WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0557

Date of Decision: 18 August 2017

Complaint

The customer complains that the company has wrongly billed him due to a faulty water meter and because its charges give rise to double recovery. The company has billed him after he has cancelled his contract for its services and its representatives have trespassed on his land to ask him to move his car from over the meter on the public pavement after he had made clear that they had no licence to enter. The customer also complains that the company has not abided by its agreement to a payment plan of £1.00 per month.

Defence

The company raised its charges in accordance with its Charges Scheme. The customer continued to use the company's services after his purported cancellation and the company was permitted to enter the customer's land because it was entitled to undertake works in relation to his meter. The company was, moreover, entitled to change the customer's payment plan which was insufficient to meet the bills.

Findings

The company had charged the customer in accordance with its Charges Scheme. There was no evidence of a faulty meter and no double recovery. The customer could not cancel his liability to make payment for services while he was still receiving these. The Water Industry Act 1991 permitted the company to go to the customer's door for a purpose associated with attending the meter. The company was, moreover, entitled to change the customer's payment plan from time to time providing that reasonable notice was give. It was therefore entitled to take action against the customer for the debt. The company has not failed to supply its services to the standard reasonably expected of it.

Outcome

The company does not need to take any further action.

The customer must reply by 19 September 2017 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 18 August 2017

Party Details

Customer:,[redacted]

Company:. [redacted]

Case Outline

The customer's complaint is that:

- The company had by its letter to the customer dated 9 November 2015 agreed to accept from the customer a contribution to its bill of £1.00 per month. Nonetheless, it has continued to bill the customer for larger amounts which the company claims to be payable and is threatening court proceedings.
- His water meter is faulty and he has asked the company to provide evidence that it is operating correctly. The company has failed to provide this evidence and therefore the customer argues that he is not liable for the company's water bills.
- He is charged twice for water in that his sewerage charges are based on the quantity of water supplied and do not take into account water that is not entering the sewerage system.
- The customer cancelled the company's services on 10 March 2015 but the company has insisted that the services continue to be provided and has ignored his letter of 17 June 2015 in which he denied the company rights of access over his land. The customer refers to a visit by the company on 5 November 2015 when the company knocked on his door and asked him to move his car which the company alleged was obstructing access to the meter. The customer says that he was unable to move his car because this had broken down.
- The customer claims:
    - Provision solely of the company's water services;
    - Provision of an accurate bill for water and sewerage;
    - Compensation of £2,900.00 comprising:
        - £2,705.00 by way of charge for trespass to the customer's land;

- £180.00 by way of charge for 7 letters sent to the company in respect of bills and for which he had set out the company's liability of £25.00 per letter; and
- £20.00 by way of payment of the company's failure top respond to the customer's letter of 20 November 2015, despite having promised to reply by 4 December 2015.

- There is no claim for interest.

The company's response is that:

- The company is not liable for this claim.
- It fulfils statutory obligations and powers in relation to its provision of services, its charges scheme and its access to its meter.
- The company has dealt with the customer's complaints about the matters raised and has made explanations over a long period. In respect of the complaints raised in this adjudication, the company argues:
    - That the customer's bills are correct and have been explained to him on many occasions;
    - The water meter was fitted in January 2006 and although the customer has made many complaints, there is no reason to believe that the water meter is faulty;
    - As there is a statutory power for the company to enter the customer's property to attend to the meter, the customer is not entitled to deny access;
    - The company does not accept applications for non-return to the sewer and its charges already assume a 5% non-return of waste water to the sewer. In consequence of the customer's complaint, the company carried out an investigation into the return to the sewer from the customer's property and concluded that he is correctly charged.
- On 9 November 2015 the company's debt recovery team agreed to accept a £1.00 monthly payment plan for £1 and provided contact details for its Payment Assistance Team. When the customer's next bill was raised on 14 May 2016 his payment plan was reviewed and a new regular monthly payment amount of £54.16 was set. Applications to the Trust Fund were unsuccessful. On 12 May 2017, the customer made a further application to the Trust Fund and pending the outcome of the Fund's decision-making process, the company is again accepting payments of £1.00 per month.
- In the company's letter of 20 November 2015, after referral of the customer to the Consumer Council for Water (CCWater), it incorrectly advised the customer that it would send a reply. For

error it has credited his account with the £20.00 payment he has claimed. No further compensation is due.

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 set out the detail of the history of the customer's account and I have not referred to the full history in my reasons below. I have, moreover, noted that the customer disputes a number of matters. I find, however, from looking at the documentary evidence, considering the submissions of the parties and reading the papers submitted by CCWater that in relation to the customer's complaints, the following considerations apply.

Water meter

2. The customer applied for a water meter to be fitted more than one decade ago. It was installed on 31 January 2006. Certain correspondence concerning the appropriateness of the company's billing followed this for some years ranging over a number of issues, some of which are referred to in this reference to adjudication. In respect of the water meter, on 9 February 2015, the customer disputed the balance outstanding in relation to the supply of clean water because he believed that his water meter was faulty. The company responded on 25 February 2015 and advised that the level of water usage recorded by his meter was low. It explained that its experience is that its meters hardly ever go wrong and when they do so, they tend to under-record the volume of water rather than over-record it. The customer was told that he could ask

for a test of the water meter. The customer was told as a matter of the company's policy that he would have to pay for the test if the meter was recording the amount of water accurately. On 9 March 2015 the customer stated that he was unhappy with the terms of the meter test policy and said that he wished to close his account. He also said that any further debt recovery action taken would be harassment. In the company's reply on 24 March 2015, it explained the balance on the customer's account and reiterated the advice that his level of water usage was low. It further explained the rationale for the charge of £70.00 which was a contribution to the costs of testing a meter. Although further correspondence passed between the parties addressing the company's right to attend and change the meter (addressed further below), the customer has not agreed to testing of the meter in view of the cost of £70.00 which would be payable if the meter was working correctly.

3. In relation to the matters set out above, I find that the customer has not proved that the company failed to supply its services to the level which would be expected of it by an average person. In accordance with section 142 of the Water Industry Act 1991, a water and sewerage company is permitted to charge for water and wastewater services provided and under section 143 it is permitted to make a charges scheme. The scheme must comply with charging rules made by Ofwat under section 143B of the Act. Section 144 of the Act confirms that the occupier of a property is responsible for the water charges. Accordingly, when a company complies with its charging scheme, it is conducting its service provision in a manner that would be reasonably expected by the average customer.

4. In this case, It is clear from the company's correspondence with the customer that the information and advice given to the customer reflects company's own Charges Scheme which, having published this, the company is required to apply to its customers. In particular in relation to the customer's case:
   - Section 3.3.3 of the Scheme confirms that the meter reading is evidence of consumption.
   - Section 3.3.4 of the Scheme enables the customer can apply in writing to have his meter tested. The company explains, and I accept, that to test the meter it would need to be removed from the property to ensure its accuracy.

5. Applying the provisions of the Scheme, therefore, the meter reading provides evidence of the customer's consumption. This has continued to be the case until 2017, despite several attempts by the company to change the meter which have been thwarted by the presence of a motor

vehicle (which the customer states is broken down) located over the meter chamber. This means that even though the company has obtained a visual reading of the meter in 2017 which shows that the customer's consumption of water has increased, the customer has not shown that the meter was faulty and therefore has not shown that the company is charging him for an incorrect volume of water supplied to his property.

Double-charging

6. In respect of the customer's complaint that the company is double-charging for water because it charges both for supplying it and then imposes a further charge for removing it as waste water, irrespective of whether this has been used for purposes which do not cause the water to enter the foul drainage, my findings are as follows.

7. After the installation of the water meter in 2006, the customer contacted the company on 25 July 2007 because he was unhappy with his wastewater charges. In its reply of 2 August 2007, the company explained the metered standing and volume charges. On 12 January 2009, the customer emailed the company again to dispute the billed wastewater charges. The company replied on 16 January 2009 to explain that it does not accept non-return-to-sewer applications from household customers because the volumetric rate is already reduced by 5% to allow for this. The customer was also sent a breakdown of his account on 22 January 2009. On 3 September 2010, the customer again complained about the wastewater charges. On 20 September 2010, the company sent the customer a leaflet about surface water drainage for household properties. On 14 October 2010, the customer wrote back complaining that he was not content with the previous reply and the company reviewed this but reiterated its previous advice on 1 November 2010. There then followed a dispute about whether or not the company had responded in line with its Guaranteed Standards Scheme which is not raised by this reference to WATRS.

8. On 30 December 2011 the company received a surface water allowance claim form from the customer and it arranged for an inspection to take place. On 18 January 2012, the company, having carried out an inspection, advised the customer that his surface water claim had been disallowed as the company had established that surface water from the front of his property entered the public sewer. The company explained that it was unable to accept partial claims for household customers if some surface water from the property drains into the public sewer.

9. I find that in its response to the customer, the company has provided its services in accordance with the standards that would reasonably be expected of it. The Charges Scheme explains at section 4.1 that a customer is liable for payment of sewerage charges for premises which are physically connected to or drained by a sewer or drain (whether directly or through an intermediate sewer or drain) to the public sewer. Section 4.4.5 of the Scheme states that a reduction can be claimed in the surface water drainage part of a customer's bill if none of the surface water from the premises enters the public sewer network or some of the surface water goes directly to a watercourse. The company, having investigated the surface water claim, established that the property was connected to the public sewer for both foul and surface water and the customer has put forward no evidence to show that this conclusion was incorrect. The customer is therefore liable under the Charges Scheme to make payment for both types of drainage. This does not, I find, amount to double charging for water but reflects the two types of service which the company provides to domestic households; that of supply of clean water and of removal of foul and surface water. Overall, I find that the company has acted in accordance with its Charges Scheme and therefore has supplied its services to the standard that would reasonably be expected of it.

Cancellation

10. The customer argues that by letter dated 9 March 2015 which addressed also other matters, he cancelled his account with effect from 10 March 2015. In its response, the company asked the customer to clarify whether he wished to close his account. On 16 April 2015 the customer said that he did not feel that the company had provided evidence for the balance on his account and he asked for this to be closed with effect from 10 March 2015. The company told the customer that he could not contract out of the provision of water:

    Under the Water Industry Act 1991 (WIA), we, as the Water Undertaker for this area, are required by statute to supply your property with water and wastewater services. In return you are legally obliged to pay for these and there is no opting out of this service. The services supplied are the supply of fresh clean water that has been purified to a set standard. We then remove your waste water through our sewers, before cleaning it to current standards and returning back into the environment.

    Part of the wastewater service is the removal of surface water from your property and also highway drainage. Because we are not allowed to charge the road owners themselves for the removal of highway drainage, the WIA allows us to recharge the cost to customers who are connected for our wastewater services.

11. The customer made clear on 18 May 2015 that he did not accept this and in due course this reasoning was given in August, October and November 2015 for why he would not agree to the company changing his water meter as part of its proactive meter exchange programme. Nonetheless, the customer appears to have continued to use the water which is connected to his property. This has been demonstrated by the visual reading obtained in May 2017 which showed that the customer's use of the water had increased. Although the customer challenges the accuracy of the meter reading, I have found that in the absence of any evidence to the contrary, the Charges Scheme requires that the reading is to be taken as evidence of the water used and I therefore find that the customer continued to utilise the connected services. Moreover, the customer has not given evidence of any steps that he has taken so as to avoid using the company's services.

12. As such, it is questionable whether as a matter of law the customer has in fact determined the contractual supply of water between himself and the company, but I do not need to decide that question. It is irrelevant whether a contractual relationship persisted or not. The customer contends that there is nothing in the Water Industry Act 1991 which prevented him from cancelling his account. I reach no conclusion as to whether he is right about this in principle, but I am quite satisfied that the provisions of the Water Industry Act 1991 precludes the customer from cancelling his liability to make payment while he is still receiving the services. This is because the power of the company to raise charges is not dependent on the existence of a contract but the company is permitted by virtue of sections 142 to 144 of the Act inclusive to raise charges which are payable by the occupier.

13. It follows that I find that the customer has not "cancelled" the arrangements between himself and the company and the company has not failed to supply its services to the standard that would reasonably be expected of it in continuing to demand payment and to change the water meter.

Trespass

14. The customer alleges that as he has cancelled his contract and refused permission to the company to enter his land, the company has trespassed. On 15 November 2015 the customer claimed a sum of £2705.00 in respect of the visit made by the company to exchange his water meter (which is located on the public pavement) when the company had also knocked on the front door to ask him to move his car which overhung the meter. He made a complaint. The company did not reply to this as the customer had already been referred to CCWater. The company visited again to exchange the customer's water meter but the customer again refused

to move his car to allow access to the meter chamber. On 1 February 2017 the company visited the customer's property again to try to exchange the water meter but his car was still parked over the meter chamber. The meter has not been changed. I refer to my finding above that it is not open to the customer to cancel his liability while he continues to receive services from the company, both in terms of the supply of water and in terms of the public sewer to which his property is connected.

15. Section 172 of the Water Industry Act 1991 states:

(1) Where the conditions set out in section 162(1) above are satisfied in relation to any premises, any person designated in writing for the purpose by the relevant undertaker in question may enter those premises, or any land occupied with those premises, for any of the purposes specified in subsection (2) below.

(2) The purposes mentioned in subsection (1) above are—

(a) the carrying out of any survey or tests for the purpose of determining—

(i) whether the carrying out of any works by virtue of paragraph (a) or (b) of subsection (3) of section 162 above is practicable;

(ii) whether it is necessary or expedient for any purpose connected with the carrying out of any works by virtue of either of those paragraphs for any other works to be carried out; or

(iii) how any works specified in that subsection should be carried out;

(b) the carrying out of any works so specified;

(c) the inspection, examination or testing of any meter which is on those premises or of any pipes or apparatus installed in the course of any works which were carried out for any purpose that is connected with the installation, connection, testing, maintenance or repair of any such meter;

(d) the ascertainment from any meter of the volume of water supplied to, or of effluent discharged from, those premises.

16. The company was therefore entitled to carry out works on the pavement (which I find to be part of the street) in respect of the customer's water meter and because section 162 permits entry into premises for the purpose of maintaining, repairing, removing and disconnecting the meter I find that it follows that the company was authorised by statute to go to the customer's door in order to try to obtain access to his water meter. I find this to be the case, notwithstanding that the customer had made clear since his letter to the company dated 25 June 2015 onwards that the company had no authority to enter his property; he had no power to undermine the impact of section 172 of the Water Industry Act 1991, the purpose of which is to enable the company to

have access to its assets. Accordingly, I find that the customer had no power to seek to levy a charge against the company for entry on to his property on 15 November 2015 or on any other date when the company has entered the customer's land in an attempt to have access to its meter.

Billing

17. The customer complains that the company has agreed to accept £1.00 per month by way of charges but that it is threatening legal proceedings for an outstanding balance. From 22 October 2015, moreover, the customer has contended that he would consider any further contact requiring payment as harassment. The company responds by referring to its statutory charging obligations.

18. The history of the customer's bills has been complicated. The company first took court action having made a decision following its inability to collect outstanding charges on the customer's account on 7 December 2011. On 4 January 2012, the company received advice from its trust fund administrators that they had received an application from the customer for a grant. On 30 January 2012, the customer was awarded a trust grant of £1584.86 which cleared his outstanding balance and put his account into credit for the sum of £53.36. The company wrote to the customer on 30 January 2012 to advise that the trust fund grant had settled the amount claimed under the court action. Thereafter the trust fund administrators recommended that the company should set up a payment plan for £5.42 per fortnight. The company says that it did not receive payments in line with the plan set and reminders had to be sent to the customer under its debt recovery process. The customer denies this, saying that he has always made payments in accordance with every payment plan. On 3 March 2014, following routine monitoring by the debt recovery team, the company then set up a payment plan for the amount of £7.10 per week. Again the company says that payments were not received and the plan was therefore cancelled but the customer says the payments were made. On 14 August 2014, because no payments had been credited to the plan, a new plan was set for £35.20 per month. The company says that there were non-payments of these instalments so that the plan automatically cancelled on 3 February 2015. On 25 June 2015 the customer advised that he would be reapplying to the trust fund for a grant. This however was refused in September 2015. The customer had been making payments of £1.00 per month and on 9 November 2015 the company's debt recovery team set up a monthly payment plan for that amount. However, when his next bill was raised on 14 May 2016, his payment plan was reviewed and a new regular monthly payment amount of £54.16 was set. The next contact was by way of letter of 28 June 2016 from the customer. He said that

he had agreed to pay £1.00 per month and would be willing to continue to do so but did not intend to pay a larger amount. The customer then applied to the trust fund again but on 4 November 2016 the administrators advised this application had been rejected. On 16 March 2017 the company sent a default notice to the customer and on 13 April 2017 the customer rang to complain about the default notice and stated that he could only afford to pay £1.00 per month. Following receipt of the legal notice the customer called back on 12 May 2017 to say that he had reapplied to the trust fund for a grant and again, he said he could only pay £1.00 per month. A monthly payment plan for £1.00 was set up pending the outcome of his trust fund application.

19. I find that the starting point is that the customer has an obligation as occupier to pay the bills for the services that he has received. On 9 November 2015, the company set up a payment plan of £1.00, having noted that no payment plan was in place. The customer was required to maintain this. The company has put forward no evidence that it was not maintained by the customer. On 14 May 2016 the amount was altered significantly. As to this, I find that the payment plan is intended as a measure to assist the customer in discharging his indebtedness to the company. It is apparent by reference to the amounts of the debt owed by the customer from time to time which are referred to in the papers, that it is highly improbable that without the assistance of a trust fund grant, the customer's payment of £1.00 per month could approach the amount necessary to discharge the debt. The agreement in November 2015 was therefore a concession, but I find that it did not follow that the debt was discharged or that the payment plan could not be altered if the circumstances changed or if the company found that the payment plan was insufficient. In the bill dated 14 May 2016, it is explained that the company's policy is to review its payment plans at least once every year. I find that, providing that the customer was given reasonable notice of any change, the company was entitled to do this. As the first instalment of the new payment plan was due more than one month after the date of the May 2016 bill and it is likely that this has been the case in respect of other adjustments, I find that reasonable notice had been given by the company. It follows that I find that the company is entitled to take lawful means to obtain payment of the bill which includes requesting him for payment and billing him as well as taking legal action. I find that these steps are not harassment and the customer has not proved that the company has failed to supply its services to the standard that would reasonably be expected of it by an average person.

<u>Fees claimed against the company for letters</u>

20. The customer complains that he has had to write to the company repeatedly following the closure of his account. He says that he has put the company no notice that it would be required

to pay £25.00 per letter. The customer has not, however, pointed to any legal authority which would entitle him to impose this charge on the company and the company has refused to pay. I find that, in the absence of a clear obligation on the part of a water or sewerage company to pay for correspondence that it receives from its customers, its refusal is not inconsistent with the standard of service that would reasonably be expected by an average person.

Conclusion

21. It follows from my findings above that the customer has not shown that the company has failed to provide its services to the standard that would reasonably be expected of it by an average person and that therefore the customer is not able to succeed in his claim for redress.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply 19 September 2017 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.

Claire Andrews, Barrister, FCI Arb

Adjudicator