

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X473

Date of Decision: 25/07/2021

Party Details

Customer:

Company:

Complaint

The customer says that the company has placed inaccurate negative markings on her credit file.

Response

The company says that the negative markings were placed correctly.

No offer of settlement has been made.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person by failing to remove negative markings from the customer's credit file after learning that the customer had left the Property in November 2018.

Outcome

The company needs to take the following further action: It must make all reasonable efforts to remove from the customer's credit file all negative markings relating to payments for periods after the customer left the Property in November 2018.

The customer must reply by 23/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- In September 2020, she was contacted by a debt collection company for an unpaid bill relating to the Property.
- She did not live at the Property during the periods covered by the bill.
- She provided evidence of this to the company.
- The company said that her account would be on hold while the matter was investigated.
- She heard nothing more from the company.
- In December 2020, she applied for a mortgage. She was declined due to a low credit score, which she discovered resulted from negative markings placed on her credit file by the company relating to the debt.
- She contacted the company again and was told that because the account had not been closed when she moved out of the Property, it remained in her name until someone else moved into the Property, which did not happen for a significant time.
- After moving out of the Property, she had registered with the company at a new address.
- The default remained listed as unsatisfied until January 2021.
- The company says that it cannot change whose name is on the bill as it has already been produced. It cannot, therefore, now be sent to the owner of the Property.

- The bill was ultimately paid by the rental agency and the landlord, which shows that it was their bill.
- The company did not make reasonable efforts to contact her.
- The debt collection company did not update her on its findings.
- She has been substantially affected by her experiences and the ongoing negative markings on her credit file.
- She requests that the negative markings be removed from her credit file. The customer's comments on the company's response are that:
- Because she had moved out of the Property, she did not receive the letters sent by the company.
- The company had other means of contacting her that it could have used.
- The bill was paid in February 2021 by the rental agency, not by her.
- If letting agencies are allowed to open accounts with the company, they should also be held responsible for closing them.
- She experienced repeated instances of poor customer service after learning about the bill.

The company's response is that:

The company's response is that:

- The customer was billed for services at the Property from 29 December 2015 to 9 November 2019.
- The last payment received by the company was on 3 January 2019.
- Bills and payment reminders were subsequently sent to the Property to notify the customer of amounts due.
- A Notice of Intention to File a Default was issued on 30 July 2019.
- A default was reported on 30 August

2019. • It was the customer's responsibility to inform the company of any changes in her circumstances. • The company first became aware that the customer had moved out of the Property on 21 November 2019, when the owner of the Property made contact to notify the company of a new resident. • At this time a final bill was sent to the Property in the hope that the customer had put in place a measure to have her mail redirected or collected. • The customer first contacted the company on 31 December 2020, notifying the company that she had moved out of the Property in November 2018. • The company removed all charges after 17 April 2019 as a gesture of goodwill, leaving the balance for the customer to pay. • The customer cleared the remaining balance on 10 February 2021. • The negative markings placed on the customer's credit file were accurate and placed correctly. • The company made reasonable and appropriate efforts to contact the customer.

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. 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."
2. The company, that is, only has a right to "demand and recover charges" from someone to whom it "provides services". The important question, then, is whether the customer qualified as a "person to whom the [company] provide[d] services" after she moved out of the Property. If she did, then the company had a right to continue to bill her for its services. If she did not, then it did not.

3. 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”.
4. 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 despite having moved out of the Property.
5. The term “occupier” is not defined in the Water Industry Act 1991.
6. 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 caselaw, 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.
7. That is, someone can be an “occupier” of a property even if he/she does not currently have a lease for that property and has no other formal interest in the property.
8. The customer, then, did not cease to be an “occupier” of the Property simply because she moved out. Rather, for the purposes of this case, the question is whether the customer retained ongoing rights at the Property 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.
9. No claim has been made that the customer retained such power over the Property, and the available evidence supports a conclusion that, as is usual at the end of a tenancy, after the customer moved out of the Property she lost all “occupier” rights, which then vested in the owner of the Property.
10. This interpretation of the term “occupier” under the Act is further supported by the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014, which specifically impose on owners of residential properties who do not live in them, such as owners of rental properties, the obligation to update water companies on the occupiers of such properties. A similar obligation is not also imposed on tenants. Section 2.2 of the official Non-Statutory Guidance for the Regulations further reinforces this position, confirming that “If a property is unoccupied the owner should aim to inform the water company that the property is unoccupied.”

11. I find, therefore, that the customer was not an “occupier” of the Property, in terms of the Water Industry Act 1991, after leaving the Property in November 2018. As a result, the company had no statutory right to bill the customer for periods after November 2018. The company has not challenged the customer’s statement that she paid for all charges applicable for periods in which she did reside at the Property.

12. Because of this, the customer was not liable for the charges that gave rise to the negative markings that have been placed on her credit file by the company. Those negative markings, therefore, do not accurately report on the customer’s payment record with the company, as they state that she was late in making payments that she was obligated to pay – but she was not obligated to pay the bills in question.

13. To be clear, I find that the company did not fail to provide its services to the customer to the standard to be reasonably expected by the average person in placing negative markings on the customer’s credit file. The evidence shows that at the time this was done, the company was unaware that the customer had left the Property, as neither the customer nor the owner of the Property had notified the company of this fact.

14. However, as soon as the company was notified that the customer left the Property in November 2018, which it acknowledges it learned in November 2019, the company was also aware that it had placed negative markings on the customer’s credit file relating to bills that she had not been obligated to pay. At this point, the company failed to provide its services to the customer to the standard to be reasonably expected by the average person by failing to update the customer’s credit file so that it accurately reflected the customer’s payment record, including that she had not been obligated to pay the bills that had previously been reported as paid late. The company then magnified this failure by maintaining its refusal to update the customer’s credit file despite explicit requests from the customer that this be done.

15. In its comments on the Proposed Decision in this case, the company argued that the above analysis fails to take account of Sections 144(2) and (3) of the Water Industry Act 1991, which allow water companies to bill individuals “for services provided by a relevant undertaker after that person has ceased to be the occupier of the premises” where they have not provided notice of the ending of their occupation of the premises.

16. However, Section 144(4) of the Act, as quoted by the company in its comments, makes clear that Section 144 is not intended to allow water companies simply to impose charges on customers for periods in which they were not an

occupier, but rather to ensure that water companies are not left with unpaid charges because of their inability to know the occupier of a premises without being told.

17. While the company focuses its discussion on Section 144(4)(b), it does not address Section 144(4)(c), which sets as the date on which a former occupier ceases to be potentially liable for charges at a premises “anyday on which any other person informs the undertaker that he has become the new occupier of the premises.” There is an ambiguity in this section as to whether the “day”referenced is the day on which the company received notification of the change of occupier, or the day on which the new occupier commenced occupation (as subsequently notified to the company). That is, if a new occupier contacted the company on 1 July and said “I have been the occupier since 1 June”, Section 144(4)(c) is ambiguous as to whether the previous occupier remains potentially liable for charges until 1 June or 1 July.

18. However, the purpose of this section of the Act, which is to ensure that water companies have accurate information regarding liability for charges at a premises, makes clear that the “day”referenced in Section 144(4)(c) must be the day on which the new occupier commenced occupation. The alternative reading would provide new occupiers with an incentive not to notify companies of their occupation of a premises, as they could then use the company’s services without paying for them, as bills would continue to be issued to the former occupier. This would clearly be inconsistent with Section 144’s focus on the billing of occupiers at the time a water company’s services are used.

19. This reading is further supported by the subsequent addition of Section 144C to the Act, as discussed above, which imposes on owners the responsibility to notify water companies of actual occupiers of a premises. Importantly, Section 144C(3) clarifies that if such a notification is given, the owner gains a shared liability with the “occupier”However,. 144(2), on which the company wishes to rely, specifically only applies once an individual “has ceased to be the occupier of the premises”. Section 144C(3), then, must be read as confirming the liability of the owner and the actual occupier for charges at the premises, not the former occupier. This is further confirmed by the Explanatory Note provided when Section 144C was added to the Act, which stated that if the information required by Section 144C(3) was not provided, the water company “may choose to pursue either the occupier or owner of the property or both”. No reference is made to pursuit of a former occupier once accurate information has been provided to a water company.

20. Further support comes from the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014, Section 3 of which requires owners to provide information to water companies, pursuant to

Section 144C, not only on the identities of the occupiers of the premises, but “the date or dates on which the occupiers began to occupy the premises”. It is unclear why this information would be necessary if Section 144 permitted water companies to charge former occupiers for periods in which they did not occupy a premises, after they received information allowing them to correctly bill the actual occupier or the owner.

21. The Water Industry Act 1991 must, therefore, be read as requiring water companies to correct billing of former occupiers once accurate information is received regarding actual occupiers for the periods in question, or where an owner has become liable due to their failure to provide the information required by Section 144C.

22. For the reasons given above, the company must make all reasonable efforts to remove from the customer’s credit file all negative markings relating to payments for periods after the customer left the Property in November 2018.

Outcome

1. The company needs to take the following further action: It must make all reasonable efforts to remove from the customer’s credit file all negative markings relating to payments for periods after the customer left the Property in November 2018.

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.

Tony Cole
Adjudicator