all the information it holds falling within the scope of the Appellant's request.
21. The witness statement of Mr McCluskey sets out in commendable detail the searches conducted by FOS to make certain that all the information falling within the scope of her request had been provided to her.
22. This included a check by the FOS Information Rights Team in respect of all the paperwork relating to the Appellant's complaint file, e-file and paper file search for any information containing a summary of investigations and/or discussions in respect of the correspondence or paperwork relating to the complaint. The only recorded information falling within the scope of the Appellant's request was the Adjudicator's provisional assessment and the Ombudsman's final decision.
23. The Tribunal accepts Mr McCluskey's evidence (within Paragraph 40 of his written witness statement) that he had personally reviewed the complaint file – including the clipper file, e-file and paper file – and had not seen any further record of information containing information complaint was investigated, discussed or decided on.

24. Mr McCluskey stated that there was no further information within any of those files falling within scope of the Appellant's request that had not been provided. But, for the avoidance of doubt, further searches had been carried out into the Adjudicator's and Ombudsman's computer hard drives and archived emails and no further information had been found as a result of those searches.
25. On the basis that this Tribunal finds Mr McCluskey's evidence cogent and credible it is satisfied, on the balance of probabilities, that the FOS holds no further information that has not already been disclosed to the Appellant and that her appeal must fail.
26. Our decision is unanimous.
27. There is no order as to costs.

Robin Callender Smith

Judge

22 May 2015