

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X653

Date of Final Decision: 23 November 2021

Party Details

Customer:

Company:

Complaint

The customer is unhappy that a payment default occurring in May 2013 was registered by the company with Credit Reference Agencies on 21 January 2016. The customer requests the company to back date the registration of her default to when it took place. The customer also complains of poor customer service.

Response

The company denies poor customer service and it states that it registered the default when its membership with the Credit Reference Agencies started. The registration took place 28 days after the customer was notified with the Intention to Default, which was issued on 23 December 2015. The company states that the default cannot be changed to a time when the company was not sharing the data, nor to a time before the notice was served.

Findings

There was a delay in the company's communications with the customer and CCW, but given the short time of the delay, I find that it did not represent a breach of the company's duty of care. The customer stated that the debt they incurred in May 2013, which was recorded in January 2016, is impacting on their ability to obtain a loan. However, the company has recorded an outstanding debt following the required notification to the customer, and updated this information with the Credit Reference Agency once the payment of the debt was satisfied by the customer. Therefore, I find that the customer's claim cannot succeed.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X653

Date of Final Decision: 23 November 2021

Case Outline

The customer's complaint is that:

- The customer is unhappy with a default in her account that took place in May 2013 and was reported on 21 January 2016.
- The company refused to backdate her default to when it first occurred.
- The customer stated that the company was slow in replying to the queries sent by CCW, which was sympathetic to her complaint.
- The customer requested the company to backdate her default to no later than September 2014.

The company's response is that:

- The company stated that on 23 December 2015 the customer was notified that a payment of £364.83 was needed to be paid by the 20th January 2016 to avoid a default from being registered.
- The customer paid £1.00 on 29 December 2015, and as the balance remained in default, the company registered the debt with Credit Reference Agencies on 21 January 2016.
- The balance was finally cleared on 29 March 2021 and the company updated the customer's credit file.
- The company stated that the customer's default was recorded accurately and that in any case it cannot backdate a default to an earlier date.

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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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. With regards to the customer's claim for poor customer services, the customer complained about a delay in the company's response to the CCW. CCW issued the query to the company on 13 August 2021 and requested a reply within 10 working days. The company replied on 27 August 2021, which was on the 10th working day, stating that the reply to the queries would be sent by Monday 6th of September. I note that the CCW file includes the response provided by the company, which was issued on 6 September 2021 at 15:39. Given that the response was delayed by 5 working days and that the company informed CCW in advance, I find that this delay did not amount to poor customer services to the extent that it ought to be considered a breach of its duty of care towards the customer.
2. The customer informed the company that she was planning to appeal their decision about the late reporting of her debt to the Financial Ombudsman Services (FOS). The customer complained that the company did not inform her that FOS does not deal with these types of complaints. The customer stated that this omission caused her complaint to be delayed because before making the claim to WATRS, she first contacted FOS. The customer however has not clarified for how long this delay was. I note that FOS can be contacted by phone and online, which the customer would have had to opportunity to do and therefore would have become aware that FOS do not deal with such issues. Thus, I find on a balance of probabilities that this delay was not significant. Accordingly, I find that the company has not failed in its duty of care with respect to the customer services they provided.
3. With regards to the customer's claim to backdate her default to the date when it first occurred, I am mindful that CCW stated that they were not convinced with the explanation provided by the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

company as to why it could not have registered the default earlier. I note that CCW in its final correspondence with the customer recommended her to seek advice from the Information Commissioner Office. CCW stated that it was wrong to report a debt to a month or year that was not accumulated, but it has not explained on what basis they reached that conclusion given that the debt was outstanding at the time when it was reported by the company to the Credit Reference Agencies.

4. The customer stated that in May 2013 her business experienced financial difficulties and two water leaks. Instead of requesting a payment plan, she made token payments since then until she was able to clear her account, which company said it took place on 29 May 2021. I note that the company stated that it has updated the customer's credit file accordingly. However, the customer stated that the negative credit mark is impacting on her ability to obtain a mortgage to purchase a property. She stated that as a result she must stay in rented accommodation.
5. The company stated that although the debt was incurred in 2013, it started to share customers' data with Credit Reference Agencies from September 2015 onwards. The company notified the customer on 23 December 2015 that she had to pay £364.83 by the 20th of January 2016 to avoid a default from being registered on her account. The customer made a payment of £1.00 on 29 December 2015 and the company registered the default on 21 January 2016.
6. The company stated that it can only register a default with a Credit Reference Agency once it has started a membership with one, in this case, in September 2015, and so it is unable to register a default retrospectively. The company referred to its Code of Practice, which contains its duty to register a default. The registration can take place any time after the account has fallen at least three months into arrears, and as long as it has complied with the 28 days-notice to the customer. The information provided by the company in Appendix 2 confirms that the registration of the outstanding debt followed the required notification process by issuing the Intention to Default on 23 December 2015. Therefore, I find that the company met the 28 days-notice notification requirements.
7. I am mindful that the customer stated that reporting her debt two years after it was incurred has caused her significant financial difficulties because she will have to wait until January 2022 for the six years of the default to be completed. In her response to the Preliminary Decision, the customer referred to the Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies, which provide that the, "Data that is reported on your credit file must

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

be fair, accurate, consistent, complete and up to date.” She also referred to the Principles in relation to “the purpose of reporting arrears is to indicate at the earliest reasonable opportunity that a customer is showing signs of potential financial difficulty or inability to manage his/her finances.” The customer states convincingly that the company registration of her default was not up to date as it was not reported at the earliest reasonable opportunity.

8. However, I find that the company has followed the correct process when recording an outstanding debt. I also note that the company is not allowed to record a debt retrospectively or before the customer has been notified with the Intention to Default. Therefore, I find that the company has reached the standards to be reasonably expected in the industry because it has reported an existing debt in 2016 and updated the customer’s credit file once the debt was satisfied in the current year. Thus, the customer’s claim cannot 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 [date] to accept or reject this 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.



This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.



Pablo Cortés, Licenciado, LLM, PhD

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

www.WATRS.org | info@watsr.org