

# WATRS

## Water Redress Scheme

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## DECISION

by Uju Obi LLB (Hons) MCI Arb

An adjudicator appointed by WATRS  
under the Water Redress Scheme

**Decision date: Wednesday 27 May 2015**

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**Adjudication Reference: WAT/ /0001**

Between <sup>1</sup> and <sup>2</sup>

- The claim is made by the customer, against a water and sewerage company,
  - The claim dated 24 April 2015 is for compensation in the sum of £10,000.00.
  - The position of the company is explained in its 13 May 2015 defence which is disputed by the customer in his undated reply.
  - The customer's claim is that the company erroneously placed two County Court Judgements (CCJs) against his credit file.
  - The company's position is that it does not accept liability.
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### Decision

1. The claim succeeds in part.
2. I direct that the company pay the customer compensation in the sum of £100.00.

### Main issues

3. I consider that the main issues in this adjudication are:
  - a. Whether the company has failed to adhere to its obligations to the customer or failed in its duty of care to the customer.
  - b. Whether the reasons given by the customer are sufficient to justify his claim.

### Background information

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<sup>1</sup> Customer's address for correspondence:

<sup>2</sup> Company's address for correspondence:

4. In order to succeed in a claim against the company the customer must prove on a balance of probabilities that the company has failed to adhere to any of its obligations to the customer as a water and sewerage company, or failed in the duty of care which the company owed to the customer and that as a result of this failure the customer has suffered loss (a duty of care is a responsibility or a legal obligation of the company to avoid acts or omissions which can be reasonably foreseen to be likely to cause harm to others). If no such failure or loss is proved, the company will not be liable, however disappointed or upset the customer is.
5. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

#### **Customer's and company's positions**

6. The customer submits the following: In July 2010, his mother passed away. She lived alone at 130 [REDACTED]. He notified all utility companies and provided them with his contact information, as well as his solicitors' details. His solicitors were instructed to pay any of his mother's remaining bills and did so successfully with all organisations, except with the company. The company did not contact the customer's solicitors, nor did the company re-engage with him. Instead, it issued court proceedings against the customer and a County Court Judgement (CCJ) was made against him for a debt which was not his. The company did not invoke its complaints process. There was no formal acknowledgment or investigation. The company ignored the situation and did not apologise or engage with him.  
In 2013 he moved home from 8 [REDACTED]. He provided the company with meter readings and a leaving date and opened an account with it at his new address. The company sent final bills and reminders to the wrong address. In August 2014, a further CCJ was made against the customer for the outstanding debt from his old property. He was unaware of this until some eight months later. This more recent CCJ has caused him significant financial harm. An application for car finance made on 10 October 2014 was refused, as was an application for a mortgage in February 2015.
7. The company submits the following: It accepts that a CCJ was recorded in the customer's name at 130 [REDACTED], his late mother's address, and this existed between 19 July 2011 and 8 August 2011 when it was removed. The company has no record of receiving any written notification from the customer's solicitors. On 22 February 2011, there was a telephone conversation with the customer as a result of which its billing records for 130 [REDACTED] were changed into the customer's name. It now accepts that the member of staff concerned misinterpreted that the customer's intent was to advise it of his position as an executor of his late mother's

estate as opposed to the customer accepting liability as an occupying customer. Although attempts were made to bring the matter to the customer's attention before proceeding to obtain a CCJ on 19 July 2011, the company now accepts that the customer did not reside at the address. The CCJ was set aside at the company's own volition without application by the customer on 8 August 2011. All bills and charges relating to the period from 1 October 2010 to 31 March 2011 were cancelled. The company has also made the maximum payment under its Guaranteed Standards Scheme of £150.00. It has also cancelled the charges due for the property for the period from 1 April 2011 to 31 October 2011.

In relation to 8 [REDACTED], the company accepts that a CCJ was recorded at this address and existed for the period 26 August 2014 to 24 January 2015 when it was set aside. It has no record of receiving notification from the customer concerning his move from [REDACTED] or confirmation of the occupation of his current address at [REDACTED]. An address of [REDACTED] was obtained by the company's tracing agents – this address formed its 'contact and recovery address' for the arrears on the account for [REDACTED] and the subsequent legal proceedings and judgment. However, although liability in respect of the arrears for [REDACTED] was not in doubt, there was doubt over whether the customer had received the correspondence sent to [REDACTED]. It therefore took steps to voluntarily set aside the CCJ on 24 January 2015. It paid the customer £50.00 as a gesture of goodwill and waived the charges in the sum of £154.70 which were correctly due for [REDACTED]

#### **Adjudicator's findings and reasons**

8. I find that:

- a. I acknowledge the customer's complaints in relation to the Data Protection Act. However, Rule 3.3 of the WATRS Rules make clear which matters can be brought to adjudication. WATRS is not the appropriate forum for issues concerning the Data Protection Act under the WATRS Rules. Therefore, this aspect of the customer's complaint will not be considered.
- b. I must also remind the parties that under Rule 5.4.3 of the WATRS Rules, comments may only be on points raised in the company's response and must not introduce any new matters or any new evidence. Any such new matters or new evidence must be disregarded by the adjudicator. Therefore, I will not take account of the new matters raised by the customer in the Reply to the company's Defence.
- c. Further, I must also remind the parties that, under WATRS Rule 3.5, I am unable to consider any disputes that are subject to existing court action or on which a court has ruled, unless the court's decision has been set aside. Although the customer's claim relates to County Court Judgments (CCJs), the company has stated in its defence that these CCJs have been set aside. Therefore, I am empowered to make findings on these matters.

- d. Finally I remind the parties that adjudication is an evidence-based process. The burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of the evidence.
- e. Submissions made without supporting evidence are unlikely to be accepted as proven.
- f. It is not part of the adjudicator's function to carry out an independent investigation of the facts, or for instance, contact witnesses. The adjudicator is only able to consider the evidence submitted to WATRS.

- ████████████████████
- g. The company accepts that on 22 February 2011 a member of its staff misinterpreted that the customer's intent was to advise of his position as an executor of his late mother's estate rather than to accept liability as an occupying customer. The company also submits that it accepts that it incorrectly sent notifications to the customer at an address at which he did not reside. I therefore find that the company failed in the duty of care it owed to the customer to provide a satisfactory level of customer service to him.
  - h. The customer has also raised a complaint of poor customer service due to the manner in which the company handled this complaint. The customer submits that the company did not invoke its complaints process – there was no formal acknowledgment or investigation; and that the company ignored the situation and did not apologise or engage with him. The customer's submissions indicate that his complaint in this regard concerns the manner in which the complaint was dealt with at the time; that is, in 2011.
  - i. I note that the company acknowledges failings in relation to the manner in which it dealt with the customer's complaint at the start of 2015 following the issues with ██████ (which will be discussed below). However, I am mindful that, in its Defence, the company does not acknowledge, address or refute the customer's submissions about the manner in which it dealt with his complaint about ██████ at the time of that complaint in 2011.
  - j. Although I am satisfied that the account notes submitted by the company in evidence show that the company engaged with the customer and took some steps to investigate the matter during the time of the complaint, I am mindful that there is a clear contrast in the way in which the company dealt with the customer's complaint in 2011 and the manner in which his complaint was dealt with in 2015. I am particularly mindful that the evidence shows that it was only after the customer complained a second time in 2015 following the issues with ██████ that the company offered the customer compensation for its errors in 2011. Further, there is no evidence to show that the company provided the

customer with a formal apology about the issues concerning [REDACTED] in 2011. I find that a formal apology would have been fair and reasonable in the circumstances. It is also worth noting that even during the 2015 complaint process, some four years later, the company did not offer the customer an apology for the issues concerning [REDACTED] in its responses to his complaint.

- k. In view of the above and in the absence of any substantive evidence showing otherwise, I find that the company failed in the duty of care it owed to the customer to provide a reasonable level of customer service in relation to the manner in which it dealt with his complaint about [REDACTED]

[REDACTED]

- l. The company itself concedes that there was doubt as to whether the customer had received the correspondence sent to [REDACTED]. The customer in his Reply to the Defence denies that he has ever lived at [REDACTED]. The company states that it voluntarily took the steps to set aside the CCJ on 24 January 2015.
- m. It is reasonable for companies that seek to apply CCJs to their customers to notify those customers appropriately, including at their correct addresses. I consider a failure to do so to amount to an unsatisfactory level of customer service.
- n. In light of the company's submissions, I find that the company has failed in the duty of care it owed to the customer to correctly notify the customer of the outstanding debt.

### **Redress sought**

- o. The customer is seeking compensation in the sum of £10,000.00. The customer states that this compensation is for both the stress experienced and the financial damage caused to his credit file.
- p. I acknowledge the correspondence submitted by the customer from Evolution Funding dated 10 October 2014 and JC-Financial dated 22 January[sic] as evidence show the financial damage done to his credit file. However, in respect of the former, there is no evidence to show what was being declined and more importantly why the application was declined. In respect of the latter, again there is no evidence to show the specific reason why the application was rejected. I remind the parties that adjudication is an evidence-based process where the burden of proof rests on the customer to prove his claim. In the absence of clear substantive evidence showing that but for the company's actions, his applications for car finance and a mortgage would have been approved, I am not satisfied that the customer has substantiated his claim in this regard.

- q. In respect of the customer's claim for compensation for stress, the company submits that it has made the following payments or allowances: £150.00 in relation to the CCJ registered in 2011; the cancellation of £88.28 worth of charges for ██████ for the period from 1 April 2011 to 31 October 2011; £50.00 in relation to the CCJ registered in 2014; the cancellation of £154.70 worth of outstanding charges in relation to ██████ and £100.00 in recognition of time taken to fully respond to the customer's complaint on 16 January 2015.
- r. The customer does not refute receipt of these payments or allowances.
- s. The company has therefore paid the customer compensation in the sum of £200.00 and cancelled charges to the value of £242.98.
- t. Having carefully considered the parties' submissions and the evidence provided to support these submissions, I am satisfied that these payments and allowances represent a fair and reasonable remedial sum in respect of the CCJs incorrectly recorded against the customer and for the manner in which the company handled the customer's complaint in 2015. The customer has not provided any evidence to justify any further sum of compensation for these failures.
- u. However, notwithstanding the above and as discussed in paragraphs j and k above, I have found that the company failed to provide a reasonable level of customer service to the customer in relation to the manner in which it dealt with his complaint about ██████ in 2011. This failure is not reflected in any of the payments made to the customer listed above. Having carefully considered the matter, being particularly mindful of the company's failure to provide a formal apology both at the time in 2011 and following the customer's further complaint in 2015, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience caused. I consider the sum of £100.00 to be a fair and reasonable level of compensation. I therefore direct that the company pay the customer further compensation in the sum of £100.00.

## **Conclusion**

- 9. My conclusion on the main issues is that:
  - a. The company has failed in its duty of care to the customer.
  - b. The reasons given by the customer are sufficient to justify further compensation in the sum of £100.00.
- 10. Therefore, I direct that the company pay the customer compensation in the sum of £100.00.

A handwritten signature in black ink, appearing to read 'Uju Obi', enclosed within a large, loopy oval flourish.

**Uju Obi LLB (Hons) MCI Arb  
Adjudicator**