

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 June 2021

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

Decision (including any steps ordered)

1. The complainant has requested information about the Alternative Dispute Resolution ('ADR') Regulations. The Financial Ombudsman Service ('FOS') has refused to disclose the requested information under section 21(1) of the FOIA as it considers the information is already reasonably accessible to the complainant by other means.
2. The Commissioner's decision is as follows:
 - FOS is entitled to refuse the request under section 21(1) of the FOIA as the information is already reasonably accessible to the complainant; the information is published on FOS' website and FOS has also provided him with a copy of the information under the ADR Regulations.
3. The Commissioner does not require FOS to take any remedial steps.

Request and response

4. On 16 June 2020 the complainant wrote to FOS and requested information in the following terms:

"...**REQUEST 1**;
Schedule 3, paragraph 2b - information concerning the FOS ADR procedure.

2. The body—

- (a) maintains an up-to-date website which provides the parties to a domestic dispute or cross- border dispute with information regarding the alternative dispute resolution procedure operated by the body;
- (b) provides the information referred to in sub-paragraph (a) to a party on a durable medium, if a party requests it;

REQUEST 2;

Schedule 3, paragraph 5b - FOS statement as approved ADR body.

Transparency

5. The body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—

- (b) a statement that it has been approved as an ADR entity by the relevant competent authority once this approval has been granted;

REQUEST 3;

Schedule 3, paragraph 5f - The FOS ADR procedure rules that you operate.

Transparency

5. The body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—

- (f) the procedural rules of the alternative dispute resolution procedure operated by it and the grounds on which it can refuse to deal with a given dispute in accordance with paragraph 13;

REQUEST 4;

Schedule 3, paragraph 5n - Legal effect of the outcome of the FOS ADR procedure. I have narrowed this request further in that my request relates only to the FOS informal (stage 1) outcomes.

Transparency

5. The body makes the following information publicly available on its website in a clear and easily understandable manner, and provides, on request, this information to any person on a durable medium—

- (n) the legal effect of the outcome of the dispute resolution process,

including whether the outcome is enforceable and the penalties for non compliance with the outcome, if any;

I would prefer to receive information in paper format. However, due to COVID and my love of trees in the alternative i would prefer information in the digital medium in pdf format file.”

5. On 3 July 2020 FOS responded. It advised that the information the complainant has requested is available on its website and is therefore exempt from disclosure under the FOIA under section 21(1).
6. FOS provided an internal review on 6 August 2020. It upheld its position.
7. FOS’ correspondence with the complainant is discussed in more detail below.

Scope of the case

8. The complainant contacted the Commissioner on 21 August 2020 to complain about the way his request for information had been handled. The complainant sent the Commissioner a submission comprising 470 pages. However, the main focus of his complaint is that the requested information “does not exist” on FOS’ website for any parts of the request and particularly with regard to part 4.
9. The Commissioner’s investigation has focussed on whether FOS can rely on section 21(1) of the FOIA to withhold the information the complainant has requested.

Reasons for decision

Section 21 – information reasonably accessible to applicant by other means

10. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to them if it is held and is not exempt information.
11. Section 21(1) of the FOIA says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

12. Section 21(2)(b) says that, for the purposes of subsection (1) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.
13. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.
14. In its submission to the Commissioner, FOS has provided the following background to the request to help put it into context.
15. The Financial Ombudsman Service was set up by Parliament under the Financial Services and Markets Act 2000 to resolve certain disputes that customers and businesses are not able to resolve themselves. FOS looks at each case on its individual merits. The rules setting out how it should handle complaints are published as part of the Financial Conduct Authority's Handbook - in the section called Dispute Resolution: Complaints.
16. FOS has a two-stage process for investigating complaints. When a consumer or their representative brings a complaint to its service, in most cases, a case handler will initially provide their assessment of the complaint. If either party to the complaint disagrees with the initial assessment, they can ask for the complaint to be passed to an ombudsman who will make a final decision. The ombudsman will look at all the information afresh and issue a decision setting out their findings. This is the final stage of FOS' process and the complainant will be asked whether they accept or reject the final decision by a specified date. If it is accepted, the final decision becomes binding. A complaint is determined by what is, in the opinion of the ombudsman, fair and reasonable in the circumstances of that individual complaint.
17. In July 2015, the Alternative Dispute Resolution Directive 2013/11/EU (the ADR Directive) came into effect. The Directive provides for alternative options for consumers and traders to settle contractual disputes quickly and inexpensively without going to court. The Directive was transposed into UK law by the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (SI 2015/542) (the ADR Regulations).
18. The ADR Regulations require that ADR providers wishing to gain certification as an "ADR entity" must meet (and maintain) certain standards with regards to independence, impartiality and expertise. The

ADR Regulations set out a number of requirements – many of which the Ombudsman Service already met prior to the ADR Regulations coming into force. For example, FOS was already free for consumers, complaints could be brought to it in a number of ways – including online, and its investigators and ombudsmen had the knowledge and experience they needed to do their work consistently to the highest standards.

19. In order to become a certified ADR entity, FOS' Chief ombudsman and chief executive at the time, wrote to the Chairman of the FCA (its "competent authority") in July 2015 to provide the information required by regulation 9(2) of the ADR Regulations. She also provided, as required, a reasoned statement which sets out how the Financial Ombudsman Service complies with the requirements of schedule 3 of the ADR regulations. The reasoned statement is published on FOS' website.
20. Schedule 6 of the ADR directive also provides an obligation on ADR entities, such as the Financial Ombudsman Service, to provide their competent authority, in FOS' case the FCA, with certain information every two years, but does not require this to be published.
21. FOS goes on to note that the complainant has made several requests for information, but the one being investigated in this case is the request that he made on 16 June 2020 for information to be provided on a durable medium pursuant to the ADR Regulations. His request was in four parts.
22. As the complainant stated in his information request, his request was specifically made "to exercise [his] entitlements to receive information in a durable medium granted under the ADR regulations 15". The four parts of his request relate to specific provisions in the ADR Regulations – each part of the request quotes specific parts of the ADR Regulations that set out certain information that the Ombudsman Service is required to make available on its website, and to provide to individuals in a durable medium upon request.
23. FOS says its Stakeholder team responded to the complainant's request on 3 July 2020 in accordance with ADR Regulations. They explained to him that the information he had requested was available on FOS' website – and that this was a requirement of the ADR Regulations. The response also explained that under the ADR Regulations, the complainant was also entitled to be provided with a copy of this information, on a durable medium, if requested. In their response the Stakeholder team referred the complainant to specific sections on FOS' website. (FOS provided the Commissioner with the links to the relevant pages.) The team also provided the complainant with pdf copies of these pages.

24. FOS' response also explained that given that the information requested was already accessible by other means, it was exempt from disclosure under section 21 of FOIA.
25. FOS says that in his email of 6 July 2020, the complainant had said he felt the information provided was too broad and asked for an internal review. He also asked for a previous version of a particular web page.
26. The Information Rights team responded to the complainant on 6 August 2020 and explained that it did not feel it was appropriate for it to respond to his request under FOIA and that it believed the information was exempt under section 21 of FOIA. FOS referred to section 21(2)(b) of FOIA and explained that the information he had requested was information that the Ombudsman Service was obliged to provide to him under the ADR Regulations. However, it had provided him with the previous version of the web page he had requested and explained that his email would be separately responded to by FOS' Stakeholder team, as far as his request related to the ADR Regulations. A further response was sent by FOS' Stakeholder team on 7 August 2020 to address the further points the complainant had raised in connection with FOS' obligations under the ADR Regulations.
27. FOS' submission goes on to detail its own investigation as a result of this complaint to the Commissioner. It says it has reconsidered the request and the exemption it has applied, and having done so, it is satisfied that section 21 has been applied correctly to this request.
28. FOS notes that the purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. Section 21(2)(b) further provides that information is reasonably accessible if it is information that the public authority is obliged by any enactment to communicate on request. The Commissioner's guidance on section 21 of FOIA states that "The purpose of the section 21 exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route."
29. Here, FOS says, the route of access to the information is two-fold. First, the information requested by the complainant is information that is already set out on the Ombudsman Service's website, as a requirement of the ADR Regulations. Second, the ADR Regulations also oblige the Ombudsman Service to provide a copy of the information to individuals in a durable medium, upon request. This is what occurred in the complainant's case – he made an explicit request under the ADR Regulations for the information in a durable medium, and this was complied with by the Ombudsman Service pursuant to its obligations under the ADR Regulations. As FOS explained to the complainant in its

response of 6 August 2020, the appropriate route for providing the information to him was under the ADR Regulations rather than FOIA.

30. FOS has confirmed that the information requested is in the public domain as it is on FOS' website. The URL links to the relevant pages have been directly shared with the complainant and it has also emailed him an electronic pdf copy of these pages, pursuant to its obligations under the ADR Regulations to provide the requested information in a durable medium. In FOS' view it is evident that the information is reasonably accessible to the complainant as he has reviewed the information that has been shared and has commented on it. Therefore, the information is reasonably accessible to him specifically.
31. FOS has further confirmed that the links it provided to the complainant were available at the time of his request and were shared with him in its response of 3 July 2020. FOS also emailed him a pdf copy of these pages as well and its response of 6 August 2020 also provided him with the previous versions of a webpage that he had requested.
32. FOS says it is not aware of any particular circumstances which means the information is not reasonably accessible to the complainant – as per the first point above. It is, however, aware that he has been able to access the information on FOS' website as he has commented on it in his responses to FOS. FOS again notes that it also provided him with pdf copies of the information. It is therefore satisfied that the information is reasonably accessible to him.
33. FOS concludes its submission by confirming that it has considered the complainant's points, and for the reasons explained above, it remains of the opinion that it has correctly applied section 21 correctly to his request. In particular, FOS considers section 21(2)(b) to apply, given its obligation to provide the information to the complainant under the ADR Regulations.
34. As a service, FOS says it is committed to being open and transparent, and it shares information where it can. The complainant has complained that the information it has provided was broad, but it has provided the relevant web pages which set out the information he had requested pursuant to the ADR Regulations. And, as this information is accessible by other means, it is FOS' opinion that the exemption under FOIA has been applied correctly.

Conclusion

35. The Commissioner finds FOS' submission to be thorough and well-explained. She is satisfied with FOS' position – that the information he

has requested is already reasonably accessible to the complainant; through FOS' website and because FOS has provided him with a pdf copy of the requested information under the ADR Regulations. The Commissioner has therefore decided that FOS is entitled to rely on section 21(1) of the FOIA to withhold the information the complainant has requested.

Right of appeal

36. 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 and from 14 June 2021: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

37. 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.
38. 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

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