WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: W WAT/ /1195

Date of Decision: 15 April 2019

Complaint

The customer complains of poor water quality that makes her ill, that the company sold her data to HomeServe contrary to her repeated instructions, maliciously damaged her credit rating, failed to send her a payment book for the correct amount in time for her to make payments, billed her incorrectly; and persistently sent junk mail and unwanted emails. She seeks compensation for the cost and inconvenience of having to boil her kettle three times each day; compensation for the cost of purchasing bottled water; compensation for annoyance and inconvenience caused by unwanted marketing communications; compensation for damage to the customer's credit rating; and a direction that the company shall send only correct bills and not fake bills. The customer estimates compensation in the minimum sum of £2,784.10 plus interest.

Defence

The company says that some of the above claims fall outside the WATRS scheme. It argues that the customer has been correctly billed, that no incorrect entries have been maliciously placed on her credit record and that it has provided a good standard of customer service in relation to all the issues raised.

Findings

The customer succeeded in showing that as a person rendered vulnerable by disability, the company fell below the requisite standard in making an unannounced visit to her house on 24 September 2018 and in failing to explain to the customer its policy on sharing data with HomeServe in a timely way when she stated that she objected to sharing of her data. In respect of her other claims, these either fell outside the scope of the Scheme or the customer did not succeed.

Outcome

The company needs to take the following further action:

- pay compensation in the amount of £60.00.

The customer must reply by 15 May 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1195

Date of Decision: 15 April 2019

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- The customer complains that the company has:
  - Sold her data to Homeserve contrary to her repeated instructions; and
  - Maliciously damaged her credit rating;
  - Failed to send her a payment book for the correct amount in time for her to make payments;
  - Billed her incorrectly; and
  - Persistently sent junk mail and unwanted emails. She seeks compensation of £20.00 in respect of each occasion when this has occurred.
- The customer also complains about the water quality. It has an unpleasant taste which has been the subject of complaint by others and, as she is a person with low immunity, has been making her poorly.
- She further complains that the company has turned up unannounced and has wanted to test her water supply inside her house.
- The customer seeks:
  - Compensation for the cost and inconvenience of having to boil her kettle three times each day;
  - Compensation for the cost of purchasing bottled water;
  - Compensation for annoyance and inconvenience caused by unwanted communications;
  - Compensation for damage to the customer's credit rating (£800.00).

- A direction that the company shall send only correct bills and not fake bills;
- Compensation in the minimum sum of £2,784.10 plus interest.

The company's response is that:

- As a statutory appointed water undertaker, the company has a duty to supply a wholesome water supply to the customer's property in accordance with sections 67 and 68 of the Water Industry Act 1991 (the Act) and the Water Supply (Water Quality) Regulations 2016 (the Water Quality Regulations). It is an offence to supply water that is not fit for human consumption. This is not a matter that falls within the jurisdiction of WATRS. The company says that rule 3.5 of the Water Redress Scheme rules applies. Moreover, if the complaint is one of water quality and not wholesomeness, the customer should be referred to a more appropriate forum for the resolution of the dispute, namely, the Drinking Water Inspectorate. The company says that rule 3.4 applies.
- Moreover, the history to this complaint is that on 2 August 2017, the company received a complaint regarding the water quality at the customer's property. The company wrote to the customer, requesting that she make contact in order that a convenient appointment could be made. The company received no further contact from the customer and therefore the job was closed. On 12 September 2018, the company received a further complaint in writing regarding the water quality. The company e-mailed the customer requesting that she make contact to discuss the matter further. By 21 September 2018, no adequate contact had been made, so, due to the nature of the complaint, the company took a decision to obtain samples from up and downstream and to visit the property. On 24 September 2018 the company took water samples but the customer refused the company entry to her property, therefore the company was unable to check the customer's internal water supply and water fittings. The samples taken were satisfactory and met the standards laid down in the Water Quality Regulations. Even if an issue has arisen in the customer's own pipework, the water was not unwholesome at the time of supply.
- There are currently only two methods of calculating water services charges. They can either be based upon the rateable value of a property or, if a water meter has been installed, they will be based upon the actual amount of water used.
- As for the billing issues referred to by the customer, charges are raised on an unmeasured basis, based upon the rateable value of the property and/or the company's Charges Scheme. In accordance with the company's Charges Scheme. Unmeasured charges are due and payable in full on demand in advance on

01 April of each year and payable as follows:

- In full on 1st April or such other date as may be specified; or
- By equal half yearly instalments on 01 April and 01 October, or
- By 10 monthly direct debit instalments commencing 01 April

By special arrangement the Company can offer monthly, fortnightly or weekly payment options.

- The company denies that it delayed issuing a payment booklet. The customer has been on several payment arrangements, the latest being agreed on 18 October 2018. The company has at all times set a payment arrangement when requested to do so. Once an instalment arrangement is agreed and set, a payment booklet is automatically generated and issued to the customer. These are sent to the property and addressed to the customer. As none was returned by the Post Office there is a presumption that the customer received these documents. The company states that it cannot be held responsible for any delay by the Post Office.
- Following discussions between the Information Commissioner's Office, water companies and OFWAT in 2010, approval was given for the sharing of data relating to individual's repayment history between water companies and credit reference agencies, such as Experian. The company has entered into a contractual data sharing agreement with these companies to data share, as has most of the water industry. Where payments are made on time the sharing of information about the regular payment of water bills will contribute positively towards building a positive credit history, particularly for customers who are not financially active in other credit services. Where bills are not paid on time, the history may develop adversely.
- The company says that the customer has not paid her bills on time and denies that it has reported the customer's status incorrectly either currently or at her previous property. On 1 July 2015, all previous negative reporting was amended to show as positive so all reporting prior to August 2015 that shows with a status 6, A Flag etc., was amended to show with a zero balance, zero status and no flags. This amendment was made as there was some doubt whether the customer knew in 2014 that the negative reporting was a consequence of not paying to terms. At this time the customer was told that failure to increase the payment amount would lead to negative reporting in the future. In 2017, the company further wrote off outstanding debt and the customer was advised that this would not happen again. The customer has not, however, kept up the required payments. As such the Company continues to report the status of the customer's account correctly. As, however, the customer is on zero status due to the payment arrangement, this does not harm her credit rating.
- The company has an obligation to report personal data accurately, therefore would be unable to remove the arrears history reporting as this would be in breach of GDPR and of the Data

Protection Act 2018. The company would be reporting inaccurate and misleading information as to a matter of fact. The company would also be in breach of Condition E of its licence if it were to remove the arrears history reporting, as this would be giving the customer undue preferential treatment and would be in breach of its contractual obligations with the credit reference agencies if this information was removed. Further, to remove the arrears history reporting would be inaccurate, misleading and fraudulent reporting and not a true reflection of the customer's payment history with the company. It would also not be in the interest of promoting responsible lending, prevention of bad/unpaid debt or the prevention of fraud/money laundering.

- In relation to HomeServe, this organisation processes data on behalf of the company in order for them to contact customers by post to explain about pipe responsibility and offer plumbing and drainage insurance. When organisations wish to process, or use, customers' personal information they must establish lawful grounds for the particular processing activity. There are six lawful grounds set out in article 6 of the General Data Processing Regulation (GDPR). The ground relied upon by the company in relation to HomeServe is not that the customer has consented, but that there is a legitimate interest in the processing of the data. "Legitimate interest" is one of the six grounds.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 company has known since August 2016 that large print bills were required by the customer and she is referred to in correspondence in 2016 and 2017 by one Mrs Brown, who was then acting on the customer's behalf, as a disabled person. There is no evidence that the customer is able-bodied and therefore I find that it is probable that the customer is a person who has been rendered vulnerable through disability.

2. The customer complains of a number of different issues in relation of a history of correspondence that extends back to 2016 and appears to involve more than one address. I deal with each of the complaints in turn below.

Water quality

3. Rule 3.5 of the Water Redress Scheme rules make clear that the Scheme cannot be used to address complaints about water quality legal standards. As the customer states that the quality of the water is so poor that it causes her to suffer from diarrhoea, I find that this equates to a complaint that the water is unwholesome and therefore that the company has not supplied water that meets legal requirements. This, I find, falls outside the scope of WATRS' jurisdiction and I therefore cannot deal with this complaint. Moreover, the Drinking Water Inspectorate is a specialist in issues of this type and is a more appropriate forum, as envisaged by rule 3.4 of the Water Redress Scheme rules for the resolution of the customer's concerns about water quality. If thought appropriate by the customer, her concerns as to the quality of the water could be taken up with this agency. I reach no findings as to the wholesomeness or quality of the water.

4. WATRS does have jurisdiction to deal with water supply services, however, which includes the customer services provided by the company. I find that it is open to me to consider whether the company's responses to her complaint failed to meet the standard of service that an average customer would reasonably expect. The customer says that she is also to be treated as a vulnerable consumer and has low immunity and I additionally take that into account.

5. The customer says that she has on two occasions complained that the water tastes of "chlorine/bleach" and is "disgusting" but the company has taken no adequate steps to address this. The samples taken were not from her house and therefore are not indicative of the water quality she receives and she was given no notice of the visit by the company to take samples in her house. She describes the company as "cold-calling". She also says that the company

should tell her what steps they intend to take so that she could have the protection of the Disability Discrimination Act 2010. The gist of the company's submission is that on two occasions in response to her complaints, they gave the customer an opportunity to respond to a request for an appointment but she did not do so, with the consequence that, as she persisted with her complaint, the company carried out an inspection and took samples up-stream and down-stream in September 2018. It explains that it did not take samples from a source within her house because the customer denied entry and, because the samples showed adequate quality at the point of supply, it was satisfied that the water supplied to the customer was sufficient. The company then took no further action.

6. The supporting documents submitted by both parties show that the first complaint that water was causing her and her guests to feel ill was made in April 2015. The company visited the customer at her address and the customer expressed surprise that there had been an unannounced visit. She said that she would contact the company. There is no evidence that an appointment was made and nothing further happened before the customer moved from that address in, according to the company, February 2016.

7. The customer contacted the company again about water quality on 2 August 2017. She complained that the water tasted of chlorine/bleach and had been making her guests ill. The company requested that the customer should contact it to arrange a suitable appointment time because, at that time, there was an ongoing issue about an appointment for a water meter about which the customer said she had been given insufficient notice. However, the customer has submitted a copy of a job record made by the company and annotated by the customer that stated that a visit had been arranged with the customer for 15 September 2017. The customer's annotation is that this was not arranged. The subsequent job record shows that at the point when the company's staff arrived, the customer was leaving her home and that the customer was asked to make a further appointment. The company has no evidence that a further appointment was made by the customer and no further action was taken.

8. On 18 September 2018, the customer made a complaint via "Resolver" and asked the company to respond by that email account. Notably the customer stated in that email that she did not want anyone in her kitchen as she was sure that the matter could be resolved in the garden. The company replied asking her to contact the company but, as this did not occur, the company decided to take samples away from the customer's property and to "cold-call". The documents

show that this happened on 24 September 2018. The customer contacted the company on the same day complaining that she had received a visit from the company. She said:

> *The issue that I have experienced was: At 09:15 today 24/9/18 a staff member from [ ] monopoly knocked on my door. I received no courtesy letter or email to say that someone would just knock on my door at an inconvenient time, out of the blue to ask for a 'sample' of my water. This is disgusting and appalling to just turn up at someone's house at this time, despite [ ] being told in the past NOT to and especially not at that time due to previously mentioned disabilities.*

9. The company replied and correspondence passed between the parties in which the customer expressed her dissatisfaction and the company repeated that it had responded to her complaint and that she had not put forward a date for the company to arrange a visit. The customer requested £20.00 compensation for a cold-call that the company declined to pay. In October and November 2018, the company again requested the customer to contact it to arrange an appointment for testing of an internal tap but the customer had not responded. Following the involvement some consideration was given to whether the company could test an external tap but the view of the company was that if there was a problem within the customer's own pipework this could not be resolved.

10. Against this background, I find that the company was on notice that the customer was vulnerable through disability and that she had previously expressed anxiety about a visit for a different purpose arranged without notice. While I find that it was appropriate for the company to carry out testing otherwise than at her property, I also find that an average customer, taking into account that the customer may have special needs due to disability, would not reasonably have expected that the company would make an unannounced visit. This would be all the more the case where a customer had not replied to the request for contact to discuss a visit and therefore had not expressed willingness for such a visit and had previously stated expressly that she did not wish someone to enter her kitchen. The customer says that the unannounced visit occurred at 9.15am. As the job sheet was completed at 10.57am on that date after all external samples had been taken, I find that the customer's account of the timing of the visit is likely to have been reasonably correct. I find, therefore, that this was a discourtesy and the company fell short of the standard of customer service that would reasonably be expected of it in this regard.

11. The customer sought redress in the sum of £20.00 in respect of her complaint about the visit by the company on 24 September 2018, and I find that, in all the circumstances, it is fair and reasonable that the company should pay this sum by way of compensation.

12. In other respects, including the communication by the company of its findings as to the quality of water and the reason for its wish to take water samples from her domestic supply, I find that the company has met the standard of service that would reasonably be expected.

Billing and Payment Book

13. The customer says that she has paid all outstanding bills and has been confused by the company's charging processes. She has also complained that she has been put on a tariff that she considers to be inappropriate and the company's conduct towards her has been confusing, especially as it has not kept the issues separate in emails through the "Resolver" web-site

14. I find that insofar as the customer's complaint is about the company's Charges Scheme, the customer has not shown that the company has failed to supply its services to the requisite standard. The company's evidence shows that it has repeated suggestions to the customer that she would benefit from a water meter, which would increase the charging options available under its Charges Scheme, but the customer has not agreed to this. The company has also submitted evidence that the Charges Scheme is a published document drawn up in accordance with legal requirements. I find that an average customer would reasonably expect that the company would impose its charges in accordance with that Scheme and, despite the customer's expressions of concern, I find that there is no evidence that the company has departed from that Scheme.

15. The customer complains, however, that since the writing off of charges on her account by agreement in 2017, she has been on a payment scheme but she has persistently been sent her payment book late or to the wrong address and in the wrong amount. There are a number of references to this in the correspondence but no clear information that would enable me to reach findings until the customer's complaint that there was a gap between August and November 2018 in which she was not sent her book and so could not make payments.

16. The company says that in response to a request from the Consumer Council for Water (CCWater) it investigated the customer's complaint and explained it fully. It found that the customer was sent a payment booklet for the 2018/19 financial year bill in time for her first

payment of £46.92 on 1 May 2018. At that stage, the customer's account was in arrears. Payments of £46.92 were due on the first of each following month thereafter. The company received a payment of £46.00 on 23 May and £92.00 on 29 June 2018. The company says that as the payments had not been received on time or in full, the arrangement was cancelled. The customer says that the payment book was only for £46.00. As to that, I find that as the company's evidence is that the payment books are generated automatically and I have observed that the customer was sent a bill that stated that the sum due each month was £46.92, it is probable that the payment book was in the correct amount. The company wrote to the customer to confirm the default and to advise that payment was due in full. At the same time it appears that information was sent to the credit reference agencies. I find that, on balance, the company is correct in its assertion that the customer had not made the correct payments and that the arrangement had been brought to an end. Although, as seen as at 1 July 2019, the customer had paid all but £2.76 of the amount due, just a few days beforehand, only £46.00 of that three month's payment had been made and the arrears position under the arrangement was more serious. I find that the customer was, therefore, making payments erratically and, although neither party has submitted to me the precise terms of the arrangement, it is more probable than not that the arrangement required the customer to comply in order for this arrangement to continue and that the company was entitled to bring the arrangement to an end due to non-adherence and to share this information with a credit reference agency.

17. The company explains that a new arrangement was set up on 18 October 2018, with a due date of 1 December 2018 for the first payment. This was because the booklet would not reach the customer in time for her to make a payment to reach the company for 1 November 2018. A new payment booklet for £46.00 a month was sent for payments starting on 1 December 2018.

18. The company's decision in this regard therefore explains why the customer may not have received a payment book during the period from July to November 2018 but it is clear that a payment book was supplied in time for the May and November payments because the first payment under the new arrangement was made on or about 7 November 2018.

19. I accept that the position in relation to the customer's complaints is somewhat complex to follow and I note that the company has sometimes referred to more than one issue in its responses through Resolver. I further find, however, that the issues are interlinked and, in any event, I find that it is generally clear what issues are considered. Although the customer explains that she has a disability, her correspondence shows that she has a good understanding of her own

complaint and its significance and I do not find that the company fell short of the requisite standard in relation to the Resolver correspondence.

20. It follows from the above, therefore, that I find that the customer has not proved that the company fell short of the standards that would reasonably be expected of it in relation to its billing and provision of payment books.

Data sharing with credit reference agencies and the customer's credit rating

21. The customer complains that the company has shared data with credit reference agencies contrary to her consent. The company has put forward its contention that this data is shared pursuant to legitimate societal concerns and that this is authorised by data protection legislation. There is therefore an issue between the parties as to the role that consent, or lack of it, may play in respect of the justification of "legitimate interest" for data processing activities. The interpretation of data protection legislation is a specialist matter that requires knowledge and expertise in data protection law. The national body entrusted with interpretation of this legislation is the Information Commissioner's Office and I therefore find that by rule 3.4.1 of the Scheme rules, there is a more appropriate forum than WATRS for the resolution of this part of the customer's dispute. I therefore make no findings as to this. I do, however, have jurisdiction to consider the company's customer services in this regard.

22. The company explains that approval has been given by the regulator, OFWAT in 2010, for sharing data between water companies and credit reference agencies, in the public interest. The company has put forward submissions that indicate that the data sharing exercise is carried out in a controlled and legitimate way. There is a governing contract, information will only be available to members of the sharing scheme administered by Experian, which is in turn a regulated activity that is compliant with GDPR and the Data Protection Act 2018. This is also supported by the company's Customer Privacy Notice which is available online or by calling customer services and all customer invoices include a shortened version of the Customer Privacy Notice.

23. I find, therefore, that whether the customer consented to the transmission of this information or not, there is no evidence other than that the company had taken a considered position on this data sharing and had publicised the existence of its policy. I find that an average customer would, in these circumstances, expect the company to report non-compliance with payment obligations to a credit reference agency. I find, therefore, that insofar as the company applied its

policy to make such reports, the customer has not shown that the company failed to supply its services to the standard that would reasonably be expected, even though the customer had not consented to this.

24. The customer complains that the company has acted maliciously by making an entry of a small amount that the company says has been paid incorrectly. She draws attention to the fact that the entry contending that payments were overdue suddenly appeared five months later despite that, she says, the company was paid in full every month and that she has the receipts that show this and even though months one to four are not shown as late payments. I have found above, however, that payments were not made in accordance with the arrangement and, although the customer says that the company's actions were malicious, I find no evidence for this. I have found above that the company was entitled to communicate the customer's non-compliance with the payment arrangement to a credit reference agency. The fact that there was a delay in entering information does not, I find, indicate that the company was at fault. It therefore follows that I find that the customer has not shown that the company failed to provide its services to the requisite standard.

Sale of data to HomeServe

25. The customer has submitted documentation evidencing that that she had not opted in to the sharing of data with HomeServe and she had been sent a letter asking her if she wished to opt out. She says that she has explicitly told the company many times that she does not give consent to it sharing her data and that there is no legitimate interest for this data to be shared with HomeServe in her case. She suggests that the company knows that a social housing property would be extremely unlikely to use HomeServe. The company says that data is shared with HomeServe on a legitimate interest basis and that it does not need consent. The customer's complaint thus raises an issue regarding the interpretation of data protection legislation. I find that this is a specialist matter that requires knowledge and expertise in data protection law. The national body entrusted with interpretation of this legislation is the Information Commissioner's Office and I therefore find that by rule 3.4.1 of the Scheme rules, there is a more appropriate forum for the resolution of this part of the customer's dispute. I therefore make no findings as to this. I do, however, have jurisdiction to consider the company's customer services in this regard.

26. The company has submitted evidence that from 2016 onwards, she has requested the company not to share her personal data. In some cases this related to credit reference agencies (see

above), but I note from the correspondence submitted that the customer has also made clear that she extended this request in relation to other third party organisations.

27. The company has justified its policy in relation to HomeServe on the basis that this organisation processes data on behalf of the company in order to inform customers of matters associated with the maintenance of private networks. It submits that the company and HomeServe have a legitimate interest in the data processing activity. While, as indicated above, I refrain from making a finding as to the legitimacy of this, I note that the company has not stated that it was compelled to share data relating to the customer nor that the customer could not be omitted from any sharing arrangement. In September 2018, the company said:

> *I've now arranged for no further bill inserts to be sent to you, or Homeserve letters. However, we can't stop the Homeserve door to door mailings going to individual properties as they go to individual postcodes, but householders can opt out here; [website address added in]…*

It therefore appears that it was possible for the company to take steps to ensure that the customer was not troubled with letters from or about Homeserve, irrespective of any data sharing issues. I find that the company has not put forward any explanation as to why these steps could not have occurred at an earlier stage nor was information given to the customer at the time that she first complained about data sharing in 2016. I find that an average customer would reasonably have expected a company, faced with an objection by a customer about data sharing, to have explained transparently what data was shared and why, in the case of a commercial organisation like HomeServe, this was perceived to be in the public interest. In relation to HomeServe, this did not occur and I find, therefore, that the company's customer service standards have fallen below the level that would reasonably be expected. I find that the customer is entitled to redress in this regard. However, as I am not compensating the customer for data protection issues, I find that the inconvenience associated with receiving information from HomeServe was small and there is no evidence that the information passed to HomeServe was intimate or invasive or extended significantly beyond that which could be found in the public domain in other ways, I find that the customer has not proved that she is entitled to compensation other than in a small amount. I find that it is fair and reasonable that the customer shall be compensated for this failure to achieve the standard reasonably to be expected in the sum of £40.00.

Unwanted mail

28. As for the customer's complaint that she has received unwanted mail, I have not found an objection by the customer raised with the company in relation to junk mail prior to September 2018, although I accept that concerns about unwanted marketing may have underlain the customer's concerns about data sharing. The company responded immediately by taking the customer's name off marketing literature and enabling her to opt out of the HomeServe communications on their website.

29. Until such a complaint was made, I find that an average customer would have tolerated a limited amount of marketing material from the company, especially where this informed the customer of available services and contact details. I do not find that the sending of marketing material by the company would, in itself, fall short of the standard that an average customer would reasonably expect and I find that the customer does not succeed in relation to this part of the claim.

30. As the redress awarded above is for inconvenience and not for incorrectly levied charges, I do not award interest. I also do not make the remaining directions sought by the customer because, save in the two ways explained above, her claim for compensation has not succeeded.

Outcome

The company needs to take the following further action: pay compensation of £60.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 May 2019 to accept or reject this 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 on 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.

Claire Andrews, Barrister, FCI Arb

Adjudicator