

Freedom of Information Act 2000 (the Act)

Decision notice

Date: 20 July 2021

Public Authority: Department for Work and Pensions

Address: Caxton House
Tothill Street
London
SW1H 9NA

Decision (including any steps ordered)

1. The complainant has requested a breakdown of the number of child maintenance cases in which a specific scenario occurred.
2. The Commissioner's decision is that the Department for Work and Pensions (DWP) is entitled to rely on section 12(2) to refuse to confirm or deny whether it holds the requested information as to do so would exceed the appropriate limit. She also finds that DWP has provided adequate advice and assistance in accordance with section 16.
3. The Commissioner finds, however, that DWP has breached section 17(5) of the Act as it did not issue its section 12 refusal notice within the statutory timeframe of 20 working days.
4. The Commissioner does not require DWP to take any steps in relation to this request.

Request and response

5. On 1 February 2020, the complainant wrote to DWP and requested information in the following terms:

"With reference to the CMS' own internal policies and guidance which considers pensions contributions exceeding 12% of gross income to be excessive, please could you provide the number of cases where the CMS has deemed excessive pension contributions to have been made and amended the maintenance payment accordingly? Please could you provide a breakdown by year. So for example:

2012: x cases
2013: x cases
2014: x cases
etc"

6. DWP provided its response on 27 February 2020 and stated that it does not hold or record data in the Child Maintenance system in relation to cases with excessive pension contributions.
7. The complainant requested an internal review on 27 February 2020 and disputed that DWP does not hold the requested information. The complainant disputed that variations are not recorded within DWP's centralised system and considered that the requested information could be obtained via a database or spreadsheet query.
8. DWP provided the outcome of the internal review on 16 March 2020 and upheld its original response. DWP confirmed that it had advised that it does not hold or record data on the Child Maintenance system in relation to cases with excessive pension contributions. DWP confirmed that variations are recorded as additional income or special expenses only.

Scope of the case

9. The complainant wrote to the Commissioner on 17 May 2020 to complain about the handling of their request for information. The complainant disputed that DWP did not hold the requested information.
10. This request is one of a series of requests made by the complainant to DWP seeking information regarding very specific scenarios that may occur as part of the Child Maintenance Service's assessment of paying parent liability.
11. During the course of the investigation, DWP amended its position and provided the complainant with a fresh response on 4 March 2021. DWP relied on section 12(2) of the Act to refuse to comply with the request as to do so would exceed the appropriate limit.
12. DWP explained that the specific scenario set out in the request falls within the category of "additional income" and this category covers a number of scenarios. DWP explained that excessive pension contributions is not a data variable available in the Child Maintenance system and it would need to examine the cases marked as "additional income" individually. DWP confirmed that it holds in excess of 70,000 cases of this type.

13. DWP explained that while some information may appear in notes screens, there is no requirement to record this low level detail and there is no means of extracting this information from notes apart from by reviewing every individual case.
14. DWP confirmed that the request also specified the cases where the maintenance payment was amended accordingly in relation to excessive pension contributions. DWP explained that whilst it records if a change of circumstances has occurred on a case, it cannot link a change of circumstances directly to excessive pension contribution and would require case by case examination to determine if any information was held falling within the scope of the request.
15. DWP acknowledged its obligations under section 16 to provide advice and assistance. However, it considered that as the request is for such specific details, it was unable to advise the complainant further on refining their request.
16. The complainant confirmed to the Commissioner that they dispute DWP's position that it cannot confirm whether it holds the requested information within the appropriate limit. The complainant provided screenshots of the online portal on which parents can update their details. These screenshots include options to declare diversions of income, including pension contributions. The complainant considers that DWP could therefore filter the cases that would require review using this information.
17. The complainant also disputed that DWP had provided adequate advice and assistance in accordance with its obligations under section 16.
18. The Commissioner considers that the scope of this case is to determine whether DWP is entitled to rely on section 12(2) to refuse to comply with this request. She will also determine whether DWP has provided adequate advice and assistance in accordance with section 16.

Reasons for decision

Section 12: Cost of compliance exceeds the appropriate limit

19. Section 1(1) of the Act states:

"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 the information of the description specified in the request, and*

(b) *if that is the case, to have that information communication to him”.*

20. Section 12(2) of the Act states:

“Subsection (1) does not exempt that public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone will exceed the appropriate limit”.

21. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004¹ (the Fees Regulations) at £600 for central governments. The Fees Regulations also specify that the cost of complying with a request must be calculated at a flat rate of £25 per hour. This means that DWP may refuse to comply with a request for information if it estimates that it will take longer than 24 hours to comply.

22. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in;

- determining whether it holds the information;
- locating the information, or a document holding it;
- retrieving the information, or a document holding it; and
- extracting the information or a document holding it.

23. As DWP is relying on section 12(2) of the Act, only the first of these activities is relevant in this case.

24. Section 12 explicitly states that public authorities are only required to estimate whether the cost of complying with a request exceeds the appropriate limit, not give a precise calculation. In the Commissioner’s view, an estimate for the purposes of section 12 has to be reasonable; she expects it to be sensible, realistic and supported by cogent evidence.

DWP’s position

¹ <https://www.legislation.gov.uk/ukxi/2004/3244/contents/made>

25. DWP explained that there is no policy which states that pension contributions above 12% are excessive². It explained that this percentage is quoted as a suggested guideline from the Financial Services Authority. DWP explained that a number of factors including age and time making pension contributions are amongst other factors that would need to be considered. DWP explained that if it was determined and accepted that pension contributions were excessive, this would amend the income of the parent and therefore amend the rate of maintenance that were liable to pay.
26. DWP confirmed that the only way to identify cases which involved variations due to excessive pension contributions would be to examine individual cases. DWP explained that details relating to specific decisions on a case may be recorded on the system in a notes facility, however, this is not a data source from which variables could be extracted.
27. DWP explained that caseworkers record the relevant information for the case in the freetext fields of individual cases ie type of variation (income/expenses), amounts, frequency. DWP confirmed that the detail recorded is at the caseworker's discretion and could include details falling within the specified scenario in the request.

² The Commissioner has reviewed the Child Maintenance Decision Maker's Guide and notes that it states:

"Excessive pension contributions

36007 A percentage of a NRP's income, which could be considered a reasonable pension deduction, may be estimated at around 12% of the gross income figure. However, when considering whether a NRP's pension contributions are excessive, the DM will consider each case individually, taking into account all the information available.

36008 The information needed for an application on the basis of pension contributions will depend on whether the NRP has an occupational or a private pension.

Private pensions

36009 NRPS who are paying into a private pension can have their gross weekly income reduced to take their contributions into account.

Private pension: contributions declared and taken into consideration

36010 If the private pension contributions have been declared the DM should consider whether they seem excessive compared to the NRP's personal circumstances, including, for example, their age. The former Financial Services Authority (FSA) guidelines should be used for comparison.

36011 The FSA was abolished from 1 April 2013, to be replaced by two new bodies: the Financial Conduct Authority (FCA) and the Prudential Regulation Authority. Neither of these have provided any new guidelines at present so the previous FSA guidelines should still be referred to, for comparison purposes see paragraph 36015."

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932180/volume-3-variations.pdf

28. DWP confirmed that there is no variable that would allow this information to be extracted. DWP explained that there is no requirement to record the level of detail that is being requested and what is recorded on individual case files is a caseworker decision.
29. DWP confirmed that it could not extract the requested information from the freetext notes section of the individual cases and it would need to review the contents of the individual notes to determine whether each case fell within the scope of the request. DWP confirmed that it held 79,000 cases labelled as "*additional income*".
30. DWP confirmed that it could not filter the cases using the information submitted via the portal as it is the gateway to enable a customer to provide information but it is not the Child Maintenance system. DWP explained that in order to extract information of this nature from the portal, new programmes or code would need to be written to identify and extract information from the portal and new data sets and reports would then need to be produced by digital colleagues.
31. DWP confirmed that the request was for cases where the maintenance payment had been amended and that this information could not be identified from the information on the portal as assessments are conducted in the Child Maintenance system. DWP explained that parents may not have declared a diversion of income via the portal and these cases would not be identified by filtering cases using the information provided via the portal. DWP explained that in order to identify if the payment had been amended due to excessive pension contributions, it would need to examine each case.
32. DWP explained that the portal is the method by which parents can update their information themselves, otherwise they would need to call or write to the Child Maintenance service. DWP confirmed that when information is updated, a work item would be raised and notes may be added to the Child Maintenance system requesting the action taken.

The Commissioner's position

33. The Commissioner accepts that DWP is unable to determine whether it holds any cases falling within the very specific scenario set out in the request without individually reviewing each case. The Commissioner acknowledges that the complainant believes that the information is held on the Child Maintenance system and could be found by filtering the cases using the information submitted via the online portal. However, the Commissioner accepts DWP's explanation that it cannot filter using these cases. She also considers that as not all information is submitted via the portal, even if DWP were able to filter cases using this

information, this will not cover all cases that may need to be searched to determine whether the information is held.

34. It is at DWP's discretion how it records the information it holds to meet its business and statutory requirements. The Commissioner cannot require DWP to hold child maintenance cases in formats that can be searched by specific scenario.
35. The Commissioner accepts that in order to determine whether DWP holds the requested information, it would be required to review the freetext fields of up to 79,000 cases.
36. As set out above, the appropriate limit for central government departments is 24 hours, or 1440 minutes. The Commissioner accepts that it would not be possible to conduct the required search within the appropriate limit. DWP is not required to work up to the costs limit and is only required to provide an estimate for the purposes of section 12.
37. The Commissioner's decision is that DWP is entitled to rely on section 12(2) of the Act to refuse to comply with the request.

Section 16: Duty to provide advice and assistance

38. Section 16(1) of the Act states:

"It shall be the duty of the public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

39. The Commissioner has issued guidance on providing advice and assistance when refusing to comply with a request on the basis on section 12³. Paragraph 59 of the guidance states:

"In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:

- *either indicate if it is not able to provide any information at all within the appropriate limit;*

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

- *provide an indication of what information could be provided within the appropriate limit, and*
 - *provide advice and assistance to enable the requestor to make a refined request”.*
40. DWP explained to the complainant that due to the very specific nature of the request, it was unable to provide adequate advice on how to refine the request.
41. DWP explained to the Commissioner that it could not aid the complainant in refining the request as even reducing the timeframe of the request to one day of incoming information would mean 300 cases would require review and it could not therefore provide advice and assistance to aid the complainant in making a meaningful request.
42. In light of DWP’s explanation regarding how information is recorded on cases and the fact that individual case files would need to be scrutinised in order to ascertain the circumstances of each case, the Commissioner accepts that in the specific circumstances of this case, DWP has complied with section 16 by advising that it cannot aid the complainant in refining the request.

Section 17: Refusal notice

43. Section 1(1) of the Act 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”.

44. Section 17(5) states that:

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact”.

45. As DWP confirmed that it was relying on section 12(2) outside of the statutory time for compliance, it has breached section 17(5) of the Act.

Other matters

46. The Commissioner wishes to place on record her understanding of the immense pressure placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the Act.
47. However, the Commissioner has concerns regarding the handling of this request. The Commissioner would expect a public authority with DWP's resources and expertise to understand the basic principles of the Act, particularly that information does not have to be held in discrete documents in order for it to be held for the purposes of the Act.
48. The Commissioner is also disappointed in the quality of the internal review. In addition to upholding the original, misleading response, DWP failed to recognise the complainant's questions as reasons for disputing its "not held" response and instead informed the complainant that it was not required to create information to answer their questions. The Commissioner considers that had DWP genuinely addressed the complainant's questions during its internal review, it would not have upheld its original response and would likely have applied section 12(2) before the Commissioner's intervention.
49. The Commissioner expects DWP to take steps to ensure that it is not disadvantaging requesters by misapplying the procedural sections of the Act. Specifically, DWP should ensure that its staff are familiar with her guidance on "Determining whether information is held"⁴.
50. The Commissioner considers that the DWP FOI team has the experience and knowledge to ensure that requests are handled correctly. Where appropriate, she expects the wider DWP to use this resource, and her published guidance, to improve its request handling in future.

⁴ <https://ico.org.uk/media/for-organisations/documents/1169/determining-whether-information-is-held-foi-eir.pdf>

Right of appeal

51. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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

Victoria Parkinson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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