

The complaint

Ms J complains that Pepper (UK) Limited (“Pepper”) didn’t send her information she requested in connection with her mortgage.

What happened

Ms J has a mortgage with Pepper.

Ms J says that in early 2022 she asked for a data subject access request (“DSAR”) in relation to her mortgage. She made it clear that because of a disability, she needed the information to be sent to her by email in an accessible format. That would allow her to use software she has on her computer to read the information. She made it clear that her software couldn’t read pdf documents.

Initially Pepper said it couldn’t send her documentation by email as it was against its policy. However, after Ms J complained to Pepper in February 2022, she spoke to its representative a number of times. She made it clear that she needed Pepper to make reasonable adjustments for her, and it agreed to email her the documents.

Pepper has provided evidence to show that it emailed Ms J the documents in two separate emails in April 2022. However, Ms J has been clear that she didn’t get those emails. She complained again in May 2022. In an email she wrote to Pepper in May 2022 Ms J asked for the documentation for Pepper to make reasonable adjustments for her.

Ms J says her email was ignored. She made another complaint to Pepper about this matter in November 2023 (she says that was ignored too). Finally, in January 2024, she complained to the Financial Ombudsman Service. For completeness I’ll say that I’m conscious that Ms J has raised other complaints with the Financial Ombudsman Service about Pepper. However, this complaint will deal with the DSAR issue only.

Our investigator looked into this matter. He said he was satisfied that Pepper sent Ms J the DSAR information by email in April 2022. However, he acknowledged that the documentation it sent in those emails was sent in pdf format – against Ms J’s preferences.

After our investigator sent Ms J the April 2022 emails, she accepted they were sent. However, she made several points. Amongst other things she said that if Pepper hadn’t ignored her complaints from May 2022 this matter could have been cleared up much sooner and she wouldn’t have had to complain to the Financial Ombudsman Service.

Pepper accepted it made mistakes and offered Ms J £200 to resolve this complaint. Our investigator thought that was fair and reasonable compensation.

Ms J remained unhappy and asked for her complaint to be reviewed by an ombudsman, so it has been passed to me to decide. She has made a number of points I’ll consider below.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable

in the circumstances of this complaint.

I'll start by saying that I completely understand why Ms J has been so frustrated by this matter. Ms J has a genuine medical need for information to be sent to her in a format that allows her to use her computer software to read it, so I can understand why she has been so annoyed and frustrated that she didn't receive the information in that format.

I've considered the emails Pepper sent Ms J in April 2022. I'm satisfied that Pepper sent her the DSAR information she wanted at that time by email as it said it did. However, it's clear from what Ms J has said that she didn't get those emails at the time (for a reason that isn't clear), and that Pepper didn't send her the information in a format that she could read using her software. Having considered what Ms J had told Pepper in February 2022 (by email) I think she'd been clear about what she needed and why.

Ms J emailed Pepper in May 2022 making it clear that she hadn't received the DSAR - in other words, that she didn't receive Pepper's April 2022 emails.

Pepper told us that it responded to Ms J's May 2022 email and sent her its final response, but it didn't notice that she'd said she hadn't received the emailed DSAR documents. Ms J says she didn't get that response either. So this matter wasn't resolved, and Ms J was left feeling that she had been ignored.

Ms J didn't follow this matter up with Pepper until November 2023 – around 18 months later. I understand Ms J's frustration about that – she said she felt she had to complain again, and that she still hadn't received the DSAR around 18 months after her May 2022 email. But as Pepper had missed the fact that she'd said she hadn't received the DSAR in May 2022, I don't think it realised there was an issue in relation to this point until November 2023. I think Pepper could reasonably expect Ms J to say something sooner so it could act to resolve the matter – especially in circumstances where Ms J was thinking about legal action that might be subject to time limits.

Pepper told us that Ms J's November 2023 email was referred to its compliance department. However, it accepts that it didn't respond to Ms J about that email.

Bearing in mind all the relevant circumstances, I think that the £200 Pepper has offered to resolve this complaint is fair and reasonable. If Ms J had complained to Pepper more often between May 2022 and November 2023 and Pepper hadn't acted to put matters right, more compensation might be warranted, but that isn't the case here. I've no reason to doubt Pepper when it says that it didn't realise (because it had genuinely missed the point in Ms J's May 2022 email) that she still hadn't received the DSAR.

Ms J says that by not sending her the information she asked for in an accessible format Pepper has discriminated against her/put her at a disadvantage and acted "illegally" in terms of the Equality Act 2010. She feels Pepper has acted to deliberately conceal facts from her (she has referred to the Limitation Act 1980 in relation to this) to prevent her taking legal action in connection with her mortgage and to abuse her vulnerable status.

Discrimination can have a specific legal meaning – it's the unlawful behaviour set out in the Equality Act 2010. The Equality Act applies to Pepper, and it's something I've taken into account in this case. I've used the words "taken into account" because it isn't for me to make a finding on matters of law in my decisions. That's a matter for the courts. Nor is it for me to act as a regulator and decide whether Pepper breached relevant regulations. However, I have considered the Equality Act, and discrimination in the wider sense. I've thought about whether Ms P has been treated unfairly, and if she has, whether that unfair treatment was because of who she is.

Having considered all the available information in this complaint, I'm not persuaded that she was discriminated against because of the personal circumstances that affect her. No-one is disputing the serious health concerns Ms J lives with and I empathise with the situation she finds herself in. I can only imagine how frustrating it was for her to be told in the course of her dealings with Pepper that it can't/won't send her the information she wants in a format that allows her to read it as a person without her disability would be able to. However, I have to balance that against the fact that after Ms J complained in February 2022 Pepper recognised her disability and agreed to send her the information she wanted by email - even though that meant acting differently to the way that it normally did things.

As I said above, I'm satisfied that Pepper sent Ms J the DSAR in April 2022 by email – as it said it would.

Ms J told the Financial Ombudsman Service that Pepper sent her a paper copy of the DSAR information by recorded delivery. Again, I appreciate that wasn't what she wanted – as she needed to use her computer software to read the information. However, that tells me that Pepper acted to ensure Ms J got the information she needed – even if she might need support to read it. In the circumstances, I don't think it's fair to say that Pepper discriminated against Ms J because of her personal circumstances. I think it acted to send her the information she wanted by email – as she wanted – and by recorded delivery.

For completeness I'll acknowledge here that Ms J told Pepper she wanted the documents to be attached by email individually (instead of being sent in one large document), in a format other than pdf. That didn't happen here, which Pepper has accepted. However, I don't think it's fair and reasonable to say that the fact that it did that amounts to discrimination or victimisation, or that Pepper deliberately concealed information from her. I think it's more likely that Pepper simply didn't take the time and care it should have taken in its dealings with Ms J. I'm also conscious that Ms J had asked for historic information from Pepper. I'm aware that when a document is scanned - especially an older document - a pdf format is often the most reliable format to ensure that the document isn't corrupted.

Ms J has asked that I act as an advocate for her and for me to consider Pepper's actions in such a way as to send a message to all financial bodies. I'm afraid that isn't my role. My role is to resolve this complaint in a way that is fair and reasonable. I think that £200 compensation is a fair and reasonable amount to resolve this complaint. It reflects the fact that Pepper sent Ms J the information she wanted in the wrong format in April 2022, the fact that Pepper didn't notice that Ms J still hadn't received the DSAR in May 2022 and the time it took to get Ms J the DSAR information after she complained again in November 2023.

Conclusion

I empathise with Ms J and recognise that this decision is likely to be very disappointing for her. Ms J has talked about the impact of this matter on her. She has said that she feels Pepper's actions were deliberate and that she has felt invisible, that her disability was a millstone around her neck, and that she has been marginalised and discriminated against. I'm truly sorry to hear that. But as I said above, I'm not persuaded that Pepper acted to discriminate against her.

In the circumstances, it wouldn't be appropriate for me to require Pepper to do more to resolve this complaint.

Putting things right

To put matters right Pepper should pay Ms J the £200 compensation it has offered her, unless it has done so already

My final decision

For the reasons set out above, my final decision is that Pepper (UK) Limited should pay Ms J the £200 compensation it has offered her, unless it has done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 23 October 2024.

Laura Forster
Ombudsman