

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1580

Date of Decision: 17 October 2019

#### Complaint

The customer complains that following transfer of her accounts to the company in 2014/2015, the company failed to bill for her trade effluent account. She only became aware of this when she received a debt letter in September 2018, stating that she had arrears of £5,105.42. The company has made a goodwill credit of £120.00 but has not been willing to reduce the bill. She claims a 50% reduction of the debt.

#### Defence

The company says that although there were problems in relation to the handling of some trade effluent accounts when these migrated to the company in 2014/2015, the customer was issued with annual bills. The goodwill payment reflects that she was not issued with reminder letters and no collections activity took place prior to the letter referred to by the customer. The customer had made no payment since March 2015 and was liable to make payment in full.

#### Findings

The customer has established that the company failed to reach the standard to be reasonably expected. I find that it did not put in place or communicate with the customer about a direct debit that I find had previously been in place, probably did not issue bills to the customer and did not issue reminders. The company has a policy by reference to which it only seeks to recover payment for unbilled accounts for a back-dated period of 18 months. I find that the customer should be treated analogously, and it is fair and reasonable to reduce the amount claimed by 50%.

#### Outcome

The company needs to take the following further actions:

1. Waive its claim of £5,105.42 made by letter to the customer in about August/ September 2018;
2. Supply the customer with a replacement bill for the period covered by that letter totalling no more than £2,552.71.

**The customer must reply by 19 November to accept or reject this decision. .**

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## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1580

Date of Decision: 17 October 2019

### Party Details

Customer: [ ]

Company: [ ]

### Case Outline

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

- The customer's account was transferred from RST Water to the company when the business retail market opened in 2014/2015. She had three accounts, one for water services, one for waste water services and one for trade effluent. She had historically paid all three accounts by direct debit.
- The direct debits for the three accounts stopped in November 2014. Only two, however, were recommenced some three months later. The direct debit for the water and waste water accounts continued as normal and the customer continued to receive invoices for these.
- The trade effluent account went unnoticed. The company failed to issue an invoice for the trade effluent account until September 2018 when the customer received a debt letter. The customer challenges the company's assertion that invoices were sent, commenting that the company's own staff member confirmed in September 2018 that the company has had massive problems with unbilled accounts for trade effluent. The customer requested copies of the bills that the company should have sent on numerous occasions and never once were they received either by post or email.
- At this point the customer was unaware that nothing had been paid since November 2014. She had not received any late payment notices, invoices, telephone calls or debt recovery letters.
- The customer seeks a direction that her outstanding balance should be reduced by 50%.

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

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- The customer contacted the company on 4 September 2018 as she had received a letter relating to a balance of £5,105.42. She asked for an explanation.
- The company explained that she has three accounts with the company, 4192340806 – Trade Effluent; 40[ ]7 – Water and Waste Water; and 40[ ]3 – Surface Water & Highway Drainage. The outstanding amount related to trade effluent. It explained initially when the customer contacted it, that the account had been affected by billing issues that also affected other accounts, but when the company investigated, this was not the case for account 41[ ]6.
- The account invoices for the trade effluent account have been produced yearly, which is how a trade effluent account is billed. There is no “return to office” marker against them, which indicates that these were posted to the customer.
- This account has not received a payment since March 2015. This raises a question as to whether the bank was given a direct debit instruction. Whilst there is no direct explanation as to why the direct debit has not been collected, the company received a direct debit notification from the bank in 2017.
- The company thus says that it has fulfilled its obligations in relation to issuing invoices to the customer in a timely manner. It acknowledges that reminder letters were not sent out to notify of an outstanding balance. It agrees that it had not foreseen this consequence when it blocked the account and has applied £120.00 as a goodwill gesture.
- The company says that it was nonetheless the customer’s responsibility to ensure that she was receiving all relevant invoices and to make payments as required.

### 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.

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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 submits that this is a case where, since the migration of her trader effluent account from RST Waterto the company, the customer has failed to pay bills that have been sent to her. Accordingly, the company argues that it has supplied its services to the customer in a manner that would reasonably be expected by an average customer and that, consequently, the customer should be required to pay the full amount of the bills less the goodwill payment of £100.00 that has already been credited to her account to recognise the “block” that was placed on her account that prevented the issue of reminders. The company has explained to the Consumer Council for Water (CCWater) that it does not consider the position of the customer to be comparable to that where the company may have failed to invoice a customer, where, the submitted documents indicate, its policy would have been to limit its demand for payment to a back-dated period of 18 months.
2. I am not able to accept, however, that the company has supplied its services to the customer to the standard that would reasonably be expected by the average customer. I reach this conclusion for the following reasons, all of which have contributed to the current situation where the customer has a significant liability to the company, of which she has explained that she was unaware until September 2018. The reasons are:
  - a. Prior to the transfer of her accounts, I am satisfied that the customer paid all three of her accounts by way of a direct debit instruction. Although the company has raised a question whether the instruction was active on the trade effluent account at the time of the transfer, it has submitted no evidence that it was not. In contrast:
    - i. The customer is acknowledged to have paid her other two accounts (water and waste water and surface water and highway drainage at the same address) by way of monthly direct debit. Although the customer has not submitted evidence from her bank in support of her assertion that the trade effluent account was also paid by monthly dire debit instalments of approximately £117.00, the company has put forward no reason why this account should have been treated differently

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from the others. I find that it is likely that, as the customer says, she paid in the same fashion for this part of the services as for the others.

- ii. The company's own records show that the last bill issued by RST Water on 1 April 2014 was for £1,405.37, all but £241.91 of which was paid. This is consistent with payments by monthly instalments that were brought to an end on transfer. Moreover, the account shows a series of credit notes in sums equivalent to the monthly payments of approximately £117.00 in each month from July to November 2014. The company has offered no explanation for these – but I find that they are consistent with the sums of approximately £117.00 having been paid by the customer until that point.
- iii. The customer says that on transfer to the company, in respect of the other two accounts, there was a three month period where no draw down of the direct debit was made. I have not seen supporting evidence for this submission from either party, but the company has not denied the customer's assertion. I therefore find that it is likely that the direct debits were stopped for a period and then re-started. This, therefore, was an area of vulnerability where the possibility of error on the part of the company, by way of failure to restart the direct debit or obtain a new instruction, arose in respect of the trade effluent account.
- iv. Although the company has also submitted a notification from the Bank that states:

*15/06/2017 – Event Note DDAR Instruction - Customer: 41[ ]6, Reason code: 6, New Account Number: , New Sort Code: , Effective date: 6/13/2017*

there is no information as to the reason for or significance of this notification that assists me to place weight on it.

- b. Accordingly, I find that it is more likely than not that the company failed to re-introduce the payment arrangement that had previously been in place, without notifying the customer that it had not done so. As the company's practice was only to issue invoices on a yearly basis, this had the consequence, even if the invoices were issued, that the customer could foreseeably accrue an unexpected liability on her account for several months or up to one year. I find that an average customer would not have expected the company to have permitted this situation to arise or continue.
- c. As to whether the company has issued invoices each year, there is a conflict of evidence. The customer says that no invoices were received, and even when she asked the company to supply copies of the invoices on which it relied to prove her liability, these were not supplied. The documentation submitted shows that the customer did not

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see copies of the invoices until these were supplied via CCWater in 2019. The company, on the other hand, says that, although on 4 September 2018, the customer was told that there had been a problem with billing trade effluent accounts when they transferred over, it has now investigated and found that the invoices had been issued. It says that it can establish this, because:

*In evidence 2, you can see a screenshot of the invoices page in the system used at [ ] . This shows when the invoices were created and what period they cover.*

*When an invoice is set to be returned to the office, it will have a return to office code on the line of the invoice. As you can see all the invoices were created yearly and there was no return to office marker against them.*

*To further clarify, when an invoice is produced, this is passed to the Printers. When the return to office status is blank, the invoice will be printed and issued to the customer. When the invoice has been printed, the image of the invoice is uploaded to the account. Please see evidence 3. This shows that the invoices were printed and posted to the address we hold on the account.*

d. However, there is reason to be concerned as to the accuracy of this statement without further explanation of the difficulties that the company experienced in relation to the trade effluent accounts when these were migrated to the company. I find that, against a background where:

- i. The customer says that no invoices were received, which is improbable if they were posted – particularly as this would apply to the invoices for at least three years;
- ii. There had been a problem in relation to other trade effluent accounts;
- iii. The account was said to be “blocked” such that no reminder letters were issued or collections activity commenced;

I am not satisfied that the invoices were supplied to the customer. I find that an average customer would expect that the company would have supplied its invoices to the customer on a regular basis.

e. It is common ground that no reminders were sent or collection activity started until September 2018 because of the “block” that was placed on the account. An average customer would have expected that the company would have sent reminders and undertaken collections activity before an arrears position of some three years duration had been allowed to accrue.

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3. Taking all these factors into account, I find that the consequences of the company's failure is that the customer has been placed in a position where she has an unexpected liability for trade effluent services that she has received. I take into account that the customer ought to have noticed that she had not been invoiced in respect of trade effluent and should have noticed that her direct debit payment was not in place. Nonetheless, I find that this is a comparable situation to where the customer has not been invoiced and it would be fair and reasonable for the customer to be treated in a similar manner. CCWater has suggested, and the customer submits, that a fair and reasonable outcome would be to reduce the outstanding bill of £5,105.42 by 50%. I agree. As the company indicates that the last payment on the account was received in March 2015 (although this does not appear to be shown on the account record), I find that reduction of the bill by 50% approximately equates to the 18 month policy applicable to unbilled accounts. It follows that I find that the company shall waive the claim made in September 2018 for £5,105.42 and shall be entitled to payment from the customer for the period covered by that claim only of £2,552.71.

#### **Outcome**

The company needs to take the following further actions:

1. Waive its claim of £5,105.42 made by letter to the customer in about August/September 2018;
2. Supply the customer with a replacement bill for the period covered by that letter totalling no more than £2,552.71.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 18 November 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.

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- 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**

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