WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X954

Date of Final Decision: 25 July 2022

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer complains that although the company promised not to do so, the company revealed to her neighbour that she had complained about the presence of a company van in residential parking spaces, which resulted in a complaint to her from her neighbour, an employee or agent of the company, who was angry and afraid of losing his job. She says that this causes ongoing fear and distress in case she meets the neighbour and has reduced her enjoyment of her home and neighbourhood and caused distress. The customer complains of a breach of data protection rules and also about the manner in which her complaint has been managed and asks for compensation of £1,000.00 and an apology,

Response

The company says that it has reported the data breach to the ICO and acted on its recommendations and also offered compensation that it would offer for any minor data breach. It has apologised to the customer for the data breach. It is not, however, responsible for her neighbour's parking, even though it is a company vehicle and nor can it engage in a neighbour dispute. The company has offered £100.00 compensation and an apology.

Findings

Rule 3.5 of the Scheme rules prevent me from considering the question of data protection, but I have jurisdiction to consider the customer service issues raised. The customer made a complaint to the company about the regular parking of a company vehicle in residents' parking near her home. The company promised that this information would not be revealed to the driver of the vehicle. It was, and in consequence she received a complaint from the driver, who is a neighbour. This has distressed her, made her frightened of meeting that individual again and reduced her enjoyment of her home. The customer has been victimised by an employee or agent of the company. I find that the company has minimised the consequences of its breach of promise and not has taken responsibility for the actions of its employee or agent in making inappropriate contact with the customer. It has not provided its services

to the expected standard and the customer is entitled to redress. This is a serious case falling within tier 3 of the WATRS Guide for Compensation and Distress for reasons explained below.

Outcome

The company needs to:

- Pay compensation to the customer of £1,000.00
- Apologise to the customer for disclosing her details to her neighbour in breach of its promise not to do so and for causing or permitting its employee or agent to complain to the customer about her complaint to the company.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X954

Date of Final Decision: 25 July 2022

Case Outline

The customer's complaint is that:

- On 18 November 2021, the customer complained that one of the company's liveried vehicles was parked in a residential space, taking up room. The customer then learned that her details had been shared with the company's technician. The background to this is that the company's technicians were carrying out work in her road and had prevented her from parking. The customer contacted the company who stated that they would ask the technicians to park elsewhere. The customer also asked that her details should be kept anonymous, but this was revealed to one of the technicians whose father then confronted the customer. This was distressing. It also appears that the technician lives in the same road and therefore there is ongoing animosity.
- The customer is unhappy about the compensation offered for this data breach as she feels that the amount of £100.00 offered does not reflect the impact on her family and the seriousness of the breach.
- The customer is unhappy with the way the complaint was investigated as it was insinuated that she was making this up and the breach has been minimised. The company's legal team said that the issue was a nuisance.
- The company has refused to supply the customer with the information relating to the personal data breach, including a named data officer, ICO report, etc.
- The customer asks for a direction that the company should provide surrounding information concerning the data breach and compensation for inconvenience and distress of £1,000.00.

The company's response is that:

- The company states that its defence is entered without prejudice to the company's position that this dispute is a legal dispute concerning alleged breaches of data protection legislation, with several factual aspects also subject to litigation privilege, and therefore not suitable for a WATRS determination. It is not a general provision of service standards customer issue. It is

submitted that the correct forum is a complaint to the ICO, which has been pointed out to the customer or a continuation with the proposed litigation. The customer has given notice of legal action and the company has given information about its solicitor to whom correspondence should be addressed.

- The company says that on receipt of the customer's complaint, the Data Protection team voluntarily reported this incident to the Information Commissioner's Office (ICO) and agreed follow-up action to prevent similar incidents from happening in the future. This was explained in the company's email of 17 December 2021.
- At this time, the ICO did not suggest that the company should make any monetary compensation for this incident, and they advised that the company did not need to take any further action. The decision to offer £100.00 was the decision of the Legal team and Senior Management as being appropriate in the factual circumstances, and as a direct comparator which the company offers in relation to minor breaches of data protection obligations.
- The amount of compensation for breach of data protection is ultimately a matter for a court to determine, should it be satisfied that (1) compensation is in fact recoverable for a deterioration in the relationship with her neighbours because of a parking dispute (2) the admitted data protection breach in itself gives rise to compensation where the more usual forms of damage (such as financial data being disclosed widely, etc) are absent. The data was disclosed to a single person, relating to a matter which was already on-going (the parking of a van in a public space which was not to the customer's approval)
- The legal advice received by the company is that the customer is not entitled to any internal information regarding the referral to the ICO and the process followed internally in anticipation of legal proceedings and subject to litigation privilege. The company has already provided the comments and recommendations from the ICO regarding the breach and confirmed that the steps suggested by the ICO have been taken.
- The company has never advised or sought to imply to the customer that her accounts of the dispute with her neighbour were untrue. The company has made the point in correspondence that it is reluctant to become involved in the minutiae of such disputes, for example by way of interviewing her neighbour, because that relationship lies outside the general ambit of the company's responsibilities as an employer. An employee can take a works vehicle home, but the responsibility for parking lies with the employee, to park legally but there is no direct instruction to park in any one place or another.

- Once the customer raised her complaint, the company has investigated her concerns, reported the breach to the ICO, responded and apologised promptly and provided the required information surrounding her complaint.

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.

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.

No comments have been made by either party on mt Preliminary Decision.

How was this decision reached?

1. The customer complains that in consequence of contacting the company about the repeated presence of one of its vehicles in residents parking near her home, she was contacted by one of her neighbours (the driver of the vehicle) who was angry and stated that he could lose his job because of her call. The company had told her that her details would not be given to the vehicle driver.

2. She complains that this was a data breach and although she has now been told that the company has reported the data breach to the Information Commissioner's Office (ICO) and has been told that the company has made some changes in its practice as recommended by the ICO, she does not know who her data was shared with. She has asked a number of questions

which she says have not been answered. Most recently these questions were formulated on 15 April 2022 as:

A) what exactly was reported to the ICO and a copy of this.
B) what steps have been taken and what the agreed follow-up action was
*C) what of my information has been shared and to who exactly. I have emails claiming it was a technician, other times **XX** claiming it is a contractor who told the individual, other times **XX** claiming they have a "right to share". So forgive me for wanting the details of the investigation to know what happened to my data, who had got it etc and why when I have someone I understand linked to **XX** and their family that are causing distress.*
*D) why my information was shared to a technician when I was making an enquiry about whether a **XX** vehicle will remain in the only parking our residents have*
E) how they will prevent similar incidents happening again
F) how my data is stored and kept more secure now
*G) how **XX** have resolved the issue as its still an ongoing matter causing distress which they are adding to*
*H) how **XX** will resolve the complaint with me*

3. The customer says also that her complaint has not been properly investigated, She says that these events have caused distress and changed the way that she lives and interfered with her family life. She says that the sum of £100.00 offered by the company is insufficient.

4. The company says that this is a legal issue because the customer has threatened litigation and, in any event, it has done enough by reporting the matter to the ICO, acting on ICO recommendations and offering compensation for a minor data breach. There is no reason to believe that the matter has not been referred to the ICO.

5. Against this background, I consider first the question of my jurisdiction.

a. I am mindful that although the customer's complaint has passed through the company's complaints' handling process, she has expressed her concerns against the framework of rules relating to the handling of personal data. I am mindful that the Scheme rules do not permit adjudication of "complaints which are being or have been investigated by a statutory or regulatory agency or agencies … in respect of the breach of a statutory or regulatory requirement". See rule 3.5. This, I find, would include a complaint that has

been handled by the ICO which has legal and regulatory responsibility for data protection. Insofar as the customer's complaint concerns data protection matters and the company's alleged failure to offer the consumer any higher level of compensation for the data breach itself, therefore, I find that this falls outside the scope of this Scheme.

b. Although the company says that the customer has threatened legal action and this should preclude an adjudicator from considering her complaint, I do not find this to be the case. Rule 3.5 of the Scheme rules states that a dispute that is subject to an existing court action or on which a court has ruled may not be the subject of an adjudication, but I find that an adjudicator may rule on a dispute where the customer has threatened an intention to bring legal proceedings but has not done so. The company has put forward no evidence that the customer has made a claim in court.

c. I am also mindful that the customer is entitled to raise the question whether, in responding to her complaint, the company has provided its services to the standard that an average customer would reasonably expect. A complaint of this type is within the scope of the Scheme.

6. I consider first the history of this matter and the extent to which (if at all) the company has failed to supply its services to the expected standard. The history of events was as follows:

- On 18 November 2021 the company received a call from the customer to report that one of the company's liveried vehicles was parked in a residential space, taking up room. The customer provided the licence number. (The customer says this call happened on 17 November 2021 but as the company has a note of the date, I accept the company's record). The customer says that she requested that her details were not shared: she wanted her complaint to be anonymous. The documentation submitted by the company also shows that this was said by the customer in her telephone call to the company. The customer says that she was told that no details would be passed on and the company has also not challenged this. On 7 December 2021 and subsequently, the company has acknowledged that her details had been passed on due to "human error". Irrespective of the question of data protection, therefore, I find that as the company had told the customer that it would not pass on information that would enable her to be identified, an average customer would reasonably have expected the company to have kept its

promise not to tell the owner of the vehicle in question about the identity of the person who had made the complaint.

- On 19 November 2021, the customer sent an email complaining that her details had been shared with the owner of the vehicle and that this was a data protection breach. In an email dated the same day, the company replied to the customer. This email stated that the van was in the possession of a technician and that (emphasis added):

  > *It is a business requirement for our technicians to keep their company vehicles with them in case they are called to attend a burst water main. They are often called out at all hours and to have to drive to a depot to collect an appropriate vehicle before travelling to a burst location would delay repairs and ultimately leave our customers without water. As you have stated, the area the van is being parked is not allocated/private parking and therefore the driver can legally park their vehicle the same as any other resident.*
  >
  > *I hope this email reassures you that* ***we have not passed on your details to a third party*** *and that we have looked into this matter for you.*

  Although, therefore, the company says that it did not deny that it had passed on personal details about the customer, I find that in this email, the company did make such a denial. I further find that this would have led to distress on the part of the customer because it would have appeared that the company did not believe her account. I find that this would not reasonably have been expected.

- On 25 November 2021, the customer responded. She said that the vehicle owner had told her that he had been given her address by the company as she had reported his vehicle to the company. I find that this is supporting evidence for the customer's complaint, and it was repeated in subsequent correspondence also. On 29 November 2021, for example, the company recorded that the customer told the company:

  > *She specifically asked for her details not be passed and for her complaint to remain anonymous. and the tech (****XX XX****) was given her address.*
  >
  > *He allegedly approached her partner as he knows who they are and where they live to ask why a complaint was made as this can affect his employment.*

The partner then went back home and queried this with her, they denied this to try and keep the peace, but is concerned that a breach has occurred and that we could have just said 'a neighbour' rather than give out her address.

I find therefore that, despite its statement on 19 November 2021, the company did not keep its promise to the customer to keep the customer's details secret. It follows that the consequence of the breach of the company's promise to keep her complaint anonymous was exactly the outcome that the customer probably most wished to avoid, namely that she would be blamed by the vehicle driver for complaining about his vehicle. This was all the more serious because the possessor of the vehicle was a neighbour of the customer and the customer felt compelled to conceal her role to the neighbour in order to avoid further confrontation for the sake of (she said on 20 November 2021) her family.

- On 28 November 2021 –the customer complained at Stage 1 and raised the issue that:

  *A **XX** vehicle was using one of our parking spaces on the road, so I enquired about the use of them parking in residential parking spaces on our road.*

- In response the company said that it would look into the matter further and would listen to the customer's call. An apology was offered to the customer on 7 December 2021 for the data breach and it was confirmed that this incident had been reported to the ICO. The company also outlined the steps that it would be taking to ensure that the data protection breach would not happen again, but notably the company did not address the customer's first complaint that a commercial vehicle was using residential parking spaces.

- On 9 December 2021, a further complaint was received from the customer who stated:

  *Your error has caused distress and conflict between neighbours, to whom we never previously had any problems with, which was unnecessary and purely as a result of **XX** actions.*

  *I specifically said on the phone call to remain anonymous in case the vehicle was used by a neighbour and I don't want to cause problems where I live, **XX** changed our safety at home. I now fear walking past their house now just a couple of doors down because of what happened. This leaves me with stress and upset where I live that should never have happened.*

Giving my address out so that your employee or sub-contractor could approach our family to complain about us is horrendous and totally unacceptable. I hate to think what them and their family may do to retaliate and that level of upset and concern will never disappear after what happened. Whether they act any further on it or not that doesn't take away our fear. We have building works we wish to apply for and so much more changes needed in our street that we needed good relationships with, with our neighbours. We had been so happy living here until this.

- Further discussions occurred and on 23 December 2021, the company said that it would offer £100.00 as a goodwill gesture to the customer. The customer at this time was looking for £1000.00 to £2000.00 because she said that this was suitable compensation for a breach of address.

- On 7 January 2022, the company advised the customer that a £100.00 goodwill gesture would be its final offer.

- This has remained the company's position even though the customer has described continuing distress. On 27 January 2022 she said:

As it happens it was a neighbour who confronted my family causing alarm and distress and now animosity between the families and subsequent issues which continue. The employee told us how he knew it us as he had been given our address and was angry.

Until then we have been happy living here and had no problems with those in the street, it has changed the way we act, go about our daily business and feel in our home.

We fear further confrontation, we avoid passing their home or avoid them in the street and have to go out of our way. Our vehicles have been reported and other strange goings on since. It feels awful living like this and I fear being confronted again when I may be on my own, what they may say or do and that feeling never goes away. To be crying down the phone to your resolution team because of this incident was another result.

The customer also commented in that letter that her original complaint had not been resolved.

- On 28 January 2022 the company's inhouse litigation solicitor said that:

  the inadvertent disclosure … is not something upon which I would be able to comment directly, the level of compensation offered having being considered internally and not being specifically a legal point, more of a subjective assessment

- On 31 January 2022, the company wrote to the customer stating that:

  It is indeed unfortunate that neighbours do sometimes have disagreements with each other, and parking of vehicles on streets can be a common cause for dispute. ***XX*** *has apologised for the fact that your confidentiality was not maintained in passing on your grievance.*

- On 18 February 2022, the company gave answers to the first two questions set out above and said that the customer was not entitled to the remaining answers to the questions because these were subject to litigation privilege.

- On 15 April 2022, the customer asked that a senior executive within the organisation should consider her complaint. She said that her questions included:

  …what of my information has been shared and to who exactly. I have emails claiming it was a technician, other times ***XX*** *claiming it is a contractor who told the individual, other times* ***XX*** *claiming they have a "right to share". So forgive me for wanting the details of the investigation to know what happened to my data, who had got it etc and why when I have someone I understand linked to* ***XX*** *and their family that are causing distress.*

  D) why my information was shared to a technician when I was making an enquiry about whether a ***XX*** *vehicle will remain in the only parking our residents have*

- The company denied that it had any further responsibility to the customer. Having regard to the documentation submitted, it is clear that the company's responses were focussed on the data protection issue.

7. I find against this background that there are a number of areas of the customer's complaint which emerge from the correspondence. In particular, the customer's core complaint is that she has been victimised as a result of the data breach. The company has focussed on the data breach but not considered the implications of that data breach having also been a breach of a

promise to its customer, nor has it considered whether this has resulted in victimisation. I find that the company would reasonably have been expected to consider the wider issues raised by the customer's complaint. I find that these would have included in particular:

- The impact that the agent's disclosure might have had on the customer. I find that the company's responses initially denied the disclosure and then treated this issue merely as a data protection issue. I find that the company's responses minimised the impact on the consumer. I find that the customer would reasonably have been annoyed and frustrated by the company's correspondence, for example that of 31 January 2022, in which the company stated that it saw the customer's subsequent involvement in a neighbour dispute as "unfortunate" but not a matter for which it took responsibility as a consequence of the breaking of its promise. The customer also complains that she has been told that the legal team considered the issue to be a "mere annoyance", which I find is consistent with that correspondence.

- That the neighbour dispute arose, not through the action of a third party but by a person for whom the company was potentially liable. Although the company in its correspondence has stated that it would not be expected to reveal its "internal disciplinary process", the documentation as a whole focusses only on the actions of the individual who wrongly disclosed the information. This, however, was not the only individual involved in this matter who has taken action that an average customer would not reasonably expect. The company had carried out its investigation into the customer's complaint because of a concern about the use of a company vehicle. The issue has arisen therefore in the scope of that person's employment or engagement. While I accept that the company may not have expected the keeper of the vehicle to have complained to the customer, it was foreseeable that the employee or agent would do so and would assert on behalf of the company its claimed right to have its vehicle parked in that area, potentially using language or arguments that the company would not have authorised (for example, that the customer had put the employee's/agent's job at risk as the customer says was stated to her). While I would not expect the company to reveal details of its communications with its staff, no indication has been given to the customer that any internal consideration was given before the event or after it, to potentially intimidatory behaviour by a person for whom the company bears some direct or indirect responsibility. I find that an average customer would reasonably have expected the company to consider whether the actions of its employee or agent had caused the customer to be victimised.

- The customer's core complaint was that the company's commercial vehicle was using residential parking spaces. Although the company responded to explain why this was convenient to the company (and to people affected by flooding) and it would appear that parking of the company's vehicles in residential parking areas is permitted by the company as a matter of policy (and all necessary legalities presumably considered), it is not clear that consideration was given to whether in this particular case, the parking of the company's vehicle in residential parking might cause a nuisance to other residents. The company has said in its letter to the customer of 29 April 2022 merely that:

  > *Unfortunately, we are not able to resolve the residential parking issues in your area, and we have confirmed that the company van can legally park here.*

  No background information has been given, save as to the company's requirement that its employees / agents should keep their vehicles at home.

- Finally, as to the company's late decision to refer this complaint to the ICO, which did not happen until 7 December 2021. After the referral, the company considered this issue and included this as an error for which it would provide compensation.

8. The company has made clear the matters for which it has offered compensation. It has stated:

   I recognise that the £100 we have offered is not the amount you had in mind, and that you feel this figure is an automatic amount given. Your monthly usage is £42.66, so we have offered this and rounded up to £100 to apologise for the two errors we have made in the breach of your data and in not reporting this sooner which I feel is a fair offer.

9. It therefore follows that the company has not considered in its offer of compensation two of the four bullet points mentioned above and has not offered a clear explanation for a third. I find that an average customer would reasonably expect the company to have considered the harm that has been caused to the customer in a more empathic way.

10. I bear in mind the WATRS Guide to Compensation for Inconvenience and Distress and I find that actions by an agent that cause a customer to feel victimised is a serious matter. I find also, that although it arose from a single incident, the impact on the customer and her family has made her feel insecure in her home and worried about meeting her neighbour again. She has set these out in correspondence with the company on a number of occasions including the extracts quoted above from 7 and 29 January 2022.

11. These are, I find, foreseeable consequences of an incident of this type and the harm that has been caused is likely to take some time to settle down and resolve - possibly months or years. I find, although this is an unusual case, that the matter falls within Tier 3 of that Guidance, and, in consequence, I also find that the customer's claim for compensation of £1,000.00 is fair and reasonable.

12. The company has apologised for the data breach, but it has not apologised for breaking its promise to the customer nor for the consequences of this and I find that this apology should be made.

13. I refer again to the questions to which the customer requires answers. I accept that the company is not obliged, as it states, to share information about its communications with the ICO, which are, so far as this Scheme is concerned, internal matters. Any requirement to share this information is a matter for the ICO. I further find that the company is not obliged to answer questions about the individuals within the company to whom her details were given because these also are internal and confidential matters. I find that the company may also be entitled to decide that provision of this information would also be a data breach. I am satisfied from the correspondence that the company has now given answers to question E (how it will prevent similar incidents happening again) and F (how the customer's data is stored and kept more secure now) – although I note that storage of data has not been an issue in this case – it has been the communication of data that has given rise to the problem. As for the questions at G and H, these have been answered in this process.

14. It follows from the above that I find overall that the company has not supplied its services to the standard that would reasonably be expected and has caused the customer serious harm.

Outcome

The company needs to take the following further actions:

- Pay compensation to the customer of £1,000.00
- Apologise to the customer for disclosing her details to her neighbour in breach of its promise not to do so and for causing or permitting its employee or agent to complain to the customer about her complaint to the company.

What happens next?

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

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator