

WATRS

Water Redress Scheme

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DECISION

by Arshad Ghaffar, LL.B, LL.M, Barrister-at-law, FCI Arb.

An adjudicator appointed by WATRS
under the Water Redress Scheme

Decision date: 15 March 2016

Adjudication Reference: WAT/ [REDACTED]/0220

Between [REDACTED] and [REDACTED]²

- The claim is made by the customer, [REDACTED], against a water and sewerage company, [REDACTED] ["[REDACTED]"].
 - The claim dated 17/02/2016 is for the company to:
 - Provide an apology – this is notwithstanding that the customer states that such an apology is “pointless ... because the service never improves” and that “This complaint just goes to show this is true.”
 - Provide a Service – the customer would like the company to improve its service.
 - Pay Money – the customer claims £3000 to enable him to move out of the supply area of the company on the basis that he has lost all confidence in the company’s ability to provide him with satisfactory services.
 - The position of the company is explained in its 29/02/2016 defence which has been disputed by the customer in his 2/03/2016 reply.
 - The customer’s claim is that following his last complaint to WATRS, WAT/[REDACTED]/0096, he was led to believe that the company would improve its service but it has not. In addition the customer claims that the company has delayed him in bringing his claim before WATRS.
 - The company’s position is that it has no liability to the customer beyond £250 already offered in compensation.
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Decision

1. The claim succeeds in part.
2. The company shall pay the customer compensation in the sum of £250, to be paid by BACS/CHAPS transfer.

¹ Customer’s address for correspondence: [REDACTED]

² Company’s address for correspondence: [REDACTED]

Main issues

3. I consider that the main issues in this adjudication are:
 - a. Whether the company has failed to provide its services to the standard to be reasonably expected.
 - b. Whether the reasons given by the customer are sufficient to justify the remedies sought.

Background information

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 provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered a loss. 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 that following his previous complaint WATRS stated that it was "satisfied that the company has taken action in respect of the most recent complaint and that there is no evidence that this [is] inadequate". However the very next time he contacted [REDACTED] to pay his bill it yet again asked for his phone number without telling him what it was going to use it for. Clearly the "training" he had been told about has made zero difference to the way the company runs its business. The customer further submits that he contacted [REDACTED] about the above and agreed to financial compensation of £150. He received this cheque and paid it into his bank, however the cheque bounced and he had a letter from his bank stating this. This caused him a great deal of difficulties. On the day he got the letter he had been having acupuncture on an ankle injury and walking was both difficult and painful. To ensure his bank account did not go overdrawn he needed to visit his bank and move money around. This was over a two mile walk on an injured ankle. He also lost a hotel place he was intending to book because he could not pay for it, causing him financial loss. He contacted [REDACTED] about this and [REDACTED], a member of [REDACTED] staff, agreed to pay this money into his account by bank transfer. During that phone call he also told [REDACTED] that he needed to take his complaint to the Consumer Council for Water ["CCW"] and WATRS, and was told he could. Thereupon CCW dealt with the matter and gave him a WATRS reference. He completed the WATRS form and emailed it.

However ██████ then stated the cheque had not been presented and he had not been through the complaints procedure. As for not completing the complaints procedure, ██████ told him to take this matter to CCW and WATRS, so his actions have delayed this complaint. Even after he had completed both stages of the complaints procedure ██████ continued to delay this matter. ██████ has been failing him for years now and the service is getting worse, not better. It continues to mislead not only him, but CCW and WATRS as well. He no longer believes ██████ are capable of providing him with any form of customer service.

7. The company asserts that it has fully addressed the customer's concerns about receiving customer satisfaction surveys by text and in line with the earlier decision by WATRS (as accepted by the customer) sent him £100 for the inconvenience this had caused. The customer has received no further surveys by text and staff training has taken place to ensure they are aware of the opt out procedure when requested by a customer. The concerns the customer brought to the company about a subsequent phone call where he had been asked for a contact number were responded to in line with the complaints procedure and the customer has accepted the offer of £150 to resolve that complaint. The company checked with its banking partner to understand why the initial cheque had bounced and acted on the information that was provided. Unfortunately, another issue was identified at a later time that proved this to be wrong for which the company have apologised to the customer and offered a further goodwill gesture of £250.00. This is on top of the £150.00 that was given and refunded within 24 hours of being notified of the cheque bouncing. This has been rejected. The company is sorry that the customer feels that it has wasted his time with this lengthy and ongoing complaint. It objected to the previous WATRS application because it brought new issues to the table around the cheque having bounced which it was investigating and which had also not been through its complaints procedure.

Adjudicator's findings and reasons

8. I find that:
 - a. I acknowledge the parties' submissions about the previous WATRS decision. However, I remind the parties that in accordance with WATRS Rule 1.8: "Adjudicators will take a consistent approach in reaching their decisions but every dispute will be decided on its own facts and a decision made by an adjudicator in one dispute will not establish a precedent for future cases."
 - b. I acknowledge that the customer is unhappy about the way in which CCW handled his complaint however part 3.5 of the WATRS rules makes clear that the Scheme cannot be used to adjudicate disputes about the handling of CCW complaints. I therefore cannot consider any submissions made in this regard.

- c. Insofar as the matters raised relate to data protection and privacy issues, I consider that this is a complicated issue of law better dealt with by the Information Commissioner's Office. I have therefore not considered such matters below.
- d. I have made various observations and comments below based primarily upon the correspondence evidence and the documents provided by the parties. Where my view conflicts with the position of either party, it is because the evidence supports the conclusions that I have drawn.
- e. I find, on a balance of probabilities, that the original complaint of the customer dated 10 November 2015 concerning the company still not informing him of why his number was requested by it has been closed and compensation of £150 was accepted by the customer in this regard on the 7 and 17 December 2015. Insofar as the complaint is that the company still continue to ask for customers' numbers I am of the opinion that the company has explained in its Defence why this is necessary, including allowing it to identify customers as well as contact them in the event of an emergency. On a balance of probabilities I find that the company is entitled to ask customers for their phone numbers and it is up to each individual customer to decline to supply the same if he or she so wishes.
- f. The subsequent WATRS referral made by the customer now included also the issue of the bounced cheque, the previous complaint having been closed by the customer accepting compensation in respect of it. Whether this referral was, as the company contends, made prematurely, before the company had time fully to complete both stage 1 and 2 of its complaints procedure and investigate it adequately or whether it was a proper referral as the customer contends, is of little consequence in circumstances where the information given by the company to WATRS and to CCW on the basis of which the referral was withdrawn - that is, that it was informed by its bank that the cheque had not yet been presented for payment was both accurate – this was the information it had been given by its bank – and provided in good faith.
- g. On 13 January 2016 the customer provided proof that he had presented the cheque and it had bounced thus, according to the company, initiating stage 1 of its complaints procedure in respect of this issue. However the company's telephone note dated 17 December 2015 states the customer was advised that it would look into the issues of the bounced cheque separately at that time. It did not at this stage request any proof of presentation from the customer. It is evident that the customer was making a formal complaint at this stage, and although the company did investigate the same with its banking provider the same day, it failed to initiate its formal complaints procedure or take any steps to address the complaint as such. Accordingly, the delay in progressing the

matter from 17 December 2015 to 13 January 2016 is attributable to the company and falls below the standard of service it could reasonably be expected to provide. However the delay period is less than a month and cannot be said to have caused any real financial harm or loss to the customer such as to entitle him to any significant compensation in respect thereof and accordingly only a limited amount is due in this regard.

- h. Furthermore, the initial cheque paid to the customer ought not to have bounced. The customer has no relationship with the banking providers of the company and his relationship is only with the company. On a balance of probabilities, the bouncing of the cheque and the consequent inconvenience to the customer is due to a failure on the part of the company to provide its service to a standard that can reasonably be expected. I note that the company has previously offered £250 as a gesture of goodwill in respect of the inconvenience caused to the customer in this regard. I note also the customer's circumstances at the time the cheque bounced. In my opinion the customer cannot have been expecting the goodwill payment from the company which was constituted by the bounced cheque and the same was something of a bonus for him. In the premises, I am of the view that £250 is a sufficient amount to compensate the customer for the limited inconvenience experienced by him purely as a result of the bouncing of the cheque and I find the customer is entitled to £250 as compensation in this respect. Insofar as there is also a claim arising from the delay in processing his complaint I am of the view that any compensation due is included in the £250, the initial gesture of goodwill by the company having been a generous one and disproportionately high given its failings. I also note that the customer has in his application requested that any monies awarded to him are to be paid by BACS/CHAPS transfer, and not by cheque. Given the customer's prior experience with a cheque from the company I am prepared to allow this claim and direct that the money be paid direct to the customer by BACS/CHAPS transfer.
- i. As to the remedies claimed by the customer, I find that sufficient apology has been provided and no further apology is necessary; that the company is in fact taking steps to improve its service such that no further direction by me is necessary in this regard; and that I am unable to accept the customer's claim to have his moving costs paid by the company. Not only is the claim wholly un-particularised and un-supported by any substantiating evidence, it is also out of all proportion to the inconvenience suffered by the customer. The customer's basic complaint – made on his own behalf and not that of other customers – is that his phone number is being used to send him uninvited customer satisfaction surveys. There is no evidence of the customer having received such a survey since the last WATRS decision on it, and his subsequent complaint, i.e. that he was asked for his phone number without being told why, has been closed by him accepting £150 compensation in respect thereof. In any case, I accept the evidence of

the company that customers' phone numbers are not used only for the purpose of sending them satisfaction surveys and that it has taken significant steps to train its staff to alert them to the issues raised by the customer in this regard.

Conclusion

9. My conclusion on the main issues is that:
 - a. The company has failed to provide its services to the standard to be reasonably expected.
 - b. The reasons given by the customer are sufficient to justify the claim in part.

10. Therefore, I conclude that the claim succeeds in part.

11. I direct that the company pay the customer compensation in the sum of £250, to be paid by CHAPS / BACS transfer.

A handwritten signature in black ink, appearing to read 'A. Ghaffar', is written over a light grey dotted grid background.

**Arshad Ghaffar, LL.B, LL.M. Barrister-at-law, FCI Arb.
Adjudicator**