

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X421

Date of Final Decision: 4 April 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer, who has suffered from long-term mental health problems since 2008 /2009, complains that the company is refusing to listen to his pleas for help in respect of payment terms of a court judgment in proceedings to which he is not a party, but in which he and his wife have agreed to meet payments out of his salary. He says that he did not understand what was or is required and cannot meet the payments and the company is not listening to him. He asks that the company should suspend enforcement action against his wife and should not threaten them with enforcement because it is making him more unwell.

Response

The company says that there is a debt of more than £11,000.00. The company brought proceedings against the customer and his wife for nonpayment of charges raised in accordance with its Scheme of Charges and latterly has brought proceedings against his wife only. There has been a lengthy history of non-payment, non-attendance at court proceedings and non-cooperation. The company also says that this matter is outside the scope of this Scheme because it is the subject of court action and the customer's wife is the subject of the court action. The company says that the customer is a third party and is not entitled to the order that he requests. The company says that its actions have been considered and proportionate.

Findings

I find that I have jurisdiction to consider this issue. The dispute concerns payments promised to be made out of the customer's salary in court proceedings to which he is not a party. His dispute with the company as to the amount and implications for him has therefore not been determined by a court and rule 3.5 does not prevent me from determining certain aspects of this matter. Moreover, although the company appears to say that the customer is not an account holder, he receives services from the company and is a customer under the Scheme. The company has not considered the fact that the customer's wife, against whom it has obtained judgment suspended against a promise to make payments, could never have made those payments from her own resources. There may thus be a conflict of interest between the customer and his wife. The customer has made representations to the company, but the company has refused to consider these because he was not a party to the action. That was a decision made by the company and it has denied the customer an opportunity to apply to the court.

Accordingly, he is powerless. An average customer would not reasonably expect the company to have refused to recognise this situation. Moreover, the company told CCWater that the issue concerned court action against the customer, which is inconsistent with its current position. This had the consequence that CCWater did not become involved. This also falls short of expected standards. The company should be required to apologise to the customer for the above.

Outcome

The company needs to take the following further action:

- Apologise to the customer in writing for:
 - o The company's omission to acknowledge the problem created because he has not been party to the second judgment; and
 - o Communicating to CCWater that this was a court issue involving the customer, when the customer was not a party to the proceedings that have given rise to the problem.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The customer says that he has been bullied beyond belief by the company. He agrees that he and his wife have serious debts, County Court Judgments and Charging Orders, but in the most recent times, the customer has pleaded with the company to put a moratorium on actions and allow the customer and his wife to start making payments, which he has started this week and will continue.
- The company is ignoring his requests to cease enforcement action and allow the payments to start, to the extent that they have received an enforcement notice from bailiffs. The company has ignored the customer's pleas.
- The customer says:
 - The account for water was previously in his sole name. About three years ago the company obtained judgment against the customer and his wife, who was joined to the proceedings without notice to him.
 - This was done because their home is under shared ownership but in her sole name.
 - The Judge was very concerned about the level of mental health issues in his household and granted a charging order reluctantly on the basis that it would not be enforced and the company would work with the customer going forward.
 - The customer's mental health declined during the pandemic.
 - Although the company suggested the **XX** Scheme, the customer cannot qualify because regular payments have not been made.
 - The company then secured a judgment against his wife only and levels of payment were set. The customer and his wife did not understand what this entailed because they did not understand whether proportion of the judgment addressed current usage.
 - The company has been bullying the customer and his wife since that point and the customer has been pleading for help. The company has not been listening.
 - The customer has recently approached the CEO and submitted a proposed payment plan.

- The company then did not respond to any emails and has instructed the **XX** Group to force his wife into court, whom he is trying to shield especially as there are difficult family issues.
 - He does not know what to do and his “dark thoughts” are getting worse.
 - He is “at his wits’ end and contemplating the worst”.
- The customer asks that the matter shall be dealt with urgently and says that he would like the company to “stop enforcement actions and allow us to make payment as we can afford, nothing more, just give us some peace as we don’t even qualify for breathing space as we have had this already in past twelve months”.

The company’s response is that:

- The company says that it is entitled to raise charges under its Charges Scheme and the customer’s wife is the account holder. Legal proceedings have been taken against her and a county court judgment has been obtained. Further proceedings are contemplated.
- There has been a lengthy history of non-payment, non-attendance at court proceedings and non-cooperation.
- The company also says that this matter is outside the scope of this Scheme because it is the subject of court action and the customer’s wife has entered into the contract with the company. The company says that the customer is a third party.
- It states that it has put a hold on enforcement action while this case proceeds but that it has reviewed the situation and concluded that the support offered to both the customer and the account holder have been appropriate, gradual and proportionate, and the actions currently being taken remain appropriate and are continuation of an existing court action, and previous court orders regarding payment by instalment following declarations made by Mrs **XX** concerning her income/outgoings and budgeted sums for water services.

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.

The customer has responded to my Preliminary Decision, and I have taken his comments into account. I have noted that the company has no comment to make at this stage. The Final Decision remains the same as the Proposed Decision.

How was this decision reached?

Jurisdiction

1. The gist of the customer's application is that the company should take more notice of his requests and his situation because he is reaching the point where he is unable to cope, and he wants a further period of moratorium. He has submitted medical evidence from his GP, Dr **XX**, in which she states:

*I can confirm that I am **XX** GP. I have had numerous conversations with him regarding his mental health and stress.*

He does feel like he is being put under undue pressure to reduce his debts and he feels, as do I, that it is having an overwhelming effect on his mental health.

*Subsequently to my letter of 7 September, **XX** has been really struggling with his mood, including getting dark thoughts, although he denies any **XX** intention, but he feels his health is being severely damaged by all the pressure and I have to say I do agree, as he has been in touch with the Practice on several occasions quite despairing. I last spoke to him on 1 February. I do agree that all his arrears are having a negative impact on his physical and mental health, as he has also been suffering with recurrent back pain.*

2. The company says that under rule 3.5 of the Scheme Rules, WATRS does not have jurisdiction to deal with this complaint because he is not the account holder, and the matter is the subject of court proceedings to which the customer is not a party

3. Even assuming that the company is correct that the customer is not the account holder, I find that it does not follow that the customer is precluded from making this application to WATRS. I am mindful that only “a customer” can make an application for adjudication under this Scheme. A “customer” is defined as:

2.1.1 a person/s who receives water and/or sewerage services provided by a company in the course of its business as a statutory undertaker and/or a statutory licensee (ie. a statutory water supply and/or sewerage licensee), including but not limited to the person/s on whom liability to pay charges for such services would fall;

2.1.2 the person/s to whom water and/or sewerage services are provided or are to be or have been provided by the company in the course of its business as a statutory undertaker and/or a statutory licensee, and the person/s who wish to have such services provided by such a company.

4. I find that the effect of such definition is that it is not only the individual identified as the account holder who is a customer, but anyone who receives services. The customer says that he used to be the account holder, he lives with his wife, and he also receives services. There is no evidence to the contrary. I am satisfied, therefore, that on the basis of the definitions of the Scheme Rules, the customer is eligible to raise a complaint.
5. The company also says that WATRS cannot rule on this issue because the dispute is the subject of existing court action. The company refers to rule 3.5 of the Scheme Rules, which states that the Scheme cannot be used for “disputes that are subject to existing court action or on which a court has ruled unless the court’s decision has been set aside”.
6. This case has a complicated history. The documentation shows that there has in the past been one County Court Judgment against both the customer and his wife for a total sum of £7,151.56, (although I have seen no supporting evidence for this). The customer says that he was legally represented at this hearing. Having obtained such a judgment, the company says that no payments were made, and a further debt accrued. For reasons that are not fully explained by the company but appear to be because the customer’s wife holds the legal title (shared ownership) to their home and because the customer was known to suffer from long-standing mental health issues, the company obtained a further judgment for £3,354.71 plus costs against the customer’s wife alone. The company then obtained a Charging Order over the customer’s wife’s interest in their home, but, as the customer explains and the documents support, this was not to be enforced if the customer’s wife paid instalments of £66.00 per month towards the arrears and judgment.

7. I note that for the purposes of this adjudication, the company says that there is no evidence that the customer is authorised to represent his wife, but I find that this is not a relevant consideration for the purposes of considering my jurisdiction. The question is whether this dispute is one that is the subject of existing court action or on which a court has ruled. I find that this application is not excluded under rule 3.5 because:

- a. The “dispute” is as to whether the company should be threatening to take enforcement action in light of the customer’s vulnerabilities and inability to make payment.
- b. While this is a matter that the court may wish to take into account, the customer is not a party to the last judgment or to any threatened enforcement proceedings.
- c. He therefore has no right, for example, to apply to the court for variation of the payment order that the court has made because he is a third party to the proceedings even if he has in the past been permitted by the court as an interested party to express an opinion.

8. It follows that I find that I have jurisdiction to determine this dispute.

The issues

9. It is quite clear from the evidence I have read that this is a very difficult situation for both parties. I make the following general observations based on the evidence:

- a. The water account statements are issued in the name of both the customer and his wife, and although in its response to this application the company suggests that only his wife is the account holder, the statements describe both parties as the account holder. The customer says that he is a joint account holder and I find that it is probable that both he and his wife are account holders – especially as the company says that the debt is due from both occupiers and it has in the past obtained judgment against both parties.
- b. The debt owed by the customer and his wife is very sizeable and has climbed steadily since 2009. (I assume for the purposes of this decision, as has the company, that the customer continues to bear joint and several liability for the second sum of £3,354.71, notwithstanding that the company has elected to proceed against only the customer’s wife in respect of this debt.) The total debt is therefore now more than £11,000.00. The company has the benefit of a charging order and a payment order against the customer’s wife only.

- c. Even following the making of a payment order in September 2022, payments of £66.00 per week have not been made (although some payments have been received from the customer and his wife: see below).
- d. The customer's wife (who holds the shared ownership legal title to their home) has been unemployed for at least three years and the customer says that she suffers from a heart condition. She does not receive any benefits, although it is notable that the Mental Health and Money Advice service has recommended that she apply for a Personal Independence Allowance, based on her mental and physical health issues, and also that she consider her eligibility for a carer's allowance as her ill mother also lives with them. The customer's wife has stated that she does not want to attend court and that her mental health is suffering from the bombardment of correspondence. This has resulted in a situation where the customer is reluctant to discuss finances with his wife, a matter of which the company is aware.
- e. The customer is employed but has for long periods been on sick leave, having been signed off by his GP as unfit for work. At some points, his GP has recorded **XX** thoughts, but there is no evidence that the customer has acted on these and they are said to be not now as prominent as they had been. The medical opinion is, however, that the customer has suffered from anxiety and depression since 2008 or 2009 and has been taking medication for much of that period and is now medicated with sertraline, an anti-depressant. The sole source of household income is said to be the customer's salary of just over £1,700.00.
- f. The customer says that the amount to be paid is unclear although the company says that this was made by consent, the customer's wife having offered previously to make a payment of £1.00 per month from the arrears assuming a payment of £65.00 per month for continuing liabilities. The company had not been prepared to accept this because current liabilities were not being met. A payment order was therefore requested by the company in the sum of £66.00 and the customer's wife agreed to this. I find that £66.00 per month is the total amount to be paid for current and past liabilities (so consistent with the customer's intended offer), however:
 - i. There is no evidence that the customer's wife was at the hearing or was separately represented. This, though not the company's fault, is an unsatisfactory state of affairs because, in the circumstances of this case, the customer may have helped his wife without realizing that they had a potential conflict of interest.

- ii. The income was given in her statement of means as “spouses salary” but it is not clear whether or how that salary was available to her to spend. She has asked the company to apply for an attachment of earnings order against her husband’s salary, but the company has correctly pointed out that the court cannot make such an order because the customer is not a party to the proceedings.
 - iii. The customer’s wife had no independent means to make the payment.
- g. While it is the case that the same outcome could be achieved by a standing order of £66.00 per month set up by the customer in favour of the company on a date after his salary is paid, the customer appears to be unwilling or unable to achieve this for reasons that have not been explained but which may be attributable to inability to take action due to mental disorder.
- h. The customer says that he wants to make regular payments so that he can be accepted onto the company’s hardship scheme but he says that his application has been rejected, and he has not made regular payments. The company has explained recent attempts to make payments of small amounts (including what would appear to be a panic attempt to pay off the entire amount by credit card – which was declined by the credit card company).
- i. The company has said in these proceedings that the customer is not authorised to represent his wife, but I note that in addition to the complications referred to above, the company is ambivalent about his status – possibly because of the difficulties that arise when the account holders are treated differentially.
- i. In addition to the presentation that was made to the court, the customer and his wife have sometimes been treated as having an identity of interest. For example, letters to the company are written by the customer on behalf of his wife as well as on his own behalf and the company has on a number of occasions been corresponding with the customer about the account. Collection processes have been delayed because the customer entered into a “breathing space” that ended in November 2022. The company has treated this as a joint application even though the breathing space notification was only made in the name of the customer. I also note that when the customer approached the Consumer Council for Water (CCWater), the company appears to have told CCWater that the matter was the subject of court action, without making clear that the enforcement

proceedings about which the customer complains could only be brought against his wife for nonpayment. CCWater's note of its conversation with the company states:

Spoke to XX

Do they have a complaint for Mr XX ? Complaint - stage 1 in May

Is the customer on the PSR? • Yes Physical/permanent and mental health XX has had some correspondence (they can send if required)

They have been to court - agreement made with the court for an amount for the customer to pay (customer showed what they can and cannot afford - court agreed payment amount and the customer agreed with that at the time)

This is a litigation account

O/s over filk (charging order on property for the outstanding balance)

This has caused CCWater to conclude that this is a court matter and that they have no role, when the position may have been different had CCWater known that the current problem has arisen because the current proceedings were against a person *other* than the customer. I find this incorrect explanation to CCWater in particular to be a serious matter that would fall short of the expectations of an average customer.

- ii. In contrast, in a recent letter from the CEO in which the customer has asked for help because he does not believe that the amount of the payment order is manageable, the CEO separated the interests of the customer and his wife, pointing up that the customer acting in his own right is powerless to make any changes and drawing on the customer's wife's fear of attending court. I have referred above to the customer's wife's request for an attachment of earnings order which could then not be made because the customer was not a party to the transaction.

10. I find that this is an unsatisfactory state of affairs and is causing hardship for both the customer and the customer's wife. It has resulted in an increase in the complications created for both the customer and his wife in getting to grips with the debt and has left the customer powerless to make changes to the arrangement based on any previous over-assessment of his financial situation or changes in his income (he refers, for instance, in correspondence with the company in January 2023 to a reduction in his salary).

11. This situation has now reached an impasse, as can be seen in the recent correspondence between the customer and the CEO. The customer having taken advice from the Mental Health and Money Advice service in November 2022 has been advised that there is a shortfall of his monthly income of just over £10.00. The customer wrote to the company's CEO on 5 December 2022 referring to a debt to a different organisation (presumably, based on the papers, in respect of his Council tax payment):

Firstly, they have agreed to suspend all further recovery action based on the current mental and physical state of the family.

Secondly, they have also seen that any recovery actions to start next year will ONLY be against myself, they see that only I have a regular income, and see this as a most logical approach to the situation.

Thirdly, they are in a position not too dissimilar to the one with your company, however, the level of liability is higher and over a longer period of time.

As they have taken a completely holistic view of the situation, and reflecting on the current delicate situation of the family, mental and physical health, I would humbly look for reassurance the XX Water will see a precedent having been set against our situation and look to allow us the time over this advent period to try to stabilise ourselves, work with the debt counsellor and come to a new resolution in the new year, one which can and will be adhered to without the problems of further legal actions against us all.

Once again, I deeply, sincerely and humbly apologies for this situation and pray that your organisation can see what others have done and also help in a like manner.

As previously mentioned, I suffer greatly with 'uncertainty intolerance', and not knowing what is happening is seriously impacting my mental health anxiety.

Therefore, I would greatly appreciate a positive and sympathetic response and offer of resolution as soon as convenient.

12. The CEO replied:

By way of further explanation, the matter to which you refer does not relate to a debt owed by you, but a judgment debt owed by Mrs XX and a previously withdrawn civil procedure rules Part 71 application for information.

Sadly, notwithstanding a previous confirmation from your barrister that the requested information would be provided voluntarily if that application was withdrawn, regrettably none has been forthcoming following withdrawal. In other words, your complaint concerns an ongoing litigation matter and is therefore not subject to our customer complaints procedure. It

is of course open to Mrs XX to apply to the Court should she wish to dispute the information previously declared to the Court concerning household income and expenditure, upon which the existing Court Order has been based.

However, we do note in general terms one of the reasons you have now stated why water services are not being paid is because you consider them to be a non-priority debt. This may be appropriate in certain temporary circumstances, but in relation to your historic arrears (now secured by way of charging order), these built up over many years and repeated broken promises from you to make contributions towards on-going consumption. The difference between water services and other utilities is that we cannot disconnect water services for debt. That is why alternative enforcement procedures are adopted, such as requests for information following a judgment debt and failure to comply with a Court Order.

We would suggest that the way forward in this matter is for Mrs XX to contact the Litigation Team on 0333 000 0034 and ask to speak with Mrs XX following which we will be in a position to review matters generally and decide upon the next steps, which may well be to follow your suggestion of a further charging order. However this requires consent from Mrs XX, registered owner of the property, apologies we did not clarify this on our previous correspondence. We note that the previous charging order was opposed by you, and therefore took approximately two years to secure, during which period the current arrears have accrued, resulting in the current judgment debt.

By default, if Mrs XX is unwilling to contact us directly, the next step is for our wider enquiries to continue and also re-instatement of the formal application for information concerning the unsecured judgment debt, which as you are aware would require Mrs XX to attend Court in person.

We trust the above sets out our current position in more detail. We should be grateful if you would share this correspondence with Mrs XX. We wish to advise Mrs XX of the various assistance options which may be of wider benefit, however these do require full co-operation and disclosure of information which historically has been resisted, and in turn has resulted in the current unfortunate situation.

I find that this response, although suggesting that the customer's wife can take steps, does not acknowledge the problem that the customer referred to the CEO.

13. While I understand the company's frustration with the customer's inability or refusal to make payments or adequate payments for more than a decade, despite attempts to set up payment plans and even though the customer and his wife may evade confrontation of the issue, I find that the company has not been willing to acknowledge the complications that have arisen from its

decision to exclude him from the second set of proceedings. It has invited him to take action through his wife, with whom, as I have indicated above, there may be a conflict of interest.

14. I find that in the peculiar circumstances of this case, the company's response to the customer's pleas for help does not meet expected standards. In reaching this conclusion, I take into account that this situation has arisen in large part because of a decision by the company to bring legal proceedings for the second judgment and for the charging order and associated order for payment against the customer's wife alone.
15. I find that the company should apologise to the customer for its omission to acknowledge this problem and also for telling CCWater that this was a court issue involving the customer, when the customer was not a party to the proceedings that have given rise to the issue.
16. As for how I could resolve the problem, this, I find, is more difficult. The customer has asked for a further breathing space, but I find that, taking into account the customer's past inability to take action, this is unlikely to be of any long-term assistance to him and I cannot in any event prevent the company from taking further enforcement action against the customer's wife if it is minded to do this.
17. Whilst I reflect that the company could reach agreement with the customer as to the sum that can be paid by him and apply to the court to change the existing order, or could take action to join the customer to the proceedings, so that he can represent the problem before the court, it is also no part of my jurisdiction to make directions as to how parties should conduct litigation. On balance, I find that the role that I can take is limited. I have considered whether I can make a direction that the company should take legal advice as to both how and whether it can afford to the customer a voice in the legal proceedings that makes any court order also binding on him. There are a number of problems with such a direction, however, not least that the advice received would not be disclosable to the customer because it would be protected by legal and litigation privilege. While I would recommend, therefore, that the company consider this possibility as a way out of the current unwelcome situation, I conclude that I should not make a direction for this.

Outcome

The company needs to take the following further action:

- Apologise to the customer in writing for:
 - The company's omission to acknowledge the problem created because he has not been part of the second judgment and enforcement proceedings; and
 - Communicating to CCWater that this was a court issue involving the customer, when the customer was not a party to the proceedings that have given rise to the problem.

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

Barrister, FCI Arb

Adjudicator