

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0881

Date of Decision: 5 July 2018

#### Complaint

The customer states that the company has placed incorrect negative information on his Equifax credit report. He requests that the company remove this information.

#### Defence

The company argues that the customer was late in making a payment on his bill, and that it has acted correctly in its reporting to Equifax. No settlement offer has been made.

#### Findings

The company has billed the customer correctly, and has acted correctly in its reporting to Equifax.

#### Outcome

The company does not need to take any further action.

The customer must reply by 2 August 2018 to accept or reject this decision.

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- On 28 September 2015, the company sent the customer a Final Demand notice.
- On 11 October 2015, the company received a request from the customer, through its website, to make payments via direct debit. Confirmation of this payment plan was mailed to the customer the following day.
- On 2 March 2018, after the customer had departed the property, the company received a complaint from the customer. This complaint was discussed with the customer on 13 March 2018.
- The company argues that the customer was late making payment on the 14 August 2015 bill, and that it had a legitimate reason for reporting this late payment to Equifax.

**The customer comments on the company's response that:**

- He did not receive the original bill the company states was sent, and so was not notified that he might be reported to a credit reference agency until he received the 11 October 2015 bill.
- The 14 August 2015 bill must have gotten lost in the post, and he made all agreed payments to the company as soon as he received a bill.
- The company has incorrectly reported that he was late in making a payment.
- The company has raised a new issue about installation of a water meter.

**The company comments on the customer's comments that:**

- The customer was repeatedly notified by the company that information might be reported to a credit reference agency.
- Equifax has recorded the late payment and the start of the customer's account in the wrong months, but it has been notified of this error by the company.
- The company has raised no issue about installation of a water meter.

**The customer comments on the company's comments that:**

- The company has not proven that he received the 14 August 2015 bill.
- The notification on the 14 August 2015 bill that his information might be reported to credit reference agencies is in very small print.

**How is a WATRS decision reached?**

In reaching my decision, I have considered two key issues. These are:

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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. The customer's complaint centers on the reporting by the company to the credit reference agency Equifax, that the customer was late in making a payment in September 2015.
2. It is agreed by both parties that the customer's credit report currently incorrectly shows that his account with the company commenced in July 2015, and that the alleged late payment occurred in August 2015. The company has explained that this mistaken information resulted from an error by Equifax, and states that it has notified Equifax of the error, so that the information can be corrected.
3. As a result, because the company was not the source of the error, and took immediate steps to correct the error once it was discovered, I find that the company has in this respect provided its services to the customer to the standard to be reasonably expected by the average person.
4. The customer does not dispute that he did not make a payment in September 2015, but argues that he did not receive the 14 August 2015 bill, and that when he did receive a bill from the company in October 2015, he immediately commenced making payments.
5. The company has produced a copy of the 14 August 2015 bill, and has also provided evidence of phone calls made to the customer in September 2015 attempting to arrange payment of that bill.

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6. In many disputes, the evidence as to precisely what happened will be to some degree unclear, and the law addresses this uncertainty through what has come to be known as the “balance of probabilities” test. Under this test, the decision-maker must look at the evidence provided by the parties, and decide what is most likely to have happened based on that evidence. Importantly, this decision is only based on the evidence provided by the parties, and so is made with full knowledge that the evidence provided may in some way be misleading, or that there may be additional evidence that would justify a different conclusion. However, as a decision must be made, it must be made based on the evidence actually provided, not on the decision-maker’s unsupported speculations regarding what may or may not have happened.
7. In the present case, while it is certainly possible that the 14 August 2015 bill was lost in the post, mail is overwhelmingly delivered when sent. As a result, while it is clearly true that the customer cannot reasonably be expected to prove that he did not receive the 14 August 2015 bill, the reliability of mail delivery raises a strong presumption that the 14 August 2015 bill was indeed delivered. In addition, the company has produced evidence that the customer was notified when creating his account that a bill would be mailed to him within two weeks, raising a further presumption that the customer would have contacted the company prior to receiving the final demand notice over a month later, in order to question why he had not yet received a bill.
8. Given the above, and while acknowledging that a decision on the balance of probabilities may be incorrect on the facts even when correct as a decision, I find that the 14 August 2015 bill was received at the customer’s address.
9. I find, therefore, that the company correctly billed the customer on 14 August 2015, and that payment was due from the customer in accordance with the terms of the 14 August 2015 bill.
10. While the company allows payments to be spread across the course of a year through direct debit, the 14 August 2015 bill expressly states that full payment of that bill was due on 1 September 2015.
11. As a result, since the customer did not arrange direct debit payment of his bill until 11 October 2015, I find that the company has correctly reported to Equifax that the customer was one month late in paying the 14 August 2015 bill.

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12. The customer also objects that because he did not receive the 14 August 2015 bill, he did not receive notice that the company might report to a credit reference agency if he made a late payment, and that he did not consent to such reporting.
13. I have already found on the balance of probabilities that the customer did receive the 14 August 2015 bill. Moreover, while it is understandable that the customer may feel that the company should not be allowed to share his personal data with third parties without his consent, the law does not require that the company secure the customer's consent to reporting late payments to a credit reference agency, as such reporting is recognized as constituting a use of the customer's personal data for a "legitimate interest" of the company.
14. As a result, I find that the company has acted appropriately in reporting the customer's late payment to Equifax.
15. For the reasons give above, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person.

#### **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 2 August 2018 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.

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Tony Cole

Tony Cole, FCI Arb

Adjudicator

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