

complaint

Mr Y and Mr M complain that Bank of Ireland (UK) Plc ("Bol") has acted unfairly and unreasonably in sending a mortgage statement to the property address and pointing out that its consent to rent out the property hadn't yet been given. They want compensation.

background

Mr Y had a residential mortgage and other buy to let mortgages with Bol (including some held jointly with Mr M). Mr Y wanted correspondence sent to his parents' address and said that he told Bol this in March 2018. The property was then being renovated by builders in readiness to be rented out (Mr Y said that he was told that he didn't need to apply for consent yet as the term was coming to an end). Mr Y said that a builder opened an envelope containing a mortgage statement from Bol for a buy to let property addressed to Mr Y as the builder said that he thought the post would be for himself, not Mr Y. The mortgage statement had been sent to both the property address and Mr Y's parents' address.

Mr Y complained to Bol. It said that it wasn't a significant data breach as there was little risk of fraud resulting and pointed out that it hadn't given consent for the property to be rented out. Bol offered to pay for Mr Y and Mr M to have one year's membership of the CIFAS fraud database in order to monitor any applications for credit made in his name; it also supplied forms to enable Mr Y to apply for permission to rent out the residential property.

Mr Y and Mr M complained to us, saying that Mr Y was distressed both by the data breach and Bol's response regarding the renting out of the property when he complained about the data breach. Bol pointed out that Mr Y asked for correspondence to be sent temporarily to his parents' address, saying that he often wasn't at his home address. It noted that Mr Y didn't have consent to rent out the property, despite being given the forms to make the application. Bol accepted that the mortgage statement was sent to the two addresses due to human error, but said as the address was allegedly Mr Y's home, only he should've received the mortgage statement.

The adjudicator's view was that Mr Y did tell Bol he still lived in the residential property and he just wanted the address for correspondence changed temporarily. The adjudicator noted that breaches of data protection law were a matter for the Information Commissioner's Office ("ICO"), but this service could look at breaches of confidentiality. He didn't understand why a builder would decide to open post sent to a property at which he was working, and didn't view what had happened as a breach of confidentiality.

Mr Y disagreed. He said that he didn't understand why the adjudicator was siding with Bol.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm not going to deal with the issue about the consent to let as that is going to be dealt with separately as it was not in the initial complaint to Bol.

Complaints about breaches of data protection law are best dealt with by the ICO. I'm therefore not going to deal with this aspect of the complaint, though I will look at whether Bol has acted fairly and reasonably generally or has breached Mr Y and Mr M's confidentiality.

It's relevant to note that Bol isn't responsible for the odd decision of a builder to start opening post sent to a property upon which he's working. There's been no explanation as to why a builder would think such action is appropriate – it's fair and reasonable for lenders to expect post addressed to a particular consumer only to be opened by that consumer. It's even more fair and reasonable to have that expectation when the post is sent to an address at which the consumer told the lender he still lives. The evidence available to me shows that Mr Y told Bol that he still lived at the address, but just wanted his parents' address used temporarily as he was often away.

And the builder has told Mr Y about his actions, so it's fair and reasonable for Bol to conclude there's little or no risk of fraud resulting. But to be on the side safe, Bol has offered both Mr Y and Mr M membership of the CIFAS scheme for a year, which I think is fair and reasonable.

Mr Y wants compensation, but I remain of the view that breaches of data protection law is best dealt with by the ICO. I'm not persuaded that it's fair or reasonable for this service to award compensation for any trouble and upset caused by a lender incorrectly writing to the address that a consumer has just told it he still lives in (particularly as a copy of the statement was sent to the address given by the consumer to ensure he received the information).

my final decision

My final decision is that I don't uphold the complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y and Mr M to accept or reject my decision before 20 January 2019.

Claire Sharp
ombudsman