

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

### **Decision notice**

**Date:** 7 December 2022

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

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

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1. The complainant made a 28-part request for information relating to matters concerning British Steel Pension Scheme (BSPS). FOS refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
2. The Commissioner's decision is that section 12 FOIA was correctly applied to the request. FOS also complied with its obligations under section 16 FOIA by providing advice and assistance to the requester as to how the request could be refined.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 6 May 2022 the complainant made the following request for information under the FOIA for:
  - "1. How many British Steel complaints about the suitability of transfer advice have been registered with the FOS in total?
  2. How many were resolved at the informal stage ?
  3. Of these, how many were settled after a 'change in outcome' ?
  4. How many complaints had 'no change in outcome' or in other words were not upheld by the ombudsman that have now been resolved/client has not responded to investigator?

5. How many final decisions have been issued by ombudsman regarding British Steel complaints about the suitability of transfer advice?
6. When was the first final decision issued by an ombudsman regarding British Steel complaints about the suitability of transfer advice?
7. Have there been any final decisions issued that did not uphold British Steel complaints about the suitability of transfer advice?
- 7 (a) What are the yearly totals for years 2017 – 2022 inclusive? (for each of the above queries).
8. If there are any Final Decisions which did not uphold British Steel complaints about the suitability of transfer advice are these published on the ombudsman decision database on the FOS website?
9. Can the FOS send a copy of any final decision (redacted details) which did not uphold a complaint regarding British Steel complaints about the suitability of transfer advice?
10. Why is the first published (on the FOS website) decision dated September 2020 – was this the first ombudsman decision regarding British Steel complaints about the suitability of transfer advice?
11. What is the current time frame for resolving a suitability of general pension transfer advice complaint?
12. What is the current time frame for resolving a British Steel suitability of transfer advice complaint?

**INTERNAL CONTROLS:** in relation to BPS matters

13. What internal intranet guidance/guidance from ombudsman is provided to internal staff? When was this published?
14. Have any internal project teams collated information regarding British Steel complaints about the suitability of transfer advice?
15. Has this information been shared externally (eg with the FCA / FSCS) ?
16. What training has been provided internally or externally regarding British Steel complaints about the suitability of transfer advice?
17. Has any external training been provided by qualified and independent financial specialists? If so, was this provided by 'pension transfer specialists' or persons holding this qualification?

18. Do ombudsman staff use the FCA's 2018-published DBAAT excel spreadsheet in the assessing of BSPS complaints?

19. If so, what training has been provided internally or externally for this?

20. Do Ombudsman staff use any British Steel specific questionnaires in order to collate information – or indeed focus on specific questions to consumers regarding the transfer?

Redress – BSPS

21. How do Ombudsman staff decide on whether redress should be paid in accordance with BSPS2 or PPF rates?

22. Do Ombudsman staff use any internal calculators, spreadsheets or process documents when arriving at the conclusion of their investigations or decisions?

23. If so can the FOS please provide disclosure of these.

24. What is the rationale for recommended redress to be delivered in the form of lump sums – either into the receiving scheme pension pot or outside of it ?

25. Is there a particular project (established) team dealing with British Steel complaints about the suitability of transfer advice?

26. If so, do any of this team hold 'pension transfer specialist' qualifications?

27. Noting that 'Lifetime Allowance' involves tax planning (subject to change by governments) and that defined benefit schemes are distinct from defined contribution schemes in how this is calculated, what training was provided to ombudsman staff before arriving at decisions which potentially recommend lump sums are paid directly to consumers ?

FOS relationship with the FCA / FSCS in relation to BSPS complaints

28. Please disclose any correspondence between FOS, the FCA and / or the FSCS in relation to the determination of BSPS complaints."

5. The FOS provided a response on 31 May 2022, it refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
6. The complainant requested an internal review on 1 June 2022,

7. On 12 July 2022 the FOS provided the result of the internal review, it upheld its application of section 12 FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way the request for information had been handled, in particular the FOS's application of section 12 FOIA.
9. The Commissioner has considered whether the FOS was correct to refuse to comply with the request under section 12 FOIA.

### **Reasons for decision**

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#### **Section 12 – cost of compliance**

10. Section 12(1) 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 complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the FOS is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the FOS.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.

14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit or confirm that this is not possible, in line with section 16 of FOIA.
17. The FOS explained that when reviewing question 28 of the request for details of any correspondence between FOS, the FCA and / or the FSCS in relation to the determination of BSPS complaints, it determined that the information could be held in a number of different locations within its service. It said that it could have been shared through emails or held by various teams or the information can be held as a result of meetings or memos with the FCA either over the phone or face-to-face and so on.
18. For this reason the FOS firstly reviewed email as a means of correspondence. It carried out a search of the mailbox belonging to its regulatory team which it believes is likely to hold some information which falls within the scope of the request. The search was carried out using keywords such as BSPS and British Steel, with the sender or the recipient noted as the FCA and the FSCS – the search yielded approximately 2,410 emails in total. This excluded searches of individual staff mailboxes or information sent through other means of communication or held in central folders, where the information may fall within the scope of the request.
19. Given the volume of emails and different locations it would have to search through in order to respond to the request, it said it is reasonable to estimate that it would take longer than 18 hours to gather the information.

20. The FOS also explained that it was aggregating the 28 requests under section 12 FOIA which it is entitled to do and so because it would exceed the cost limit to comply with part 28 of the request it was therefore refusing to comply with all parts of the request. However following receipt of the request for internal review (in which the complainant made a new request for parts 1-27) the FOS confirmed it would process parts 1-27 of the request as a separate request for information and upheld the application of section 12 FOIA to the request made on 6 May 2022.
21. Based upon the fact that the FOS identified 2,410 relevant emails, even allowing a time of 1 minute per email to review, this would take in excess of 40 hours work. Given it would clearly exceed the cost limit to comply with part 28 of the request and the FOS was able to aggregate all parts of the request under section 12 FOIA, the Commissioner is satisfied that it was not obliged to comply with the request made on 6 May 2022 under section 12 FOIA.

### **Section 16 – advice and assistance**

22. As explained above, when relying upon section 12 FOIA, under section 16 FOIA a public authority must (where reasonable) provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit or confirm that this is not possible.
23. In this case, the FOS provided the following advice and assistance:

“You may wish to refine your request for correspondence located in a specific location for example emails to and from our regulatory mailbox and over a short timeframe, such as emails within a particular six-month period.”
24. The Commissioner is therefore satisfied that the FOS complied with its obligations under section 16 FOIA.

## Right of appeal

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

26. 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.
27. 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**.....

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**