

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0868

Date of Decision: 28 September 2018

#### Complaint

The company erroneously closed the customer's account. She received a final bill showing a credit balance of £541.06 and this amount ("the Money") was subsequently paid over to her. It later transpired that a mistake had been made: the company had been informed that a new tenant had moved into the property - but this was incorrect ("the Mistake"). The company was not clear on the information that it provided to her when the account was closed. Despite all this, the company is demanding repayment of the Money. The customer is unemployed, now, and cannot afford to make the repayment. The Money has been spent. In the circumstances, the customer would like the company to waive its £541.06 charges.

#### Defence

The onus was on the account-holder to notify the company when the Mistake was made and unfortunately, in this instance, the customer did not make any such notification until after she had spent the monies refunded to her. The company cannot waive the £541.06 charges, as requested. There is no justification for cancelling these charges and it would be unfair to other customers to do so. The customer has received and used full water and waste water services for the relevant period. Moreover, the company has provided information to the customer about payment plans, alternative tariffs and schemes that she could apply for to help her pay her bills - and about the possibility of having a water meter installed (but the customer has not engaged with these options, when put forward).

No offer of settlement has been made.

#### Findings

The customer cannot be criticised for not spotting the Mistake or for having spent the Money. However, by the same token, the company cannot be held liable for the Mistake having happened. The company has done all that could reasonably be expected of it in light of the Mistake. It would be unwarranted, in this case, to require that the company writes off or waives the £541.06 charges.

#### Outcome

The company does not need to take any further action.

The customer must reply by 26 October 2018 to accept or reject this decision.

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### The company's response is that:

- According to its records, the customer moved into the property on 7 February 2011. In accordance with its Charges Schemes, the customer is billed on an unmetered charge, which is based on the Rateable Value of the property.
- Bills are raised in advance (normally in February or March of each year) and are due for payment on or before 1 April - unless there is an agreed payment plan in place.
- In this specific case, it was agreed that the customer could pay half of her yearly bills on or before 1 April and the second half on or before 1 October each year. The customer set up a direct debit to make all her payments.
- The customer was billed in line with this arrangement from the date that she opened her account and she paid her first and second half payments for 2016. Therefore, her account was paid completely up to date to 31 March 2017.
- On 15 December 2016, the company received written confirmation from the Letting Agent for the property that, with effect from 8 April 2016, a Mr Archer had moved in to the property.
- In light of this information ("**the Mistake**"), the customer's account was closed and a new account was opened for Mr Archer from that particular date, 8 April 2016.
- On that same day, 15 December 2016, the customer was sent a Final Bill stating "*Closing balance in credit*" for £541.06. The Final Bill also stated that the monies would be "*refunded into your bank account*" and "*You do not need to do anything*".
- It disputes that its bills were insufficiently clear. The contents of the Final Bill provided dates and explanations. It is not considered that the company could have been clearer. On page 2 of the Final Bill, it showed plainly that the period for which the statement related was for seven days, i.e. from 1 to 8 April 2016. The customer, however, never queried this with the company.
- The company points out and emphasises that:
  - in view of the written confirmation from the letting agency, it took the information it received (about a new tenant moving in to the property) in good faith; and
  - it provided a Final Bill to the customer, with a refund, which should have prompted the customer to make contact; and
  - it sent several communications to Mr [ ] Archer at the property. No correspondence was ever returned; if it had been returned, the company would have been able to investigate the Mistake by the letting agent so that the customer's account could be corrected; and
  - it provided information on its letters and envelopes inviting the customer to return this correspondence to the company, with the correct information, if anything was wrong. No such returns were ever received; and

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- from the outset of when she first made contact about the matter on 2 March 2017, it was explained that - as the customer had used the services provided by the company - the company's bills were correct and payable and none of the charges due could be waived; and
- it gave the customer £50.00 to say sorry for any inconvenience; and
- it gave information about payment plans, alternative tariffs and schemes that the customer could apply for to help her pay her bills. It also put a temporary hold on the customer's account at times when it has been waiting for her to confirm how she would like to pay the bills; and
- it encouraged a metering application on the customer's behalf; however, she would not engage with the company about this when it contacted her by telephone and letter; and
- Whilst appreciating that she is unemployed following her redundancy, the customer:
  - does not appear to have taken the company's advice and applied to its Customer Assistance Fund for help in clearing her arrears; and
  - has not applied for any of the schemes or tariffs for which she may be eligible; and
  - has not progressed her request for a water meter to be fitted; and
  - has made no attempt to set up a payment plan with to cover the charges for 2017-2018 or 2018-2019. (This is despite the payment plans that the company could accept being detailed in the company's correspondence to her).
- Regrettably, by the time that the customer first contacted the company about the Mistake, her bills were starting to rise. Now, at the point when the company is putting in its defence in this matter, the balance owing on the customer's account stands at £1,608.29.
- The onus is on the account-holder to notify the company if a mistake has been made and, unfortunately, in this instance the customer did not do so until after she had spent the monies refunded to her.
- The company is unable to waive the £541.00 charges, as requested. There is no justification for cancelling these charges and it would be unfair to other customers to do so. The customer has received and used full water and waste water services for the relevant period.

### 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.

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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. I have carefully reviewed:
  - a. the detailed 'chain of events', which is set out by the company on pages 1 to 6 of its defence; and
  - b. all of the documentation presented by both parties in support of the cases that they respectively put forward.
2. I have also had the benefit of reading the customer's comments of 4 September 2018 ("Comments"), in which she gives her responses to the main issues that the company takes up in its defence.
3. One key feature of the defence, I note, is the company's submission that the customer:
  - a. ought to have identified the Mistake in the first instance; and
  - b. ought to have made contact sooner than she did (to query the matter), which would - it is submitted - have enabled the company to investigate, to discover the Mistake and to correct the customer's account.
4. On this, I see the company's position is that:

*"... The onus is on the account holder to notify us if a mistake has been made and unfortunately, in this instance [the customer] did not do so until after she had spent the monies refunded to her ... it is hard to understand why [the customer] didn't call us or use the back of our envelope to notify us that something was amiss. However, she accepts that she ignored the correspondence addressed to Mr Archer. Again, we cannot be held*

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*responsible for her actions in this regard ... [the company disputes the customer's] comments that we didn't explain how the mistake happened because the evidence shows that we advised her that we received the information from the letting agent. Indeed, [the customer] should have been looking to the letting agent to find out how they made this mistake and perhaps sought to gain the compensation she wants from them not us ..."*

5. In her Comments, as to the Final Bill that she received just before Christmas 2016, I note the customer's statements:
  - a. that "a highlighted box" told her: "... No action [was] required, bill is for information ..."
  - b. that it was: "... in line with the communication I would expect to receive at this time of year, and [the company] cannot claim that the onus on me is to check back with them. It is absolutely not clear this was a 'final closing bill', but was in line with the regular bills that I receive each year. Also, it clearly states 'no action is required', so this argument that I should have queried this, is not valid ..."
6. The customer goes on to submit that:

*"... [the company] appear[s] to have a serious data management / access issue. A letting agent communicated instructions for my property without my knowledge. The fault is with the letting agent and with [ ] Water for not having a more robust and secure way of allowing people to change details of billing with no checks. In terms of not being [ ] Water's responsibility to check details of requests, I think in this data-compliant age, this is remiss and indeed it is their responsibility. If they had checked with me, this situation would never have occurred ..."*
7. Generally, I find the customer's Comments on this aspect to be persuasive. The criticisms that the company levels against the customer - for failing to 'spot' the Mistake and to make contact earlier - seem to me to be unfair and unjustified.
8. Given the prominent wording on the face of the Final Bill: "... No action is needed, this bill is for information ... You do not need to do anything, your account is in credit and the amount shown above will be refunded into your bank account ...", I find that the customer's reaction – including her spending of the £541.06 money that was paid over to her ("the Money") – was on the whole reasonable. In this respect, I am satisfied (and find) that:
  - a. the customer could not reasonably have been expected to detect that the Mistake had

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been made; and

- b. it was reasonable for her to rely on the information that the company was giving her (which, in turn, meant that her actions were understandable).
9. The next question that arises is whether – having discovered the Mistake (and in light of the customer having, by that stage, spent the Money and her financial circumstances having changed) – the reasonable thing for the company to do was to ‘write off’ these £541.06 charges. This is the outcome that the customer is seeking.
10. Whilst I have found that the customer should not be subject to criticism for having spent the Money, I am satisfied that - by the same token - the Mistake did not directly occur because of anything done (or not done) by the company. To put it another way, I am not persuaded that the company was liable for the Mistake.
11. Even where, as in this instance, it was not responsible for the Mistake, the main expectation on any company in this situation (it seems to me) is that it will:
  - a. show patience and understanding to its customer in how it goes about trying to resolve the matter; and
  - b. where the customer happens to be in difficulties with making payments, to offer support and flexibility.
12. Having regard to the numerous steps that it says were taken ‘*to resolve the case*’, I am satisfied that - in this case - the company has provided its services to the customer to the standard that would be reasonably expected by the average person. I find that the steps listed out as bullet points on page 6 of the defence were:
  - a. in fact taken by the company as it submits; and
  - b. were satisfactory in the circumstances; and
  - c. did demonstrate the requisite degree of patience, understanding, support and flexibility that would be expected of the company in such a situation.
13. In reaching this conclusion, I have taken account of the following factors, particularly:
  - a. there seems to be little doubt that - so far as the relevant charging period is concerned (and as the company has pointed out) - the customer “*has received and used full water*

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*and waste water services*” from the company; and

- b. a substantial period of time has now elapsed since the Mistake first came to light – approximately 18 months, in fact; and
- c. the customer has had the benefit of the Money all the while; and
- d. the company has provided information to the customer about payment plans, alternative tariffs and schemes that she could apply for to help her pay her bills – and about the option of having a water meter installed; and
- e. the company has given the customer £50.00 “*to say sorry for any inconvenience*” caused.

14. For the reasons given above, I find that:

- a. the company has done all that could reasonably be expected of it in light of the Mistake; and
- b. it would be unwarranted to require that the company writes off or waives the £541.06 charges, as the customer requests.

15. It follows that the customer’s claim is 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 26 October 2018 to accept or reject this decision.

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- 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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**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**

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