

complaint

Mr M complains that Hitachi Capital (UK) Plc ("Hitachi Capital") wrote to him at his old address and therefore breached the Data Protection Act. He also complains about the poor customer service he says he received.

background

Mr M complained to Hitachi Capital about an issue with a timeshare he had financed through them.

But Hitachi Capital decided the timeshare company were best placed to handle the complaint so they wrote to Mr M and told him so. Unfortunately, they wrote to Mr M's previous address and they've subsequently explained that they had failed to amend his address details on their system. Mr M complained to them about the data breach in September 2017 but he complains that despite his regular calls they didn't provide a final response until the end of October.

Hitachi Capital apologised for their error and offered Mr M £100 to compensate him for any inconvenience their actions had caused. But Mr M wasn't satisfied and thought the compensation should be much higher.

Our investigator explained to Mr M that it was for the Information Commissioners Office (ICO) to consider breaches of data protection. She said we could consider such issues when there was a financial loss but she didn't think there had been any in this case. She understood that Mr M thought the calls he was now receiving from the timeshare company were a result of this data breach but the investigator didn't agree. She explained that there had been limited information on the letter sent in error and Mr M's phone number wasn't on the letter. So she thought it would be unreasonable to assert that the letter had led to the phone calls.

She also reviewed the customer service Mr M had received. She explained that:

- Hitachi Capital would usually be expected to provide a final response to a complaint within eight weeks and as they had done so she didn't think they'd done anything wrong.
- it wasn't unreasonable of Hitachi Capital not to provide proof of postage of the letter in question. They'd agreed it was sent in error.
- whilst Mr M said they hadn't responded to his data protection complaint she could see that they had attended to all Mr M's complaints in their final response

So the investigator thought Hitachi Capital's offer of £100 compensation was sufficient and she didn't think they needed to take any further action.

But Mr M disagreed. He said Hitachi Capital was wrong not to tell him the complaint should be referred to the ICO and this had led to a seven month delay.

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 know it will disappoint Mr M but I agree with our investigator's view on this complaint.

Where the information I've got is incomplete, unclear or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

Our role isn't to decide if a business has breached data protection laws. This is, as the investigator explained, for the ICO. But we can decide whether it is fair for the business to pay compensation to the consumer or take any other action to recognise the impact of what's happened.

I can understand that in this case it would have been alarming for Mr M to have realised that a letter intended for him had been sent to another address. He had, after all, told Hitachi Capital that he'd changed address and he could therefore have expected them to amend his details. It appears that they only did so on one of the accounts they held for him.

So I've considered whether, as a result of this breach, Mr M has been financially inconvenienced but I don't think that was the case and I therefore think the £100 compensation Hitachi Capital has offered is reasonable. I don't think Mr M has provided any evidence that the data breach was responsible for the irritating phone calls he's been receiving from the timeshare company. And as the letter didn't share his telephone number I don't think I can reasonably suggest that the mistake has currently led to any additional complications.

I've considered the complaints Mr M makes about the customer service he received but here I also agree with the investigator. Hitachi Capital replied to Mr M within the eight weeks they are allowed by the regulators of the service and I think they addressed his complaint in their final response – they offered £100 in compensation.

I don't think they needed to supply Mr M with proof of postage of the wrongly addressed letter either. They probably didn't have that but regardless; they admitted they'd sent the letter in error.

Mr M is frustrated that the process has been delayed because he'll now need to complain to the ICO if he wants the data breach to be considered by them. But I'm not persuaded that the delay has resulted in any financial loss. The ICO is the correct organisation to consider issues surrounding the data breach Mr M complains about and he may wish to do that. But he should also be aware that the ICO cannot award compensation for any breach and that, if he remains unhappy with the compensation that's been offered, he would need to pursue a claim for compensation through the courts. Further information can be found through this link:

<https://ico.org.uk/for-the-public/compensation/>

my final decision

For the reasons I've given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 June 2018.

Phil McMahon
ombudsman