

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

### **Decision notice**

**Date:** 24 November 2022

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

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

---

1. The complainant has requested information regarding the amount of compensation which would be awarded to an individual who had been discriminated due to their disability.
2. The Commissioner's decision is on the balance of probabilities, the Financial Ombudsman Service (the FOS) does not hold the requested information under Section 1(1)(a) FOIA.
3. The Commissioner does not requires the FOS to take any steps.

#### **Request and response**

---

4. On 8 October 2021, the complainant wrote to the FOS and requested information in the following terms:

"I would like to know if the Financial Ombudsman Service makes awards comparable with VENTO for [disability] discrimination within or by a bank or building society?

Here are two everyday occurrences:

What would your compensatory award of money be for a reasonable adjustment being refused to a disabled customer by head office customer services?

What would your compensatory award of money be for denial of service to a disabled customer who was refused service because of a disability within a branch?

I would like to understand whether it is fairer to a disabled customer to use the services of the Financial Ombudsman Service or whether a disabled customer should just go straight to court to obtain redress.

There is no explanation on the FOS website which adequately explains whether the FOS use their discretionary powers or not and to what extent.

Case studies would be of assistance to decide the correct course of action - where you have used your discretionary powers as regards the types of disability discrimination complained of, and the likely outcome for the complainant."

5. The FOS responded on 5 November 2021. It provide a website link regarding its approach on equality and diversity, but advised that it did not hold information within the scope of the request.
6. Following an internal review the FOS wrote to the complainant on 18 February 2022. It stated that it was upholding it's original position that the requested information was not held.

## **Scope of the case**

---

7. The complainant contacted the Commissioner 22 February 2022 to complain about the way his request for information had been handled.
8. The Commissioner considers whether the Council is likely, on the balance of probabilities, to hold the requested information.

## **Reasons for decision**

---

### **Section 1 – General right of access to information**

9. Section 1(1) of the FOIA 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.*

10. Section 1(1) requires that any person making a request for information to a public authority must be informed in writing by the public authority whether it holds information relevant to the request, and if so, to have that information communicated to them. This is subject to any exclusions or exemptions that may apply.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints, the ICO must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).

### **The complainant's position**

13. The complainant provided a link as evidence, regarding the FOS position on equality Act Powers<sup>1</sup>. The complainant advise this link enabled the Commissioner to "find that the Financial Ombudsman [Service] do hold the [information/correct] information."

### **The FOS's position**

14. The FOS advised that Section 1 of the FOIA and ICO guidance "confirms that the Act only requires a public authority to provide information it already holds in recorded form, but that a public authority does not have to: 'create new information or find the answers to a question from a staff who may happen to know it.'
15. The FOS went onto to explain it does not hold a specific policy which sets out what the service must do in the scenarios of the request. It advised in order to answer the request, it would have to create new information, which the Commissioner guidance advises is not required when answering a Freedom of Information request.
16. The FOS confirmed that it liaised with its Accessibility Manager, individuals within its casework area who lead the awards for distress and

---

<sup>1</sup> [Financial ombudsman clarifies Equality Act powers \(pinsentmasons.com\)](https://www.pinsentmasons.com)

inconvenience, and an individual in its casework area who leads on complaints involving discrimination and reasonable adjustment.

17. The FOS advised that all departments confirmed that it does not hold nor publish the information requested. The FOS explained that the scenarios which are in the request, would be dealt with on a case by case basis and no standard approach is taken.
18. In its submission to the Commissioner the FOS explained that its services decided the level of compensation based on what is fair and reasonable. It also must take into account relevant law and regulations. The FOS make money awards for things such as: "distress or inconvenience" and "pain and suffering".
19. The FOS confirmed that only a court can make a finding of discrimination under the Equality Act, however the FOS does take the provisions of into account when dealing with relevant complaints. The FOS explained in these circumstances the Vento guidelines would also be relevant, though any award made would be based on its remit of what is fair and reasonable.

### **The Commissioners Position**

20. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
21. The Commissioner recognises that the complainant believed the website provided had evidence that the FOS holds the requested information, however the website only referenced that the FOS had the power to require financial service firms to make reasonable adjustments for people with disabilities.
22. The Commissioner also acknowledges that the website provided by the complainant did support the FOS position that it would make a decision based on what's fair and reasonable when dealing with complaints.
23. The Commissioner agrees that the FOS are not expected to create new information to answer a request. The Commissioner notes that a public authority is not obligated to create information, provide explanations or advice to answer a request. For this request to be answered fully, the Commissioner considers these things would have to be conducted.
24. The Commissioner is also satisfied that the FOS conducted relevant searches to locate the requested information with the suitable departments and staff to locate the requested information.

25. The Commissioner's decision in this matter is that, on the balance of probabilities, FOS does not hold the requested information.

### **Other matters**

---

26. Although the FOS is under no legal obligation under FOIA to conduct an internal review, the Commissioner considers it to be good practice and that they should usually be completed with 20 working days, but should never take longer than 40 working days. In this case the Commissioner notes that the FOS did not complete the Internal Review within this timeframe. He considers this to be poor practice.

## Right of appeal

---

27. 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](mailto:grc@justice.gov.uk)

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

28. 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.
29. 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 .....**

**Catherine Fletcher**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

