

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1052

Date of Decision: 30 November 2018

#### Complaint

The customer received a high bill backdated to December 2016. This related to her ex-husband advising the company that he had moved out in December 2016. The customer states that her ex-husband lived at the property until December 2017 and that she had to move out between July 2017 and January 2018.

The customer requests that the company pursue her ex-husband for the outstanding charges and revise her bill to commence from January 2018.

#### Defence

The account was set up in the joint names of the customer and her ex-husband. A direct debit set up on the account was cancelled in September 2017. No contact was received from the customer. A debt collection agency traced her ex-husband in February 2018 and in April 2018 he advised that he had moved out in December 2016. The company closed the account from this date and put it in the customer's sole name as it had been advised that she remained at the property throughout. The customer is jointly and severally responsible for payments.

#### Findings

The customer was a named account holder from when the account was opened. She is jointly and severally liable for the balance on the account. The company closed the account and placed it in the customer's name in line with its policy. Under the law, the customer remained liable for the balance throughout, as a named account holder. There is no legal basis for the bill to be removed or recalculated and the company cannot be obliged to pursue the customer's ex-husband for payment.

#### Outcome

The company does not need to take any further action.

The customer must reply by 3 January 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1052

Date of Decision: 30 November 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer received a bill from the company dated 8 June 2018 for £1,044.00. The customer's ex-husband had called the company and advised that he had moved out in December 2016. The company did not verify this with the customer, but closed the account for her ex-husband and opened a new account in the customer's name only, transferring the balance across. The company was not interested in the customer's explanation of the circumstances. She was advised that there was a credit of £358.00 on the old account that could be transferred to the new account, reducing the balance to £686.00. The customer did not live at the property from July 2017 until January 2018 and stopped her direct debit to the company in September 2017 whilst her divorce proceedings continued. The customer did not receive any correspondence from the company until June 2018 regarding the new account. The customer has requested that the company open the old account and pursue her ex-husband for payment, instead of just herself.
- The customer requests that the company pursue her ex-husband for the charges until December 2017, and that she is charged from January 2018 only.

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

- An account was set up on 15 December 2014 in the names of Mr Simon Smith and Mrs Jane Smith. The initial water bill was sent in these joint names. A direct debit was set up by the customer to pay outstanding charges. The company became aware, on 19 September 2017,

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that the direct debit had been cancelled. No contact was received from the customer or Mr Smith. Notices were sent to the property on 31 October, 20 November, 7 December 2017 and 4 January 2018 advising that a balance was due. A debt collection agency was employed by the company and traced Mr Smith to his new address in February 2018. On 20 April 2018, Mr Smith contacted the company and advised that he had left the property on 15 December 2016, that his wife had remained in the property, and that there was no contact between them. The company closed the account in joint names back to 15 December 2016. The credit balance of £357.58 and the closing statement was sent to Mr Smith at his new address. The company had been advised that the customer had lived at the property throughout the entire period and therefore opened a new account in her sole name from 15 December 2016. On 11 June 2018, when the customer contacted it, it found the credit balance remained on the old, joint account and transferred this to the new account. The customer has not provided evidence demonstrating that she did not live at the property for any period. The company does not get involved in marital disputes. The customer did not contact the company to advise that she was leaving the property, or to provide the reason for her cancellation of the direct debit. The company had no forwarding address or registered telephone number on the account. The customer's credit report indicates that she remained at the property.

### 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.

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### How was this decision reached?

1. The customer is disputing liability for water bills at her property from December 2016 until January 2018. The customer states that her ex-husband was living at the property until December 2018, and that she was not living at the property between July 2017 and January 2018.
2. The company has explained that an account was set up in the joint names of Mr Smith and the customer on 15 December 2016. It has provided a copy of the first bill, dated 1 July 2015. I note that this was addressed to Mr S Smith, and that the customer was listed under “Additional account holders”.
3. I am therefore satisfied that the customer was a joint account holder from December 2014 onwards. I acknowledge that, as Mr Smith was the main account holder, the company’s letters and bills were addressed to him, however I am not persuaded that this indicates that the customer was not also an account holder. I further acknowledge that, with the breakdown of the customer’s marriage, she may not have been given the water bills. However, the company had not been made aware of the situation and was therefore not in a position to change how it communicated in relation to the account, such as to send copy bills to the customer directly. I am unable to find any failure of the company to act as a reasonable water provider as it had no notice that it should be contacting the customer directly.
4. The company has also referred me to its Charges Scheme, and section 144 of the Water Industry Act 1991. I note that, under the Charges Scheme, “where there are two or more people occupying the relevant premises to which the supply is made, the occupiers shall be jointly and severally liable for the payment of the charges”.
5. Joint and several liability is a legal term that means that, where two people are liable together to pay a sum to a third party, they are also individually liable for that full sum until it is paid. This means that, where two people are named as account holders and a bill is unpaid, the company may pursue payment from one account holder individually. It would then be for that account holder to pursue the other account holder for their share of the bill.

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6. In this case, I am satisfied that the customer was named as an account holder in December 2014 and was jointly and severally liable for the water bills with her ex-husband. The effect of this is that the customer will be liable for all sums due on the account unless she can demonstrate she was not occupying the property.
7. The company has explained that Mr Smith contacted it on 20 April 2018 after a debt collection agency had traced him. Mr Smith advised that he had moved out of the property on 15 December 2016. I acknowledge that the customer states this to be incorrect. The company's account notes show that the company closed the joint account down from 15 December 2016, with the bills being moved into the customer's sole name from this date.
8. The effect of this was to leave a credit balance of £357.58 on the joint account and to generate charges of £1044.32 on the new account in the customer's sole name. The credit balance has now been moved onto the new account.
9. As above, I am satisfied that the customer was jointly and severally liable for all charges on the joint account whilst she was in the property. I therefore find that the company is entitled to recover all water charges, raised on the joint account, from the customer alone. I acknowledge that this appears unfair as the customer will be paying for her ex-husband's share, however the shared payment of the water bill is a separate agreement and dispute between the customer and her ex-husband.
10. I further acknowledge that the company acted by closing the account, backdated to 15 December 2016, apparently without requesting proof from Mr Smith for when he moved out, or confirming his version of events with the customer. However, I note that the company's policy regarding marital disputes indicates that it will take one of two actions in relation to the account. In a situation where a joint account holder moves out and the person staying in the property confirms, verbally or in writing, that they are prepared to take over the account, the departing person will be removed from the account. However, in the circumstance where the remaining person does not agree, whether intentionally or by not being involved in the call from the departing person, the company's policy is to complete a change of customer and set up an account in the name of the person remaining. I am satisfied from the evidence that the company properly followed its process by closing the joint account that had been in the names of both Mr Smith and the customer, and by creating a new account in the customer's sole name.

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11. However, whilst the company did follow its policy, I am conscious that it does not appear to have fully considered the impact of backdating the closure of the joint account to December 2016, namely that this resulted in charges being applied to the customer's new account that the company had already received payment for under the joint account. These charges appear to have been both made available to be refunded to Mr Smith individually, and also applied to the customer's new account. I am mindful that the company's policy is to avoid taking the side of either party in a marital dispute; however, it appears clear in this case that backdating the closure of the joint account to December 2016 would cause a dispute where payments had been made for water services beyond this date, the company had no way of determining which account holder had made those payments, and it was making the balance available to Mr Smith alone rather than refunding it to the bank account from which the payments were made.
12. Notwithstanding this, the balance on the joint account has been applied to the customer's sole account in full. She has therefore not incurred any loss as a result of the company backdating the closure of the account, such as may have been incurred if the charges had been refunded to Mr Smith. I am further mindful that, at all times, the customer was legally responsible, on an individual basis as a named account holder on the joint account, for the full water bill at the property. The customer has therefore always been liable for the full charges from December 2016, and the change of account has not increased nor reduced that liability.
13. In respect of the period that the customer states she was not living at the property, I find that no evidence has been provided by the customer. The Consumer Council for Water specifically requested, by email dated 14 August 2018, that the customer provide the exact dates that the customer moved out and some proof to verify that the customer was not living at the property. The customer replied on 15 August 2018 advising that she moved to a friend's house. The customer did not confirm the date that she moved out, nor provide any evidence, such as a letter from the friend, confirming that the customer was living with her for a specified period.
14. In the absence of such evidence, I am unable to find that there was any period in which the customer was not the occupier of the property. I therefore find that there is no basis for any part of the water bill to be removed.
15. The customer has requested that the company pursue her ex-husband for the outstanding charges. For the reasons given above, I find that the company is not legally obliged to pursue Mr Smith for the outstanding balance or any part of it. I am satisfied that the customer was an

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account holder for the entire period covered by the disputed bills, and that the company is therefore entitled to pursue her for the full payment, irrespective of any agreement that the customer may have had with her ex-husband for sharing the payment. I am not persuaded that there is any legal basis for directing the company to pursue her ex-husband for the charges, especially where Mr Smith is not a party to this Water Redress Scheme dispute and the precise evidence that he may have provided to the company in respect of the December 2016 move-out date are not known.

16. The customer has also requested that the company revise her bill to include charges from January 2018 only. For the reasons given above, the company is entitled to pursue the customer for all charges and there is therefore no legal basis for the company recalculating the customer's bill from January 2018 only. The customer's claim is therefore unable to 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 3 January 2019 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.

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**Alison Dablin**, LLM, MSc, MCI Arb

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**Adjudicator**

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