

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0757

Date of Decision: 3 May 2018

Complaint

The customer's claim is that the company used his data for purposes other than the purpose it was supplied, and the company have breached the Data Protection Act by registering his account on-line without his permission or knowledge. The customer is seeking the company not to hold personal information except his address, not use any his data for other purposes and to provide an apology.

Defence

The company submits the creation of the on-line account was part of the company's normal procedure at the time and at no point did it breach the Data Protection Act. The company has offered to pay £25.00 as a gesture of goodwill for the failure to inform the customer during a telephone conversation that an on-line account would be created, which has been declined by the customer. Furthermore, excluding the above failure, the company has provided a good level of service at all times throughout its dialogue with the customer and therefore the company is not liable for any damages in this respect. The company has not made any further offers of settlement.

Findings


I am satisfied the evidence points to the fact the company failed to provide its services to the customer to the standard to be reasonably expected, with regard to the creation and deletion of the on-line account. I therefore direct the company to pay the sum of £25.00 to the customer. Furthermore, I am satisfied there have been no failings with regard to customer service, which the customer has not already been offered adequate compensation for, as the company has provided a good level of service at all other times throughout its dialogue with the customer.

Outcome

The company needs to take the following further action:

I direct that the company should pay £25.00 to the customer.

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- The customer must reply by 4 June 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 3 May 2018

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The customer's claim is the company used his data for purposes other than the purpose it was supplied, by registering his account online without his permission or knowledge and in doing so that the company breached the Data Protection Act.
- The customer is seeking the company not to hold personal information except his address, not use any his data for other purposes and to provide an apology.

The company's response is that:

- The company's position is the creation of the on-line account was part of the company's normal procedure at the time and at no point did it breach the Data Protection Act.
- The company submits it removed the on-line account on receipt of the first complaint by the customer. The company also has apologised to the customer that he was not informed his account had been registered online during the call on 12 February 2018 and offered a gesture of goodwill of £25.00, which was declined.
- Furthermore, the company asserts it has provided a good level of service at all times throughout its dialogue. Therefore, the company submits it is not liable for any damages in this respect.

How is a WATRS decision reached?

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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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

I have carefully considered all 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. To succeed in a claim against the company, the customer must prove on a balance of probabilities the company has failed to provide its services to the standard one would reasonably expect and that because of this failure the customer has suffered some loss or detriment. If no such failure or loss is proved, the company will not be liable.
2. I must also remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of the evidence.
3. The customer submits the company has breached the Data Protection Act with regards to using data for purposes other than the purpose it was supplied. The legal interpretation and application of the Data Protection Act is a complicated issue and overseen by the Information Commissioner's Office. Under rule 3.4.1 of the Water Redress Scheme Rules a more appropriate forum for an alleged breach of the Data Protection Act is a complaint to the Information Commissioner's Office under Section 42 of the Data Protection Act. Therefore, I find that the WATRS scheme is not the correct forum for an alleged breach of the Data Protection Act and for this aspect of the dispute the correct forum would be the Information Commissioner's Office.
4. However, I find I am able to consider the other aspects of the customer's claim.

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5. The dispute centres around whether the company incorrectly registered the customer's account online as part of a project to automatically update accounts to paperless billing where an email address was held on the company's files. The company is required to meet the standards set out in OFWAT's Charges Scheme Rules and the Water Industry Act 1991.
6. Furthermore, the company also has certain obligations in respect of its customer services as set out in OFWAT Guaranteed Standards Scheme and the company's own Guaranteed Service Standards.
7. From the evidence put forward by the company, on 12 February 2018, after the customer had made a payment via telephone the company registered an online account for the customer based on email information held on the company servers. The company failed to advise the customer within the call that an online account would be set up. However, a notification email regarding the online account was sent to the customer the same day as part of the registration process.
8. On the same day, the customer contacted the company querying why the company registered an online account for him when he had not requested or given permission for such an account. The company states within their defence documents that on 19 February 2018 the company replied to the customer, closing the online account and offering a payment of £25.00 as a gesture of goodwill in recognition of their error in not advising the customer on the 12 February 2018 call that an online account would be set up. The evidence shows this gesture of goodwill was declined by the customer on 20 February 2018.
9. The evidence shows various correspondence took place between the parties resting with the company's email dated 2 March 2018, reiterating the company's position that they had not breached the Data Protection Act and the customer's online account had been deactivated.
10. In light of the above and after careful review of all the evidence, I am satisfied the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person in respect of the creation and subsequent deletion of the online account. I find where the company failed to inform the customer within the telephone call that an on-line account would be created I am satisfied the customer has been offered adequate compensation of £25.00, as the customer was notified after the telephone call by email. I therefore direct the

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company to pay the customer £25.00 for this aspect of the customer's claim. I understand from the company's defence the company no longer automatically creates an on-line account in circumstances similar to what happened in the customer's case.

11. The company has certain obligations in respect of its customer services. From the evidence provided I am satisfied that the company provided the customer with an explanation for their actions and apologised.
12. In relation to the customers comments regarding the company not holding his personal information except his address and not using his data for other purposes, as set out in the company defence documents, the company's privacy policy shows how the company collects and shares data. The privacy statement is also shown on the back of the company's bills and the full policy is shown on its website and Code of Practice. The company states that if the customer doesn't want the company to hold a record of his telephone number, date of birth and/or email address then the customer confirms all future contact be by phone or email. However, the company states by the customer providing personal information to the company, he is consenting to the company using the information for the purposes mentioned in its privacy policy. I am satisfied this approach means the company has not failed to provide its services to the customer to the standard to be reasonably expected with regard to the use of the customer's data.
13. The customer has requested an apology from the company. Having carefully considered the various correspondence put forward in evidence, I am satisfied the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person. Furthermore, I am satisfied the company has sufficiently apologised and offered recompense where appropriate within its dialogue with the customer. Therefore, I find the company is not required to provide a further apology with regard to how it treats its customer's data or the online account creation and subsequent deletion.
14. In light of the above, I find the customer has proven the company failed to provide its services to the customer to the standard to be reasonably expected, with regard to the creation and deletion of the on-line account. I therefore direct the company to pay the sum of £25.00 to the customer. Furthermore, I am satisfied there have been no failings with regard to customer service, which the customer has not already been offered adequate compensation for, as the company has provided a good level of service at all other times throughout its dialogue with the customer.

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Outcome

The company needs to take the following further action:

I direct that the company should pay £25.00 to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 June 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Mark Ledger FCI Arb
Adjudicator

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