WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X756

Date of Decision: 23 February 2022

Complaint

The customer says that he has been billed by the company for charges for which he is not liable and he has experienced poor customer service.

Response

The company says that the customer has been billed in accordance with the law.

No offer of settlement has been made.

Findings

The company provided its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company does not need to take any further action.

The customer must reply by 24 March 2022 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT-X756

Date of Decision: 23 February 2022

Party Details

Customer:

Company:

Case Outline

The customer's complaint is that:

- He is the landlord of the Property.
- In the tenancy agreement it is stated that water and sewerage services are the responsibility of the tenant.
- When the tenant moved into the Property on 26 June 2020 he immediately called the company and informed it.
- The company now denies being informed.
- The company is pursuing him for payment of outstanding charges of £640.13, rather than pursuing the former tenant, even though he has provided updated details of the tenant.
- The company states that it believed the Property was unoccupied, but has not identified anyone who told it this.
- The company delayed making contact about the charges as they were being accrued, thereby increasing the charges.
- The law states that the landlord should only be pursued for payment if he/she "wilfully" did not provide the necessary information, and the company's agent has acknowledged that he did not wilfully refuse to do so.
- The company opened an account in his name without his consent.
- It provided false information to the Consumer Council for Water (CCW).
- It has harassed him and threatened him with debt collection agencies.

- He requests that the company apologise, cancel the outstanding bill, and pay compensation of £2,500.00.

The company's response is that:

- The customer is the landlord of the Property, and has been billed for the period 23 July 2020 to 27 July 2021.
- The Property was listed on the company's systems as unoccupied beginning June 2020, when the previous tenant notified the company they were moving out.
- When the meter was read in July 2021, usage was found, indicating that the Property was occupied.
- An account was opened in the customer's name on 23 July 2021 and backdated 12 months.
- The Water Industry Act 1991 and the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 permit the company to charge the landlord of a property when tenant details have not been provided in the required period.
- The company has no record of the customer notifying it of a new tenant at the Property.
- No payment has been made towards the charges owed.
- The company has placed negative markings on the customer's credit file relating to the unpaid charges.

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

- Some of the information provided by the company is inaccurate.
- The company is attempting to make him its customer retrospectively.
- The company has refused to provide him with copies of phone records.
- The company did not contact him despite having actual meter readings, allowing charges to build up.
- The company has not explained why it has sent bills that show a "move-in" reading from July 2020.

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 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 (the "Act") 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, generally only has a right to "demand and recover charges" from someone to whom it "provides services". In the present case, both parties agree that the customer does not qualify as a "person to whom the [company] provide[d] services".

3. However, Section 144C of the Act imposes on owners of "residential premises which are occupied by one or more persons other than the owner (and not by the owner)" the obligation to provide to the water company "information about the occupiers". Where that information is not provided, the owner is subject to a shared liability with the "occupier".

4. Section 144C(3) of the Act then states that where information on the "occupier" is not provided by the owner, the water company "may choose to pursue either the occupier or owner of the property or both" for any charges incurred.

5. In Wales, Section 144C has been supplemented by the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 (the "Regulations"), which clarify the information that must be provided to water companies by owners of residential properties who do not live in them, such as owners of rental properties.

6. While the customer argues that he contacted the company when his tenant moved into the Property, the company has stated that it has no record of being contacted, and the customer has provided no evidence of his own in support of his statement. Ultimately, the customer has the burden of providing evidence to support his claims, and any decision must be reached on the basis of the evidence actually provided, not on the basis of speculation by the Adjudicator.

7. I find that there is insufficient evidence to justify a conclusion that it is more likely than not that the customer provided to the company the information required by the Act and the Regulations when his new tenant commenced occupation of the Property. As a result, under the terms of the Act, the customer became jointly liable with his tenant for the charges incurred, meaning that the company gained the right to collect those charges from the customer.

8. In his comments on the Proposed Decision in this case, the customer emphasises that the company has not yet provided him with its call records. However, as the customer is stating that he contacted the company his own call records would support his claim that such a call was made. Moreover, the company has confirmed that it has performed a search for contact from the customer and has not identified a call being made. While evidence can be requested from the company despite the company's statement, such a request is only appropriate when the available evidence justifies at least a *prima facie* conclusion that evidence from the company would support the customer's claim. I do not find that such a conclusion is justified on the basis of the evidence available in this dispute.

9. In his comments on the Proposed Decision in this case, the customer also argues that if another party contacted the company to inform it that the Property was unoccupied, this should not override a notification by the owner that the Property was occupied. However, I have found that the evidence is insufficient to justify a conclusion that it is more likely than not that the customer made contact to inform the company that the Property was occupied.

10. The customer emphasises that the Non-Statutory Guidance issued by the Welsh government alongside the Regulations states that "water companies should only pursue owners where they have wilfully failed to provide the information." I accept that if this guidance is interpreted to mean that in order to be liable for the charges at the Property, the customer must have consciously considered providing the information to the company but decided not to, then the customer is not properly pursued by the company for the charges in dispute. I acknowledge that

there is no evidence that the customer made a “wilful” decision, in this specific sense, not to provide the information required by the Act and the Regulations.

11. However, the Non-Statutory Guidance is not itself legislation, and the Welsh government only has the authority to issue guidance that is consistent with the Act. The Welsh government, that is, cannot overrule the text of the Act, but can control its implementation in Wales, within the limits set out in the Act.

12. Section 144(C)(5) of the Act, however, is clear that the Welsh government may only issue regulations “exempting owners from liability” in one specific situation: where “information supplied by them is false or incomplete” but “they have taken steps specified by the regulations to ensure its accuracy or completeness”.

13. The Act, that is, only permits the Welsh government to exempt owners from shared liability when owners have made a good faith effort to provide the required information, but have failed to do so. The Act does not permit the Welsh government to exempt owners from shared liability because they were unaware of their obligation to provide the required information or because they forgot to do so. Given these limitations on the Welsh government’s power, the word “wilfully” in the Non-Statutory Guidance must, therefore, be interpreted as referring to any situation in which an owner has not made a good faith effort to provide the required information, even if this occurred due to ignorance or oversight.

14. The Welsh government may recommend as good practice not pursuing owners in a broader range of situations, but this does not change the owner’s liability under the law, and does not deprive the company of the right to pursue “either the occupier or owner of the property or both” for any charges incurred.

15. In his comments on the Proposed Decision in this case, the customer has appealed to another WATRS Decision, in case WAT-0978. However, the Adjudicator in that case found that while the evidence justified a conclusion that the company did not receive the owner’s notification of the new occupier of the Property, it also justified a conclusion that the owner did make a good faith attempt to provide that notification. It is, therefore, inapplicable to the present case, where I have found the evidence does not justify such a conclusion.

16. I have found above that the evidence does not justify a conclusion that the customer made a good faith effort to provide the required information to the company at the beginning of the tenant's occupation of the Property, and so under the Act the company has the right to pursue the customer for the charges incurred by his tenant up to the time that the customer made the required good faith effort to provide the required information.

17. The company has satisfactorily established that the customer did not make this good faith effort until July 2021, and that it ceased billing the customer once he made contact.

18. The customer emphasises that the company took an actual reading at the Property in January 2021, but did not contact him until after a second actual reading in July 2021. The following evidence request was sent to the company by the Adjudicator: "In its Defence, the company states "However, it wasn't until reading the meter in July 2021 that we determined water was being used at the Property, at which point we made reasonable effort to inform the Customer of the bill." However, the bill sent to the customer on 24 July 2021 states that an actual reading, rather than an estimate, was taken by the company on 18 January 2021, showing usage of 112 cubic meters since 23 July 2020. The company is to confirm if an actual reading was taken in January 2021. It one was not, the company is to explain the language on the bill. If one was, the company is to explain how it responded to that reading, and why that reading was not sufficient to place the company on notice that water was being used at the Property, as the company acknowledges the July 2021 actual reading was."

19. The company responded as follows: "An actual company reading was taken in January 2021 of 1516 [sic]. Whilst this could be taken as an indication of occupancy we aim to only open accounts in line with the Regulations when we are certain water is being used. When we closed the previous occupier's account in July 2020 we were unable to obtain an actual meter reading, so an estimate was used. This means that when we read the meter in January 2021 we could not determine with certainty whether water had been used between July 2020 and January 2021, as the previous reading was not based upon actual consumption. It is only when we have sufficient evidence of water being used (i.e. two actual reads) that we would look to open an account and back date charges. In this case it wasn't until the second meter reading in July 2021 that we were confident that sufficient water was being used at the property to strongly indicate actual occupation, and were able to carry out subsequent checks to identify the customer as being responsible."

20. I accept that the company's explanation is reasonable, and that it therefore provided its services to the standard to be reasonably expected by the average person in waiting until the July 2021 reading to contact the customer.

21. In his comments on the Proposed Decision in this case, the customer argues that the evidence shows the company taking an actual reading in June 2020. However, the bill cited by the customer expressly states that the reading to which he refers is an estimated reading.

22. The customer also objects that he never consented to be the company's customer and that a contract is being created retroactively. However, as explained above, the company's right to bill the customer does not arise from a contract, but from the Water Industry Act 1991, which permits the company to bill the customer in the way it has billed him.

23. In his comments on the Proposed Decision in this case, the customer has questioned why he has not been billed for surface water at the Property, which he argues the company is entitled to do if it can impose the charge underlying the present dispute. However, the company does not fail to provide its services to the customer to the standard to be reasonably expected by the average person by deciding not to bill the customer for charges it could legitimately impose.

24. In consideration of the above, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person, and the customer's claim does not succeed.

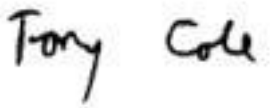
Outcome

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 by 24 March 2022 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.



Tony Cole, FCIArb

Adjudicator