

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X293

Date of Decision: 23/04/2021

#### Party Details

**Customer:** X Customer

**Company:** X Company

#### Complaint

The customer complains that the company has shared data such that she has adverse credit entries relating to an unpaid bill of £282.63 in respect of a property that she shared with her stepfather in a period up to July 2016. She says that she had told the company in 2010 that she wanted to represent her stepfather because he is deaf and that the company has wrongly treated her as liable for the bill. She also says that the company acted unfairly by telling her that the final bill was £4,000.00 whereas it was £4,282.63. She asks that the company should remove her liability for the bill and correct the adverse entries on her credit file.

#### Response

The company says that the customer was in occupation of the property and was therefore individually liable for the bills. Therefore, the customer was liable to pay the final outstanding balance and it is entitled to report the situation to a credit reference agency because the customer did not make this payment. The company says that it has supplied its services to the correct standard.

#### Findings

I find that, even though the company has taken a wide definition of occupation, the customer reasonably appeared to the company at the time to be both resident at the property, to be an adult family member and to exercise a reasonable level of control over her stepfather's financial responsibilities. The company did not supply its services to an incorrect level in concluding that the customer was an occupier of premises and therefore liable. Also, even if the company incorrectly stated the final amount by rounding it down, the customer was provided with a bill in the correct figure and knew in 2016 that the sum had to be paid. An average customer would expect the company to ask for payment of outstanding

sums.



The company is not required to take further action.

The customer must reply by 21/05/2021 to accept or reject this decision.

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## Case Outline

### **The customer's complaint is that:**

- The customer is unhappy that following a request in 2010 to have 3rd party authorisation to speak on behalf of her stepfather (X Customer 2) the company added her name to the account as jointly liable for the outstanding debt at the property X Location. The customer was not told that adding her name would make her liable for this debt.
- After moving out of the property the customer paid £4,000 on the 20.08.16 which she and her stepfather believed to be in full and final settlement of the account. However, a bill of £282.63 was still outstanding.
- This outstanding debt has subsequently been added to the customer's credit file even though the customer has not said to the company that she will be liable to pay this sum.
- The customer is also unhappy that the company has addressed her on various occasions and tried to open a direct debit in the name of X Customer 3, despite the customer never having that name.
- The customer wants the company to remove the outstanding balance of £282.63 and to remove the adverse entries from her credit file.

### **The company's response is that:**

- The customer was an occupier of X Location (the property) under account number (REDACTED).
- Section 144 of the Water Industry Act 1991 (the Act) states that it is the occupier(s) for the time being who must pay the water and/or sewerage charges. The Company is not required to notify a customer of their liability for charges.
- The term 'occupier' is not defined in the Act. In the absence of a definition, the starting point is that the term needs to be given its ordinary and natural meaning. That being so, 'occupier' would generally be defined as the person(s) who lives in or is otherwise in possession of premises and has some lawful right to be there.
- Section 143 of the Act entitles the company to make a charges scheme. Part 3.2 of the Company's current charges scheme, which is materially the same as previous charges schemes, states that where more than one person is the occupier of a single supplied property, then each such occupier shall be jointly and severally liable for all charges arising in respect of that supplied property.
- Section 142 of the Act gives the company the power to: (a) fix charges for any services provided in the course of carrying out its functions; and (b) demand and recover charges from any persons to whom the company provides services...
- As a result of a telephone call with the customer on 29 December 2010, the customer's name was added to the account as an occupier of the property. The company is unable to listen to the telephone call due to

the length of time that has passed however, it would have confirmed with the customer that she was in fact living in the property prior to naming her on the account. • The customer admitted on numerous occasions that she was living at the property during the relevant period, namely 29 December 2010 to 30 July 2016. The customer is therefore an occupier of the property and is liable for the company's charges. • Any agreement between the customer and her stepfather, X Customer 2, regarding liability for the outstanding balance is a third-party matter to which the company is not party. Under Rule 3.5 of the Scheme rule, WATRS is not permitted to adjudicate on third party matters. • The company issued its invoices in the name of "X Customer 2 and X Customer 3". The company has multiple references on the account of speaking to a X Customer 3 as well as the timeline. • As there was an outstanding balance on the account, the company instructed a debt collection agency, namely X Company 2, to contact the customer to discuss payment of the outstanding charges. Following a telephone call between X Company 2 and the customer on or around 27 March 2012, a direct debit was set up in the name of X Customer 3 for a bank account in the name of X Customer 3. The company was at that time acting in reliance on the information provided by the customer. • Prior to 12 October 2020, which is the first occasion on which the issue was raised, The company had never been informed that the customer's surname was incorrect. An error in the customer's name would not mean that she is not liable for the charges. • Ofwat has approved data sharing data between water companies and credit reference agencies, such as X Company 3. The company has entered into a data sharing agreement with credit reference agencies and has a contractual arrangement with these companies to data share, as has most of the water industry. The company and X Company 3 comply with legal requirements relating to data. The company's processing is in accordance with the 'legitimate interests' condition. Utility accounts, such as the customer's X Company's account, which provides something of value on the understanding that, the customer, will repay at a later date, are accepted as accounts which can be subject to data sharing. The company's Privacy Policy tells customers what the company does with their personal data, including when it may be shared with third parties. All customer invoices include a shortened version of the Privacy Policy.

### **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.

No further matters have been taken into account following my Preliminary Decision as neither party has submitted comments.

### How was this decision reached?

1. 1. I find that there are two issues in this case. The first is whether the customer is liable for any charges at all in respect of the property at X Location. The second is as to how it has come about that the company, having taken a “final payment” from the customer and her stepfather, have made a further claim for payment.
2. As for the first of these issues, I find that this depends on whether the customer was an occupier of the property in question from 2010 onwards.
  - a. The customer says that her involvement with the company was consequential upon contact made with the company in which she asked to represent her stepfather in his dealings with the company due to his deafness. She says that she did not agree to be liable for the water account and that the company has added her name wrongly, including entering her name incorrectly as “X Customer 2”. She says that her step-father has accepted liability.
  - b. The company says that she was an occupier at that time and as such, the company is entitled to treat her as jointly and severally liable for the bills in question and it has numerous dealings with her.
3. The company has explained that its right to impose water charges is dependent on the terms of the Water Industry Act 1991 (the Act) and the company’s Scheme of Charges and not on the existence of a contract or duty of care. It refers to sections 142 to 144 of the Act, which state that the company is entitled to impose charges on an “occupier” of premises. The company says that the term “occupier” is not defined in the Act and that in the absence of a definition, the starting point is that the term needs to be given its ordinary and natural meaning. That being so, the company argues that the ‘occupier’ would generally be defined as the person(s) who lives in or is otherwise in possession of premises and has some lawful right to be there.

4. That the company has applied this definition of “occupier” to raise and pursue a claim for payment against the customer is shown by the following exchange of correspondence. By an email dated 20 January 2021, the customer’s step-father explained that he has tried to inform the company since 2016 that he is the person liable for payment of the water charges. He complains that he has not been contacted by the company for payment of the outstanding balance. He said:

“I can confirm no one has been chasing me for this debt even I have told them on the phone and completed online forms on their website to advise them that it’s my debt and they should be contacting me. They have not contacted me back personally since I paid them the £4000 to clear my account back in 2016. I have repeatedly asked them to contact me, but they just keep chasing X Customer. I do not want them to be chasing X Customer, I am very annoyed over this and the fact that I paid them £4000 to clear the debt and they advised me the account was clear and they chase X Customer for the £285. It’s absolute disgrace from them.”

5. The company responded to the customer’s step-father:

“Further to my email below, I’ve been able to look into this for you with our legal team and the resolutions team. They’ve confirmed that as X Customer was living at the property, you both remain jointly and severally (individually) liable for our charges as occupiers in your own right as, in accordance with section 144 of the Water Industry Act 1991 (the Act), it is the occupier(s) for the time being who is liable to pay our charges. Whilst I note that in your email, you accept full responsibility for the outstanding charges, any arrangement that you and X Customer may have is a third-party agreement to which we are not party, so the account will remain in joint names.”

The email then offers to make a payment arrangement for the final balance of 282.63.

6. The company therefore:

- (i) Acknowledges that there is no legal definition of “occupier”; and
- (ii) Has not put forward any decided case on the meaning of “occupier” for the purposes of the Water Industry Act 1990.

7. I find that the company is correct that it does not need to prove that a customer has consented to make a payment for water. Its entitlement to charge customers is dependent upon occupancy of the property in question.

8. While I agree that the word “occupier” must, in the absence of a statutory definition, be given its ordinary and natural meaning, I am also mindful that this falls to be determined in the context in which the word is used. I take into account the following matters:

a. I am mindful that in many contexts, “occupation” involves not only that the person has a right to be present but also that the person must be able to exercise a degree of control over the premises. For example, I bear in mind that in some contexts (for example in relation to the control of drugs), the status of “occupier” encompasses the right to exclude others who might take actions on the property that contravene lawful requirements.

b. I also bear in mind that in order to be an “occupier” of premises it is likely that the level of control in question should apply to the whole of the premises or part of the premises that is the subject of dispute. It is questionable, therefore, whether a person who has a right only to occupy one room of a house and use its common parts cannot, can always be said to “occupy” the whole of the house.

c. I am not, moreover, satisfied that mere residence is sufficient to make a person an occupier, particularly when another resident asserts that it is he alone who has the necessary responsibility. Were mere residence by a person in a property with rights derived through another resident sufficient to make that person an “occupier” and jointly and severally liable for the water charges, it would follow that any dependent relative, child, housekeeper, carer or lodger, could also be made liable for the water bill for the entire property. I find that it is improbable that this is how Parliament intended the Act to be applied and that some element of control of the premises as a whole is likely to be relevant to the definition of “occupier”.

9. That said, having considered the evidence submitted by the parties, I find that, on balance, the company has established that through the customer’s involvement with her stepfather’s account, she has represented to the company that she is also an occupier of the premises, and I find that an average customer would reasonably expect that a company would rely upon this.

10. The documentation submitted to WATRS shows as follows:

a. The customer has expressly stated that she was living at the property with her stepfather at the relevant time.

b. Although the property in question may, at least at one time, have been held on a council tenancy of which the customer’s stepfather, a semi-retired person, was the tenant (as suggested in a record made by the company’s representative on 19 March 2012), the customer on 11 July 2016 said to the company that the property was being put up for sale. There was at that point a very large outstanding bill which she agreed that X Customer 2 would pay, but she also agreed to make a payment of £10.00 by 31 July 2016, after which a payment plan would be set up and an IP Booklet supplied. Similarly, in the preceding year, the customer also agreed to make a payment of £10.00 prior to the setting up of a direct debit

arrangement. It is not clear why the customer should be making a payment in respect of arrears if she was not an occupier of the property.

c. On 27 March 2012, an attempt was made to set up a direct debit arrangement. This was in the name of "X Customer 3". The arrangement is said in the company's records to have been made over the telephone. Although the customer says that she did not provide the name "X Customer 3" because she has never used that name, I find that the setting up of a direct debit arrangement in an account that bears her title and initial is likely to have followed discussions between the customer and the company and that the customer will have indicated to the company, by agreeing to set up a direct debit (in whichever name), that she accepted liability for the discharge of bills. This is consistent with an acceptance that she was an occupier of the premises.

d. From 18 April 2013 to 15 April 2016, at least thirteen bills were issued in respect of X Location. Although the copies of the bills submitted are now in the name of X Customer and X Customer 2 and have been sent (as now showing on their face) to an address at X Location 2, which is X Customer 2's new address, the company says that bills were previously sent addressed to X Customer 2 and "X Customer 3". The customer has not said that she had not seen the bills which the company says were sent from 2010 onwards. It is clear from the large number of conversations that the customer has had with the company in relation to payment that the customer was very familiar with the amounts then owing and the state of the account and I find that it is unlikely that the customer did not know that she was the person referred to in the bills or that the bills were also addressed to her. This, I find, reasonably indicated that she was also expected to pay the bills but there is no evidence that the customer objected to this.

e. A number of conversations took place with the customer about the settlement of the final account, when both she and her step-father appear to have moved out of the property on 30 July 2016. The final bill was issued in the sum of £4,282.63 on 2 August 2016 and the customer was involved in conversations with the company about the final payment on 20 August 2016 and again on 20 or 22 August 2016 when the customer or X Customer 2 made a payment of £4,000.00.

f. On 14 October 2016, the customer had a conversation with the company. The company's records state:

"Spoke to X Customer.

Says that spoke to agent and 4000 was the total owing. I explained that 4000 is a round figure. Explained that there was 65.03 for the bill ended 15.04.2016. The final bill was for 217.60 making 282.63. She swears that she was told this was final

*necessary in order to enforce the decision.*  
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amount? Checking her phone records. Explained no contact on 22.08.2016 when payment made. Emailing X Company 2 to bring back to us as GWJ”

11. While I take into account that the company has sent the customer a number of emails addressed to “X Customer 3” at “(REDACTED)”, which appears to be her step-father’s email address, I nonetheless find that the customer reasonably appeared at that time to be exercising a high level of control and involvement over the payment of bills and was orchestrating settlement of the account for her step-father’s property. She agrees that she was living at the property with her step-father and her birth certificate shows that she was at that time a grown woman, who might reasonably be expected to have understood that she would also bear a liability for the water services. By virtue, therefore, of the relationship between family members that appeared to exist at the property, I do not find that the company has failed to supply its services to the correct level because it concluded that the customer was in occupation of the property with her step-father at the relevant time and therefore, under the provisions of the Act and the company’s own Scheme of Charges, was jointly liable to pay its bills.

12. It follows from the above that I do not find that the company has failed to supply its services to the expected standard in seeking to obtain payment from the customer or by reporting the matter to a credit reference agency. The documentation submitted shows that the customer was aware that the final bill had not been settled in full and the company has shown that customers are notified that credit data will be shared. I am mindful that this is industry practice and I find that an average customer would reasonably expect the company to engage with credit reference agencies in accordance with its policies.

13. I therefore find that the customer has not proved that the company has fallen short of the expected standard in respect of this issue.

14. As for whether the company has failed to supply its services to the correct standard because there was an amount outstanding after the payment of £4,000.00 in August 2016, I again do not find that the customer has shown that the company did not supply its services to the correct standard. This is because:

- a. The company has submitted persuasive evidence that the amount due at the date of moving out of the property was £4,282.63.
- b. The company supplied the customer and/or her stepfather with a final bill showing that figure on 2 August 2016.
- c. There is no evidence that this bill was incorrect or that it did not reflect the services received at the property from which both the customer and her stepfather benefitted.

d. The customer says that she was told that the final bill would be £4,000.00. The company informed her in October 2016 that this was a rounded-up figure. I find that even if the company had rounded up the figure for the customer in the course of a conversation, this would reasonably have been obvious to her, especially as the final bill showed a slightly larger sum.

e. The company has asked for the balance of payment which has not been paid.

15. Even if, therefore, the company was imprecise in its explanations to the customer, I find that an average customer would reasonably expect the amount in question to be discharged and the company did not fall below expected standards in requiring that payment or by reporting the matter to a credit reference agency when no payment was received.

16. It follows that I find that the customer does not succeed in relation to this aspect of her claim.

17. Accordingly, I do not direct the company to take any further action.

### 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.

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**Claire Andrews**  
**Adjudicator**