

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)**

**DECISION NOTICE**

**Dated 26<sup>th</sup> September 2005**

**Name of Public Authority:        The Financial Services Authority**

**Address of Public Authority:    25 The North Colonnade  
Canary Wharf  
London  
E14 5HS**

**Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that on 7<sup>th</sup> January 2005 the following information was requested from The Financial Services Authority ("the FSA") under section 1 of the Freedom of Information Act 2000 (the "Act").

"the mortgage interest rates that I have frequently asked for and [an explanation of] why HBOS is not used in the survey".

On the 23<sup>rd</sup> February 2005 the complainant clarified the information that was required in the request for a review of the FSA's initial refusal. The complainant stated the following:

"We know that Building Societies have more than one rate, so I need to see, month by month, for each Society by name, what rate you have used and the mortgage balances and your calculations to arrive at the weighted average".

The complainant also stated that they were "still waiting for you [the FSA] to prove to me that Banks are excluded from the calculations".

It is alleged that:

The FSA has breached section 1 (1) (b) of the Act in failing to provide the complainant with the requested information because it has inappropriately applied the exemption in section 44 (1) (a). Section 44 (1) (a) states that:

"information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment"

The FSA has claimed that the requested information is subject to the prohibition against disclosure of confidential information in section 348 of the

Financial Services and Markets Act 2000 (“FSMA”) and therefore the exemption in section 44 (1) (a) of the Act applies.

### **The Commissioner’s Decision**

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner’s decision is as follows:

#### **1. Failure to provide proof that HBOS is excluded from the calculations**

The Commissioner’s view is that “proof” is a subjective term. The request for information has been interpreted as being the “reasons why” HBOS is excluded from the calculations. In a letter to the complainant dated 8<sup>th</sup> February 2005, the FSA explained that the monthly mortgage rate provided to the Office of National Statistics (ONS) is the weighted average rate of the largest 23 building societies. The FSA provided a list of the societies used and clarified that mortgage lenders that left the building societies sector in the past decade are not included. This includes the Halifax which is part of the HBOS Group which moved to the banking sector in 1997.

It is not for the Commissioner to decide whether this amounts to “proof”. However he is satisfied that the FSA has provided the information requested by the complainant in accordance with section 1 of the Act.

#### **2. Failure to provide individual interest rates for each building society**

The Commissioner is satisfied that the information requested about the basic individual interest rate of each society has been disclosed to the complainant. A table showing the relevant rates was enclosed with the FSA letter to the complainant dated 6<sup>th</sup> April 2005.

#### **3. Failure to provide mortgage balances and calculations used to arrive at the weighted average**

The Commissioner is satisfied that the FSA has complied with the Act when responding to the request for mortgage balances and calculation information and that the exemption in section 44 (1) (a) has been appropriately applied. This is because the Commissioner is satisfied that the information is prohibited from disclosure by virtue of section 348 of the FSMA. Further explanation of this decision is provided in the Statement of Reasons in Annex 1.

## Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the FSA.

## Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 26th day of September 2005

Signed: .....

Graham Smith  
Deputy Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **Annex 1 – Statement of Reasons**

The Commissioner has considered whether s44 (1) (a) applies to the information not provided to the complainant by virtue of s348 of the FSMA.

The mortgage balances are provided to the FSA in regulatory returns submitted by the individual building societies. These returns are used by the FSA to obtain information for the purposes of, or in the discharge of, its functions under the FSMA and are compulsory.

Section 348 of the FSMA states that:

“348 – (1) Confidential information must not be disclosed by a primary recipient or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of –

- (a) the person from whom the primary recipient obtained the information; and
- (b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which –

- (a) relates to the business or other affairs of any person;
- (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
- (c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received –

- (a) by virtue of a requirement to provide it imposed by or under this Act;
- (b) for other purposes as well as purposes mentioned in that subsection.

(4) Information is not confidential information if-

- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
- (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

The Commissioner is satisfied that the mortgage balances constitute confidential information within the meaning of section 348 (2) because the

mortgage balances relate to the business of the individual building societies and were received by the FSA, the primary recipient, for the purposes of its functions. The Commissioner is, therefore, satisfied that s44 (1) (a) of the Act has been correctly applied in respect of the mortgage balances.

Section 348 (1) of the FSMA provides that information falling within the scope of that section must not be disclosed without consent. The FSA advised the Commissioner that it has not sought the consent of the building societies to the disclosure for the following reasons.

The FSA claims that releasing mortgage balances would enable third parties to calculate whether a society loan book was growing or stagnating and in the absence of knowledge about the society's business strategy to draw inappropriate conclusions about these developments. In view of this the FSA is satisfied that the societies would have been unlikely to agree to the disclosure and the Commissioner accepts that this is a valid argument.

In addition, the Commissioner understands that the FSA has previously consulted with societies in other cases relating to the release of regulatory information and most societies are not prepared for the information to be disclosed.

The Commissioner accepts the FSA's contention that it was not necessary to approach each of the societies to try to obtain their agreement to the disclosure of the information.

In determining that it was not necessary to contact all of the relevant societies, the Commissioner is satisfied that the FSA also had regard for the requirements of the complainant who requested a full set of figures from all societies. The FSA use statistics from the 23 largest societies to compile the rates submitted to the Office of National Statistics. Unless all parties agreed to the disclosure it would not be possible to ascertain an accurate figure.

The Commissioner is satisfied that the information requested is not otherwise available to the public and does not fall within the scope of section 348 (4) of the FSMA.

The complainant requested an explanation of how the weighted average is calculated. This information has been provided to the complainant. The complainant also requested the calculations used to arrive at the weighted average.

The FSA has explained the calculation used to work out the weighted average. The mortgage balance of each society is multiplied by the individual basic interest rate to produce the notional interest figure for each organisation. The total notional interest rate of all the societies is then divided by the total mortgage balance to arrive at the weighted average.

The basic interest rates for each society are in the public domain and have been provided to the complainant for the year beginning 1 October 2003.

If the notional interest figures for each society were disclosed, the complainant could simply reverse the calculation and by dividing those figures by the individual rates could work out the separate mortgage balances.

The Commissioner is, therefore, satisfied that section 348 of the FSMA also applies to the calculations completed by the FSA to arrive at the weighted average and that therefore this information is also exempt from disclosure under section 44 (1) (a) of the Act.