

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 September 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant requested the training material provided to adjudicators on Payment Protection Insurance (PPI) adjudication. The Financial Ombudsman Service (FOS) refused the request under section 12 on the basis that the cost of locating all the information would exceed the appropriate limit.
2. The Commissioner's decision is that the FOS was entitled to rely on section 12 to refuse the request. However the Commissioner is not satisfied that the FOS advised the complainant whether there was any information which could be provided within the appropriate limit, and if so, how to refine his request to capture that information. This is a breach of the duty to provide advice and assistance under section 16.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide appropriate advice and assistance.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 23 April 2014 the complainant wrote to the FOS and requested information in the following terms:

"In relation to the attached please be advised that I wish to be provided with all documents concerning PPI adjudication."

6. It is understood that the attachment referred to was a previous request for information. That earlier request had been made on 24 March 2014 in the following terms:

"Please can you confirm what guidance/Training/updates have been issued to Financial Ombudsman Service adjudicators within the past 2 years. I require all documentation and update emails in regard of the aforementioned."

7. That request had been refused under section 12 and the later request of the 23 April 2014 represents the complainant's attempt to refine his request so as to bring it within the appropriate limit by specifying he wanted information relating only to PPI.
8. The FOS responded to the refined request on 22 May 2014. It advised the complainant that even complying with the refined request would exceed the appropriate limit. It therefore refused the request, relying, again, on section 12 to do so.
9. Following an internal review the FOS wrote to the complainant on 16 June 2014. It stated that it maintained its refusal under section 12.

## **Scope of the case**

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10. The complainant contacted the Commissioner on the 18 June 2014 to complain about the way his request for information had been handled.
11. The scope of the case is the FOS's handling of the request made on 23 April 2014. The matter to be decided is whether the cost of locating and retrieving the requested information would exceed the appropriate limit. If so, the public authority can rely on section 12 to refuse the request.
12. The Commissioner will also consider whether the FOS complied with its obligation under section 16 to provide reasonable advice and assistance to the complainant.

## Reasons for decision

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13. Section 12 of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of doing so would exceed the appropriate limit.
14. The appropriate limit is a cost limit set out in regulations that were introduced under the Act. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the 'Fees regulations' set the appropriate for non-central government departments, such as the FOS, at £450. Very often the costs of dealing with a request relate to staff time. The Fees Regulations set the cost that can be charged for staff time at £25 per hour. They also specify the activities that a public authority can take into account when estimating whether the appropriate limit would be exceeded. Under regulation 4(3) these activities are restricted to the time taken in determining whether the information is held, locating that information, retrieving that information and extracting that information from a document containing it.
15. Therefore if it would cost the FOS more than £450, which at £25 per hours equates to 18 hours, to identify, locate and retrieve the requested information it is entitled to refuse the request under section 12.
16. When estimating the cost of locating and retrieving the information the first thing to consider is what information has actually been requested as this obviously impacts on what searches required. The FOS has explained that it interpreted the request of the 23 April 2014 by reference to the complainant's earlier request. The earlier request was very wide and sought all training material provided to adjudicators over the last two years. Therefore the FOS interpreted the 23 April request as seeking all training material provided to adjudicators working on PPI. This would include not just training material relating specifically to PPI itself, but also training on any other issue received by adjudicators working on PPI, for example training on how to use the FOS's electronic database or how to keep records.
17. The FOS has stated that there is not one manual on how to handle PPI complaints. Therefore FOS consulted with a number of its departments and concluded that to locate and extract all the training material described above it would need search a number of different locations. The FOS searched its central electronic hard drives from which it produced a list of folders that referred to training which could have been provided to adjudicators working on PPI. This covered both training specific to PPI and no specific training eg records management. The FOS has described this as a non-exhaustive list and has commented that to

go on and determine whether all of this training material had actually been sent to the adjudicators working in PPI would take a considerable number of hours. It has not however put a figure on the number of hours involved.

18. Importantly, the FOS explained that as well as the information held centrally, each individual team had developed its own training material relating to specific issues they dealt with. This could include for example checklists and reminders. This information would be held in the each team's team folder. Under the FOS's records management practices, these folders are reviewed annually and therefore it is very likely that some information from the previous year would have been deleted whereas other information from before April 2012 would be retained.
19. The FOS currently has 1350 adjudicators dealing with PPI complaints and these are split into 132 teams. The FOS has stated that it would take between 30 and 45 minutes to search each team folder to determine what information was held and whether any training material was produced or circulated within the last two years. Unfortunately the FOS has not explained whether this estimate is based on an actual sampling exercise. In light of this the Commissioner will take the lower figure of 30 minutes per folder as being the most realistic. The Commissioner notes however that even if the time taken to search individual team folders was reduced to 20 minutes per folder it would still take 44 hours to search all 132 folders. This is well in excess of the 18 hours set as the appropriate limit.
20. The FOS also searched for the formal training held by its Learning and Development department issued to new staff working in PPI teams. The FOS has explained that it took six hours to produce a list of all the induction training that these new starters would receive. This included not just training on PPI complaints but also training on its complaint handling systems and, what it described as, soft skill training, presumably skills relating to customer care issues. It is not clear from the explanation provided by the FOS why this list would not have been produced by its search of the central hard drives. It may be that the FOS is describing a more detailed interrogation of some of the folders which that search identified.
21. Finally the FOS has explained that PPI adjudicators are also sent various updates and guidance material from its internet and via emails. It is understood that the FOS only archives emails sent over the last twelve months. Its IT department has estimated that a search of this archive for emails which referred to PPI in the subject box would return tens of thousands of emails. Again it is not clear what the basis for this estimate is. However the Commissioner would expect that, considering the role of the FOS and the high profile of the PPI issue, there would be a very high

volume of emails. Each email located would then have to be filtered to determine whether it contained training material. The FOS is of the view that simply searching these archived emails would exceed the appropriate limit.

22. In assessing the FOS's grounds for applying section 12 the Commissioner has first considered the FOS's interpretation of the complainant's request. The FOS has interpreted it as being for all training information and updates provided to adjudicators working in PPI. This interpretation captures information which is not specific to the PPI issue. The Commissioner finds that there is an alternative, objective interpretation of the request. The alternative interpretation is that the request is only seeking training material and updates issued to adjudicators which relate specifically to PPI. This is a narrower request and excludes training material relating to other aspects of an adjudicator's role, for example records management or customer care training.
23. The Commissioner also finds that some of the estimates provided by the FOS are not supported by any sampling exercises. This weakens the FOS's arguments for applying section 12.
24. However the Commissioner is persuaded that regardless of how the request was interpreted it would be legitimate for the FOS to include a search of the team folders held by each of the 132 teams dealing with PPI issue. As discussed above even if it took only 20 minutes to search each folder this would far exceed the 18 hours, equating to £450, as set out in the Fees Regulations. In light of this the Commissioner is satisfied that to attempt to provide all training material and updates relevant to PPI would exceed the appropriate limit and the request can be refused under section 12.

## **Section 16**

25. Under section 16 a public authority is under a duty to provide advice and assistance, so far as it is reasonable to do so, to any person who has made a request. This includes situations where a request has been refused because it would exceed the appropriate limit. Guidance on the level of advice and assistance expected is set out in the code of practice issued under section 45 of the Act. The code of practice, issued by the Secretary of State for Justice, sets out guidance to public authorities as to the practice which it would be desirable for them to follow when discharging their obligations under the Act.

26. The code of practice states that where a public authority refuses a request under section 12 it should consider providing an indication of what, if any, information could be provided within the cost ceiling.
27. The Commissioner interprets this to mean that where a public authority considers that it cannot provide any meaningful response to a request within the cost limit it should advise the applicant that this is the case. This prevents an applicant going through the frustrating experience of making a series of requests, none of which can be complied with. If however the public authority could provide some information within the cost limit it should provide an indication of what that information is. Where it is possible for an applicant to refine their request so as to bring it within the appropriate limit, the Commissioner would expect the public authority to provide advice and assistance to enable the applicant to do so.
28. The Commissioner notes that the complainant's request of the 23 April 2014 was already an attempt by him to narrow the scope of the request. The Commissioner therefore considers it appropriate to look at both the FOS's response to the complainant's earlier request as well as its response to the request of the 23 April 2014 together with the outcome of the subsequent internal review when determining whether the FOS has provided appropriate advice and assistance in respect of his second request.
29. The refusal notices to both requests explain that the cost of providing the requested information would exceed the appropriate limit. The refusal notices explain in broad terms that the high cost is due to the fact that there is no single storage place for the training material on PPI and that therefore the FOS would have to search a variety of different locations for the information. This would include the need to search for emails sent to a large number of staff. Neither refusal notice informed the complainant whether any information could be provided within the appropriate limit, or what that information may be.
30. The refusal notice for the earlier request did explain that adjudicators specialised in a variety of financial areas. This allowed the complainant to narrow his request down to just information on PPI adjudication. However this was not sufficient to bring the request within the appropriate limit. Nor was there any other advice and assistance offered regarding how the request could be refined so that it could be complied with.
31. The internal review of the 23 April 2014 request did clarify that there was not one specific training manual on PPI which could be provided in response to the request. The FOS also explained that, according to its interpretation, the request captured not just information on PPI but on

other case handling issues. This may have alerted the complainant to the possibility of refining his request so that it just captured training on the PPI aspects of case handling. However this still falls short of what the Commissioner would expect a public authority to provide in terms of advice and assistance under section 16 in these situations.

32. The Commissioner considers that the FOS should be in a position to give an indication of what if any information it could provide within the appropriate limit and to offer advice and assistance how the complainant can refine his request.
33. This could include explaining that it has considered both information relating specifically to PPI and information on the more general aspects of case handling. This would allow the complainant to focus his request purely on the PPI aspects if he chose to do so. In deciding whether such advice is relevant the FOS obviously needs to have regard for whether this would reduce the amount of searches that were needed.
34. The FOS may also wish to consider suggesting that the complainant limits his request to only the training materials provided during the induction to new staff as described in paragraph 20 above. The FOS may be able to identify, what could be described as, the core guidance provided to adjudicators working on PPI cases. If this could be provided within the appropriate limit, it would be reasonable for the FOS to inform the complainant.
35. These suggestions do not form an exhaustive list. The FOS is best placed to understand what information it holds and how that information is held. It should therefore use this knowledge to suggest to the complainant how he could refine his request so as to bring it within the appropriate, if this is possible.
36. The Commissioner accepts that it is possible that the FOS may not be able to provide any meaningful information to the complainant within the cost limit. It may be that any information which can easily be located and provided is not of any interest to the complainant. However the Commissioner finds that the public authority has failed to properly address its obligations to provide advice and assistance under section 16.
37. The FOS should now inform the complainant what if any information could be provided within the cost limit. If it is possible to provide information within the cost limit the FOS should provide advice and assistance aimed at enabling the complainant to refine his request so as to target the information of most interest to him.

## Right of appeal

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38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
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