

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1062

Date of Decision: 6 December 2018

Complaint

The customer states that the company improperly commenced court action against her and misallocated payments that she made. She requests compensation of £400.00 for stress and inconvenience, £37.50 as the court costs she has paid, £2,050.00 for misallocation of funds, and a written apology.

Defence

The company states the court action was properly commenced and that the customer has been billed correctly. It acknowledges that one payment was misallocated, but states that this error was subsequently corrected. It has paid 50% of the court costs owed by the customer. No further offer of settlement has been made.

Findings

The company was justified in its decision to commence court action against the customer. However, the company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its accounting of the payments made by the customer after court action was commenced.

Outcome

The company needs to take the following further action: It must pay the customer total compensation of £712.50, and must apologise to the customer for misallocating her 1 March 2018 payment of £100.00 and for allocating her payments in a way that improperly extended the court action being undertaken against her.

The customer must reply by 8 January 2019 to accept or reject this decision.

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- The company confirmed that a £100.00 payment she had made on 1 March 2018 was misallocated and paid to the wrong account. This was only noticed by the customer, not by the company, and was subsequently reallocated.
- While she cannot locate receipts or other supporting evidence, she believes that she paid the company fully before it commenced its debt collection action and that other payments were also misallocated.
- The company agreed to reduce the court costs owed by the customer by 50% as a gesture of goodwill.
- She requests compensation of £400.00 for stress and inconvenience, £37.50 as the court costs she has paid, £2,050.00 for misallocation of funds, and a written apology.

The company's response is that:

- As well as paying her own account, the customer also pays for her sister's account. The company was not notified that this second account was not the customer's account, and that account is also in the customer's name.
- On or around 10 April 2017, the customer was sent a consolidated invoice for the period 1 April 2017 to 31 March 2018 in the amount of £350.64.
- A payment plan was put in place at that time of £25.00 per month, commencing 1 May 2017.
- The customer did not make payments in accordance with the agreed plan and after unsuccessful reminder notices had been sent, the company cancelled the payment arrangement on 26 August 2017.
- As a result, the entire amount owed then became due.
- Default notices were issued by the company on 28 September 2017 and 14 October 2017.
- The company has no record of the call the customer states she made on 18 October 2017.
- Neither the customer's account nor the account for the customer's sister were placed on hold at the time of the alleged phone call.
- On 28 November 2017, the company issued a Notice of Pre-Action.
- On 19 January 2018, the company issued a Notice of Court Action, stating that £175.64 remained due and that court action would be commenced if the customer did not make the payment or contact the company within 14 days.
- Neither payment nor contact were made and court action was commenced on 8 February 2018.
- Once court action is commenced, the customer's account is split into two accounts, with the amount subject to court action being referred to as the Court Account and other ongoing charges being referred to as the Current Account.

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- Unless a customer specifically requests that a payment be allocated to a specific account, payments are allocated to the oldest debt in accordance with the rule in Clayton's Case.
- On 9 February 2018 a payment of £50.00 was received from the customer.
- As the customer's Court Account had been ring-fenced, this payment was applied to the customer's Current Account.
- On 17 February, the company issued a bill for the period 1 April 2018 to 31 March 2019 in the amount of £253.35, with a monthly payment plan agreed of £22.59.
- On 1 March 2018, a payment was received from the customer of £100.00.
- This payment was initially mistakenly credited to the customer's sister's account, but was then, at the customer's request, reallocated to the customer's Court Account on 1 May 2018.
- The customer made a further payment of £250.00 on 30 April 2018, which was allocated to her Current Account.
- The remaining balance on the customer's Court Account at this time was £150.64 including costs and fees.
- As a goodwill gesture, the company offered to waive 50% of the costs and fees, thereby reducing the customer's Court Account to £113.14.
- The customer's Credit Account at this time had a credit of £46.65 and the company offered to move this amount to the customer's Court Account, leaving an outstanding balance on the customer's Court Account of £66.49.
- On 30 July 2019 and 3 August 2018, the customer paid further amounts equalling £66.49.
- The company then informed the court that the dispute had been settled.
- The Company denies causing confusion over the customer's bill by misappropriating payments, and states that all invoices accurately reflected the company's charges that were payable by the customer.
- The company acknowledges making an error regarding the misallocation of the £100.00 payment, but argues that this payment was made after court proceedings had commenced, and that it therefore had no impact on the commencement of debt recovery action.
- The customer has not provided any evidence that additional payments were made.
- The company states that it was not made aware of the customer's personal circumstances until after court proceedings had been issued, and notes that the customer did not mention these difficulties in her response to the court proceedings.
- The company is willing to apologise for the misallocation of the £100.00 payment, but denies that any stress or inconvenience resulted.
- The company denies that it has any general duty of care towards its customers.

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- The company is willing to offer the stated apology, but no additional settlement offer has been made.

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. The customer states that she is not convinced that all the payments she has made to the company have been properly credited to her account. However, she has not identified specific payments that she believes were not credited and has not produced any evidence supporting her expressed concern.
2. As a result, on the basis of the evidence available to me, I find that the payment records produced by the company are accurate.
3. The customer also states that she called the company on 18 October 2017 and was told that given her personal circumstances she should continue to make payments as she was able, and should ignore subsequent communications from the company. She has produced a signed

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letter from an acquaintance stating that he witnessed this phone call, but has declined to produce phone records demonstrating that the call was made.

4. The company states that it has no record of any such call being made by the customer.
5. 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.
6. On the balance of the evidence in this dispute, I find that the customer has not sufficiently established that the call to which she refers was indeed made. While it is not inherently implausible that the customer would have been told by a representative that she should make payments as possible, it would be unusual for a formal payment plan not to be arranged, and even more unusual for the company to state that further communications from it should be ignored. It is also surprising that the customer continued to ignore communications from the company even when they stated that court action was being commenced.
7. This does not mean that I find the customer’s statement about the 18 October 2017 phone call to be untrue, but the company has stated that it has no record of this call, and so the customer’s account requires support. While the customer has produced a signed letter from an acquaintance, whose phone she states she used to make the call, she has declined to ask her acquaintance for evidence from his phone records that the call was made. While this may be understandable in terms of the customer’s relationship with her acquaintance, it nonetheless undermines the plausibility of her account when she refuses to present evidence that could be acquired and would definitively prove the truth of her statements.
8. As a result, I find on the balance of the evidence available to me that the company did not agree in a phone call on 18 October 2017 that the customer did not need to pay the bills that she was being sent.

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9. It is a consequence of this finding that the company was justified in commencing court action against the customer, as the customer had not paid money that she owed and the company had provided the customer with clear notice that court action would be commenced.
10. I find, therefore, that the company was justified in commencing court action on 8 February 2018 to collect the amount of £175.64, and that in doing so it did not fail to provide its services to the customer to the standard to be reasonably expected by the average person.
11. However, the company acknowledges that on 9 February 2018, the customer made a payment of £50.00.
12. The company states that this payment was credited to the customer's Current Account, as the customer's Court Account had been ring-fenced.
13. There are, however, difficulties with the company's position. Firstly, there is no evidence that the customer had at this time been notified that her account had been "split" by the company in its internal accounting, so that she now had both a Court Account and a Current Account.
14. Moreover, the customer's Current Account at this point had no debt outstanding, as the customer's entire balance due for the year had been transferred by the company into her Court Account, and no new amounts owed were applied until 17 February 2018, 8 days later, with the first payment not due until 2 April 2018.
15. In addition, the company relies on the rule in Clayton's Case for the principle that unless a customer specifically requests that a payment be allocated to a specific account, payments are allocated to the oldest debt. However, the oldest debt on the customer's account was the debt being claimed by the company through its court action. Indeed, it was the only debt on the customer's account.
16. Nonetheless, despite the above, rather than crediting the customer's payment to the debt it was collecting from her through its court action, the company instead left the customer's Court Account unchanged, while creating a credit on the customer's Current Account.

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17. It is unclear on what ground the company could have understood that the customer was making a payment in order to create a credit on her account, rather than to pay off the amounts for which she was being taken to court.
18. I find, therefore, that while the company's decision to commence court action against the customer to collect £175.64 was appropriate and justified, as of 9 February 2017 the customer only owed the company £125.64.
19. On 1 March 2018, the customer made a further payment to the company of £100.00, which the company acknowledges it mistakenly allocated to the customer's sister's account (which the customer was also paying, and which was in her name).
20. This was subsequently allocated to the customer's Court Account, at her request, however as the payment was also made at a time at which no amounts were yet owed on the customer's Current Account (the first payment for the new year not yet being due), I find that this payment is properly treated as having been paid to the customer's Court Account on 1 March 2018.
21. As a result, as of 1 March 2018, the customer only owed the company £25.64, in addition to the £75.00 of court costs that the company was legitimately able to ask the customer to pay as the customer owed the money underlying the court action.
22. On 30 April 2018, the customer made a further payment to the company of £250.00, which the company again allocated to her Current Account. However, under the payment agreement the customer had with the company, only £22.59 was owing on the customer's Current Account at this time.
23. Again, I find that the company could not reasonably have believed that the customer was making a payment to her Current Account, to pay off amounts not yet due, at the exclusion of paying the amount currently being claimed from her in court.
24. Nonetheless, the company proceeded to use the £250.00 paid by the customer to pay off her bill for the current year, even though a payment agreement was in place that meant the customer was only obligated to pay £22.59 per month, and the company was simultaneously attempting to collect £100.64 from the customer through court action.

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25. Indeed, the company's accounting not only resulted in the customer paying off her full bill for the coming year, despite only one small payment being due, but left the customer's Current Account in credit by £46.65. This makes even less plausible any contention that the customer wished this payment to be applied solely to her Current Account, thereby paying off amounts not yet due, creating a credit on her account, but leaving unpaid amounts for which she was being taken to court by the company.
26. The company offered to apply this credit to the customer's Court Account, which on its accounting left an amount owing on the customer's Court Account of £66.49, which the customer then paid.
27. The consequence of the above was that the customer had by this time not only paid the company the amounts claimed through the court action, as well as 50% of the court costs, but had paid in advance a year of payments that were not yet due under the payment arrangement she had with the company. Moreover, the final payment of £66.49 was only made by the customer because the company had credited her payments to her Current Account to cover amounts not yet due and to create a surplus, instead of crediting her payments to her Court Account.
28. I will reiterate that I find that the company was justified in its decision to commence court action against the customer for amounts owed. In addition, the company was justified in imposing on the customer the £37.50 of court costs that it added to her account, as it was justified in commencing court action. Indeed, the company could legitimately have asked the customer to pay the full £75.00 of court costs, as it was justified in commencing court action.
29. However, I also find that the company's approach to the accounting of the customer's payments was justified neither by the company's Charges Scheme (which does not mention the creation of a separate Court Account), nor by the customer's consent, nor by a good faith interpretation of where the customer was likely to wish her payments to be allocated.
30. I note that if the customer's payments had all been properly credited to her Court Account, rather than used to create a credit on her Current Account, then as of 1 March 2018, the customer would only have owed the company £25.64 plus £75.00 for court costs.

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31. I also find that if the customer had been told at this time that she now only owed the company £25.64 plus court costs, it is more likely than not that she would have made this payment in order to conclude the company's court action against her.
32. It is, however, clear that as of 30 April 2018, the customer had paid the company an amount sufficient to cover both the amount properly remaining on her Court Account and the full court costs.
33. The court action was not concluded until August 2018, and I find that this extended court action resulted solely from the company accounting for the customer's payments in a way that the average person would not regard as providing its services to the customer to the standard to be reasonably expected.
34. I accept the customer's statement that being subjected to court action caused her distress and inconvenience, and while initially this distress and inconvenience resulted from the customer's own actions, for 4-6 months from March/May until August 2018 it resulted solely from the company's treatment of the payments she made to her account, which I have found did not meet the standard to be reasonably expected by the average person.
35. I also accept that the amount of inconvenience and distress caused to the customer by the company's actions was enhanced by her personal situation. While the company denies being aware of the details of the customer's personal situation, it is standard law that compensation is owed for harm actually caused, not only for harm that an actor knew it would cause or even harm that would have been caused to an average person.
36. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, and taking into account both the customer's personal circumstances and the prolonged period for which the customer was subjected to court action because of the company's allocation of her payments, I find that fair and appropriate compensation for the significant inconvenience and distress that was caused to the customer would consist of £750.00.
37. I acknowledge that the company agreed to pay 50% of the court costs, in the amount of £37.50, and this amount is appropriately deducted from the compensation now owed.
38. Consequently, the company must pay the customer total compensation of £712.50.

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39. The customer has also requested a written apology, and I find that an apology would be appropriate given the facts above.

40. Consequently, the company must apologise to the customer for misallocating her 1 March 2018 payment of £100.00 and for allocating her payments in a way that improperly extended the court action being undertaken against her.

41. For the reasons given above, the company must pay the customer total compensation of £712.50, and must apologise to the customer for misallocating her 1 March 2018 payment of £100.00 and for allocating her payments in a way that improperly extended the court action being undertaken against her.

Outcome

The company needs to take the following further action:

It must pay the customer total compensation of £712.50, and must apologise to the customer for misallocating her 1 March 2018 payment of £100.00 and for allocating her payments in a way that improperly extended the court action being undertaken against her.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 January 2019 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.

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- 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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