

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X382

Date of Decision: 28/05/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The customer says that she is being billed for water charges for which she is not responsible.

Response

The company says that the customer has been billed correctly.

No offer of settlement has been made.

Findings

The customer has been billed correctly, but the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in its collection actions.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £300.00 and provide the customer with a 36 month payment plan for the amounts currently owed on the account.

The customer must reply by 28/06/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- She moved into the Property on 1 April 2019.
- Her agreement with the owners of the Property was that they would pay the utility bills.
- She has no tenancy agreement or other legal right to remain in the Property, but does so at the discretion of the owners.
- The owners paid the water bill until 1 August 2019.
- On 13 August 2019, the company made contact and asked her to pay the water bill.
- She explained the situation and directed the company to the owners.
- The company responded on 28 August 2019 and confirmed that she would not be contacted again about the matter.
- On 3 December 2020 she was contacted by the company again and told that she was liable for the water bill from 1 August 2019.
- She requests that the company seek payment from the owners, although she is willing to pay amounts owed from 3 December 2020 onwards as a compromise.

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

- She reiterates her limited right to remain the Property and denies that she is legally the "occupier" of the Property.
- She believes that the owners are primarily responsible for the payments of services at the Property.
- She has no employees and no-one contacted the company on her behalf on 8 August 2019.
- She challenges the company's willingness to accept a statement from an unknown party that she was liable for water charges at the Property.
- She denies that she can be held liable for retrospective payments.
- She reiterates that the owners are breaching their agreement by refusing to pay water charges at the Property.
- If she was not responsible for water charges prior to 1 August 2019 then she should not be responsible after that date, as nothing changed.

The company's response is that:

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- On 8 August 2019, the company was contacted through webchat by an employee of the customer, who explained that the customer occupied the Property.
- A letter was sent to the customer on 13 August 2019 asking the date on which she moved into the Property, the number of occupants, and a contact number.
- The customer made contact on 19 August 2019 to dispute her liability for the charges.
- The company explained that as she lived at the Property she could only avoid liability for the charges if she could establish that someone else had assumed responsibility for them.
- After further correspondence, the company confirmed to the customer on 28 August 2019 that as she had satisfactorily established the identity of the owners of the Property, she would no longer be contacted about the

Property. • On 3 December 2020, the company was contacted by a representative of the owners of the Property, who confirmed that the customer had occupied the Property since 1 August 2019 and was responsible for water charges. • The company opened a new account for the customer at this time. • The company received further communications from the customer challenging her liability for the charges, and the basis of her liability was explained. • Any dispute between the customer and the owners of the Property regarding payment of the water charges is a third-party dispute and does not affect the company's right to collect payment from the customer. • The company is willing to make changes to the account if the owners accept liability for the water charges. • The company believes it has followed the correct processes.

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.

How was this decision reached?

1. The customer acknowledges that she lives at the Property, and lived at the Property in the period for which the company is seeking payment, but emphasises both that she was not the formal tenant at the Property (i.e. she has not signed a lease and possesses no other legal interest in the Property) and that the owners of the Property agreed to accept liability for water charges.
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 the company is seeking payment.

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 customer was, then, a “person to whom the [company] provide[d] services”, and so liable for water charges at the property, if she was an “occupier” under the Water Industry Act 1991 at the times the late payments occurred.

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

8. 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.

9. That is, someone can be an “occupier” of a property even if he/she did not sign a lease for that property and had no other formal interest in the property.

10. 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.

11. The customer acknowledges that she lived at the Property, and that she did so on a long-term basis with her daughter. While she had not signed the lease for the Property and argues that she has no other legal interest in the Property, there is no evidence indicating that she did not possess traditional “occupier” powers of the type just described.

12. 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 at the Property.

13. The customer also argues that the owners of the Property originally agreed to pay the water charges at the Property, subsequently breaching that agreement.

14. However, even if this is accepted, that is a matter between the customer and the owners, and does not restrict the company's right under the Water Industry Act 1991 to collect payment from the customer.

15. If the customer has a valid agreement with the owners of the Property for them to pay the water charges, then the customer has the right to attempt to enforce that obligation in another forum, such as a court. But the clear language of the Water Industry Act 1991 allows the company to seek payment from "any persons" to whom its services are provided. As explained above, the customer qualifies as a recipient of the company's services, and so is liable to the company for water charges at the Property even if she has a valid agreement with a third party for that party to pay the water charges.

16. As a result, the customer's claim for retrospective charges to be waived or for the owners to be identified as the parties liable for water charges at the Property, does not succeed.

17. Nonetheless, while I must find on the basis of the applicable law that the company has the right to seek payment of the water charges from the customer, the company acknowledges that in August 2019 it expressly told the customer that she would no longer be contacted about those charges. It then failed to contact the customer again until December 2020, presenting the customer at that time with a substantial retrospective bill.

18. I find that it constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person to fail to advise the customer in August 2019 that she would remain liable for water charges if they could not be collected from the owners, and to then fail to update the customer for over 15 months. This failure deprived the customer of the ability to take a water reading in August 2019 to clarify her potential liability, and to herself challenge the owners of the Property on their responsibility for payment of water charges, as well as depriving the customer of the incentive to reduce her water usage in order to reduce her water charges. The delay in re-contacting the customer then resulted in the customer being presented with a substantial bill without notice.

19. I accept that this has caused the customer both inconvenience and distress, and in consultation with the WATRS Guide to Compensation for Inconvenience and Distress I find that fair and appropriate compensation would consist of £300.00. This amount reflects the multiple consequences of the company failing in its duty of care in August 2019, as just discussed, as well as the extended period that passed before the company again contacted the customer, this delay not having been

justified by the company.

20. In addition, while the customer remains legally liable for the water charges being sought by the company, I find that it would be appropriate for the company to provide the customer with a 36 month payment plan, as offered in its email of 29 December 2020. This will allow the customer to pay the back charges incurred due to the company's failing in its duty of care, without unreasonable inconvenience.

21. In her comments on the proposed decision in this case, the customer argued that under the doctrine of promissory estoppel, the company is estopped from now claiming the charges that it had previously stated it would not collect from her. However, promissory estoppel does not apply to every statement made by a party, but requires that an unequivocal promise was made. I do not find that the evidence supports a conclusion that this standard was met in the present case. Both parties understood when the statement was made that it was made on the understanding that a third party would be making the payment, and this was why the customer would not again be contacted. There is no evidence supporting a conclusion that the company was reasonably understood as making a promise that the customer would not be contacted again even if the third party refused to make the payment.

22. For the reasons given above, the company must pay the customer compensation of £300.00 and provide the customer with a 36 month payment plan for the amounts currently owed on the account.

Outcome

1. The company needs to take the following further actions: It must pay the customer compensation of £300.00 and provide the customer with a 36 month payment plan for the amounts currently owed on the account.

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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in 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.
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Tony Cole
Adjudicator