

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX94

Date of Decision: 28/01/2021

Complaint

The customer says that she has been billed incorrectly by the company and was subjected to wrongful and threatening collection action.

Response

The company says that it has billed the customer correctly and was justified in taking collection action.

The customer has been paid compensation of £50.00 and the default was removed from the customer's credit file.

Findings

The company billed the customer correctly and was justified in taking collection action. There is insufficient evidence that the customer was subjected to threatening collection action.

Outcome

The company does not need to take any further action.

The customer must reply by 25/02/2021 to accept or reject this decision.

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Adjudication Reference: WAT-XX94

Date of Decision: 28/01/2021

Party Details

Customer's Representative: The Representative

Company: X Company

Case Outline

The customer's complaint is that:

- The company incorrectly billed her and placed negative markers on her credit file.
 - The company was notified that her husband was the correct bill-payer but there was a substantial delay before the company updated its records.
 - The company repeatedly used an incorrect address and used incorrect names.
 - She is not on the electoral roll at the Property and has no ownership interested in the Property, although she does reside there.
 - She was threatened with deportation if she did not pay the bill.
 - She requests that the company apologise and pay total compensation of £4,415.00.
- Comments on the Proposed Decision: • The customer submitted extensive comments on the Proposed Decision in this case. However, as these comments repeated the customer's original submissions they did not impact the Final Decision.

The company's response is that:

- The customer was identified as resident at the Property after a "trackand trace" search was performed on the Property.
 - The company opened an account in her name, sending her a welcome letter and then bills.
 - No payments were received and on 1 November 2019 the customer was sent a final notice.
 - After further communications a default was registered against the customer on 19 November 2019.
 - The company sent the customer's account to a debt collection company and payment was made by the customer on 13 December 2019.
 - Negative markings were left on the customer's credit file, but the file was updated to confirm that the debt was now satisfied.
 - The customer's account was closed on 12 February 2020 and an account was opened in her husband's name on 13 February 2020.
 - On 3 August 2020, the company agreed to a recommendation from the Consumer Council for Water to remove the default from the customer's credit file. The instruction to credit agencies to do this was issued the same day.
 - The company emphasised at the time that this was done in full and final settlement of

the customer's complaint. • The customer notes that it has already apologised to the customer's husband, who was acting as the customer's representative, and has paid the customer compensation of £50.00. It denies that any additional payment of compensation is owed.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. While the customer and her husband have had a number of disputes with the company, the core of the customer's present claim relates to the company's action of billing the customer, rather than her husband, for water usage at the Property. The customer emphasises that she is not on the electoral roll at the Property and has no ownership interest in the Property. However, the customer acknowledges that she lived at the Property in the period in question.
2. The company argues that it is irrelevant to the question of the customer's liability for water charges at the Property whether she was a formal tenant at the Property, as she nonetheless was an "occupier" under the applicable law.
3. Section 142 of the Water Industry Act 1991 grants the company the power to "demand and recover charges fixed under this section from any persons to whom the undertaker provides services."
4. The important question regarding the liability of the customer for water charges at the Property, then, is whether she qualified as a "person to whom the [company]

provide[d] services” during the times for which bills were issued in her name. If so, then she was correctly billed by the company even if she did not wish to be the bill-payer for the Property, was not on the electoral roll at the Property, and had no ownership interest in the Property.

5. Under Section 144 of the Water Industry Act 1991, “supplies of water provided by a water undertaker shall be treated for the purposes of this Chapter as services provided to the occupiers for the time being of any premises supplied”.

6. The term “occupier” is not defined in the Water Industry Act 1991.

7. As a result, the best interpretation of the Act is that the term “occupier” in the Act was intended to reflect the established meaning of the term “occupier” in English case law, as most famously stated in *Wheat v E Lacon & Co Ltd* [1966] 1 All ER 582. This definition focuses on the level of control an individual exercises over a property, rather than on the formal legal relationship of an individual with a property.

8. That is, someone can be an “occupier” of a property even if he/she did not have an ownership interest in the Property.

9. For the purposes of this case, then, the question is whether the nature of the customer’s residence at the Property was such that she could have exercised traditional “occupier” powers, such as deciding when she would enter or leave the property, participating in deciding who could or could not visit the property, what services should be purchased for the property, how the property should be decorated, etc.

10. The customer acknowledges that she lived at the Property, and that she did so on a long-term basis with her husband. While she had no ownership interest in the Property, there is no evidence indicating that she did not possess traditional “occupier” powers of the type just described.

11. As a result, I find that the customer was an “occupier” of the Property under the Water Industry Act 1991, and so was liable for water charges at the Property during her residence in the Property.

12. This means that the company was permitted to bill the customer for water usage at the Property and to place negative markings on her credit file when she failed to pay the amounts that were being requested from her.

13. The customer has satisfactorily established that there was a delay after her husband requested that he be recognised as the bill-payer before an account was opened in his name, however I find that the evidence shows the company actively

attempting to gain the evidence it required to confirm the details it needed to discuss the account, to confirm that the customer's husband had the right to act as the customer's representative, and to change billing of the services to her husband. I also find that these delays were to a significant degree caused by the approach of the customer's husband in his interactions with the company, rather than resulting primarily from the company's failure to provide its services to the standard to be reasonably expected by the average person. I acknowledge that the company has already paid the customer compensation of £50.00 and has agreed to remove the negative markings from the customer's credit file arising from her default, and I find that this constitutes sufficient compensation for the company's role in these delays.

14. In view of the above, the customer's claims relating to the bills sent by the company do not succeed.

15. The customer also objects that she was threatened with deportation if she did not pay the company's bills. However, I note that in his original account of this incident the customer's husband stated that this was a fear felt by the customer, rather than a threat made by the company's debt collection company. I cannot, therefore, find on the basis of the available evidence that such a threat was made.

16. In view of this, the customer's claims relating to actions taken by the company's debt collection company do not succeed.

17. For the reasons given above, the customer's claim does not succeed.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

Tony Cole
Adjudicator