

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1875

Date of Decision: 30 March 2020

Complaint

The customer has a dispute with the company regarding changes to her billing process. The customer contends that she did not consent to enter into a contract situation with the company when it terminated a billing arrangement with the landlord of her residence. The customer has declined to pay bills issued by the company and objects to a negative credit mark placed on her file by the company. Consequently, the customer requests the company revert to the previous billing method, issue an apology, and delete all data held on her.

Defence

The company states that it was entitled to end the historic billing arrangement, and followed the correct procedures when doing so. It further contends it is allowed under statute to bill the occupier of a premises using its services. Additionally, it believes it can keep sufficient data to permit it to administer the customer's account and that this was correctly supplied by the landlord. The company has not made any offer of settlement to the customer, and contends it has acted in a correct and reasonable manner. It believes the outstanding water bill is correct and payable and declines to accede to the customer's claims.

Findings

The customer has not presented sufficient evidence to support her claim that the company should revert to the previous charging and billing system. I find the company was entitled to end the billing arrangement and to subsequently bill the customer directly. I also find that the landlord was obligated to provide the customer's data to the company. Additionally, I am satisfied that the company dealt at all times with the customer in a reasonable manner and I am not persuaded it placed her under duress. Consequently, I find the company has not failed to provide its services to the extent to be reasonably expected by the average person.

Outcome

The company needs to take no further action

The customer must reply by 29 April 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1867

Date of Decision: 30 March 2020

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- The customer claims she has experienced an ongoing dispute with the company regarding a billing issue and in particular the company billing her without her consent. Despite the customer's ongoing communications with the company and the involvement of CCWater, the dispute has not been settled.
- The customer states that she has been resident in her dwelling for a period in excess of ten years, and that her landlord is [] Homes with whom she has a tenancy agreement.
- The customer claims that she has paid for the water consumed at the dwelling through her rental charge to [] Homes, who in turn pass payment to the company.
- The customer asserts that she understands that [] Homes met with the company in April 2019 and agreed that the company would end the agreement between them and henceforth the company would collect water charges directly from each tenant. The customer believes this change in charging procedures is illegal as no consultation took place with the tenants and she personally did not consent to enter a contractual arrangement with the company.
- The customer believes that [] Homes has a contract with the company but she asserts that she does not, and does not wish to have such contract. Consequently, the customer insists that

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the company continue to bill [] Homes for the water charge for her dwelling and desist from sending the water bill direct to her.

- The customer asserts that under the changed arrangement the company began billing her directly as from September 2019. The first bill issued on 17 September 2019 was in the amount of £206.03 and covered the period from 30 September 2019 to 31 March 2020, and the company set up a monthly payment plan in the amount of £34.38. The customer states she did not commence making payments to the company.
- The customer states that the company sent a notice of arrears in October 2019 and she responded in writing with her letter dated 30 October 2019 in which she informed the company she did not regard herself in a contract with it and that it should continue to claim her water charges from [] Homes as per the previous custom and practise. She also returned all the paperwork previously sent to her by the company regarding the account it has set up in her name for payment of water charges.
- The customer records that having received no reply to her letter of 30 October 2019 she sent a follow-up letter dated 12 December 2019 in which she reiterated her position that she was not in contractual relationship with the company and it should seek payment from [] Homes.
- The customer notes that she escalated her dispute to CCWater by her letter to it dated 13 December 2019.
- The customer also records that faced with ongoing non-response from the company she made, on 20 December 2019, an official complaint to Ofwat regarding the actions of the company. The customer explained in detail her objection to the company changing its charging procedures and reiterated her belief that she was not in a contract with the company and stating she would not be forced into such a relationship. The customer also asserted that the company had not responded to her letter of 30 October 2019.
- The customer has stated that she believes CCWater trivialised her complaints and did not investigate the issues in an unbiased and objective manner. She also believes that the CCWater letter dated 17 January 2020 contained factual inaccuracies and she was unhappy that CCWater closed her complaint without resolution.
- The customer remains dissatisfied with the response of the company and CCWater. The customer has submitted detailed legal style arguments to support her position, including reference to recent case law. Following the closure of her complaint by CCWater the customer has, on 07 February 2020, referred the matter to the WATRS Scheme whereby she seeks to

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have the company revert to the previous method of charging, issue an apology, and delete from its records any data or information it holds pertinent to her.

The company's response is that:

- The company submitted its Defence paper to the claim on 11 March 2020.
- The company confirms that prior to 30 September 2019 the company had an historic billing agreement with [] Homes who are the owner of the property rented to the customer. Under the agreement the landlord billed and collected charges from its tenants on behalf of the company and remitted the payments to the company.
- The company confirms that it decided to terminate the agreement and bill the tenants directly. A meeting was held with [] Homes in April 2019 where both parties agreed to end the agreement and in June 2019 the landlord wrote to all its tenants advising of the change in water billing as from September 2019.
- The company asserts that under S.144 of the Water Industry Act 1991 an occupier of a premises is liable for payment of water charges incurred. In July 2019, it wrote to the customer advising her how the changed system would operate and how it would affect her.
- The company confirms that on 17 September 2019 it sent the customer her first bill under the new system which covered the period from 30 September 2019 to 31 March 2020. The company asserts that it advised the customer that it had set up a payment plan whereby she would pay £34.33 per month
- The company notes that on 11 October 2019 it sent the customer a reminder that she had not made the first monthly payment. The company asserts that the customer advised it that she would not make any payments to it as she paid her water charges to her landlord through her tenancy agreement.
- The company confirms that it received the customer's letter dated 30 October 2019 and a further letter dated 04 November 2019 with similar contents. Contrary to the customer's assertion, the company states that it replied to the customer's letter of 30 October 2019 with its letter dated 13 November 2019.
- The company acknowledges that the customer's bill is calculated according to the Rateable Value method which can be more expensive for a single occupant and it has recommended to the customer that she apply to have a meter installed.

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- The company notes that it continued to have both written and telephone contact with the customer throughout November and early December 2019, including writing to her to advise that she was not complying with her payment plan. Ultimately, on 18 December 2019 the company placed a negative mark on the customer's credit history file because of default on the payment plan.
- On 09 January 2020, the company informed the customer that she had exhausted the complaints procedure and it would henceforth cease to correspond further on the issue. The company further notes that following its investigation into the dispute CCWater agreed with the position of the company and that it had proceeded correctly.
- Regarding the customer's legal style complaint and reference to recent case law, the company asserts that it is fully compliant with the applicable parts of the Water Industry Act 1991 and is legally entitled to bill the customer as the occupier of the property and the consumer of water at that property. The company notes that since 01 September 2019 there is no longer in place an agreement whereby a third-party pays the water charges on behalf of the tenant (customer) and thus she becomes directly liable to make payments to the company.
- The company further asserts that it is not governed by the Financial Conduct Authority in relation to water services charges. The company also contends that the negative marker has been correctly applied to the customer's credit history file and will not be removed. The company also asserts that it retains its right to refer the outstanding bill to a debt collection agency which in turn may result in an agency contacting the customer.
- In summary, the company believes it correctly applied its procedures in respect of actions taken and advice given following the change in the charging system. It reiterates its position that it does not require the consent of the customer before either sending her a bill for services used or for reporting late payments to the credit monitoring agency. The company declines to accede to the requests made by the customer in her WATRS application.

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

- The customer has submitted comments on the company's Defence document. She reiterates her position that she is not in a contractual relationship with the company and thus has no obligation to settle the bills they have issued to her. The customer further reiterates that she has not denied to make payment for her water services, and believes that by paying the same monthly rental payment to [] Homes she is continuing to pay the company for her water

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services. She claims, again, that [] Homes has a contract with the company and she does not. The customer refers once more to recent court cases which she believes are pertinent to her dispute and also to section 144(8) of the Water Industry Act 1991 where she asserts responsibility for payment of water charges rests with the property owner not the occupier. The customer confirms that she seeks to have the company revert to the pre-September 2019 charging system and for it to remove the negative marks from her credit history file.

- On 19 March 2020, the company responded to the customer's comments. The company denies that the customer's reference to section 144(8) Water Industry Act 1991 is pertinent to this dispute.

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 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 dispute relates to the customer's dissatisfaction over the change to the billing policy employed by the company and the ending of the long-term agreement whereby she paid her water charges via her landlord. The company asserts that it is entitled to change the policy and has followed the correct procedures, and thus the outstanding bill issued to the customer is correct and payable.

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2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The owner of the customer's residence is [] Homes, and it is her landlord in terms of a tenancy agreement. The company had an historic billing agreement with the landlord whereby the landlord billed and collected water charges from its tenants on behalf of the company and remitted the charges to the company.
4. In April 2019, the company, with the agreement of the landlord, terminated the historic billing agreement. The company had taken the commercial decision that it would benefit both itself and the tenants for each customer to be billed directly thus allowing the company to offer a more tailored individual service. From my examination of the documents presented to me I am satisfied that the company was entitled to terminate the billing agreement. I am further satisfied that the landlord did not oppose the change.
5. The main change for the tenants was that henceforth they would pay their water service charge direct to the water utility provider rather than to the landlord as part of their tenancy charges. The crux of the customer's dispute and claim is that she does not agree to this change, and has submitted arguments to support her position.
6. Firstly, the customer asserts that [] Homes has a contract with the company whereby it pays water charges on behalf of its tenants. From the documents laid before me I am satisfied that this was the case prior to 01 September 2019, but the "contract" is no longer in place. I am provided with a copy of a letter from [] Homes to its tenants sometime in June 2019 where it clearly sets down that the agreement with the company will end on 30 September 2019.
7. Additionally, in July 2019 the company also wrote to the customer confirming the changes, detailing that she would be billed directly and be responsible for paying the company for her water services and not the landlord. Thus, I find that the customer was made aware well in advance of 01 October 2019 that the billing/payment system was changing. Therefore, it follows that it was clear that as from 01 October 2019 there was no longer a contract/agreement between [] Homes and the company. It is outside the jurisdiction of this adjudication scheme for me to direct the company as to the charging policies it adopts. I shall not direct the company to revert to the charging policy in place prior to 01 October 2019 in respect of the customer.
8. Secondly, the customer has also claimed that there is no contractual agreement between her and the company and thus she is not obliged to pay the water charges submitted to her by the

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company. Having established that no billing agreement was in existence after 31 September 2019 then it follows that the occupier of the premises becomes liable to pay for water services received. In terms of Section 144 of the Water Industry Act 1991 the occupier of a premises receiving water services is liable to the provider of the services for payment thereof. The company has stated that it does not need to be in a service contract or agreement with an occupier in order to bill the occupier for services provided. My examination of the Water Industry Act 1991 persuades me that the obligation on the occupier is a statutory one, and I find that the company has acted correctly and reasonably in setting up an administrative and payment account for the customer and in sending her bills for services provided. I am satisfied that the company is entitled to bill the customer directly.

9. The customer contends that despite being billed directly by the company her rental payments to the landlord have not reduced commensurately. I find that this is an issue between the customer and her landlord, and is outside my jurisdiction as an adjudicator under the WATRS Scheme.
10. Additionally, the customer claims that the landlord was in error giving her details to the company in order to facilitate it setting up her company account. Again, I make reference to Section 144C of the Water Industry Act 1991 which requires that landlords must give all relevant information to the service provider. Thus, I find that company was entitled to request this information and the landlord was obliged to submit it. I shall not direct that the company remove from its systems data it holds regarding the customer in respect of being able to administer her account.
11. The customer has claimed that the company has wrongly entered a negative marker on her credit history file, and requests that it be removed. I have established that the billing agreement between the landlord and company had ended and that the customer was responsible from 01 October 2019 for paying the company directly for water services. The company, correctly, set up an account for the customer and sent her a bill in September 2019 whereby it expected that she commences to pay monthly instalments as from October 2019. To date the customer has not made any monthly payments, and has stated on several occasions her refusal to make the payments. I am satisfied that the company has acted correctly and reasonably in submitting the bill and thus I find that the bills are payable. I further find that the company has sent reminders to the customer that her payments are overdue and thus I find, on balance, that the company has acted reasonably and correctly in placing the negative marker on the customer's credit file. I shall not direct the company to remove the markers.
12. In her WATRS application the customer has requested an apology from the company for creating her account without consent and for wrongly placing the credit marker on her credit

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history. As I have found that the company was entitled to set up the administrative account and to place the negative markers then it follows that I find an apology is not appropriate.

13. I note that the company has on several occasions provided the customer with detailed explanations concerning the change in the billing system and identified its authority to make the change. The company has acknowledged that on occasions it has been tardy in replying to the customer and has exceeded the time limit for replying to correspondence, and I note it has made the appropriate compensation payments. I am further satisfied that the company has correctly followed its procedures in respect of challenging the customer over non-payment and delayed payment, and I note that it has offered to explain to the customer all possible payment plans and suggested applying for a water meter as a way to possibly reduce her monthly charges. Overall, I am satisfied that the company has acted reasonably in its dealings with the customer and I find no evidence to support the claim that the customer has been placed in a position of duress or that she has been pressured or been subject to undue influence.
14. The customer has stated that she believes that CCWater trivialised her complaints and did not investigate the issues in an unbiased and objective manner. I have examined the CCWater documents submitted to me and have read in detail the correspondence between all stakeholders. I am satisfied that CCWater processed the customer's case with a reasonable level of skill and care and I am not persuaded that there is any apparent bias or lack of objectivity. CCWater followed its standard procedure in seeking a detailed explanation from the company and upon receipt thereof it made a reasoned decision that the company could not be challenged on its position.
15. The customer, in her detailed comments to the company's Defence paper specifically referenced section 144(8) of the Water Industry Act 1991. I find that it is not sufficient for the customer to quote the wording of the Act but it also necessary to provide evidence that section 144(8) is actually and materially relevant. The customer has not substantiated the applicability of section 144(8) of the Water Industry Act 1991 in this situation.
16. Overall, I am sympathetic to the frustrations of the customer insomuch that she did not agree to have her payment method changed and believed she could not be charged directly by the company as she had not entered a contractual arrangement with it. I am satisfied that the company has behaved correctly and reasonably and that the bills as issued are payable by the customer. For the avoidance of doubt, I render no opinion on the level of charges.
17. In summary, I find that the customer has not provided sufficient evidence to justify the claim.

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18. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person, and therefore, my decision is that the claim does not succeed.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 29 April 2020 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.



Peter R Sansom
MSc(Law); FCI Arb; FA Arb;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CEDR Arbitration Panel.

Adjudicator

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