

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X233

Date of Final Decision: 21 November 2022

Party Details

Customer:

Company:

Complaint

The customer complains that a bill was sent to him in December 2021 relating to a property where he had lived 22 years earlier and where the bills had been paid by his ex-partner. The company had tracked the customer to his current address, opened an account in his name, issued a default notice and instructed a collections agent. The customer says that this was a clear data breach and asks for compensation of more than £400.00 which is less than a company would have to pay in a court of law if found guilty.

Response

The company says that it made an error in issuing the bill in the name of the customer, opening an account without his permission and issuing a default notice. However, the company says that it was entitled to use credit reference agencies and investigations partners to find out whether anyone is living in apparently unoccupied property. Investigations for this purpose involve legitimate use of data. The company has offered the customer £400.00 in compensation and says that this is a fair amount.

Findings

I find that issues concerning enforcement of data protection rules are for the Information Commissioners' Office to consider, but I can consider whether the company has supplied its services to the expected standard. I find that the company has not supplied its services to the expected standard in that it asked the customer to pay a debt said to have arisen a fifth of a century earlier in the name of another person (albeit that she may have appeared to the company on the basis of its records to have been the customer's wife) by taking collections actions in relation to a debt for which he was not the nominated account holder. The company has agreed that the amount of £400.00 is fair compensation and I do not direct that any additional sum should be paid to the customer.

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Outcome

The company needs to pay £400.00 to the customer.

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Case Outline

The customer's complaint is that:

- The customer complains that a bill was sent to him in December 2021 which dated back 22 years and had been paid at that time by his ex-partner. The company had tracked the customer to his current address, opened an account in his name and issued a default notice. The customer says that the company revealed his name and address. This was a clear data breach.
- The company admitted its mistake and made three offers of compensation, the final one of which was for £400.00.
- The customer says that this does not approach what the company "would have to pay out if a court of law found them guilty".
- The customer asks for further compensation.

The company's response is that:

- Consumers are liable for water supply charges in respect of all occupied or furnished premises to which, or for the benefit of which, a supply of water is provided or made available. Section 144 of the Water Industry Act 1991 confirms that the occupier of premises is responsible to pay for charges. This means that water companies are reliant upon people contacting them to inform them that they have started using services at a particular property, and to confirm who is liable for charges.

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- Where the company has not received contact from an occupier, it checks who is using the services in order to levy a charge in a number of ways. It relies on its legitimate interests, public interest and its legal obligation as a water and wastewater provider as lawful bases of data processing under UK GDPR Article 6. The company has notified customers since 2011 that it may use the services of credit reference agencies and debt collection agencies. This is explained to customers on the back of bills, in the yearly billing leaflet, in the Charges Scheme and on the company's website.
- The company explains that following routine checks, carried out on an unoccupied property by a third-party partner organisation on behalf of the company, it received information identifying a 'REDACTED' as the potential occupier. This information showed a 'REDACTED REDACTED' had a listing on the Electoral Roll at the address, and they were also listed on the British Telecom register.
- In response to this advice the company sent correspondence to the property and as no response was received, it set up an account in the name of "REDACTED", accidentally omitting the word "REDACTED" from 20 October 2020 and sent an initial bill. Subsequently, reminder correspondence followed addressed to 'REDACTED', and the account was passed to the company's collection agency.
- On learning of the mistake on 18 December 2021, the company took action to close the account, remove all bills and also removed all the payment history data shared in the name of REDACTED.
- Within the complaints process, the company made a number of offers of compensation and also provided the Consumer Council for Water with a copy of the third-party data which led to the setting up of an account in the name of "REDACTED". To try and reach a satisfactory resolution for the customer the company offered a further increased compensatory payment of £400.00, but the customer did not wish to accept this
- The company says that it considers that the compensatory payment offered of £400 is fair.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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.

Both parties have commented on my Preliminary Decision. I have taken their comments into account. The outcome in the Final Decision does not differ from the Preliminary Decision.

How was this decision reached?

1. The documentation submitted to me shows that the following events occurred:
 - a. Until a date in 1999 or 2000, the customer was resident at an address within the area served by the company. The customer says that the bills were paid by his ex-partner, whom, he says, was not known as REDACTED. He says that no REDACTED lived with him at that address.
 - b. The customer says that he left the property and his ex-partner paid all the bills, including the company's bill, for which she was responsible.
 - c. The company carried out an investigation of seemingly empty properties and found the customer's current address to be occupied. Checks with third party investigations indicated that the property was occupied by REDACTED. Account details from 2020 were found to show that there was an outstanding bill payable in relation to the customer's old address by REDACTED.

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- d. Either the company's systems or human error led to the customer being contacted because the title "REDACTED" was omitted.
 - e. The company sent an 'Intention to Bill' letter on 21 October 2020.
 - f. On 3 November 2020 the company set up an account in the name of "REDACTED" and sent out an initial bill. for a billing period from 20 October 2020 - 2 November 2020 in the sum of £82.17. Subsequently, reminder correspondence was also addressed to "REDACTED". There was no reply, a default notice was issued, and the account was passed to a REDACTED.
 - g. The customer then received a collections letter and on 18 December 2021 he contacted the company.
 - h. The company investigated and concluded on 20 December 2021 that the customer was not liable for the bill and had left the previous property in 2000.
 - i. On 22 December 2021 the company closed the account down and returned charges on the account to a zero balance. The company offered the customer compensation of £50.00 on 22 December 2021, which it has subsequently increased to £150.00 and £225.00. It has now offered £400.00. These goodwill payments are in respect of the company's errors in asking the customer to pay the bill, opening an account and issuing a default notice.
 - j. The customer has not been willing to accept this because he is concerned that the company has undervalued the seriousness of the events described above.
2. The customer argues that a larger penalty would be issued "in court" although he has not put forward any supporting evidence for this. I find, however, that this Scheme is not concerned with the imposition of penalties or what would happen if a business were to be "guilty". I am mindful that by rule 3.4.1 WATRS can decline to deal with disputes that are more appropriately dealt with in a different forum. I am satisfied that a dispute concerning the significance of a data breach is a matter that falls within the appropriate jurisdiction of the Information Commissioner's Office. Moreover, even if I were minded to accept jurisdiction for this matter, the size of a financial penalty is a matter of regulatory enforcement and rule 3.5 of the Scheme rules makes

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clear that this Scheme cannot be used for the purposes of regulatory enforcement of any description. I therefore do not deal with the customer's concerns about any financial consequences of a data breach.

3. I do have jurisdiction, however, to consider whether the company has provided its customer services to the standard that an average customer would reasonably expect.
4. I find that the events described above indicate that the company has not supplied its services on that basis. In particular, I find that an average customer would not reasonably expect to be asked to pay a debt that is said to have arisen a fifth of a century earlier in the name of a person (albeit that she may have appeared to the company on the basis of its records to have been the customer's wife) and would also not expect to have collections actions taken in relation to a debt for which he was not the nominated account holder.
5. However, I make clear that I do not find that the company failed to act in the way that would be reasonably expected in relation to its investigation of properties that appear to be unoccupied, nor in respect of an unpaid bill. An average customer would reasonably expect that a company could approach a credit reference agency without a customer's permission. I am mindful that most water undertakers engage with credit reference agencies and exchange data under permitted exceptions to prohibitions on processing personal data (referred to by the company in correspondence with the customer as the "legitimate interest" exception although it has made clear in its submissions to me that other exceptions also apply). The company has explained that to meet fair processing requirements, it has notified customers since 2011 that it may use the services of credit reference agencies and debt collection agencies and this is explained on the back of bills, in the yearly billing leaflet, in the Charges Scheme and on its website. I find that there is no evidence to the contrary and I further find that an average customer would reasonably expect that the company would take such action in order to ensure that all users of water and other services pay for services that they have received.
6. As for the level of compensation offered to the customer, I bear in mind that the company has fallen short of expected standards only in some of the ways raised by the customer and it also tried to make contact with the customer by letter but did not receive a reply. When the customer contacted the company on 18 December 2021, the company acted quickly to rectify the situation. Additionally, save for the matters described above, the customer has not complained

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of any additional inconvenience that has been caused. I also have regard to the WATRS Guide to Compensation for Inconvenience and Distress.

7. I do not find that a higher award of compensation should be made. The company has offered £400.00 to the customer and has stated in its evidence that it considers this sum to be fair. I therefore also find that this is a fair and reasonable sum and I direct that the company shall pay the sum of £400.00 to the customer.

Outcome

The company needs to pay £400.00 to the customer.

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

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