

## The complaint

Miss T complains about a Bank of Scotland plc (BoS) data breach.

## What happened

I issued a provisional decision on 18 April 2024, and this is what I said:

*I've considered the relevant information about this complaint.*

*Before I issue my final decision, I wanted to give everyone a chance to reply.*

*I'll look at any more comments and evidence that I get by 2 May 2024. But unless the information changes my mind, my final decision is likely to be along the following lines.*

### *The complaint*

*Miss T complains about a Bank of Scotland plc (BoS) data breach.*

### *What happened*

*A letter about Miss T's savings account was sent to her relative in error. BoS accept they mistakenly sent a letter about Miss T's account to the wrong address, but as they don't have an audit trail or records, they can't explain:*

- How this happened*
- What data was breached*

*Miss T has explained that this data breach had serious repercussions on her life and caused her significant upset, worry and distress. Also, she believes it has caused her very serious health issues.*

*BoS say they 'apologised for the upset caused and awarded £200.00 redress by way of an apology'. However, as Miss T was dissatisfied with their response and complaint letter, she escalated her complaint to our office.*

*Our investigator thought £500 compensation would more fairly reflect the significant impact this error had on Miss T.*

*BoS agreed to increase their compensation offer to £500 but Miss T remained dissatisfied. So, her complaint has been referred to me to look at.*

### *What I've provisionally 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.*

*Having done so, I'm also partially upholding this complaint and asking BoS to pay £500 compensation and I'll explain why.*

*I would first like to say I'm very sorry to hear of Miss T's distress and illness following an error relating to her address.*

*I should explain that there are limits to how we can help here as:*

- *Although BoS confirm a letter was sent, it isn't possible to know what information was contained in the letter. The letter was destroyed and, it appears, Miss T's name and account number were viewed.*
- *We're neither the regulator of financial services nor a court service. So, we don't have powers to demand information or interrogate business systems data, where this still exists, to attempt to determine what was sent and how the incorrect address was connected to Miss T's file and then dispatched.*
- *The Information Commissioner's Office (ICO) is the body which can investigate data breaches and, as explained by our investigator, Miss T has the option to ask them to investigate her complaint.*
- *There are rules (known as DISP Rules) laid down by the Financial Conduct Authority (FCA) which means complaint handling is not a regulated activity. So, specific complaints about BoS complaint handling, including quality of complaint response letters, can't be considered by our service.*

*What we can do though is consider each individual case and, where we think a business hasn't acted fairly and reasonably in the circumstances, decide what should be done to put right any financial or non-financial losses that a consumer has experienced. So, we can ask a business to pay a proportionate level of redress.*

*When considering the error here, it isn't possible to know:*

- A. *What information was seen by Miss T's relative*
- B. *How the wrong address got updated to Miss T's account*

*Regarding A, it appears Miss T's relative saw the name and account number. But, regardless of whether the BoS letter had any account information, I'm persuaded it was enough to indicate Miss T had an account. And, because Miss T didn't know what was seen, this set off a chain of conversations and events that she found difficult, upsetting, worrying and stressful.*

*Regarding B, it isn't possible to say what happened. Although BoS's information indicates it might've been due to data migration, when transferring accounts between BoS systems, Miss T says she didn't know the relative's address or have any account connections.*

*Having looked at A and B, BoS don't have an audit trail and have accepted an error based on Miss T's version of events rather than evidence. And, as they should have an audit trail, I think this is fair and reasonable.*

*So, what's left for me to do, is consider a fair and reasonable amount of compensation for a complaint where there is persuasive testimony on the impact but a lack of evidence.*

*Also, Miss T feels the error here led to her medical condition, but it isn't possible to determine if this is the case.*

*Having considered the above and all the information on file, including our guidance, our investigator's view and BoS's subsequent agreement, I think £500 compensation is a fair and reasonable outcome here. So, my provisional decision is to require:*

- *Bank of Scotland plc to pay Miss T £500 compensation less any amounts already paid.*

*My provisional decision*

*For the reasons I've given above, it's my provisional decision to uphold this complaint.*

*I require Bank of Scotland plc to pay Miss T £500 compensation less any amounts already paid.*

*I'll look at anything else anyone wants to give me – so long as I get it before 2 May 2024. Unless that information changes my mind, my final decision is likely to be as I've set out above.*

### **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 would like to thank both parties for their responses to my provisional decision.

BoS said they had nothing further to add.

Miss T expressed her dissatisfaction and made a number of points which included the following:

- She would like *'someone to acknowledge how bad this actually can affect a person, I'm being made to feel that my complaint is unwarranted'*.
- She feels her statement and evidence, relating to the content of the letter / data information breach, hasn't been taken seriously and / or been given sufficient weight.

Miss T's comments on this included:

- *The provisional decision states "that it is was "impossible to know what information was contained in the letter?"', 'although my account number and name were viewed no evidence of any other information was on it? I disagree with this'.*
  - *'I clearly stated in all correspondence/conversations from the very start that my X (relative) clearly referred to it as a savings account and CLEARLY referred to a sum of money that ----- (redacted) so is my statement not evidence enough'.*
  - *'My question is why is it impossible to know what was in the letter when I have confirmed on more than one occasion that details of my savings and the amount was there and that is the whole nature of my complaint, why is it impossible just because the business conveniently has no audit trail or records. Just because you cannot find any evidence (conveniently all the evidence and records cant be found)'.*
  - *'Why would I have gone through all of this upset if I thought X didn't know about the money. That was the whole point of my complaint'.*
  - *'X clearly knew I had a large amount of money in the account otherwise why would she have called me'.*
  - *BoS have 'shared my personal information with a person not authorised to receive it, even if they are related to me'.*
- The option of referring her complaint to the ICO *'has never been explained to me and I*

*have never been given this option*'.

- *'You state that there is no proof my medical condition was brought on by the stress of this incident, ----- (redacted), I fell extremely ill in the 8 weeks following this incident and even if it was not caused by this incident it was certainly a contributing factor*'.
- She feels an offer of £500 is inappropriate as her *'whole life has been affected by this', 'the impact this has had is huge', 'not only was my personal information identified but my financial records also, my details were disclosed inappropriately*'.

So, I considered the above and looked at everything again focussing on Miss T's latest comments.

Having done so, I think it would be helpful to clarify some of my provisional decision comments:

- I said, 'it isn't possible to know what information was seen by Miss T's relative' rather than it's *"impossible to know what information was contained in the letter?"*. This is because:
  - Our service relies on the submissions of both parties and, although I understand Miss T being both frustrated and suspicious that BoS haven't produce the letter or information on what was contained within it, I don't think their business change and data migration explanations are unreasonable. Also, Miss T hasn't provided the letter because she was informed that it was destroyed by X's pet.
  - A detailed interrogation of BoS's system and records, by the business or either the financial services or information regulators, could possibly identify the information. But that's where such an investigation was considered necessary and / or proportionate.
- When considering other evidence:
  - X appears to be the only person who has seen the letter but there is no witness or witness statement to question or evaluate.
  - There is however hearsay evidence on file, from Miss T, that a letter pertaining to her account was sent to the wrong address. I found this, alongside information from BoS, to be persuasive. And, I'm upholding Miss T's complaint.
  - However, whilst I don't disbelieve any of Miss T's comments, hearsay evidence is difficult to place reliance upon. And, with regards to the actual contents of the letter, I don't think the hearsay evidence here is strong. Miss T told us X *'knew from the letter I had savings'* and X said *'I know you've got money / savings in the bank saving'* and this could be deduced from seeing either financial or non-financial information. I appreciate Miss T later says, *'details of my savings and the amount was there'*.
  - Regarding Miss T's very serious health issues which followed this incident, I'm very sorry to hear this. However, whilst I'm sympathetic and don't doubt that she was caused distress, there is a lack of information on Miss T's health issue.
- Regarding the ICO, our investigator's on file view was sent to Miss T on 5 January 2024 and 9 January 2024 and this said:
  - *'Our service doesn't have the power to issue fines or penalties for breaches of personal data, therefore, I will only address the impact of the incident. If Miss T has any concerns relating to her personal information being shared incorrectly, Miss T will need to refer her complaint to the Information Commissioner's Office (ICO)*'.
  - Whilst I have empathy with Miss T's situation, and it's unclear what outcome she is seeking here, if she wishes to make a complaint to the ICO we are unable to do this on her behalf.

It's clear that BoS made an error here and accept that they sent a letter, intended for Miss T, to the wrong person.

Although it isn't possible for me to determine what personal information was breached, and whether this was basic information or detailed financial information, I think it more likely than not that the error illustrated Miss T had a BoS savings account and had a significant impact on Miss T. So, what's left for me to do is determine a fair and reasonable amount of compensation.

Assessing compensation isn't an exact science and our approach when making awards for non-financial loss is detailed on our website and tends to be modest.

Having looked considered both the impact and evidence again, I still think BoS's £200 offer is insufficient for the upset and distress caused to Miss T. And I think £500 is a fairer amount of compensation here.

So, in summary, I'm upholding Miss T's complaint and I require BoS to pay Miss T £500 compensation.

### **My final decision**

My final decision is that I'm upholding Miss T's complaint and I require Bank of Scotland plc to pay Miss T £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 5 June 2024.

Paul Douglas  
**Ombudsman**