WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X397

Date of Decision: 28/06/2021

Party Details
Customer:
Company:

Complaint

The customer complains that she was told by a debt collection agency (DCA) in 2017 that she had paid off an overdue balance to the company. The company was told that the balance had been paid in full, but it believed a sum of £36.70 to be outstanding. The company did not raise any further bills but made adverse returns to a credit reference agency. This negatively impacted her ability in 2020 (at which point she discovered the adverse markers) to obtain a vehicle contract at a rate of interest of 25%, rather than more than 39% which she had to pay. The customer asks for compensation in an unspecified amount.

Response

The company says that the customer was in arrears and its calculation of the account was correct. It was therefore entitled to make adverse credit reports until the debt was discharged. The error was made by the DCA which was a third party, and this claim is outside the Scheme. Moreover, the customer contacted the company in December 2017 asking for repayment to her of £36.70 (the outstanding amount) and had been told that this was due to the company rather than due to be repaid to her. In 2020, the company has reversed the adverse credit entries as a matter of goodwill and has made a GSS payment of £40.00. The customer has not proved the financial loss she claims in relation to the vehicle agreement.

Findings

I find that the company has not supplied its services to the standard that would be expected by an average customer. The agency was collecting the debt on behalf of the company and the company, as principal, was bound by errors made by the DCA. The DCA had told the customer that nothing further was payable. Even though the company later said that

there was a balance on her account, the customer was not billed for that amount. In the circumstances, there was no reason for her to believe that this sum had not been waived. Reporting a debt of which the customer was unaware foreseeably leads to consumer detriment of which a consumer may not be aware. Although the customer cannot prove the loss in respect of her vehicle contract, she has been caused inconvenience and distress. A fair and reasonable sum by way of compensation is £150.00 from which the goodwill payment of £40.00 that she has already received should be deducted.

Outcom

The company is required to pay £110.00 to the customer.

The customer must reply by 26/07/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

• The customer was advised of a final bill on 3 September 2016 for charges up to the 28 July 2016 of £226.70 at her previous address of redacted. She set up a payment arrangement and direct debit in October 2016. The direct debit wassubsequently cancelled in December 2016. Following this, a notice of default was sent to the customer at her new address in March 2017. • The account was then transferred to a debt collection agency (DCA). The customer made payments through 2017 and was told by the DCA that the account had been settled in full on 30 November 2017. • The customer subsequently became aware in November 2020 that an outstanding bill of £36.70 remained for the previous address despite being told by the DCA that the balance had been cleared and no further payments were needed. This had a negative impact on her credit file as the company had been placing late markers on it. • Following her initial complaint, the company agreed that the markers were in error and removed them from her file. • The customer maintains that the company's actions had a negative financial effect on her and led to her paying a higher price for credit. She is unhappy that the company's legal team have rejected her evidence of a hire purchase agreement for a car as being insufficient. She says that according to a phone call she made, the information needed to provide evidence of her financial loss was the copy of her hire purchase agreement, evidence of her credit file and to show the rate normally offered - all of this was provided. The customer is also unhappy with the service received from the company and says that the gesture of goodwill offered by the company is insufficient to cover her losses.

The company's response is that:

• The customer was in occupation of the relevant property at REDACTED until she moved and was liable for the company's charges. In accordance with Section 144 of the Water Industry Act 1991, it was for the customer to tell the company when moving home. This did not happen. The company became aware the customer had vacated the Property on 28 July 2016, due to a third party advising of new occupiers. As such the company closed the customer's account and issued a final invoice in the sum of £226.70. This was served in accordance with the Civil Procedure Rules to the customer's last known or usual residence. • On 31 October 2016, the customer contacted the company in respect of the final invoice and set up a payment

arrangement and gave a mailing address. An instalment plan was agreed for the customer to pay the outstanding balance at £25.00 per month. The customer's payments for November 2016, January 2017 and February 2017 were returned by her bank due to insufficient funds. As the customer did not stick to the payment arrangement, on 10 February 2017 the payment arrangement was cancelled. The remaining outstanding balance of £176.70 therefore became due and payable in full. • The company referred the account to a Debt Collection Agency (DCA) to recover the debt. Payments were then made by the customer to the DCA in the total sum of £140.00 thereby leaving an outstanding debt of £36.70. When the account was sent back from the DCA in November 2017, however, it was returned as 'paid in full'.• The company was entitled to report the outstanding balance to a credit reference agency. • The customer requested a refund on or around 15 December 2017 of £36.70 as she thought this was a credit amount on the account. On 18 December 2017 the company informed the customer that the amount of £36.70 was actually a debt on the account and not a credit. • No further contact was received from the customer until a complaint was made on 25 November 2020. • The company has as a gesture of goodwill amended the credit reporting to show this as settled as of 30 November 2017 and is reporting the account as a zero balance and a status zero, which has no negative impact on the customer. This gesture was made because it was reasonable to assume that the DCA had informed the customer that the account had been settled despite there being a debt of £36.70 which is why the company agreed to amend the negative reporting from November 2017. • The company did, however, tell the customer on 18 December 2017 that there was in fact an outstanding balance. Any alleged failures are on the part of the DCA in misinforming the customer which are a third-party matter and, in accordance with Rule 3.5 of the Scheme, cannot be adjudicated upon. • In acknowledgement of its customer service shortcomings, the company issued the customer with a guaranteed service standard payment of £40.00 as follows: a. The administrative error on behalf the DCA. Although this was not a shortcoming on behalf of the company, the company acknowledged that it could have investigated and provided an explanation sooner. b. The lack of contact with the customer between 2017 and 2020 regarding the outstanding balance of £36.70. Although in accordance with the Limitation Act 1980, the Company has 6 years to recover a debt recoverable by virtue of statute, it acknowledged that it could have investigated and acted sooner. • In accordance with GSS and the payment required regarding account queries, the company issued payment of £20.00 for each of the above shortcomings, thereby giving a total compensation amount of £40.00. • The company says that if it has failed to meet the level of service expected, which is denied, the customer has already received adequate compensation. • For the company to consider a claim for financial loss due to adverse credit reporting, there must be an error made by it and therefore any resulting loss must have been as a result of its error. • The company denies any errors made in respect of the reporting of the customer's account and does not accept that any alleged financial loss was incurred. • The customer has failed to quantify her loss on

her application to the scheme and has not provided substantial evidence that she applied for a credit hire agreement or that the agreement was rejected or that a higher interest rate was paid as a result of the company's credit reporting, or any alleged rejection/higher interest rate was solely because of the company's negative reporting (which has now been removed). • The company denies liability for this claim.

How is a WATRS decision reached?

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

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

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.

I have received responses from both parties to my Preliminary Decision dated 15 June 2021 and have taken these into account.

How was this decision reached?

1. 1. The customer in this case does not dispute that the company was entitled to raise charges against her or that she was liable to pay them in respect of her home. She also does not dispute that in principle the company is permitted to supply information to credit reference agencies when payments are not made.

   2. I find that her complaint focuses on the facts of this particular case, where, she argues that the company had, by reason of the actions of a DCA, told her that nothing was payable, but the company had nonetheless reported an outstanding balance to a credit reference agency. She argues that although the company has refunded the outstanding balance and made a compensatory payment of £40.00, this does not reflect the distress and inconvenience that she has suffered, including the inability to obtain finance on preferential terms.

3. I take into account that the background to this complaint was that the customer had failed to make payments to the company that in 2016 and 2017 were due and payable. I am also mindful, however, that an average customer would reasonably expect that only accurate information would be passed by a water company to a credit reference agency. I find that an average customer would also reasonably expect that a water company (which would reasonably be expected to know of the reputational damage to customers and potential loss of access to credit associated with adverse reporting) would not report a debt position of which a customer might be unaware.

4. Focussing on these issues, I find that the following occurred.

• The customer's account was in arrears in 2017 and was sent to a DCA.

• The company has not set out its commercial arrangements with the DCA, but it acknowledges that the DCA was taking steps to recover payments from the customer and to pay them wholly or in part to the company. That, in association with the description of the DCA as an "agent"would reasonably convey to an average customer that the DCA was acting on behalf of the company as its agent. The company was thus the principal and the DCA was the agent. As such, I find that the company is not correct to take the view that a mistake made by the agent was that of a "thirdparty" for which the company was not responsible: I find that any mistake made by the agent was a mistake made by and for the company and the company is to be treated as responsible because the mistake was done on its behalf.

• In November 2017, the DCA reported to the company that the account had been paid in full with a slight overpayment of £3.00. As the company acknowledges, this supports the customer's assertion that she had been told by the DCA that she had paid off the debt in November 2017 and I find that it is more likely than not that this occurred.

• The company's records show that a response was made to the DCA that states:

"Please be advised that as per our records the account is still in a debt of £36.70. The last payment received was on 30.11.2017 of £20. Also we have received payments of £20 each on 05.04.2017, 04.05.2017, 06.06.2017, 04.07.2017,28.07.2017,01.09.2017 and 30.11.2017. If there is any other payments to be returned to us, please return this ASAP."

• There is no evidence that this was also stated to the customer.

• However, the company's records show that the customer contacted it on 15 December 2017 requesting a refund that the DCA had told her she would need to

contact the company to collect.

• The company replied on 18 December 2017 advising the account was in debt by £36.70 and asked for proof of payment. The response stated:

"Our records show that the account is still in debt by £36.70. So we're unable to issue refund. Can you please forward the proof of payment so that we can look into it."

This message did not indicate an expectation by the company that the customer should make any further payments.

• The customer did not reply.

• I therefore find that at this point, the customer was aware that there may be some uncertainty about the state of her account, but she had not been asked to discharge the sum of £36.70 that the company said was showing.

• The company, on the other hand, was also aware that the customer had been told both that nothing further was owing and that the company's records showed a balance of £36.70. Notwithstanding this, the company acknowledges that it did not send any further bills or reminders, but instead reported the situation to a credit reference agency.

5. I find that the adverse credit reporting in these circumstances was not consistent with the standard of service that an average customer would reasonably expect. The DCA had been given the responsibility by the company of collecting the debt and the customer had been told that there was no further debt. I find that whether anything further is due from a customer is not only a question of whether it has been calculated correctly, but also a question of whether the company wishes to ask the customer to make continuing payments. In this situation, the customer had been told by the DCA that there would be no more demands for payment and, although the company told the customer that an amount was still showing on her account, no demands for payment were made. This, I find, would have reinforced the customer in her view that nothing further was payable and that, even if a balance was shown on her account, the company had waived this.

6. Although I accept that when the customer discovered the adverse entries in her credit file in late 2020, the company agreed to correct these entries as a matter of goodwill and to make a goodwill payment of £40.00 as well as to repay the balance (which initially the customer paid). I find that this compensatory payment does not reflect the inconvenience that has been caused. In particular, the customer refers to the increased costs of a vehicle agreement, for which, unsurprisingly, I find that she has been unable to prove the precise impact that the adverse credit entries

may have had, even though she submitted relevant documents to the company.

7. I am mindful that incorrect and unfair credit reporting is a source of consumer detriment of which a consumer is often unaware. It can, nonetheless, be a source of inconvenience and hardship because it reduces access to borrowing and can prove to be distressing when the impact of the reporting becomes known. In this case, the customer has submitted documentation to the company in support of her claim and I find that it is more probable than not that the customer has been caused inconvenience of this type, even though I accept the submission of the company that the precise amount of her loss, if any, cannot be known. I find also that the customer has been distressed when she discovered what had happened. I find that the customer has been caused additional distress because, although the company has taken steps towards remedying the situation in 2020, it has not fully acknowledged to her the potential misleadingness of its failure to raise bills for sums that she had not been told needed to be paid. The customer has had to engage in correspondence with the company over a period of months.

8. Although the customer has not formulated her claim for compensation in the application form by stating a precise amount, she has made clear that she does not believe that the compensation offered of £40.00 reflected the detriment to her position.

9. Taking all the above matters into account, I have found that a fair and reasonable sum by way of compensation for inconvenience and distress is £150.00, from which I find that it is also fair and reasonable to deduct the goodwill payment of £40.00 already made. Both the customer and the company have challenged this amount, which was set out in my Preliminary Decision: the customer says that it does not cover the increased interest payments on her vehicle contract and does not reflect the inconvenience caused. The company refers to the WATRS Guide to Compensation for Inconvenience and Distress and says that the offer of £40.00 was sufficient.

10. I have not, however, changed my decision. As indicated above, the customer has not submitted evidence to prove the link between the company's conduct and the cost to her of her hire purchase agreement. This part of my award is limited to compensation for inconvenience rather than financial loss. I bear in mind the WATRS Guide referred to by the company. I am quite satisfied that the incorrect reporting of a debt to a credit reference agency is not a matter that falls within tier 1 of the Guide, as suggested by the company. Were it not that the company had immediately agreed to correct the entries when they were discovered, the award of compensation for distress and inconvenience would have been in a higher amount. In the light of the company's action to correct the credit file (even though it treated this as a matter of goodwill rather than acknowledging error), I find that the

inconvenience fell within tier 2 and not the sum of £500.00 to £1,000.00 claimed by the customer.

11. I find, therefore, that it is fair and reasonable to direct that the company should make a further payment to the customer of £110.00.

Outcome

1. The company shall pay the customer £110.00.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final decision.

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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in 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.

Claire Andrews

Adjudicator