

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0578

Date of Decision: 14 September 2017

#### Complaint

The customer's claim is that the company has installed a Smart Meter at his property unlawfully and that he should continue to be billed on a fixed rate annual charge rather than on the Smart Meter variable rate. The customer is seeking to be continued to be billed on a fixed rate annual charge, removal or non-activation of the Smart Meter, an apology and compensation for various customer service failures, clarification of the legal interpretation and application of the Smart Meter program.

#### Defence

The company submits that in accordance with the Water Industry Act 1991 and the Water Industry Regulations 1999 the installation of a Smart Meter and the use of the Smart Meter for billing purposes is lawful and justified. Furthermore, any additional compensation is not appropriate as adequate compensation has already been credited to the customer's account regarding the various failures of customer service and a full explanation of the why a Smart Meter is lawful and justified in this instance has been given. Therefore, the company is not liable for any further damages.

#### Findings

The reasons and evidence provided by the customer are not sufficient to justify his claim that the Smart Meter was installed unlawfully and that he should continue to be billed on a fixed rate annual charge rather than on the Smart Meter variable rate. From the evidence provided I find that the company has failed to provide its services to the standard to be reasonably expected with regard to Customer Guarantee Scheme payments and the company should pay the customer compensation of £50.00.

#### Outcome

The company needs to take the following further action:

I direct that the company should pay the customer compensation of £50.00.

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- The customer must reply by 12 October 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.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0578

Date of Decision: 14 September 2017

## Party Details

Customer: [REDACTED]

Company: [REDACTED]

## Case Outline

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

- The company has installed a Smart Meter at his premises unlawfully and intends to change his current fixed tariff to that of a variable tariff based on the data collected by the Smart Meter.
- Once the customer raised his concerns with regards to the Smart Meter installation and charge to the tariff he alleges that he then received poor customer service throughout his dialogue with the company, which led to unnecessary stress, inconvenience and time wasted.
- The customer is seeking the company to remove the installed Smart Meter, if removal is not possible then not to activate the Smart Meter.
- The customer is seeking to remain on his current fixed tariff as he has excess water usage due to a family member's medical issues.
- The customer is seeking payment of £80.00 which the company offered under the Customer Guarantee Scheme (CGS).
- The customer is seeking additional compensation from the company for poor customer service which led to unnecessary delay.
- The customer is seeking an apology from the company regarding the customer service received.

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

- The company's position is that in accordance with the Water Industry Act 1991 and the Water Industry Regulations 1999 the installation of a Smart Meter and the use of the Smart Meter for billing purposes is lawful and justified. As the Department for the Environment, Food and Rural Affairs (DEFRA) has determined the [REDACTED] region to be an area of serious water stress the restrictions set out in section 144B of the Water Industry Act 1991 do not apply and therefore the company is entitled under section 162 of the Water Industry Act 1991 to install Smart Meters on

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a compulsory basis. Accordingly, the company is not compelled to remove the Smart Meter or prevent its use to charge the customer using a variable tariff.

- If the customer has additional water usage due to a family medical condition then the customer can apply for the company's   scheme.
- The company should not pay further compensation than already credited to the customer's account for the alleged poor customer service as when dealing with the customer's complaint the company fully explained the issues surrounding the mandatory installation of the Smart Meters and the proposed variable tariff. Furthermore, there was no intention to cause the customer stress, inconvenience or waste his time.

### **How is a WATRS decision reached?**

In reaching my decision, I have considered two key issues:

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 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. To succeed in a claim against the company, the customer must prove on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that because of this failure the customer has suffered some loss or detriment. If no such failure or loss is proved, the company will not be liable.
2. I must also remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of the evidence.
3. The company states that DEFRA published guiding principles which state that where a water company is in an area designated as an area of serious water stress, it must consider compulsory metering as part of the feasible options in its Water Resources Management Plan.

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4. Within its defence, the company has provided various sections of its Final Water Resources Management Plan, OFWAT's guidance on the Water Meters and pointed out the relevant sections of the Water Industry Act 1991 and the Water Industry Regulations 1999.
5. On page 164 of its Final Water Resources Management Plan the company has provided an Environment Agency Map of Water Stress showing the highest water stress regions and as stated within page 14 of OFWAT's guidance (appendix 9 of the company defence) water companies in high stressed areas can ask the Government for permission to compulsorily meter their customers and that most of south-east and eastern England is classed as being seriously water stressed. The customer's property falls within one of these areas classed as water stressed.
6. The company states that as the customer's property falls within an area classed as water stressed section 144B of the Water Industry Act 1991 does not apply. Therefore, the company is entitled under section 162 of the Water Industry Act 1991 to install a Smart Meter on a compulsory basis and therefore set a tariff based on volume of water used. From the evidence put forward, in my view, the company has shown that the Water Industry Act 1991, as amended, allows it to implement a programme for setting tariffs based on the volume of water used in areas designated to be areas of serious water stress. I am also satisfied that the company was required to consider compulsory metering under the DEFRA guiding principles.
7. Within the company's defence it sets out periods of consultation (May to August 2008 and December 2011 to January 2012) with customers regarding metering and other areas of its Final Water Resources Management Plan. In view of this, I am satisfied that the company did consider compulsory metering and put this proposal out for consultation. The company obtained approved permission from DEFRA in June 2012 (see appendix 1 of company's defence), the relevant government department, to implement its Final Water Resources Management Plan which included the compulsory metering policy.
8. I acknowledge the various arguments put forward by the customer in relation to the impact of leakages in areas of serious water stress, automated disconnection of a customer's water supply, fracking, data protection, surveillance and his health regarding various radio transmissions from Smart Meters. I also acknowledge evidence provided by the company in their defence regarding some of these issues, such as the independent report on potential

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health effects of Smart Meters (see appendix 11 of company's defence). However, these arguments do not affect the legitimacy of the compulsory metering scheme, the requirement for the customer's property to be fitted with a water meter, or the change of tariff from a fixed annual tariff to variable tariff based on water usage.

9. Accordingly, having reviewed the evidence in full, I must find that the company has implemented the compulsory metering scheme fully in accordance with the applicable legislation. It has also consulted widely before implementing the scheme and received specific permission from the relevant government department. In view of this, I find that the policy has been properly implemented. I have no authority to direct that the company amend this policy or make an exception for the customer. As the customer's property falls within an area classed as water stressed, the company can insist on fitting a water meter.
10. I acknowledge the customer's submissions that due to a family medical condition the customer has additional water usage and should not be removed from a fixed tariff. However, this should not have any effect on whether a fixed tariff or a metered tariff can be used. As stated within the company's email 02 March 2017 in instances such as this the customer can apply to use the company's ■■■ scheme if metered and the ■■■ Plus scheme if not. The company advise that they have supplied the customer with the application forms for both schemes within the same email 02 March 2017.
11. I am therefore satisfied that the company has a clear legislative basis for implementing a scheme of compulsory metering and I find that the customer has not proved that the company has unlawfully installed a Smart Meter and nor has the customer proved that the company should continue to use the fixed tariff system rather than the tariff system based on the Smart Meter readings. Accordingly, I find I am unable to uphold the customer's claim to remove or not activate the smart meter installed on 17 January 2017 and thereby changing the fixed tariff system currently used at the customer's property. Therefore, the customer's claim is unable to succeed.
12. Furthermore, the company also has certain obligations in respect of its customer services as set out in the OFWAT Guaranteed Standards Scheme and the company's own CGS. The timeline of events set out in the company's defence and the customer's comments shows that the processes to explain the company's position regarding the Smart Meter and accompanying tariffs took some time from when customer first complained to the company in December 2016.

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13. On 21 September 2016, the company established that fitting of a Smart Meter at 47 ABC Street (the customer's address) was possible. The company alleges at the time the company established that fitting of a Smart Meter was possible the customer did not reside at 47 ABC Street. On 24 October, the company was informed that the customer had moved into 47 ABC Street on 22 October 2016.
14. From the evidence put forward by the company, on 13 December 2016 the company informed the customer that it would be installing a Smart Meter, giving timescales for this installation (see company's defence appendix 6).
15. On 20 December, the customer contacted the company's Smart Metering team informing them that in his view the company could not lawfully install a Smart Meter at his property.
16. From the 20 December 2016 through to the 16 February 2017 various correspondence between the parties took place, however matters were not resolved and the customer took his complaint to the Consumer Council for Water.
17. On 02 March 2017, the company responded to the customer addressing the points raised in the complaint to the Consumer Council for Water and offered £30.00 as compensation to cover a CGS payment for non-substantive response to email dated 24 January 2017 and a further £30.00 CGS payment for non-response to email dated 1 February 2017. In addition to this a further £20.00 late payment credit for both CGS payments.
18. Within the company's defence the company states that the compulsory CGS payments of £80.00 have now been credited to the customer's account. In relation to the claim for general customer service its position on the issue has not changed. The company informed the customer of the basis on which it could install the Smart Meter and change the tariff, therefore the company denies any liability for the length of the customer's complaint being unresolved.
19. On reviewing the evidence, it was not until the customer brought the matter to WATRS, some 6 months from when the CGS payments had been offered, that the company took steps to ensure that the CGS payment had been made. I therefore find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person and I direct that the company pay the customer a sum of £50.00 for this aspect of his claim.

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20. Regarding the customer's comments that the company was applying bullying and predatory tactics, after careful analysis of all the correspondence submitted in evidence, I am not satisfied that it has been proven that the company applied bullying and predatory tactics whilst dealing with the customer.
21. The customer has requested an apology from the company. Having carefully considered the various correspondence put forward in evidence, I am satisfied that excluding the CGS payments dealt with in paragraph 19 above, the company has not failed to provide its services to the standard one would reasonably expect with regard to customer service. The company has apologised with regard to the delayed CGS payments within its defence and I therefore find that the company is not required to provide a further apology with regard to the customer service given.
22. Therefore, I am unable to uphold the customer's claim regarding removal of or non-activation of the Smart Meter. Accordingly, I find that the customer's request to remain on his current fixed tariff system also fails. However, as above, with regard to customer service I find that the customer's claim for compensation succeeds and I therefore direct that the company should pay the customer compensation of £50.00.

#### **Outcome**

The company needs to take the following further action:

I direct that the company should pay the customer compensation of £50.00.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 October 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.

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**Mark Ledger FCI Arb  
Adjudicator**

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