

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X504

Date of Decision: 12/08/2021

Party Details

Customer:

Company:

Complaint

The customer's claim relates to a credit default that the company has placed against the customer's name in respect of unpaid water bills. The customer explains that he was unaware of the outstanding payments as he believed that a third party was taking care of his bills, and as he was working outside the UK, he did not receive any payment reminders. He asks for an order that the company remove the credit default from his record.

Response

The company contests the customer's claim. It says that it has followed all its policies, processes and legal and regulatory requirements when dealing with the customer's case. It considers that the default against the customer was correctly recorded and was based on accurate facts, so it does not consider that it should remove the default.

Findings

I find that, in the exceptional circumstances of this case, the company should have taken the customer's situation into account when dealing with his request that the default it had placed on his record should be withdrawn. Given that the customer had not received any of the company's payment reminders, had not knowingly defaulted on his bills and had paid the outstanding amount immediately once he became aware of them, I find that the company, acting in accordance with the principles of reasonable customer service, should have withdrawn the default.

Outcome

If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, take all necessary steps to ensure that the default recorded against the customer's name is removed from the customer's record with the relevant credit reference agencies.

The customer must reply by 10/09/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

The customer's claim relates to a credit default that the company has placed against the customer's name in respect of unpaid water bills. The customer says that the non-payment occurred because he believed that a third party, REDACTED, was taking care of the payment of all of his utilities bills, including water bills, for him. He explains that, following his separation from his wife in November 2019, he rented a property on a 12-month tenancy to be able to see his young children when he returned to the UK from working abroad. He also signed up with REDACTED who told him that they would take care of all of his utilities bills. However, when he recently applied for a mortgage, he discovered that the company had registered a default because REDACTED had not in fact paid his water bills. He immediately paid the outstanding amount and asked the company to remove the default, which they ultimately refused to do. The customer considers that this is unfair as he was outside the UK during the period when the company sent him payment reminders, and was unable to return due to the Covid-19 restrictions imposed at the time. He therefore did not receive any of the company's correspondence or text messages, and was unaware that there was any payment outstanding because he believed it was being handled by REDACTED. He says that he has always paid his bills on time, with over 6 years of excellent payment record with the company, and would not have failed to pay if he had been aware that any amounts are outstanding. He says that the situation has been extremely stressful for him as it has stood in the way of him obtaining a mortgage in order to move back to the UK and see his daughters. He asks for an order that the company remove the credit default from his record.

The company's response is that:

The company contests the customer's claim. The company says that it has followed all its policies, processes and legal and regulatory requirements when dealing with the customer's case. It explains that it has a statutory duty to provide water services and a statutory right to charge for those services, in accordance with the charges scheme that it has established. The company is not entitled to show any undue preference to any class of customers or potential customers. The company also explains that the money that it collects from charges is used to fund improved provision of services for all its customers, so it is important that it is able to collect charges in an efficient way. The company says that the customer was duly charged in accordance with its charges

necessary in order to enforce the decision.
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scheme from 12 December 2019, the date on which REDACTED informed it that the customer had moved into his property. It says that REDACTED did not tell it that REDACTED would pay the customer's charges on his behalf, so it sent bills to the customer. The company lists 9 payment reminders that it sent to the customer over the period of April to September 2020, and says that in October 2020 the customer telephoned it to ask for a link to set up a payment plan. On 14 November 2020, REDACTED emailed the company to advise it that the customer had moved out of the property on 12 November 2020. The company shared a credit notice that the customer was late with his payments in October, in November and in December 2020, and then issued a default notice on 14 January 2021. It received payment for the outstanding balance of £194.64 on 17 March 2021. The company argues that its decision to issue a default notice was in accordance with its obligations under the Data Protection Act, and that the data sharing that it carries out is legitimate because it enables the company to understand its customers and their ability to pay, and make fair decisions concerning all of its customers. Under its "Principles for Reporting of Arrears, Arrangements & Defaults", the company's policy is to record defaults against customers who leave their properties while in arrears and without notifying the company. As the company considers that the default against the customer was correctly recorded and was based on accurate facts, it does not consider that it should remove the default.

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 customer's complaint relates to a credit default that the company recorded against the customer on 14 January 2021. The customer does not dispute that his account was in arrears at the relevant time, but he says that he was unaware of

this fact as he believed that his service provider, REDACTED, was dealing with the payment of his water bills for him.

2. On the basis of the papers before me, I note that it is not disputed that the customer was working outside of the UK for most of the period in question. The company also does not dispute that it was REDACTED, and not the customer, who contacted the company on behalf of the customer to notify the company that the customer had moved into his property on 12 December 2019, and that he had moved out of the property on 12 November 2020. The customer says that he genuinely believed, on the basis of what REDACTED had told him, that REDACTED would also handle his bill payments on his behalf. Unfortunately, it turned out that this was not the case. As a result, the customer's water bills were not paid until the customer became aware of the problem, at which point he made immediate payment of the outstanding amount.

3. The company argues that it did everything required in order to notify the customer of the outstanding amounts. In its Defence it lists nine payment reminders, which I understand were sent by post and by text message to the customer's UK mobile telephone, and elsewhere in the papers it refers to 17 text messages which it sent to the customer. It also says that it sent him an email on 13 November 2020, although I have not seen a copy of this email.

4. The customer says that he did not receive these reminders because he was, at the time, working in Iraq and was unable to return to the UK because of Covid-19 related restrictions. Although he says that he visited the UK for two weeks in July 2020, he did not receive any post. He then left the UK again and was unable to return again before the end of his tenancy. He says that when abroad, he did not receive text messages on his UK mobile phone.

5. I note that the company says that the customer contacted it by telephone to request to set up a payment plan on 13 October 2020, and that the company sent him an email reminder on 13 November 2020. While these elements could suggest that the customer was made aware of his responsibility to pay his water bills directly, I have not seen either a record of the telephone call or a copy of the email, so I do not know what was said on these occasions.

6. On balance, I accept the customer's explanation that he was entirely unaware that he was directly responsible for paying his water bills or that his account was in arrears. In all the circumstances, including the fact that the customer was trapped outside the UK due to the pandemic with all its associated stresses, and the fact that he seems to have been misadvised by his service provider, I find that the customer's belief in this regard was reasonable.

7. I accept the company's argument that it has a duty to collect charges from its customers in an efficient manner, in the interests of fairness and because it is to the benefit of all of its customers for the company to have the funds to be able to carry out improvements to the water and sewerage infrastructure. As explained by the company, the company also has a duty to ensure that it provides accurate information about its customers' credit histories to credit reference agencies.

8. Balanced against this, however, is the company's duty to provide a reasonable customer service to each of its customers. It has been established by the courts that a person who provides a credit reference has a duty of care to the subject of the reference (see *Durkin v DSG Retail Ltd and another (Scotland)* [2014] UKSC 21), and should not label a person a "defaulter" where there is a doubt about whether this label is accurate (*Grace and another v Black Horse Ltd* [2014] EWCA Civ 1413). A negative credit reference can have a significant impact on a customer's life, as was the case in this instance, where the customer has been unable to get a mortgage due to the default recorded against his name, a situation that he has found very stressful as it is making it difficult for him to return to the UK and see his young children. The company was therefore required to take into account the circumstances of the customer's individual case when making decisions about the information it shared with credit reference agencies about the customer.

9. The company also argues that its decision to share the customer's status as a defaulter was in accordance with the terms of the Data Protection Act. While I accept that the company has, as a general matter, a legitimate interest in sharing its customers' credit status, the fact that it is entitled to share this information does not mean that the company should necessarily do so in all cases.

10. In the exceptional circumstances of this case, I find that the company should have taken the customer's situation into account when dealing with his request that the default it had placed on his record should be withdrawn. Given that the customer had not received any of the company's payment reminders, had not knowingly defaulted on his bills and had paid the outstanding amount immediately once he became aware of them, I find that the company, acting in accordance with the principles of reasonable customer service, should have withdrawn the default.

11. I therefore conclude that, if the customer accepts this decision, the company must take all necessary steps to ensure that the default is removed from the customer's record with the relevant credit reference agencies.

12. For completeness, I note that following the Preliminary Decision, both the customer and the company wrote to say that they accepted the decision, and the company said that it had removed the relevant information.

Outcome

1. If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, take all necessary steps to ensure that the default recorded against the customer's name is removed from the customer's record with the relevant credit reference agencies (to the extent that this has not already been done following the Preliminary Decision).

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.

Natasha Peter

Adjudicator