

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 03 September 2013

Public Authority: The Financial Ombudsman Service
Address: South Quay Plaza
183 Marsh Wall
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information on behalf of his nephew regarding two complaints he made to the Financial Service Ombudsman (the "FOS") concerning a High Street Bank (the "Bank"). He wanted a copy of the documentation held by the FOS in relation to its investigation of his complaints. The FOS has provided the complainant with his nephew's personal data held in relation to this matter under the Data Protection Act 1998 (the "DPA"). That part of the requested information which falls under the FOIA concerns the account Terms and Conditions and this has also been provided to the complainant.
2. The Commissioner's decision is that the FOS does not hold further information with respect to the requested account Terms and Conditions and that it correctly handled the request in accordance with the FOIA. He does not require any further steps to be taken.

Background to this Request

3. In 2006 the complainant complained to the Bank about its conduct concerning loans taken out by his nephew. He submitted two complaints about the conduct of the Bank to the FOS in 2010 and 2011.
4. The FOS conducted an investigation and in October 2012 informed the complainant that it did not uphold either of his complaints.
5. Following the determination of the FOS, in order to challenge its decision, the complainant submitted a series of requests for information concerning statements the FOS had made in its correspondence to him.

6. On 5 November 2012 under the DPA, the complainant requested his nephew's personal data (key documents) relating to the FOS's investigation regarding the Bank in 2010 and the review carried out in September 2011. He also requested a copy of the relevant current Terms and Conditions referred to by the FOS in its decision not to uphold his nephew's complaint concerning payments taken from his current account by the Bank, even though he was overdrawn and in financial difficulties.
7. On 20 November 2012 the complainant asked for further information and documentation concerning loans taken out by his nephew.
8. The FOS responded to this request on 13 December 2012 and provided the complainant with a bundle of documents. It explained that the complainant had been provided with all the information to which he is entitled and that it can only provide copies of documents which it holds. The FOS explained it cannot provide the complainant with comments on the merits of his complaint or the way in which the complaint was handled.
9. The FOS explained that it would not be able to elaborate on or support the comments of individuals as this falls outside the scope of its role.

Request and response

10. On 13 December 2012, the complainant wrote to the FOS and requested information under the FOIA in the following terms:
 - "1. *A copy of the personal account terms and conditions relevant at the time regarding the quote (section 3) from the FOS: "if we receive...any other payment...that would, if honoured by us either make your account go overdrawn or over an existing overdraft limit, we will treat this as an informal request from you for an overdraft" ([name 1 redacted] 19 March 2012).*
 2. *Copy of key documents received from [bank name redacted], as referred to in the letter from the FOS: "...all information relating to [name redacted]'s accounts and details used for investigation by [bank name redacted]'s complaint handler [name 2 redacted] (our ref: 11053878) would have been requested by us as part of our standard enquiries" ([name 3 redacted] 16 May 2012).*

3. *A copy of the benefits evaluation and calculated interest rates referred to by the FOS: "I must also have in mind that the consumer had the benefit of the loans" and "the initial refinancing, in September 2001, reduced the consumers monthly payments (because the interest was lower than on the first loan)" ([name 4 redacted]).*
4. *A copy of the loan documentation received in early September."*
11. On 15 January 2013 the FOS provided the complainant with an internal review of its response to this request. The FOS confirmed that the complainant had made a subject access request and he had been sent the documents the FOS considered to be his personal data.
12. The FOS confirmed it had also sent the complainant a full copy of the Bank's submissions, including copies of the Terms and Conditions the Bank had provided to the FOS.
13. The FOS confirmed that the complainant and his nephew had already been provided with the information to which they were entitled.
14. On 23 February 2013 the complainant requested the following:
 - "1. *A paragraph contained in the [bank name redacted] Terms and Conditions prior to March 2006 which contains the words "if payments were honoured by us would cause the account to be overdrawn".*
 2. *Documents that the FOS received from [bank name redacted] regarding the 2010 investigation and the September 2011 review.*
 3. *The lending documentation for all five loans (50 sheets).*
 4. *A copy of the [bank name redacted]'s final response sent to [name 5 redacted] ([bank name redacted] reference CRD/241022, FOS reference 1006-4902) concerning the charge of "irresponsible lending".*
 5. *A copy of the [bank name redacted]'s final response sent to [name 5 redacted] ([bank name redacted] reference CRD/289718, FOS reference 1105-3878) concerning the transfer of funds which caused the account to be overdrawn and incur charges.*
 6. *A copy of the evaluation of the loans/repayments which the FOS had argued were "of benefit to the customer"."*

15. The FOS responded to the second request on 15 March 2013. It informed the complainant that it had provided him with all the information that it holds. It explained that it considered this request was identical to one it had handled under the FOIA request dated 13 December 2012.

Scope of the case

16. The complainant contacted the Commissioner on 22 March 2013 to complain about the way his request for information had been handled. He does not consider he has been provided with all the information he has requested.

17. In summary the two requests ask for:

- i. A copy of the personal account terms and conditions relevant at the time of the loans.
- ii. A copy of key documents received from the Bank.
- iii. A copy of the loan documentation.
- iv. A copy of the Bank's final response sent to the complainant's nephew concerning the transfer of funds which caused the account to be overdrawn and incur charges.
- v. A copy of the benefits evaluation and calculated interest rates for the account.

18. The Commissioner considers the only part of the request which falls under the FOIA is the request for the Bank's Terms and Conditions (request 1 of both requests).

19. The other requests are the personal data of the complainant's nephew and therefore fall under the DPA. The FOS has provided the personal data it holds with respect to these requests under the DPA and this response has been considered under case reference RFA0505151.

20. The personal data of the complainant's nephew has therefore not been considered as part of this case. The complainant has been informed of this.

21. The scope of this case is to consider whether the FOS handled the complainant's requests of 13 December 2013 and 23 February 2013 in accordance with the FOIA. The Commissioner will therefore consider whether the FOS is correct when it says that it does not hold further

information which it can provide in response to the request for the Terms and Conditions.

Reasons for decision

22. Section 1(1) of 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."*

23. The FOS has explained that in February 2012 its adjudicator issued an assessment to the complainant and referred to section 3 of a specific set of the Bank's Terms and Conditions. In March 2012 an extract of this set of Terms and Conditions was provided to the complainant.

24. It later transpired that the Terms and Conditions provided post-dated the complaint so copies of the Terms and Conditions which had been in effect in 2005 were forwarded to the complainant, also in March 2012.

25. On 16 August 2012 another adjudicator contacted the complainant and reiterated the above. He also confirmed he had sent a further copy of the applicable Terms and Conditions.

26. The FOS has confirmed to the Commissioner that in December 2012 it provided the complainant with three separate terms and conditions:

- i. Navigator Savings Plan date-stamped October 2004.
- ii. A general set of terms and conditions, effective from July 2011.
- iii. Personal banking, date-stamped 2005.

27. This information has been provided under the FOIA.

28. The complainant has argued that the FOS has not provided him with a set of Terms and Conditions which contain the specific quote he is looking for. However it should be noted that the FOIA is concerned with the provision of recorded information which existed at the time of the request.

29. The Commissioner cannot consider whether the FOS has misquoted documents and cannot investigate how the complainant's complaint to the FOS was handled.
30. In this case the FOS has confirmed that it has provided the complainant with the relevant Terms and Conditions that it held at the time of the request. Taking into account the explanations provided by the FOS the Commissioner is satisfied that it has provided the information that it holds that falls under the scope of the request. Therefore the Commissioner's decision is that the FOS has fulfilled its obligations under section 1(1)(b) of the FOIA (the duty to provide information held by a public authority unless exemptions apply).

Right of appeal

31. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. 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

Rachael Cragg
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