

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1782 - Billing & Charges - Account Information

Date of Decision: 1 May 2020

Complaint

The customer had financial difficulties in 2006. He explained the situation to the company and arranged a payment plan. The customer was in continuous contact with the company when he had difficulty paying. He was not aware of the company's credit sharing policy that was introduced in 2015 and there were no markers on his credit file until April 2019. The customer did not receive any default notices from the company. The customer requests the removal of negative markers from his credit file.

Response

The customer is billed on an unmeasured basis once a year in advance. The customer did not keep up payments on a number of agreed payment plans. The company has used credit reference agencies since 2015 and has updated its documents and letters to reflect this. The company sent numerous letters of late payments and that the account was in default. The information it has provided to credit reference agencies is correct and should not be removed. The customer did not advise he was struggling or offer very small payments that would have prompted the company to suspect that he could not pay.

Findings

The company changed its policy to include reporting to credit reference agencies from April 2015. It was entitled to provide a payment history from dates from April 2015 onwards. The company is obliged to provide accurate information. Any delay in information appearing on a credit report is likely related to the credit reference agency; however, a delay in reporting information would not constitute a failure provided this was accurate. The negative entries relate to correct outstanding balances that were not in dispute. There is no basis for these to be removed.

Outcome

The company does not need to take any further action.

The customer must reply by XXXX to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1782

Date of Decision: 1 May 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The customer states that he had financial difficulties in 2006. The customer contacted the company to explain the situation and arrange a payment plan that he was able to afford. The customer remained in continuous contact with the company if he was unable to pay on his payment date, or was prompted to do so following contact from the company. The customer was not aware of the company's credit sharing policy, introduced in 2015. The company started reporting negative markers from April 2017. There were no negative markers on the customer's file from the company prior to April 2019. The customer submits that the company did not inform him that it was sharing his information with credit reference agencies. The customer denies receiving any default notices from the company. He also asks why the company did not register negative markers before 2012 as these would have been removed after six years.
- The customer requests the removal of negative markers from his credit file. He also requests the view from WATRS in relation to the customer's intention to commence an action for racial discrimination against the company.

The company's response is that:

- The company submits that the dispute falls outside the scope of the WATRS Scheme as it is the Information Commissioner's Office that deals with matters such as whether the company was entitled to share information with credit reference agencies. WATRS is not able to adjudicate on

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the company's commercial practices, such as reporting information to credit reference agencies. The allegations of racial discrimination are out of scope as it relates to alleged criminal activity.

- Notwithstanding this, the company states that the customer has been registered with it since 3 July 2006. He is billed on an unmeasured basis, billed once a year in advance. Unless a payment plan is agreed, payment is due in full on 1 April each year. Where a payment plan is agreed but a customer defaults, the payment plan is cancelled and the whole balance is due immediately. The company has been using credit scores from credit reference agencies to better understand its customers' debt since 2015/16. This is consistent with the view from Ofwat that water companies must be able to demonstrate that they are managing debt correctly and not act the expense of customers that pay on time. The company uses an automated debt recovery system and its letters inform customers of the implications of not paying the charges due. The company provides details of its social tariffs and trust fund in the annual billing leaflets and on its website. The customer has had numerous payment plans, however he failed to make regular payments under these resulting in a large outstanding balance. The company sent numerous letters advising of late payments, notices of further action, and that the account was in default. The company submits that the information it has provided to credit reference agencies is correct and should not be removed. The customer did not advise that he was struggling to pay, and did not offer very small payments which would have prompted its agents to suspect that the customer was unable to pay. The company denies treating the customer any differently from its other customers.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. The company has objected to the customer's claim, submitting that it falls outside the scope of the WATRS Scheme. I shall first respond to the company's objection, before proceeding to determine those parts, if any, that remain in scope.
2. The company has submitted that those parts of the customer's claim that relate to the reporting of the customer's payment history to credit reference agencies fall outside the scope of the Scheme under Rule 3.4.1. This relates to disputes where "a customer should be referred to a more appropriate forum for the resolution of the dispute". The company has submitted that the Information Commissioner's Office (ICO) is the forum that deals with these types of matters.
3. The ICO has jurisdiction over matters of data protection and determining whether a party has complied with the various data protection requirements. Whilst I accept that a claim that the company sharing information with credit reference agencies constituted a breach of data protection requirements would be better handled by the ICO, I am not persuaded that this is the full extent of the customer's claim. I am satisfied that the claim relates to the company's behaviour in relation to payments on the account and communication with him, and is not a dispute about whether the company has the general right to communicate with credit reference agencies. As such, I am satisfied that I am able to determine this part of the claim under the WATRS Scheme.
4. The company has submitted that the customer's reference to a racial discrimination claim falls outside the scope of the Scheme under Rule 3.5. This states that the Scheme cannot be used to adjudicate "disputes concerning allegations of fraudulent or criminal activity". I am satisfied that a racial discrimination claim falls, in its entirety, outside the scope of the Scheme as racial discrimination may constitute a criminal offence. Additionally, I am satisfied that discrimination is a complex area of law and is not a matter that the WATRS Scheme is empowered to review. I find that any claim for discrimination should be referred to a more appropriate forum, being the police in the event the customer believes he has been subject of a criminal offence, or the Court system if he wishes to bring a claim against the company himself. For the avoidance of doubt, I

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make no comment as to the likely success of such a claim. I shall not refer to the customer's claim relating to discrimination further within this decision and I make no finding as to whether the customer has been subject to racial discrimination.

5. The customer has disputed negative entries and defaults that have been placed on his credit file by the company. He states that he was not advised that the company would update his credit file, and that he has maintained communication with the company when he has had difficulty paying. The company did not place markers on his credit file until April 2019. The customer also denies receiving any default notices from the company.
6. The company took the decision to utilise the services of credit reference agencies as part of its debt management processes in 2015. The company has referred me to the Ofwat website and a document published by Ofwat in relation to dealing with household customers in debt. I am satisfied that Ofwat take the stance that water companies must do more to help customers in debt and to address the levels of bad debt amongst their customer bases. I find nothing to indicate that Ofwat dislike or disapprove of the use of credit reference agencies by water companies; on the contrary, Ofwat place an onus on water companies to effectively manage customer debt and credit reference agencies offer information that may be key to debt management in respect of individual customers.
7. The company commenced the use of credit reference agencies in April 2015. This meant that the company would start sharing payment data with credit reference agencies, including whether its customers were making agreed payments on time, making late payments or defaulting. In exchange, the company has access to details about its customers' wider debt profile, based on their ability to pay other creditors. This should enable the company to identify customers that struggle generally to pay their debts who may benefit from being referred to the company's social schemes and means-tested tariffs, and distinguish these customers from those who are simply refusing to pay and where referring their account to debt collection agencies would be the more appropriate action. This is a simplistic overview for the purpose of clarifying the basis of the company's policy change. I am satisfied that debt management by the company is a complex policy, and that WATRS has no power to direct the company to make changes to its policies or processes generally.
8. I find that, prior to 2015, the company was not entitled to share data with credit reference agencies. It had no agreement to do so and none of its documentation included a statement

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about sharing this data. From April 2015, the company amended the standard wording on its bills to advise that it would be “sharing your information with, and receiving your information from, credit reference agencies”.

9. I am satisfied that the company was entitled to share data with credit reference agencies from April 2015 only. It was not entitled to backdate the data shared prior to April 2015, but was able to provide information to credit reference agencies in respect of dates from April 2015 onwards.
10. I am satisfied that the company did notify its customers of the policy change. Whilst this was done in small print on the customer’s bills, I am mindful that a bill will contain key data only due to the limited space constraints. The company also updated its website to reflect the policy change.
11. The company has provided copy letters that it sent to the customer. Those letters entitled “Notice of further action” advise under “what happens next” that the company may “share your details with a credit reference agency which could impact your credit rating”.
12. Letters entitled “Your immediate response is needed” include a statement in red text that “We may also share your details with a credit reference agency which could impact your credit rating”.
13. Letters stating, “Final demand - Your instalment payments aren’t up to date” also include a statement in red text that “We may also share your details with a credit reference agency which could impact your credit rating”.
14. I am satisfied that all of the company’s standard letters were updated to reflect the change and that the company now had the option to report a customer’s payment history to credit reference agencies.
15. The customer states that he did not receive any of the correspondence from the company in relation to late payments. However, the evidence shows a large number of letters about late payments and defaults have been sent by the company; around 28 letters were sent between April 2015 and March 2019. I accept the company’s submission that it would be nearly impossible for the customer to not have received any of these letters, and that it would indicate a

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substantial and significant issue with the postal service that should be raised with the Royal Mail to be investigated.

16. I also note that the company's evidence does suggest that the customer received, at a minimum, the Notice of Further Action dated 10 November 2017, as he called the company on 20 November 2017 advising that he had received letters. This letter advises in red text that information may be shared with debt collection agencies.
17. I am therefore satisfied that the customer was made reasonably aware, through both the bills and at least one letter that the customer did receive, that his payment history may be provided to a credit reference agency.
18. I also find, from reviewing the call notes, that the customer was advised of the 'debt implications' when setting up payment plans. I accept, on the balance of probabilities, that this would have included a statement that non-payment may affect a customer's credit file.
19. Notwithstanding this, I am not persuaded that a customer's express knowledge is required in order to provide payment history to credit reference agencies. The effective communication of a policy change such as this constitutes a customer service issue only for the purpose of WATRS; it may, separately, be a matter for the ICO to review as part of an investigation into whether the credit reporting policy is compliant with data protection requirements. As above, I am satisfied that the company did take reasonable steps to communicate the change through the bill, and to the customer specifically within the context of debt collection. I find no failure on the part of the company to meet the standard expected of it in relation to the policy change where it commenced sharing information with credit reference agencies.
20. The customer has also stated that the company did not provide any information to credit reference agencies prior to April 2019. The company states that it did not provide information to credit reference agencies prior to December 2017, but notes that this was to the customer's benefit as it could have reported negative entries from April 2015.
21. I find that the company's policy is that it 'may' provide information to credit reference agencies. It is not obliged to provide information; however, where it does so, that information must be accurate. The company is entitled to provide accurate information in respect of the customer's payment history for all periods from April 2015.

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22. I acknowledge that there does appear to be some disparity between when the company advises it started to send payment information to the credit reference agency in the customer's case, and the time that this started to appear on the customer's credit file. However, a credit file is curated and updated by the credit reference agency; where the company has provided information to the credit reference agency, it will not be responsible for any delay in this information being placed on the customer's credit file.
23. I am satisfied that the company has acted reasonably by not providing historical data to debt collection agencies, such as backdating the information provided in December 2017 to dates from April 2015. This has benefitted the customer as the poor payment history between April 2015 and December 2017 has not been recorded on his credit file. The information remains accurate as no incorrect payment history has been recorded; there is simply no information available.
24. I have no evidence to suggest that the company has provided inaccurate information to credit reference agencies. The company's evidence shows that the customer consistently failed to maintain the agreed payments under a payment plan. There is no basis to remove the negative entries from the customer's credit file where they are accurate and relate to correct and undisputed bills.
25. In reviewing the company's notes from the various calls, I am satisfied that the customer would call and request a payment plan, having failed to maintain payments under the previous plan. The company agreed a new plan on each occasion. There is nothing in the notes to indicate that the customer explicitly advised that he was struggling to make payment, and I note that each payment plan was set at a level that would have seen all or almost all of the balance cleared within 12 months. The customer did not request a very low monthly payment that would have also indicated that he was struggling to make payments.
26. I also note that the company's documentation does advise customers to call it and if they are having trouble paying their bills. In particular, the annual bill leaflets refer to schemes that a customer may qualify for to help them pay their bills. I am satisfied that the company does make information available about how a customer may obtain help to pay bills. However, I accept that a failure to make regular payments under a payment plan will not necessarily indicate financial hardship, and that some further sign, such as a statement that a customer can't pay their bill or

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requires a low monthly payment, is required to trigger a referral to an appropriate support scheme.

27. I am therefore satisfied that the company did meet the standard expected of it in how it handled the customer's account and the reporting of the payment history to credit reference agencies whilst the account was in arrears.
28. The customer set up a payment plan on 30 May 2019 where he agreed to pay £60.00 per month from 4 July 2019. The customer then made a payment of £475.00 on 7 June 2019. The customer states that he requested the plan be reduced to £20.00 a month on 14 June 2019.
29. The customer provides an account of this call in his letter of 12 August 2019. He states that he called the company to make a lump sum payment. The representative, named [personal information removed], advised him to call back after the payment had been made so the direct debit amount could be reduced. The customer called on 14 June 2019 and spoke to a representative named [personal information removed]. The customer states that it was agreed that the direct debit would be reduced to £20.00 a month from July 2019, and that the company would send out a Subject Access Request form. The company then took a direct debit payment of £60.00 on or around 28 June 2019.
30. The company denies that it received any request to reduce the customer's direct debit amount on 14 June 2019. The call note states that the customer wanted the marks removed from his credit file, that the customer wanted to make a subject access request, and that he wanted a manager to call him within 48 hours.
31. I am mindful that the accounts of this call by each party is largely consistent. The customer's account includes a lot of detail, including the names of the representatives spoken to. The call was also not straightforward and included a number of different issues and required different follow-up action to be taken. I therefore accept, on the balance of probabilities, that the change of direct debit amount was discussed, but that the representative overlooked this change as he was also arranging a manager call back and a Subject Access Request form. I also note that this was the incorrect process as a subject access request could be made by telephone since 2018. Whilst one error by the representative does not confirm a second error was made, I am persuaded by the customer's submissions that he also requested the direct debit be amended at this time.

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32. I therefore find that the company fell below the standard expected of it when it did not amend the payment plan to reflect the newly-reduced outstanding balance, and for not processing the subject access request by telephone.
33. The company did reduce the payment plan to £20.00 a month on 2 July 2019 and the customer has maintained payments under this plan. I note that the payment plan has also been adjusted to reflect the new account balance following the issue of the April 2020 bill, taking payments to around £24.21 a month.
34. In view of this, having reviewed this case and the evidence in full, I find that the company acted appropriately in respect of the customer's outstanding balance, including communicating about the missed payments and that information would be relayed to credit reference agencies. I am satisfied that the company has only reported accurate information to credit reference agencies and that there is no basis for these records to be removed. The company did fall below the standard expected in relation to its failure to amend the direct debit amount on 14 June 2019, however I have found no other failure by the company to meet the standard expected of it.
35. The customer has not requested an apology, nor any compensation. The only requested remedy is for the negative credit markers to be removed from his credit file. However, for the reasons given above, as the billing was correct and not in dispute and the information on the customer's credit file is accurate, there is no basis for this to be removed. I am therefore unable to make any award to the customer; the claim is unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by XXXX to accept or reject this decision.

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- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
 - If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.
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A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal stroke that ends in a small flourish.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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