

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X488

Date of Final Decision: 12 May 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer states that the company delayed with registering a default against him. It ought to have registered the default within three to six months of his missed payments, therefore by March 2017 at the latest. However, the company registered a default in September 2018 after three missed payments. The company has refused to remove the default and negative markers. The customer requests that the company have the default and negative markers removed.

#### Response


The company states as the customer was engaging with it by requesting payment plans and setting up direct debits, it was not in a position to register the default sooner than it did. The company says it has correctly followed its policies and internal processes and also legal and regulatory requirements. The company states it has a duty to record accurate information and therefore it does not agree to the customer's request to remove or adjust the default and negative markers. The company made no offer of settlement.

#### Findings

The company acted in accordance with its policy when it entered a default against the customer in September 2018 as this followed three missed payments. As the evidence shows the customer had entered a payment plan with it in 2017, it was reasonable for the company not to enter a default against him at this time. There are no instances of the company not providing its service to the standard to be reasonably expected.

The company does not need to take any further action.

#### Outcome



The customer has until 12 June 2023 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT/X488

Date of Final Decision: 12 May 2023

## Case Outline


### **The customer's complaint is that:**

- The company unfairly issued a default at a later date than it should have been. It allowed nine consecutive missed payments in 2017 and the default should have been issued between January 2017 and March 2017, however, it allowed this to continue then registered a default in September 2018 after three missed payments instead.
- Regarding its comment that he made an arrangement to pay in March 2017, this is correct however this arrangement was broken "straight away" as no payment was made therefore the default should have been registered then.
- The Information Commissioner Officer (ICO) rules on 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' states:  
*"As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears. There are exceptions to this which may result in a default being recorded at a later stage, such as secured or long term loans e.g. mortgages, or if the product operates in a more flexible way e.g. current accounts, student loans home credit. If an arrangement is agreed, a default would not normally be registered unless the terms of that arrangement are broken"*
- The customer says his arrangement with the company was broken without any payments made. Therefore, the company should have registered the default in March 2017 at the latest, but he was asking for this to be June 2017 which is nine months missed payment.
- To allow nine missed payments in 2017 without registering a default but then register it after 3 months of missed payments in September 2018 is unfair and unjustified.
- The Consumer Council for Water advised him to go to the ICO which he has done however they don't help remove the default merely make a note of the failings and contact the company where improvements are to be made.
- The customer requests that the company adjust the default and negative markers.

### **The company's response is that:**

- It disputes the claim that the default entered against the customer on September 2018 incorrect.

- A default was registered on the customer's water account on 14 September 2018 which will show on his credit file for six years.
- The customer first contacted it on 7 February 2023 regarding the negative data shared and asked for it to be removed as a gesture of goodwill due to his personal situation.
- It replied on 8 February 2023 advising it was not in a position to remove the negative markers due to it entering them factually correctly due to non-payment.
- It reiterated this position in subsequent communications with the customer.
- On 22 February 2023, a breakdown was sent to him showing payments on his account and outlining principle 2 & 4.
- During an outbound telephone call to the customer on 6 March 2023, it explained the default registered in September 2018 was correct, and was not entered earlier due to him setting payment plans, even though he missed a payment, a plan was still in place and it cannot enter a default with customers having a plan in place.
- On 8 March 2023, an email was sent to the customer confirming the decision and that it was its stage two response.
- Under the Data Protection Act (DPA) there are a number of way in which information can be processed/disclosed. Given its industry circumstances, the need to identify and validate customers, establish their ability to pay and locate debtors as well as ensuring that it acquires and maintain accurate, up to date and relevant information in compliance with its data protection obligations, it does not rely on DPA Schedule 2 (1) processing condition –'the data subject has given his consent to the processing' in order to data share with credit reference agencies.
- Rather, it relies on DPA Schedule 2 (6) (a) – 'the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.'
- In the interests of fairness, openness and transparency, it publicised its proposed Credit Reference Agency (CRA) data sharing activity to its customers from February 2011 before it began the data sharing in February 2014. It is also aware that similar data sharing activity is already happening not only across the water industry but across the wider utility sector as a whole with a number of regulators being involved and some of them actively encouraging such activity.
- It has followed the correct internal process. This has also been reviewed by its data share team, who have confirmed, as the customer was engaging with it by requesting payment plans and setting direct debits via its website, it would not have been in the position to default him sooner.
- It understands that whilst recording of a credit history may be detrimental to its customers future prospects, it is important to remember that a credit file is not only for a customer, but also



lenders who provide them with credit, and a credit file should accurately reflect their relationship with it so that other organisations looking to provide credit are aware of their history.

- By deleting or amending a customer's credit history, it would be failing in its duty to record accurate information and this could affect its working relationships with other organisations going forward.
- In summary, it has followed all its policies, processes and legal and regulatory requirements whilst dealing with the issues the customer has raised and it does not believe that it has failed to provide services to the standard to be reasonably expected.
- It does not agree to provide the remedies requested by the customer.

## **Reply**

- The customer provides detailed comments on the company's Response including that:
  - It has not taken into account 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies' or 'Information Sharing Principles of Reciprocity'.
  - The evidence supplied shows the company opened a new account on 9 September 2019 a year after the default was registered and transferred the balance of the previously defaulted account therefore creating a new account presenting a "double hit" of negative markers for the same outstanding balance.
  - He clarifies that only one arrangement was set up at the time this dispute relates to, March 2017. No payments were made between October 2016 and June 2017, the last payment was September 2016 and the next payment was July 2017, as such the company ought to have registered the default after the arrangement was broken.
  - The company has not provided the audio call plus transcript of his call to the company on 17 March 2023 during which the principles were discussed which he requested on 1 April 2023.

## **Comments on the Preliminary Decision**

- The customer provided comments in which he reiterates that the company have not acted in accordance with ICO rules or its own policy by not registering the default after three missed payments in 2016/2017.
- He states the adjudicator has misunderstood the complaint and he requires that the company adjust the default date to March 2017 or to December 2016 if it is accepted that the company must register a default after three months after three missed payments (as per the findings at para 6 below relating to events in 2018).

- The customer comments that the adjudicator has not dealt with the double reporting of the same balance on the new account created by the company.

### 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.

### How was this decision reached?

1. Scheme Rule 5.4.3 states the customer cannot introduce new matters in their Reply (to the company's Response). This is because the company has not had a reasonable opportunity to respond to, or resolve this. Therefore, I am unable to consider the customer's point raised in the Reply about the company's transference of the balance of the defaulted account to the new account set up, being a 'double hit' of negative markers for the same outstanding balance as this issue has not been through the company's complaints procedure and was not raised in the WATRS Application.
2. The complaint concerns the company's registering of a default against the customer in September 2018. The customer says the company should have registered the default in March 2017 or no later than June 2017, after he broke the payment plan, however, it unfairly entered the default in September 2018. The customer states its failure to register a default in 2017, shows it did not follow the ICO rules on 'Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies'.

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3. I remind the parties that Scheme Rules 3.4 and 3.4.1 state that WATRS may reject all or part of an application to the Scheme where it considers that the customer should be referred to a more appropriate forum for the resolution of the dispute. Therefore, I am unable to consider the customer's submission that the company failed to follow the ICO rules in relation the reporting of arrears arrangements and defaults at CRAs. This is because the ICO is a more appropriate forum for determining disputes concerning adherence with its rules.
  4. However, I am able to consider if the company failed to provide its service to a reasonable expected standard when dealing with the customer's complaint and issues raised.
  5. I am satisfied from the company's submissions in its Response and its document titled 'Guide to data sharing' (policy) on its website that it is entitled to share information about how a customer manages their account and payment with CRAs. I note this document states the company can register defaults for non-payment once a debt is three months old.
  6. On this basis, I am satisfied that by entering the default on the customer's account on 14 September 2018, the company acted fairly and in accordance with its policy. I find this is regardless of the events in 2017. This is because the customer had missed the prior three monthly payments from June 2018 to August 2018. Therefore, I am satisfied that this does not establish any failure by the company to provide its service to the standard to be reasonably expected.
  7. I acknowledge and accept the customer's assertion that he made no payment for nine consecutive months between October 2016 until June 2017. In response to his concern that the company ought to have entered a default by March 2017 after six non-payments, in its Response the company explains that as the customer had set up a payment arrangement with it during this period, it would not have entered a default at this time as it said it cannot default customers with a payment plan in place. I accept from the evidence including at Appendix 25, that the customer set up a payment plan with the company on 12 March 2017 and then again on 14 June 2017, as such I accept the accuracy of the company's assertion in this regard. Furthermore, I find that the company's practice, not to enter defaults against customers when they have a payment plan in place, is reasonable and in line with its policy.
  8. In his Application, the customer points out that this payment arrangement was "immediately broken". I acknowledge that on 13 April 2017, the direct debit payment the customer set up



either failed or was cancelled and the next payment made by the customer was not until July 2017. I accept that no default was entered against the customer by the company between his April 2017 payment failing and him next setting up a payment arrangement on 14 June 2017. However, in the absence of any evidence to show the company is under an obligation to share a customer's details either once a debt is three months old or otherwise, I find that it had discretion as to whether or not it shared his details with CRAs from April 2017 to June 2017. Therefore, by not sharing the customer's details on this occasion, I am satisfied this does not demonstrate that the company acted either unfairly or outside of its policy.

9. In summary, I find that there is no evidence to demonstrate any instances of the company failing to provide its services to the standard to be reasonable expected when handling the customer's case. Therefore, I find that the company is not required to provide the remedy sought for it remove or adjust the default and negative markers from his credit file.
  
10. I have carefully considered the customer's comments on the preliminary decision, however I find that they do not affect my above findings. I acknowledged that as per its policy the company can enter a default after three missed payments however, in the customer's case, it appears it used discretion and did not enter a default December 2016 after he missed three payments. As explained above, this does not establish a failing by the company. Whilst the customer then broke the payment plan set up with the company in March 2017, he set up another one in June 2017 and then went on to make a series of monthly payments to the company (seven) before missing the three payments mentioned above, in 2018 which led to the company registering a default in September 2018. Therefore, I am satisfied that the disputed default entered in September 2018 was not entered 'late' as it does not reflect the missed payments in 2016/2017 but entered correctly as a result of three missed payments from June 2018 to August 2018.

**Outcome**

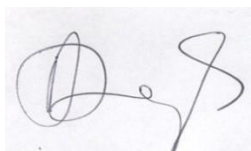
The company does not need to take any further action.

**What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 June 2023 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.

A handwritten signature in black ink, appearing to read 'A. Jennings-Mitchell', written on a light-colored background.

**A. Jennings-Mitchell**, Ba (Hons), DipLaw, PgDip (Legal Practice)

**Adjudicator**