

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X176

Date of Final Decision: 25 October 2022

Party Details

Customer:

Company:

Complaint

In February 2022 the customer discovered she had a default on her credit file. This dated from November 2019. The customer says that she was not aware of this default prior to February 2022.

The issue arose from the customer's failure to notify the company of a change of address. The customer acknowledges that this was an oversight but says that there were extenuating circumstances. She says that she had suffered various mental health problems and had recently been diagnosed as autistic.

The customer says that the company could have done more to find her new address and inform her of the impending default.

The customer says that she is willing to pay the outstanding debt but wants her credit rating restored.

The customer requests that the company remove the default from her credit file.

Response

The company says that it was advised in June 2013 that the customer was moving to an alternative address. It says that a final bill was sent to the customer on 18 June 2013 showing an amount due of £1,872.18 and that a payment plan was agreed to clear this amount. The company says that payments ceased in August 2019. At that time that balance remaining was £342.24.

The customer moved to another address in 2017. The company says that it had not been informed that the customer had moved to another address. The company says that it made numerous unsuccessful attempts to contact the customer before initiating action to recover the outstanding balance. The company says that it referred the matter to the County Court in January 2020.

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The company says that it did all it could to contact the customer prior to referring the matter to the County Court. It says that it was not made aware the customer had moved to her current address until November 2021.

The company says that it had previously advised the customer of assistance available if the customer had difficulty making payments. It says that it did not become aware the customer was autistic until March 2022.

The company says that it has an obligation to share data concerning payment defaults with credit reference agencies. It says that once the debt has been paid, it will inform the credit reference agencies that the debt is satisfied.

Findings

The company has offered, as a gesture of goodwill, to waive court fees and costs from the customer's outstanding debt. The company has also offered to set up a new payment plan to clear the remaining balance.

The company is entitled to recover charges for services provided under the Water Industry Act 1991.

I find that the company followed its procedures to recover the outstanding balance from the customer. I also find that the company had taken reasonable steps to contact the customer prior to referring the matter to the County Court and registering a default on her credit file.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X176

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Case Outline

The customer's complaint is that:

- The customer has a default on her credit file for failing to pay an outstanding debt to the company. The customer had an ongoing payment plan with the company to clear the debt. The default arose following the customer's failure to notify the company of a change of address.
- The customer only became aware of the default when she checked her credit file. She says that the company had not made her aware that they were intending to register a default.
- The customer says that there were various extenuating circumstances that contributed to her failing to inform the company of her change of address. The customer accepts this was an oversight.
- The customer considers that the company could have done more to locate her new address before registering the default.
- The customer confirms that she is willing to pay the outstanding debt but wishes to have her credit rating restored.
- The customer seeks to have the default removed from her credit file.
- The customer has made comments on my preliminary decision. I have addressed those comments at the end of this decision.

The company's response is that:

- The company has referred to its right to make charges under the Water Industry Act 1991 (the "Act"). In particular it refers to sections 142, 143 and 144 and the responsibility section 144 places on an occupier.
- The company says that the background provided shows that it has, over several years, offered assistance through a variety of payment schemes. It has also suggested the customer contact its Payment Assistance Scheme and its Trust Fund. It says that when it became aware that the customer was autistic, it asked her to register for its Priority Services Scheme. It says that it offered

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financial support to the customer once it became aware the customer was having difficulty paying her bills.

- The company says that it had repeatedly tried to contact the customer using the telephone number, email address and contact address provided by the customer. It says that it had no reason to believe the customer had moved from her last known address.
- The company says that it has already waived £398.94 from the customer's account and paid £80.00 to her account through its Payment Matching Scheme. It has also offered to waive the court fees and costs incurred. The company says that the customer has declined the offer unless the company removes the County Court Judgement.
- The company considers that it has done all it can to resolve the matter amicably. Its offer to waive court fees and costs remains open to the customer. The company has also offered to set up a new payment plan for the remaining outstanding balance.
- The company says that it has an obligation to share customers' personal data with credit reference agencies and to ensure such information is accurate. It says that the data shared about the customer is factually correct.

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.

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How was this decision reached?

1. The customer's complaint relates to a default on her credit file arising from an outstanding balance on her account. The customer says that she discovered this on checking her credit file in February 2022. The outstanding balance is from a property the customer occupied until around 17 June 2013. I refer to that property address in this decision as "Address A". The company has provided a copy of a final bill dated 18 June 2013 that was sent to the customer showing the amount due as £1872.18.
2. The company says that a payment plan had been set up to clear the outstanding amount. Payments were monthly by direct debit. The company says that, although the dates for payment and amounts changed a number of times, the customer continued to make payments. The company says that the payment plan remained in place until 19 August 2019 when the direct debit was cancelled by the payer.
3. The company says that the customer had initially advised it to continue to write to her at Address A until 17 June 2013 as she would continue to collect mail from there. A copy of a letter from the customer dated 10 June 2013 has been provided. This letter confirms that the property had a new occupier from 17 June 2013. The letter also notes that the customer would be collecting mail from that property.
4. The company says that it received a letter from the customer on 22 October 2013 advising that the customer had changed her correspondence address. I refer to that new correspondence address in this decision as "Address B". A copy of the customer's letter dated 14 October 2013 has been provided.
5. The company says that during 2016 it wrote off £92.51 and £306.43 from the customer's debt due to statute barred rules.
6. The company says that on 28 August 2019 it received advice from the customer's bank that the customer had cancelled her direct debit. It says that the balance remaining at that time was £342.24. The company says that on 29 August 2019 it sent a payment request to the customer

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following the cancellation of the direct debit. The company has not provided a copy of that request. It says that it does not keep copies of such letters.

7. The company says that it attempted to call the customer on 13 September 2019 using the telephone number it had on record. The company says that there was no reply and a message was left.
8. The company says that on 15 October 2019 it sent a default letter to the customer at Address B. It says that it has an arrangement with Royal Mail that any undelivered correspondence is returned to the company. The company says that it had not had any undelivered mail returned to it from the customer's address. It says that it had no reason to believe that the customer had moved or that the address it was using was no longer the customer's correspondence address.
9. The company says that as there had been no contact or payments from the customer it referred the outstanding balance to its debt recovery team. The company has explained that a number of factors are considered when determining the best strategy to recover debts. These include whether the account is active or inactive, previous payment history, age, employment, benefits, status. In this case, the company says that the situation met the criteria for issuing a claim at the County Court.
10. The company has provided further background concerning the customer from 2005 to 2010. The background notes various occasions where payments had been in arrears and steps had been initiated to recover debts. The company also notes that it had advised the customer about options if she had difficulty making payments.
11. The company refers to two visits that it made to the customer's property at Address A in 2009 to speak with her about her situation. The company says it had not been able to speak with the customer on either occasion. However, the company notes that on one visit it was able to speak with a relative who confirmed the customer still lived at the property.
12. The customer says that she is willing to pay the outstanding debt. However, she wants the default removed from her credit file.
13. The customer says that for around 17 years she has tried to keep the company up to date with her situation and had made efforts to reduce her debt. The customer also says that she was

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diagnosed with autism and has had other problems affecting her mental health. She says that now the company is aware of her medical conditions, they could show some discretion in removing the default from her credit record.

14. The company says that it was not aware of the customer's vulnerability until March 2022. The customer acknowledges that the company had only recently become aware of this but says that she only recently became aware of her diagnosis herself. She says that given the long history of the account they could have shown some discretion in removing the default on her credit file.
15. The customer says that the company could have done more to contact the customer before taking the matter to court. She refers to visits the company says it made in 2009 to her property at Address A. However, she notes that no similar visits were made to Address B in 2019. She also disagrees that the non-return of letters sent in 2019 could be taken as proof that she had received the letters.
16. I note that the customer says that she moved to her current address in 2017. I refer to the customer's current address in this decision as "Address C".
17. The company has referred to its right under the Act to make charges for its services. Section 142 of the Act gives water companies the power to demand and recover charges from those using their services. Section 144 of the Act makes an occupier of a property liable to pay charges for services provided by water companies to that property.
18. Under the WATRS Rules, an adjudicator cannot determine a dispute which is subject to an existing court action or on which a court has ruled unless the court's decision has been set aside (Rule 3.5). The company has taken this matter to court and a court decision has been issued. I am therefore unable to make any determination in relation to this aspect. However, the customer accepts that she has an outstanding balance owed to the company and therefore this aspect is not in dispute.
19. In accordance with Rule 3.5 of the WATRS Rules, a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. That includes company procedures in relation to recovery of outstanding payments. I can therefore only consider whether or not the company has fairly applied its procedures and acted reasonably in relation to the customer's situation.

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20. The final bill dated 18 June 2013 includes the statement, *“If you do not pay and do not contact us, we will take court action against you or pass your account to a debt collection agency”*. The company had therefore made the customer aware of the possible consequences of not paying her bill and not contacting the company.
21. The company says that it made three unsuccessful attempts to contact the customer by mail and telephone from 29 August 2019 to 15 October 2019 following the cancellation of the direct debit. The matter was referred to the County Court on 6 January 2020. The company then made three further unsuccessful attempts to contact the customer by mail and text message from 25 March 2020 to 20 August 2020. The company says that bailiffs were engaged to recover the outstanding balance. Bailiffs visited on four occasions from 29 September 2020 to 20 January 2021 but were unable to meet the customer or gain entry to her property. The company referred the matter to a collection agency on 23 September 2021.
22. The company says that following searches by the collection agency, it established the customer’s current address as Address C.
23. I note that the company was not made aware of the customer’s vulnerability until March 2022. However, the evidence shows that the company had, prior to then, informed the customer of various schemes that were in place to assist customers with difficulty paying. The company had also established payment plans that had been amended from time to time to assist the customer. The company had also made several attempts to contact the customer about her outstanding debt using the contact details it held on its system.
24. I understand the customer’s situation and her vulnerability. However, the company is entitled to be paid for the services it provides and to take steps to recover outstanding debts. I find that the company followed its policies in relation to seeking recovery of payment due and had taken reasonable steps to contact the customer before initiating debt recovery action. I also find that as the company had not been informed that the customer had moved to Address C, it was reasonable for the company to continue to send correspondence to Address B.
25. The company has exercised discretion in offering to remove the court fees and costs from the outstanding debt. The company has stated that it has correctly reported the customer’s financial position. The company has also confirmed that once the outstanding debt has been paid, it will

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add a note to the customer's credit file that the debt has been satisfied. It is a matter for the company whether or not it is prepared to exercise further discretion due to the customer's circumstances. This is not a matter on which a WATRS adjudicator can make any direction.

26. I find that the company needs to take no further action in relation to this matter. The customer's claim for the company to remove the default from her credit file does not succeed.
27. The customer has made comments on my preliminary decision. I have addressed her comments below.
28. The customer says that she had not been made aware that the company had offered to waive court fees. The customer says that she was advised that she would have to pay all fees plus the outstanding debt.
29. In the company's response, it says that on 6 April 2022, it advised the customer that it was unable to remove the default but was willing to remove the court fees and costs to reduce the balance to be paid. The company has provided a copy of the text of a communication it says was sent to the customer. In that communication, the company says that, as a gesture of goodwill, it would remove the court fees and judgement costs of £110.00, leaving a balance to pay of £421.49. The company also asked the customer to contact the company to set up a payment arrangement and it would then process the gesture of goodwill. The company has also provided a copy of the text from a reply it says it received from the customer on 6 April 2022. In her reply, the customer has asked whether the default will be removed if she agrees to pay the £421.49.
30. The customer acknowledges that the company is entitled to take action to recover a debt. She says that her particular issue is that the company does not have to register a default against her name and could have used some discretion now the company is aware of the facts of her situation. The customer also repeats that she is not trying to avoid paying the outstanding balance. However, she considers that a default on her credit file is not deserved.
31. I have explained in this decision that a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. The company has followed its policy in relation to debt recovery. I have found that the company took reasonable steps to contact the customer before acting.

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32. It is acknowledged that the company may exercise discretion in the action it takes in relation to debt recovery. However, whether or not a company chooses to exercise discretion and how far that discretion extends is a matter for the company. It is not a matter a WATRS adjudicator can order.

33. Having reviewed the comments made by the customer on my preliminary decision, I make no changes to my decision.

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 22 November 20 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.

I H Raine

Ian Raine, CEng, MIMech E, FCI Arb, MCIBSE

Adjudicator

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