



IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(INFORMATION RIGHTS)

Appeal No: EA/2012/0190

ON APPEAL FROM:

The Information Commissioner's Decision Notice No: FS50417316
Dated: 30 August 2012

Appellant: David Eric Platts

Respondent: The Information Commissioner

Second Respondent: National Savings and Investments

Heard on the papers: Field House

Date of Hearing: 11 January 2013

Before
Chris Hughes
Judge
and
Richard Fox and Mike Jones
Tribunal Members

Date of Decision: 15 January 2013

Subject matter:

Freedom of Information Act 2000

Cases:

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision dated 30 August 2012 but deletes paragraph 19 and substitutes paragraph 2 below and dismisses the appeal.

Dated this 15th day of January 2013

Judge Chris Hughes
[Signed on original]

REASONS FOR DECISION

Introduction

1. Due to significant strategic errors over many years the Equitable Life Assurance Society became insolvent. Following an investigation the Parliamentary Ombudsman concluded that there had been failures of regulatory supervision and recommended that the government compensate those who had lost money. Early in the life of the current administration the government announced the extent of funding which would be put into the Equitable Life Payment Scheme and put in place the arrangements for its administration. As a result of the funding decision many policyholders would only receive a proportion of what they would have received if Equitable Life had not become insolvent. National Savings and Investments (NS&I) is charged with aspects of the administration of the payment scheme.
2. NS&I is a non-ministerial government department and also an executive agency of the Chancellor of the Exchequer.
3. Mr Platts (the Appellant) is one of the investors who has suffered a loss due to the insolvency.

The request for information

4. On 2 August 2011 Mr Platts wrote to 2. NS&I in the following terms:-

"I wish to be provided with the actual value(s) for the paragraph 19 variables contained within "the Equitable Life Payment Scheme design-technical annex" for comparator company, for the years 1998, 1999, 2000, 2001, 2002, 2003, 2004 and 2005; for the avoidance of any doubt(s) such variables are denoted therein as Gc, Rc and Fc"
5. Paragraph 19 of that document set out how aspects of the payment model would work and these variables are a step in the calculation which ultimately would determine how much Mr Platts would receive.
6. On 23 August 2011 NS&I replied indicating that the information requested was not held. Mr Platts requested an internal review saying that the response he had received

was contradictory and 19 September 2011 National Savings and Investments upheld its initial refusal and confirmed that the comparator data was not held at an individual policy level.

The complaint to the Information Commissioner

7. Mr Platts complained to the Information Commissioner on 20 September 2011 and in his investigation the Commissioner set out to determine whether NS&I hold the comparator policy value and the figures used in the formula which would demonstrate how payments are calculated.
8. In his decision the Commissioner explored the explanations offered as to why the information is not held and the searches for the information.
9. As a result of his investigation the Commissioner explained that NS&I is a "delivery partner" for the Equitable Life Payment Scheme acting under the instructions of HM Treasury. It holds policyholder details for the scheme. This information comes from Equitable Life, Prudential and Towers Watson who provide the data in order to allow it to correspond with the relevant policyholders and make payments to them. It is only involved with the administration of the payment and is provided with the figure needed to make the payment not with the details of how an individual policyholders payment has been calculated. It cannot generate the calculation. At the request of NS&I and relayed via HM Treasury Towers Watson responded to certain questions raised by the Commissioner as to how the system worked. It explained that for each policy intermediate calculation steps of the model to calculate relative loss involve a large amount of reconciliation data of which the variables requested by Mr Platts form a small part. These variables are part of an internal reconciliation check prior to the calculation of relative loss:- "They are not used to calculate the relative loss itself, do not form part of the output and are not stored. Indeed the figures are not calculated in the model in the form of the separate variables..... As they are not directly used in the calculation of relative loss, these working variables are not in the technical annex."
10. In the light of this explanation the Commissioner did not consider it relevant to examine any searches undertaken by NS&I, acknowledged that there were concerns about the transparency of the calculations but concluded that the information was not held.

The appeal to the Tribunal

11. Mr Platts appealed promptly and in his notice of appeal dated 31 August 2012 he stated his grounds of appeal:-

"National Savings and Investments in fact has access to the information requested since HM Treasury has appointed National Savings and Investments to calculate and deliver compensation payments in conjunction with subcontractors."

The question for the Tribunal

12. The jurisdiction of this tribunal is set out in section 58 FOIA. The question the tribunal has to answer is whether the notice against which an appeal is brought is in accordance with the law and in coming to its decision the tribunal may review any finding of fact on which the notice is based.

13. What Mr Platts is asking the tribunal to do is to look at the underlying facts-the arrangements under which the compensation scheme is operated- and see whether the Commissioner was right in deciding that National Savings and Investments does not hold the information.

14. In deciding not to strike out the appeal as having no reasonable prospect of success the Chamber President commented that he was unclear what not held "at an individual policy level" meant, that the explanation about how the private company which carried out much of the process discharged its responsibilities was unclear, and that there might be an argument that National Savings and Investments should have taken steps to assist Mr Platts in finding where this information was held.

Evidence

15. Mr Platts is not in a position to submit any evidence and the evidence upon which the tribunal relied was submitted by NS&I. This was in the form of a witness statement by Angela Harriette Bascombe-McCarthy who is Head of Compliance, Policy and Guidance at NS&I and is an appropriate person to explain how the compensation scheme works. She has also provided details to enable the correction of a technical error in the Decision Notice which the Information Commissioner has acknowledged. The tribunal accepted her evidence as giving a sufficient and robust explanation of the position.

16. The role of NS&I in delivering the Equitable Life Payment Scheme is making payments, providing a call centre and dealing with correspondence from policyholders. Much of this work is actually carried out by Atos (which is a contractor handling many outsourced functions for organisations). The detailed policy data needed to make the calculations are passed by Equitable Life/Prudential via HM Treasury to Towers Watson (a professional services firm which carries out relevant actuarial calculations) without being provided to the NS&I or its contractor. This information is handled by Towers Watson in an anonymised form. Once it has calculated the relative loss/relative gain figure for all a policyholder's relevant policies that information is passed to Atos, the amount is matched up with the relevant policyholder and payment is made. Accordingly while NS&I does deliver payments in accordance with the output figures generated it does not calculate payments since only the relative loss/relative gain figure is provided to NS&I.
17. Towers Watson collect a significant amount of data from the insurance market. Much of this is confidential as to the performance of comparator company policies and funds. This information is a key part of their stock of intellectual property which gives them the ability to provide services to their clients.
18. It would be possible for Towers Watson to generate the information which Mr Platts seeks in a step-by-step way so as to record the value of the relevant variables. On the evidence before the tribunal it appears that there would be significant cost involved in this.
19. Her evidence acknowledged that it was a feature of the scheme to limit the matters which policyholders can seek to have reviewed. A policyholder would be unable (in her view) to seek a review of the scheme rules or of the assumptions used in calculating relative loss. However policyholders are in a position to check the data provided to Towers Watson by requesting a "core data report" and this has now been provided to Mr Platts.

Conclusion and remedy

20. The tribunal is therefore satisfied that the information is not held by NS&I. Nor, on the evidence before the tribunal, is the information held by HM Treasury or any other public body. The tribunal is therefore satisfied that the Information Commissioner

correctly analysed the position and upholds his decision notice, save with respect to the technical correction relating to the precise status of NS&I.

21. Our decision is unanimous

[Signed on original]

Judge C Hughes

15 January 2013

Corrections made to decision on 14 February 2013 under Rule 40 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009