

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0674

Date of Decision: 02 March 2018

Complaint

The customer states that the company placed incorrect information on his credit report, relating to a property at which he was never responsible for payment of bills. He seeks compensation of £1,300.00 as the deposit on rented accommodation, £3,900.00 as 6 months of rental payments on rented accommodation, and £1,000.00 for "time spent and stress caused".

Defence

The company argues that it followed appropriate processes in identifying the customer as responsible for payment of bills at the property in question, that the customer has not produced evidence sufficient to establish that he suffered any losses due to the company's actions, and that it is not in breach of its legal obligations. It has offered the customer compensation of £100.00, but this was rejected.

Findings

The company breached its legal duty to exercise reasonable care not to make untrue statements to a credit reference agency.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £750.00 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.

The customer must reply by 30 March 2018 to accept or reject this decision.

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Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- In October 2017 he received a letter from the company relating to an outstanding bill for a property in ██████
- He contacted the company, which told him that it believed he was the bill payer at the property, and hence liable for the amount stated.
- He informed the company that he had never lived at the address.
- He spoke to a member of the company's legal team and was assured the matter would be resolved.
- Shortly afterwards he was declined for a mortgage after a "soft search" by the bank.
- Upon investigation he noted that there was a reference on his credit report to the property in, ██████ which linked unpaid bills at that address to his name at his current address.
- He again spoke to the company's legal department, who insisted that the information would be removed.
- Due to this information being on his credit report he was unable to move house as planned.
- He requests compensation of £1,300.00 as the deposit on rented accommodation, £3,900.00 as 6 months of rental payments on rented accommodation, and £1,000.00 for "time spent and stress caused".

The company's response is that:

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- In December 2016, a residency check determined with a high degree of confidence that a Mr. Mr Brown was living at the property in ■■■■, and so an account was opened in this name.
- After repeated unsuccessful attempts to make contact with Mr Brown at this address, the account was closed in August 2017 but effective 15 December 2016, the date the residency check was completed, leaving a final bill of £33.47.
- As no contact or payment was received, on 13 September 2017 the company carried out a further search, which identified the customer as potentially the Mr Brown from the property in.■■■■■
- A letter was sent to the customer at his home address, notifying him of the outstanding bill.
- The customer contacted the company on 16 September 2017 and advised that he had never been the bill payer at the property.
- The company then closed the account to the date it was opened, and removed all charges in the customer's name.
- On 27 September 2017 a letter was sent to the customer confirming that he would not receive any further bills for the property in ■■■■■
- The customer called the company again on 24 October 2017 regarding a mark on his credit file relating to the property in ■■■■■
- The following day the company confirmed to the customer that the search it had performed on 13 September 2017 had left a footprint on his credit report, but that this would be removed, although removal might take up to 30 days.
- The customer contacted the company again on 24 November 2017, noting that while the address link to the property in ■■■■ had been removed from his credit report, the negative payment information from that property was showing on his credit report as connected to his current address. The customer stated that this was causing him problems with mortgage and other credit applications.
- The company attempted to contact the customer on 1 December 2017, but was unable to reach him, and so left a message.
- The customer returned the company's call on 4 December 2017. The company offered compensation of £100.00, but this was rejected by the customer.
- The company argues that it is not liable to pay compensation for the incorrect reporting on the customer's credit report, and that the customer has not produced evidence sufficient to establish that he suffered any losses. The company denies that it is in breach of its legal obligations.

How is a WATRS decision reached?

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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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. In *Durkin v DSG Retail Ltd & Anor* [2014] UKSC 21, the Supreme Court confirmed that parties reporting to credit reference agencies bear a duty of care to those about whom they are reporting. More precisely, as stated by Lord Hodge, writing for the Court, parties reporting to credit reference agencies are “under a duty to exercise reasonable care not to make untrue statements”. Where information is unclear, a party must choose between “(i) saying nothing to the credit reference agencies or (ii) if it chose to notify them, incurring the duty to him to take reasonable care to ensure that the notification was accurate”.
2. The company concedes that it had no clear evidence that the customer was responsible for the bills at the property in ■■■■. Indeed, while it states that after its initial investigation it had a “high confidence”, even this related only to the probability that a Mr. Mr Brown was living at the property in ■■■■. Not that the customer was doing so.
3. Nonetheless, when it twice received returned mail from the property in ■■■■ labelled as “Addressee Unknown”, it did not conclude that this indicated Mr. Mr Brown might not live at the address, but instead generated a “potential forwarding address”, namely the address of the customer. Notably, the company does not state at this point that it had “high confidence” that the customer was the Mr. Mr Brown it was seeking, but only that it was “potentially” the customer.

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4. Merely contacting the customer at this point was not an unreasonable action on the company's part. However, the record is clear that the manner in which the company dealt with credit reference agencies resulted in significant negative information being placed on the customer's credit report.
5. The company emphasises that it responded relatively quickly to remove the information once the customer established that he had not in fact lived at the property in ██████ in the period in question. However, as the Supreme Court has emphasized, the company had an obligation either to avoid placing any negative information on the customer's credit report until it was sure that it had identified the correct individual, or to at least ensure that any information placed on the customer's credit report was accurate.
6. The company, however, was not even sure that the customer was the individual it was seeking, and took actions that impacted on the customer's credit report before even contacting the customer to confirm if he was the individual responsible for payments at the property in ██████.
7. By failing observe the standards laid out by the U.K. Supreme Court, and causing significant untrue negative information to be placed on the customer's credit report, the company breached its duty of care to the customer and failed to provide its services to the customer to the standard to be reasonably expected by the average person.
8. The specific facts of this case reflect a serious breach of the company's duty of care to an individual who was never actually a customer of the company, and who was able to confirm to the company's satisfaction that he was not liable for payments at the property in ██████ as soon as the company made contact with him. In light of these facts, I find that fair and appropriate compensation for this breach would consist of £750.00.
9. The customer also claims compensation for expenses related to renting a property, on the ground that he was unable to secure a mortgage because of the incorrect information placed on his credit report by the company.
10. However, while I accept the customer's testimony that he made the application he describes, and that it was rejected, he has not provided a basis on which the damages that he is claiming can be awarded. The customer acknowledges that he had not yet formally made a mortgage application, but was merely attempting to confirm his ability to secure a mortgage. He has,

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therefore, not established that he would indeed have purchased a house absent the company's incorrect reporting to credit reference agencies. Moreover, no information has been provided regarding the payments that he would have been making under such a mortgage, and so it is not possible to confirm if the customer is making higher payments because of the company's actions than he would have been making if he had purchased a house. The customer's contention that payments for rent are "dead money", rather than "investment" does not suffice to justify an award of damages.

11. In view of the above, the company must pay the customer compensation of £750.00 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company needs to take the following further action:

It must pay the customer compensation of £750.00 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 30 March 2018 to accept or reject this decision.
- 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.

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Tony Cole

Tony Cole, FCI Arb

Adjudicator

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