

The complaint

This complaint is about a mortgage Mr C used to hold with Clydesdale Bank Plc trading as Yorkshire Bank ("CB"). He's unhappy that CB made changes to the security for the mortgage debt at the request of his former partner without his knowledge or consent, and disclosed his address to his former partner. Mr C is seeking compensation for the impact of CB's actions on him and his family.

What happened

By way of a provisional decision dated 14 January 2022, I set out my provisional conclusions on how this complaint should be determined. The following is an extract from the provisional decision.

"Mr C and his former partner had a joint mortgage over a property, where they lived together. Their relationship ended many years ago; Mr C left the mortgaged property (his former partner has continued to live there) and has since remarried and started a family. For reasons I shan't disclose here, Mr C has gone to great lengths to try to ensure his former partner doesn't know where he and his new family live.

During the intervening years, the financial affairs of Mr C and his former partner (including the mortgaged property) have been the subject of highly contentious legal disputes. In 2016, a court order determined that the joint legal and equitable interest in the property be split into two parts; one to be owned by Mr C, the other by his former partner, but both continuing to act as security for CB's lending. However, that hasn't been the end of the financial and legal disputes between Mr C and his former partner.

In 2019, Mr C discovered that CB had made changes to the way the joint mortgage debt was secured against the (now) two properties. This had happened at the request of his former partner and without his involvement. Mr C also discovered that since around 2012, CB had been issuing statements to his former partner that revealed where he and his new family lived. This, he has told us, has resulted in great distress to him and his family and – Mr C says – resulted in various incidents of harassment, some of which amounted to violence and property damage.

In a final response dated 10 January 2019, CB rejected both complaints. In a second final response dated 15 March 2019, CB revisited the address disclosure issue, but not the changes to the security. This time, CB agreed it had breached Mr C's personal data by revealing his address to his former partner, and offered him £1,000 compensation. In a third final response dated 14 May 2019, CB offered Mr C a further £1,000 compensation for the data breach, making £2,000 in all. Again CB didn't revisit the aspect of the changes to the security for the borrowing. In the meantime however, the mortgage had been repaid in full.

Mr C referred his complaint to us by email on 11 July 2019. It's been with us a long time, not helped by a change of case-handler after the first investigator to whom the case was assigned left the service.

In November 2021, the current investigator issued his assessment of the case. After considering everything both parties had told us, he concluded that the £2,000 was fair compensation for the impact CB's disclosure of his address had on Mr C and his family. He didn't think further redress was warranted.

Mr C has asked for the complaint to be reviewed by an ombudsman. He remains of the view that the circumstances justify a higher award of compensation, and also points out that the investigator didn't address the changes to the security for the mortgage.

By way of a decision dated 10 February 2022, I confirmed, with reasons, that our remit to consider the merits of this complaint was limited to just the issue of the data breach. This decision sets out my findings on that. As they're different from the original investigator's recommendations, this is a provisional decision that allows both parties the opportunity to comment before I finalise it.

What I've provisionally decided – and why

Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point it's not because I've failed to consider it but because I don't think I need to comment on it in order to reach what I think is the right outcome in the wider context. My remit is to take an overview and decide what's fair "in the round", at the same time ensuring I don't reveal any information that might introduce the risk, however small, of Mr C being identified when the decision is published.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

This is a serious and sensitive case; but in one key respect, it's a relatively straightforward one. That's because it's not a complaint where I have to decide fault. It's common ground that the data breach happened; CB has admitted as much, and agreed to pay Mr C compensation for the impact it had on him. What that leaves for me to decide is whether the current offer (£2,000) is a fair settlement, or whether CB needs to do more.

Strictly speaking, CB isn't responsible for the actions of Mr C's former partner; she acted alone and in her own capacity when she harassed Mr C and his new family. But she was able to do so because of the information CB wrongly disclosed to her. In that context, CB effectively became an enabler to Mr C's former partner.

The nature of the underlying relationship between Mr C and his former partner was known to the business. It's possible she might have found out where Mr C lived by other means, but I can disregard that; the simple fact is, she found out through CB. Also, the manner in which the information was revealed (on monthly account statements) meant that even after Mr C and his family moved, their new address was passed to his former partner.

I'm largely limited to awarding financial compensation; that's a "blunt instrument" at the best of times. Also, I can't put myself in Mr C's shoes; only he and his family can truly know what the impact has been on his family and himself of the actions of his former partner. This is very much a subjective area; everyone reacts to and perceives things differently, especially "in the moment". What I have to do is take a step back and assess things objectively.

In doing that, I've factored in that the harassment (so there's no ambiguity, I use that generic term to cover all of the events and incidents that I'm unable to reveal in detail) went on for many years, so it wasn't simply "in the moment". There were many, many moments, the impact of which was cumulative.

There's another dimension; consumers who find out something has gone wrong often, after the event has come to light, pose the question "what if something even worse had happened?". Normally, I wouldn't award compensation for something that could have happened but didn't. But this is different; throughout the period the harassment was going on, Mr C and his family knew it was going on (albeit not how or why) and lived constantly with the fear of what might happen next.

Mr C has explained these actions made him and his family feel unsafe in their previous home and their current one. They were unable to feel relaxed and have had to take steps to protect themselves and their property. He's also explained he's been caused significant stress, upset and worry by not knowing how this information was obtained and continues to experience the effects of these disclosures.

Clydesdale's mistakes have clearly caused sustained distress, severe disruption to Mr C and his family's daily life for a number of years and the disclosure made will likely have long term effects as Mr C's former partner still knows where they are. It will have been particularly distressing when the harassment resumed after Mr C had moved his family to a new location, believing this had made them safe again.

Overall, taking everything into account, I don't think CB's offer of £2,000 is sufficient. I have decided, provisionally, that an award of £5,000 would be fair and reasonable. I refer Clydesdale to information we have on our website about awards to show why I consider Mr C fits into this redress bracket.

<https://www.financial-ombudsman.org.uk/consumers/expect/compensation-for-distress-or-inconvenience>.

There is one other thing; in neither of the final responses in which CB admits to the data breach does it actually apologise for it. The nearest CB comes to an apology is in the 14 May 2019 letter in which it expresses regret for the difficulties caused; that's really not good enough. That said, I'm generally not one for ordering an apology in a decision; an apology given under duress has no value. But I'd like to think that CB will realise that it has much to apologise for, and will provide a sincere and full apology to Mrs C and his family without any order from me."

I gave the parties two weeks to reply to the provisional decision; both have done so already. Both parties have accepted my provisional findings, although Mr C remained unhappy that I've only considered the data breach.

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've considered afresh everything that both parties have said and provided. Having done so, I won't be departing from my provisional conclusions.

I've noted Mr C's disappointment that I haven't considered the security changes. But the reasons for that were set out clearly in my jurisdiction decision, and Mr C has given me no new grounds to revisit that decision.

My final decision

My final decision is that I uphold this complaint by ordering Clydesdale Bank Plc trading as Yorkshire Bank to pay Mr C £5,000 compensation for the impact of its admitted data breach.

My final decision concludes this service's consideration of this complaint, which means I'll not be engaging in any further discussion of the merits of it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 March 2022.

Jeff Parrington

Ombudsman