

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1410

Date of Decision: 17 May 2019

Complaint

The company failed to set up a direct debit as requested. This caused a debt to be unknowingly incurred by the customer. The customer became aware of this when he was contacted by a debt collection agency and a payment plan was set up. The company defaulted him on his credit file and the customer asks for this to be removed.

Defence

The company did fail to set up a direct debit as agreed, however the customer paid his first bill in full. The second bill went unpaid and the company sent correspondence to him including a notification of its intention to default. The company has provided the customer with £30.00 for the error with the direct debit. It submits that the customer was aware that there was no direct debit as he made a manual payment of the first bill. The company must provide an accurate record of the customer's payment history to credit reference agencies; this includes the default.

Findings

It was necessary to review whether a reasonable person in the customer's position would have been aware that there was no active direct debit on the account. The evidence indicated that the customer was aware of the initial error setting up the direct debit; he did not clearly make a second request for a direct debit to be set up. The company's letters could not reasonably be misconstrued as statements. The company cannot be obliged to use alternative communication methods if a customer has not advised them of any issues with regular post; in any event, the customer admitted receiving some letters. The company therefore acted reasonably to make the customer aware of the debt and there is no basis for the default to be removed from the customer's credit file as it is accurate.

Outcome

The company does not need to take any further action.

The customer must reply by 17 June 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 17 May 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The customer moved into his property in March or April 2016. The customer called the company to set up a direct debit on moving in. The company failed to set this up for reasons unknown. The customer made a payment online as the company's customer service lines were down. The customer believed that his direct debit was set up once more. The company failed and did not set up the direct debit. A debt was unknowingly incurred by the customer. The company started chasing, but the customer mistook its letters for statements. The account was eventually sent to a debt collection agency. The customer called the company and it agreed to remove the account from the debt collection agency and set up a payment plan. The customer then found that the company had defaulted him. The customer submits that the company made no attempt to contact him verbally. The customer does not receive mail reliably as he lives on Oak Way and there is a Oak Road and a Oak Avenue on the same estate. As a result of the default, the customer has been unable to obtain a business loan.
- The customer requests that the default is removed from his credit file.

The company's response is that:

- The company states that the customer has been billed for water and sewerage services at his property since 15 April 2016. The customer called it on 20 April 2016 to arrange to pay his charges by direct debit. The direct debit was not set up as agreed. However, the customer paid his first bill, dated 22 June 2016, in full. The customer's next bill, dated 5 January 2016, was unpaid. The

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customer sent correspondence to the customer on dates in February and March 2016, before sending a notification of the company's intention to default on 15 April 2017. The default was registered on 14 May 2017. The customer's next bill was generated on 23 June 2017, showing the balance of the January 2017 bill to have been carried forward. The account was allocated to a debt collection agency on or around 7 November 2017. The company also sent an SMS message to the customer's mobile number on 13 March 2017. The company has provided the customer with a cheque for £30.00 for the error made in setting up the direct debit. The default has been registered on the customer's credit file in accordance with the relevant rules. The customer made the payment in June 2016 via the automated payment line and not by direct debit; had the company spoken to the customer at this time, it would have been able to set up a payment plan. The customer would have received bank statements over the period and would have been able to check that payments were being made. The customer contacted it on 7 December 2017 after being contacted by the debt collection agency. He advised that he believed he was paying charges by direct debit. The balance linked to the default was reported as satisfied in May 2018. The company denies that the default should be removed as it has been correctly reported and removing the default would be falsifying information.

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?

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1. The customer is disputing a default that was placed on his credit file by the company. This is on the basis that the customer believed that a direct debit had been set up by the company, but that it had not, in fact, been set up.
2. I am mindful that a person's credit file contains the payment history of any loans, credit cards, or other services that require a regular payment, such as telephone contracts or utilities. The credit file is used by prospective creditors to assess an individual's risk, enabling companies to make offers of credit or services that reflect the likelihood that a customer will make payments on time and in full. As a result of the role of the credit file, each party that provides information to credit reference agencies must do so on an accurate basis.
3. I am satisfied that there will be some instances where it is appropriate to direct a company to amend entries sent to a credit reference agency. This will include where the information is incorrect, where the underlying billing is incorrect, any instance where a company failed to send the bill to a customer, cases of mistaken identity, or potentially an instance where a direct debit was set up but not utilised by the company, especially where this coincides with a lack of correspondence about the outstanding balance, such that the customer could reasonably be unaware of the debt.
4. It is therefore necessary to review the evidence in order to determine the customer's level of knowledge about the account and whether the company reasonably corresponded with the customer to make him aware of the debt. For the avoidance of doubt, where there are no extenuating circumstances, the customer's knowledge of the debt must be assessed on a 'reasonable person' basis. This is asking whether a reasonable person would have been aware that a debt was outstanding had he been in the customer's position. It will therefore be possible for a customer to have been honestly unaware of the debt, but that he should nevertheless reasonably have been aware of it.
5. The customer was sent a letter on 20 April 2016 to advise that an account had been set up for him. The first bill was issued on 22 June 2016 for £60.38, covering the period 19 April to 21 June 2016.
6. The parties are agreed that the customer contacted the company when he moved into the property and asked to set up a direct debit. The company did not set this up. It is unclear why the company

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failed to set up the direct debit at this time. I find that the company fell below the standard expected of a reasonable water company when it failed to set up this direct debit.

7. The customer's 22 June 2016 bill states that the customer should "ensure your payment reaches us before 05 Jul 16". It also includes details of various ways the customer could pay, providing details of the company's website and automated payment line. The customer made a payment of the first bill through the company's automated systems.
8. I must find that, at the time the customer made this payment, a reasonable person would have been aware that there was no active direct debit on the account. There is no reference to the company taking payment by direct debit on the bill and the customer did actually make a manual payment. This indicates that the customer was aware that the payment would not be taken by a direct debit at that time.
9. The customer states that he attempted to call the company but that its "customer service lines were down". The customer does not appear to have made any other attempt to contact the company. I am mindful that, whilst the company did fail to set up the direct debit initially, it would be unable to set this up afresh without the instruction of the customer. This could be given through the call centre or by using the company's website to set up the direct debit. I find that, unless and until the customer was able to speak to the customer's call centre or complete a direct debit setup form online, a reasonable person would not believe that there was an active direct debit on the account.
10. I therefore find that the company did fail to provide the services to the standard expected when it failed to set up the direct debit initially. However, the customer did not speak to the company, nor make any alternative contact attempt, after he became aware in June 2016 that the direct debit had not been set up.
11. I am satisfied that the customer is responsible for ensuring that his bills are paid on time. In view of this, I find that, once the customer became aware that the direct debit had not been set up on the account, the onus was on him to contact the company to have this correctly set up. The company remains responsible for the failure to set up the direct debit initially; however, this is a customer service failure and does not affect the customer's responsibility to ensure that his bills are paid.

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12. The customer's second bill was issued on 5 January 2017 and covered the period 22 June 2016 until 4 January 2017. The bill states that the customer should "ensure your payment reaches us before 18 Jan 17". It also makes no mention of any direct debit from which the company would attempt to take payment. I am satisfied that a reasonable person would have been aware that a manual payment was required to settle this bill.
13. The evidence shows that the company sent a number of letters to the customer in respect of the outstanding balance. The customer states that he mistook these letters for statements. He also states that he did not receive all of the letters due to postal issues relating to his street name.
14. In respect of the customer's mail delivery issues, I find that these rest with Royal Mail, the party responsible for delivering ordinary post. The company cannot be held responsible for any letters being misdelivered. I also find that there was no reason for the company to prioritise the use of any other method of communication to the customer as it had not been made aware that the customer was experiencing difficulties in receiving post.
15. I am also mindful that the customer admits receiving at least some of the company's letters. It is therefore necessary to review whether a reasonable person would have ascertained that the account balance was outstanding and that no direct debit was in place on the account.
16. The first letter, dated 8 February 2017, starts with the heading "Oops! You seem to have forgotten something!". The first line explains that the payment of £221.52 "was at least 14 days overdue". The letter includes information about credit reference agencies and also clearly provides two options to bring the account balance up-to-date.
17. I am satisfied that this letter was clear that there was a balance on the account that had become overdue. I am not persuaded that this letter could reasonably be mistaken for a statement. I therefore find that, even where the customer reasonably believed that the January 2017 bill would be paid by direct debit, the 8 February 2017 letter was clear that no payment had been made. I find that this letter would have prompted a reasonable person to have investigated and contacted the company to clarify the situation.
18. The company's second letter was dated 4 March 2017. This includes the heading "Final Notice" and includes details about credit reference agencies, the overdue balance amount, and ways to

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pay. It also expressly states that “Doing nothing could result in legal action and a Default being registered against your credit file”.

19. I am not persuaded that this letter could be reasonably mistaken for a statement. It is expressly a final notice in relation to an overdue balance.
20. The company sent a notice to the customer on 28 March 2017 that the balance was being passed to a debt collection agency. This letter includes a heading in red ink, well known to be used in relation to overdue bills. I am not persuaded that this letter could reasonably be mistaken for a statement.
21. On 15 April 2017, the company sent a notification of its intention to file a default. This is a formal notice of the balance, the date it became due, and the basis under which the company was to register the default. The letter also included an information sheet about the default and what the customer needed to do. I find that this letter and information sheet could not reasonably be mistaken for a statement of the account.
22. I therefore must find that, as the customer has admitted to receiving some of the company’s letters, though not all, he should reasonably have been aware that there was an overdue balance on the account. This is because each item of correspondence could not reasonably be mistaken for a statement. Whilst I accept that the customer may not have received all of the company’s correspondence due to postage issues, the company had no knowledge of these issues and I am satisfied that all items of correspondence were clear that the balance was overdue and had therefore not been taken by direct debit.
23. I acknowledge the customer’s submissions that he did not receive any SMS message from the company on 13 March 2017. However, as above, I am satisfied that the company did reasonably make the customer aware of the outstanding balance through its letters.
24. I also acknowledge that it would have been better customer service to have made an attempt to call the customer prior to defaulting the account. However, I am satisfied that the company did make reasonable efforts to make the customer aware of the debt through correspondence. The fact that the company could have provided better customer service to the customer does not mean that the level of service it did provide was to a poor standard or below the level expected of a reasonable water supplier. As the evidence shows that the company did fully advise the customer

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of the outstanding balance and the intention to default, I am satisfied that the company did meet the standard expected of a reasonable water and sewerage supplier.

25. In view of this, I am satisfied that the customer did not pay the January 2017 bill, although he should reasonably have been aware that there was no active direct debit on the account and that the balance was overdue. For these reasons, I find that the default has been correctly applied to the customer's credit file. I find that the only failure in the company's customer service relates to the initial failure to set up the direct debit; however, this oversight did not directly result in the default as the evidence shows that the customer should reasonably have been aware that the direct debit was not active. I therefore find no basis for the company to remove the default from the customer's credit file as this represents an accurate record of the payment history on the account. The customer's claim is therefore unable to succeed.

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 by 17 June 2019 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.



Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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