WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1526

Date of Decision: 5 August 2019

Complaint

The customer complains that having been told on two occasions told that she had been incorrectly billed for the property behind hers (number 1a Green Street), which was included in her bill and for which she was given a refund, the company in 2018 stated that she had a liability for back-billing for services including those relating to 1a . The customer, who has now left the property says she is unable to pay and seeks cessation of the claim for a final bill amounting to £3666.92 on account 45[ ]5-&; and compensation in the sum of £981.86.

Defence

The company says that the customer is liable under section 142 and 144 of the Water Industry Act 1991 because she is the occupier of the premises including the property at 1a , which shares her supply. This is a third-party issue. The company has apologised for billing the customer incorrectly but says that it has information from a discussion between the customer and a company representative in November 2017 and from the landlord that the customer knew that she was liable. The company seeks to back-date the bill under its Charges Scheme.

Findings

The company has not supplied its services to the standard that would reasonably be expected. By informing the customer on two occasions that she was not liable for usage at number 1a and then, having decided that the customer was liable in November 2017, by failing to send the relevant bills to her address, the company caused the customer to believe she was not liable and to act to her detriment because she had not made arrangements for payment. In deciding that the customer was aware of the liability, the company relied upon an unclear report of a conversation, failed to investigate at the time and placed reliance on information given two years later by the landlord, with whom she had a conflict of interest. The company also caused distress and inconvenience. The company should be required to waive the outstanding bill.

Outcome

The company needs to take the following further action: 1. waive the outstanding bill on account 45[ ]5-& for £3,666.92 and cease all collections activity accordingly. 2. Issue a replacement bill to the customer in the sum of £333.46.

The customer must reply by 2 September 2019 to accept or reject this decision.

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Date of Decision: 5 August 2019

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- The company has billed her incorrectly. She says that she was resident at 1 Green Street, [ ] as a tenant between 2 April 2014 and 31 March 2019 and she was responsible for paying the water bill.
- She says that after a short while she became aware of certain problems, for instance that of leakage, the hot water ran constantly from the top pipe in the house and the supply meter also measured the use of the property behind at 1a , Green Street, [ ]. This was under separate occupation and the tenants had a direct contract with the landlord.
- The customer notified the company and was offered a rebate and final bill on account 7[ ]9-& by way of a letter dated 21 October 2015.
- After few months the company re-opened the customer's account under same account number 7[ ]9-&, but all the issues were the same. When the customer contacted the company, it carried out checks and again closed the account and sent a closing bill by email on 1 September 2016. The customer then received no further communication for two years, until on 24 September 2018, the customer received a card from Mr Brown at the collection agency [ ]. Mr Brown discussed the position with the customer and took a photograph of her closed bill. He promised to upload this information into the system and at the same time he introduced a new fixed water plan of £482.00 for one year, starting from October 2018 and a one year standing order was set up. Mr Brown told the customer that she was not responsible for any previous payment. When the customer received no confirmation from the company about this, she

contacted Mr Brown again and he told her that he had spoken to the company and that she would receive confirmation soon.

- The customer then called the company and learned that she had been given a new water account numbered 45[ ]5-&. She was told that the outstanding balance on this account was £5,060.89. The customer argued that her account number was 7[ ]9-& and it had been closed on 1 September 2016, She said that she had not received any bills relating to the other account number.
- After that, the customer received a letter from the company dated 16 October 2018 saying that she owed £5,060.89 and then received a further letter dated 1 September 2018 for £5,100.89 The customer informed Mr Brown, who said that he would sort it out. On 1 October 2018, he told the customer that it was all sorted out and the bills had been a system error.
- The customer, however, again received a payment reminder letter from the company. The customer spoke to the company but a member of staff was very rude to her and would not listen. The customer says that she was treated like a criminal and told that because the bill was in her name, she was liable for it.
- The customer complained.
- When she moved from her address in March 2019, the company sent her a final bill for £3,666.92. In both its letters the company states that the outstanding amount is for 1a Green Street, [ ].
- The customer claims that the company makes mistakes, that she has been harassed and that she is unable to pay this bill. She says that she has two daughters to bring up and other responsibilities and this has caused considerable distress and inconvenience.
- The customer .seeks:
    - Cessation of the claim for the final bill amounting to £3,666.92;
    - Compensation in the sum of £981.86 comprising the amount of the bill initially claimed of £5,31.86, £3,000.00 in respect of the distress and inconvenience relating to the company's claim for sums for which she had not previously been billed and £1,500.00 because the company did not listen when she contacted them.

T**he company's response is that:**

- The customer has a responsibility under sections 142 to 144 of the Water Industry Act 1991 to pay for the services supplied. As the customer resided at 1 Green Street, [ ], from 2 April 2014 until 31 March 2019, being a property with a single water supply with no separate supply to '1a ' (which is not recognised as a separate dwelling under Council Tax systems), the water

services charges are to be paid by the occupier of the property, i.e. the person who lives there and uses the water. In this case, because number 1a was not a separate property, the customer was liable.

- The customer's account, reference 739729, was closed on 21 October 2015 after the company was informed by a visiting Customer Service Technician that there were two dwellings at 1 Green Street. Thereafter, account reference number 45[ ]5 was opened in the name of the landlord, one Mr Blue.
- However, during the investigation into leakage at the property on 7 November 2017, the customer informed a Company Debt Collector, sent to the property to collect payment for the debt which had built up against reference 45[ ]5, that she was receiving £600.00 rent from other occupiers of the property which they describe as '1a ', to help her with the rent. At this point the account reference 45[ ]5 was changed from being in Mr Blue's name to the customer's, as she had accepted responsibility for the charges.
- The customer is therefore responsible for all charges accrued between 2 April 2014 and 31 March 2019 when she both resided at the property and sub-let a section of it. In the absence of the details of the other users of the water, the company has no alternative but to bill the customer, particularly as she has accepted that she was taking in rent and was responsible for all the bills, including water. The landlord also confirmed this arrangement with the company on 26 February 2019 during a phone call.
- The company acknowledges that it did not send copies of the disputed bills directly to the property, because it did not change the correspondence address until 12 October 2018. It has apologised for this.
- However, the company contends that billing these charges is authorised by its back-billing policy held in its Charges Scheme and that is not reasonable for the customer to contend that she was unaware of the charges, having told the company, long after the account was closed erroneously, that she was indeed responsible for the water.
- The current balance owed is £3666.92, after a leak allowance was applied.

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.

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. As is apparent above, the company relies in particular on the provisions of the Water Industry Act 1991. Section 144 indicates so far as relevant that, except in so far as provision to the contrary is made by any agreement to which the undertaker is a party, supplies of water and sewerage services provided by an undertaker are to be treated for billing purposes as services provided to the occupier for the time being, and it contends that numbers 1 and 1a , Green Street are a single set of premises because there is no separate registration for council tax purposes of number 1a , Green Street. The company argues that the area that the customer says are separate premises is merely an extension of number 1 and therefore that section 144 applies.

2. In reliance on the 1991 Act and its Scheme of Charges, the company further says that, notwithstanding that it acknowledges that its staff have on two occasions (in 2015 and 2016) treated the premises at number 1a as separate, and notwithstanding also that it has not issued any bills to the customer in respect of the premises between October 2016 and September/October 2018, the customer is nonetheless liable for the bill for this period. It relies on section 4.3 of its Scheme of Charges, which states that it will back-bill a customer for charges that have not been billed but if it believes that the customer would not reasonably have known about the unbilled charges, it will back-bill only to the start of the current charging year.

3. The company says that the customer was aware that she was liable. The correspondence passing between the parties and the Consumer Council for Water (CCWater) makes clear that the company has, in reaching this conclusions, placed weight on its belief that the customer has in 2017 admitted responsibility for the water bill for number 1a and told the company that she

collects the rent from the tenants of number 1a to put towards the bills and that this has been confirmed by the landlord. The customer on the other hand, denies that she has ever admitted that she is liable for the bills for number 1a. The customer's application and her comments in reply indicate that she is adamant that at the time she entered into occupation of number 1, the property at 1a was already let and the rent was being paid directly to the landlord and not to her.

4. I bear in mind that the first question that I have to answer is whether the company has supplied its services to the customer to the standard that would reasonably be expected of a water/sewerage company.

5. The documentation submitted by the parties shows that, following concern about the high level of consumption of water at number 1, Green Street in September 2015, the company arranged for a visit to the customer's property. During that visit, the documentation evidences that the company accepted that there were separate premises at 1a, Green Street and it sent the customer a letter dated 21 October 2015 in which it stated that the customer was not responsible for paying the water used in 1a , Green Street and also stated that it had arranged for a refund of a total of £240.00. The company does not deny that this refund was made. The company's internal records include an entry in those records which appears to be dated 24 September 2015 and that stated:

   meter read 4040 joint supply house split into two flats landlord should be made to pay bill or new connection should be made for 1a …

6. The customer says that subsequently there was a repeat of these events in 2016 when she was again given a refund and sent a closing water bill, presumably on the basis that as the supply had multiple users, the landlord would take responsibility

7. The company has not fully explained what then happened. It acknowledges that an account under a new number was set up in the landlord's name and the landlord was billed directly. It is to be inferred, I find, that the landlord did not pay the bills in question, but there is no record in relation to the customer's account that any query was raised by him about his potential liability for the bills for 1, Green Street and 1a , Green Street until November 2017. The company's records indicate that a collection telephone call was made to somebody (unidentified) and that someone called "John" visited the property. The notes of the conversation do not confirm that John was a staff member responsible for debt collection because there were at the same time, concerns about leakage, but the content of the recorded conversation is consistent with this

person having been involved with the financial aspects of the service use. The notes of the visit record that he had spoken with somebody that had been emailed in the past. He said that this was the customer and that she had lived there since 2014. It is recorded that she rented the house for £1500.00 per month from the landlord. John explained that there were four separate rooms at the property with six occupiers. He is recorded as having said that the person to whom he spoke explained that "she is responsible for all the bills but she has other people living there to help with the rent". The entry subsequently goes on to state that:

There is a property at the back attached to house? 1a ? Like an extension on the house? One bed flat (paying an additional £600 rent a month) water is supplying the house as one including extension? So Mrs Green gets money from the flat to pay bills. She knows she is responsible for bills. 1a use the same water/gas and electricity. When people live there they share the bills.

8. The company relies upon this entry as evidence of knowledge by the customer that she was responsible for paying the water bill for the extension at 1a . I find, however, that this is not stated in clear terms. I find that the record is ambiguous in a number of important areas, as to which words have been used by the customer (who denies the interpretation placed by the company on this entry) and which words are interpretations of the situation by John. In particular, because the entry relates to two different categories of letting, the record is unclear as to whether the £600.00, was said by the customer to have formed part of the contribution to the bills or whether that was John's assessment. Nor is the record clear that the customer stated that she acknowledged liability for number 1a or whether she accepted liability in relation to collecting the contributions for number 1 and it was John's comment in relation to number 1a . I find, on balance, that this entry cannot be taken as a fully reliable account of the conversation and that the company would not reasonably be expected to have placed weight on this entry without further investigation.

9. The customer says she heard nothing further until September 2018. The company confirms that it, following the conversation between the customer and John, changed the name on the account but the bills continued to be sent to the landlord's address. There is no evidence of any other investigation at that stage. There is no indication that the company's interpretation of the conversation was ever formally suggested to the customer at the time and no indication of anything that John might have said about this. There is no evidence that the company took any other steps at the time to ensure that the customer understood that she would be liable for the bill for both numbers 1 and 1a . As the company acknowledges that during this period the bills

were not sent to her, this would not have been effective to notify her of her liability. I find that this lack of communication is likely to have confirmed in the mind of the customer that it was the landlord that was to be billed and that she was not responsible for making payment.

10. The customer therefore says that the first that she knew of this situation was on 24 September 2018 when a visit had been received from “Mr Brown”, a representative of a debt collection agency. The customer has recorded that she texted him and she has submitted copies of text messages in which Mr Brown indicated that he had sorted out the situation, which would be confirmed by the company. While the company states that Mr Brown, was not authorised to waive any liability of the customer, however, I find that nothing in the conduct of the company over the preceding three years had made clear to the customer that she had the liability for which the company now argues, so that it would not have been clear to the customer that a waiver was necessary. In contrast, I find that the conduct of the company had affirmed to the customer that she had no liability in respect of number 1a and had therefore deprived her of the opportunity that she might otherwise have had of ensuring that payment was made by the tenants of 1a and/or the landlord to enable her to discharge the indebtedness as it arose.

11. Moreover, in relation to the landlord’s confirmation given in February 2019, the company has not put forward any confirmation from the landlord in writing and nor has it obtained a copy of any rental agreement. The landlord is stated to have 'confirmed' that the customer was letting the property out, including 1a and he is stated to have said that she had been collecting the money to cover the bills from the other tenants, but in accepting this account, the company has not taken into account that this point had not been previously made by the landlord when the bills began to be addressed to him in 2016, and nor has any explanation been obtained from the landlord as to why the bills had been permitted to go unpaid at a time when these were being addressed to him.

12. Against this background, I summarise the reasons why I find that the company has not supplied its services to the standard that would reasonably be expected of it, namely:

    - The documentary evidence indicates that, notwithstanding that there may be a dispute about whether the property is correctly divided into one flat or two, the company has on two previous occasions affirmed in writing to the customer that she was not responsible for the supply of services to 1a . Although the company has apologised for this, it has not taken into account when now seeking to claim the

entire back-dated bill, the ways in which this conduct may have caused her to act to her detriment by not arranging for or perhaps not obtaining contributions from the tenants at 1a and/or the landlord in order to discharge this liability. For the reasons given above, I find that the evidence of 7 November 2017 and from the landlord does not plainly establish that she had collected funds from the occupants of number 1a . I find, on balance, therefore, that the customer has altered her position in reliance on the assertions made by the company to the extent that she says that she is no longer able to meet the arrears. There is no evidence that the customer has available resources to meet the bill, even though a payment plan has been suggested by the company and by CCWater. Overall, I find that an average customer would reasonably expect the company to have taken notice of these circumstances in reaching its conclusion that it should in September 2018 have raised a bill against the customer.

- The company has relied upon an unclear report of a conversation of 7 November 2017 and did not investigate this at the time. An average customer would reasonably have expected a company to have investigated fairly and impartially and confirmed its understanding with the customer. As this did not occur, I find that the company has fallen short of the standards of service that would reasonably have been expected of it.
- The company also has placed undue weight on a conversation with the landlord in February 2019. The company was faced with a conflict of information, but without seeing any supporting documentation, save for that in relation to the registration for council tax, it has preferred the information of the landlord to that of the customer. I find that an average company would not have treated the input of the landlord as conclusive, particularly in circumstances where at one point the company had sought to bill the landlord and there was thus a conflict of interest.
- The company, therefore, further fell short of the standards that would reasonably have been expected by seeking to apply its Charges Scheme to backdate the billing beyond the current billing year.

13. The customer additionally claims that the company's staff were rude to her and did not listen. I find that there is no evidence that members of the company's staff were rude, but I accept that the customer would have experienced inconvenience and distress in consequence of the company having instructed debt collectors in respect of sums that had not been billed to her and

in consequence of its continuing assertion that the customer was liable for the disputed amount notwithstanding the matters referred to above. This, I find, was a further failing by the company to achieve the service standard that would reasonably have been expected of it.

14. I find, therefore, that the customer is entitled to redress. The customer seeks cessation of the claim for the final bill amounting to £3,666.92; compensation in the sum of £9,81.86 comprising the amount of the bill initially claimed of £5,31.86, £3,000.00 in respect of the distress and inconvenience relating to the company's claim for sums for which she had not previously been billed and £1,500.00 because the company did not listen when she contacted them.

15. I find that, taking into account the matters set out above, it is fair and reasonable that the company shall waive the bill for £3,666.92 in part. Although the company has indicated in correspondence that it is this amount that relates to number 1a , I find that the customer's explanation of the facts makes clear that the bill must include sums due in relation to 1 that have not been discharged under the payment plan put in place by Mr Brown. I find, therefore, that the customer would have been liable to make payment for the company's services that were supplied to number 1 and for that reason I find that it is not appropriate to waive this bill in its totality. However, as I have found above that the customer has suffered distress and inconvenience in consequence of the actions and inactions of the company for which I find that she would be entitled to compensation, this also should be taken into account.

16. As it is not possible to ascertain the correct usage of services at the property as between 1 and 1a , and the position is further complicated by the presence of a water leak, I find that it is fair and reasonable to split the outstanding bill equally between the two properties, and to apply a continuing liability to the customer in respect of her usage at number 1, for which she would have known that she was responsible. This gives a total liability of £1,833.46. In addition, bearing in mind that the customer is a tenant who is known by the company to have been able to pay the rent of her property only by letting rooms and she is likely to have impaired earning capacity because she brings up two daughters and therefore is a person who would foreseeably be very distressed to be told that she owed an amount to the company that exceeded £5,000.00, coupled with the length of time that the problem has continued, the fact that the company instructed debt collectors for a debt of which she had not been properly informed and had not been billed and failed to place weight on the seriousness of her complaint, I further find that it is fair and reasonable that compensation for distress and inconvenience should be

£1,500.00. This should be off-set against the liability that the customer continues to have to the company, leaving a total sum due from the customer to the company of £333.46.

17. In respect of the customer's remaining claims for compensation, I find that the further claim for compensation for distress and inconvenience and for not having been listened to are, in the light of the discharge of her liability for £3,666.92, not proportionate and I make no additional award. As for the claim in relation to the debt as additionally raised against her, this was not a financial loss that she has suffered and therefore does not arise.

Outcome

The company needs to take the following further action:

1. Waive the outstanding bill on account 4581355-& for £3,666.92 and cease all collections activity in relation to that amount.
2. Issue a replacement bill to the customer in the sum of £333.46.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by **2 September 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.
- 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.

Claire Andrews, Barrister, FCI Arb

Adjudicator