

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X408

Date of Decision: 29/06/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding the company not following its own debt recovery policies when placing default notices on his credit history file. The customer says the company placed defaults on his file in 2014 and 2016 after failing to give him twenty-eight days' advance notice. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to remove the default from his credit file, pay compensation, and issue an apology.

#### Response

The company states that all the allegations made by the customer are denied. The company says it issued a default notice in 2014 after following all its internal procedures but did not issue a further default in 2016 as it is not permitted to raise more than one default on the same person at the same address. The company has not made any offer of settlement to the customer and declines to remove the default notice or to pay compensation.

#### Findings

I am satisfied the company acted reasonably and correctly in its dealings with the customer. I have been provided with a copy of the advance notice issued prior to raising the default in 2014 and I am satisfied from the evidence submitted by the company that it did not raise a second default in 2016. I find the customer has not provided sufficient evidence to justify his claim. Overall, I find that the company has not failed to provide its services to a reasonable level nor has failed to manage the customer's account to the level to be reasonably expected by the average person.



The company does not need to take further action.

The customer must reply by 27/07/2021 to accept or reject this decision.

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## Case Outline

### **The customer's complaint is that:**

- He has experienced an ongoing dispute with the company concerning issues with how it has proceeded its debt collection process. The customer says that he believes the company should have provided him with a twenty-eight day advance warning in writing before issuing a default notice. The customer says he has no record of such warning being issued to him. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- The company has placed a default notice on his credit history file on two separate occasions, in September 2014 and May 2016.
- He understands that the company's own debt recovery process requires it to send out a written warning to customers twenty-eight days prior to issuing the actual default notice. The customer contends that on neither occasion did he receive such written notice.
- In August 2020 he made a subject access request (SAR) to the company, and in the bundle of information it sent to him he did not find any letters of an advance warning of a default notice.
- He contacted the company immediately to seek clarification as to why if the two notices were actually issued they were not included in the SAR response. The customer says the company informed him that all its records were archived in 2017 and it cannot always find information back beyond 2017.
- He further questioned the company because as part of the SAR bundle were copies of letters as far back as 2011. The customer says the company advised him that it had more than one filing system and certain systems are more accessible than others.
- Believing the company had not properly addressed his concerns the customer, on 06 October 2020, escalated his complaint to CCWater who took up the dispute with the company on his behalf. The customer records that CCWater contacted the company and requested more detailed information from it and to review the customer service provided.
- He acknowledges that CCWater were involved in much correspondence with the company and on 06 October 2020, contacted the company and requested to receive a detailed explanation of its position and actions in respect of dealing with the customer's complaints.
- On 20 October 2020 the company provided a detailed response to CCWater. The company reiterated that it had advised the customer in its letter to him dated 13 October 2020 that a warning letter was sent to him on 19 July 2014. Also, that once a default notice was raised it was not necessary to raise a second default notice because any increased debt would simply be added to the amount recorded on the default notice. It stated that it had sent the customer correspondence in April 2016 about his continued

outstanding debt. • Consequently, on 21 October 2020, CCWater informed him that it believed the company had followed its own debt recovery procedures before filing the default notice, and that the company would not change its position and it will not agree to remove the default notice while an outstanding amount remains on the customer's account. CCWater confirmed that it could not take any further steps to alter the position of the company and was closing his complaint. • The customer says that despite the intervention of CCWater, the dispute is ongoing, and the company has not changed its position and CCWater are unable to obtain a resolution between the parties. The customer remains dissatisfied with the response of the company and has, on 23 March 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to remove the default notice as it was not raised in accordance with its own rules and pay him compensation.

**The company's response is that:**

• It provided its response to the claim on 10 May 2021. • It notes the customer has previously complained to WATRS on 19 June 2018, and that the issues complained of are the same in both the previous and current complaints. • In the previous application to WATRS the adjudicator found in favour of the company. • It acknowledges that it registered a default in respect of the customer on or around 31 August 2014. The company asserts that the applicable legislation does not permit more than one default to be registered against the same customer at the same address. • If a customer continues to not make payments a running default will effectively be created as any new charges are added to the default balance. Thus, the default that the customer complains of dated May 2016 is not a new or second default as the company had no need to raise a second default. • It sent reminders and a cancellation notice to the customer in 2016 prior to transferring a new overdue balance onto the existing default.

• It is not required to give notice of any change in the balance or date of the default. • A default notice requires any debt over six years old to drop off the default amount, and this plus adding new outstanding debts, means the value of the default will change over time, either up or down. • It has acted in accordance with its data sharing policy when sharing the customer's data and registering the default. • The entries on the customer's credit history file are an accurate reflection of his payment history with the company and it would thus be dishonest for the company to remove the default notice. Thus, it declines to remove the default from the customer's file. • It also does not accept to pay compensation to the customer as it has acted in accordance with its data sharing and default reporting policy. The customer's comments on the company's response are that:

• On 17 May 2021, the customer submitted detailed comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced. • The customer reiterated his position as previously set down. He repeats his belief that the company did not send him advance warning of its intent to issue a default either in 2014 or 2016.

## 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.

## How was this decision reached?

1. The dispute relates to the customer's dissatisfaction that the company placed a default notice on his credit history file without following its own process and refuses to remove it.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I am aware that the company has identified that the customer has a previous WATRS case registered in respect of water charges raised against the same property that the customer's current WATRS application refers to.
4. I note that in the previous WATRS referral the adjudicator found in favour of the company.
5. Additionally, I can see that CCWater has also addressed the customer's previous application and is satisfied that the issues newly raised by the customer were not part of his previous application and were not dealt with by the adjudicator in his decision.
6. From my reading of the evidence supplied by the parties and CCWater I find that I am in agreement with the findings of CCWater and I am satisfied the new issues

raised in this referral are to do with the debt recovery procedures of the company and are not a repeat of the dispute concerning the accuracy and validity of the charges raised by the company for water services provided.

7. I am thus satisfied that the current application is within the scope of the WATRS Scheme and I confirm that I shall proceed accordingly in respect of the customer's current WATRS application and I shall not address any issues that were dealt with under his previous application back in 2018.

8. The customer contends that the company issued two default notices against him, in September 2014 and May 2016.

9. The customer further contends that to comply with its own internal debt recovery procedures the company shall issue a twenty-eight day notice of its intent to register a default. The customer says that the company never issued such advance notice on either occasion it registered a default.

10. I am supplied with a copy of a letter from the company to the customer dated 19 July 2014 that shows as its subject "FinalDemand Notice of Default". The letter states that the customer should either pay the outstanding amount due on his account or contact the company for assistance before 16 August 2014 otherwise a default notice will be registered.

11. I am satisfied on a balance of probabilities that this communication satisfies the procedural requirement to give the customer twenty-eight days advance warning of the company's intent to register a default.

12. The company has detailed in its Defence submission the process whereby it is not permitted to issue more than one default notice per person per property. The default registered in 2014 remains in existence.

13. The company has stated that on 27 May 2016 it added a further outstanding amount to the existing default.

14. The company denies registering a second default in May 2016. It cannot provide the same paperwork as submitted to prove the 2014 default because no such paperwork was raised. Additionally, I have not seen any evidence from the customer to show that a default was registered against him by the company in 2016.

15. The company has provided me with a copy of its letter to the customer dated 13 April 2016 in which it advises the customer that it intends to refer his account to a debt collection agency. It makes no reference to registering a second default notice.

16. In respect of the customer's claim that the company did not include copies of advance notice letters in its response to his SARS request, I note that the company did not address this in its Defence submission.

17. However, I can see that in its response to CCWater dated 20 October 2020, the company has stated that its file storage system was retired in 2017 and decommissioned in early 2020 and thus it cannot access all correspondence dated prior to 2017.

18. I take note that the customer has raised the point that certain letters in the SARS bundle were dated as far back as 2011, and I can see inconsistency in the company's position.

19. Nevertheless, I am provided with the appropriate default advance notice letter from 2014 and I am satisfied that the company did not raise a second default in 2016 and thus no advance letter was issued.

20. The customer has also requested that the company be directed to pay him an unspecified amount of compensation. I am not satisfied that the customer has established on a balance of probabilities that the company did not adhere to its own debt recovery procedures and as such I find that compensation is not appropriate. I shall not direct the company to pay compensation.

21. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person.

#### Preliminary Decision

- The Preliminary Decision was issued to the parties on 17 June 2021.
- The company confirmed it had no comments on the Preliminary Decision.
- On 24 June 2021 the customer submitted comments on the Preliminary Decision along with additional evidential submissions.
- The customer has stated that the company lied in its Response submission. The customer contends that a second default was raised in 2016, but I am not satisfied that the documents submitted by the customer establish on a balance of probabilities that the 2016 entry is a new default rather than an update by the company of the amount outstanding as noted on the initial default notice of 2014.
- I am not persuaded that the comments and documents submitted by the customer require a change be made to the Preliminary Decision.

## Outcome

1. The company does not need to take further action.

## 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.

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**Peter Sansom**  
**Adjudicator**