WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0658

Date of Decision: 21 February 2018

Complaint

Over a period of seven years, the customer submits that the company overcharged him. His flat was never suitable for a water meter. As such, he should have been charged at a lower rate that applies specifically for 'unmeterable' properties. The amount by which the customer has overpaid is £3,817.17. In view of the company's overcharging, he seeks a refund of that £3,817.17 sum, plus interest.

Defence

It is denied that the customer has been overcharged. The customer has recently had his tariff changed to the Assessed Household Charge ("AHC") band 2, which has a lower annual value compared to the Rateable Value ("RV") charge that he had been paying historically. However, the switch to the AHC tariff can only be made once a particular property is deemed unsuitable for a water meter. In the customer's case, his flat was only deemed unmeterable on 1 August 2017 (that being the point at which the company managed to complete its survey of the property). Prior to 1 August 2017, therefore, it was correct for the customer to have been charged on the RV basis.

No offer of settlement has been made.

Findings

The company's suitability survey – establishing that the customer's flat was unmeterable - was completed on 1 August 2017 only and not before. Prior to that date, it was appropriate and correct to keep the customer on the RV basis of charge. Therefore, the customer has not been overcharged.

Outcome

The company does not need to take any further action.

The customer must reply by 21 March 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 21 February 2018

Party Details

Customer: [redacted]

Company:. [redacted]

Case Outline

The customer's complaint is that:

- He was informed in 2010 that his flat was unsuitable for a water meter (it was "**unmeterable**").
- For the period between 2010 and 2017, he was charged by the company at the rate of £854.69 per year.
- He then discovered that the proper rate for an unmeterable flat such as his should have been much lower. He contacted the company. It acknowledged the error and brought down the rate to £307.38 a year going forward.
- The company suggested:
    - that he talk to the company's complaints department to recover the sums that had been overpaid in the previous seven years; and
    - that the flat be inspected with a view to verifying, again, that it was unmeterable.
- The company's technician attended at the flat and established that there was no way to install a meter.
- The company still denied his claim, referring to efforts made to install a meter at the flat several years earlier (and using this as an excuse).
- In the circumstances, he requests that the company be directed to refund the amount by which he was overcharged, i.e. £3,831.17, plus interest.

The company's response is that:

- It denies that the customer has been overcharged.
- On 13 July 2010, a 'handy man' technician attended the customer's home to fit a meter in a kitchen cupboard. Upon arrival, however, the technician found that the Inside Stop Valve ("ISV") was seized. The meter installation could not be completed without an operational ISV. This was needed in order to determine the layout of the pipework and to confirm whether a meter could be fitted which would capture all of the customer's water consumption only.
- An operational ISV is a legal requirement for which the customer is responsible. In this situation, the customer would have been advised of the need to have the ISV repaired before the meter installation work could be continued.
- Subsequently, there never was any confirmation or clarification from the customer that the ISV had been repaired.
- The customer refers to being charged at "*the wrong unmeterable rate*". He appears to say this because he has recently had his tariff changed to the Assessed Household Charge ("AHC") band 2 (for 2 bedroom properties). The AHC has a lower annual value compared to the Rateable Value ("RV") charge that he has historically paid for his flat.

Assessed Household Charge ("AHC")

- All customers have the right to request a meter. Where - for practical reasons - a meter cannot be installed, customers are informed about the AHC. Ofwat, the Water Industry Regulator, makes clear its position on how the AHC scheme may be used:
    - "… *The purpose of the charge is to make sure that customers are not unreasonably disadvantaged because they cannot have a meter. The charge is not available if the company can fit a meter at their property* …".
- The AHC prices are based on information gained from the Domestic Water usage surveys. These are readings taken from a series of meters that are put on customers' supplies who are billed on Rateable Value ("RV"). This should mean their behaviour/water usage is unaffected by having a meter.

Rateable Value (RV)

- Until such time as a customer applies for a water meter, he or she will always be billed using the RV of their property.
- The Inland Revenue's District Valuer decided the RV of each property based on its size, location, access to local facilities and transport, and its desirability, for example, if it had central heating, or double-glazing.

- The value was meant to represent the theoretical amount of rental income that the property might command annually and was reviewed at five-yearly intervals or when major improvements were made.
- Since 1 April 1990, no new or amended RVs have been issued. However, legislation allows all water companies in the UK to continue basing their charges on the RV of any property as at that date.
- Under Section 143 of the Water Industry Act 1991, the company has the power to make a Charges Scheme.
- For present purposes, the key point arising from the Charges Scheme is that the rate-based charge known as RV shall stand *until such time as a customer applies for a water meter*.
- It is disputed that the customer has been *'overcharged at the wrong unmeterable rate*'. Until such time as a property has been fully surveyed to see if it is suitable for a water meter, the RV of a property stands.
- The customer did apply for a water meter in 2010 but despite more than one visit from the company, a survey of his home was never fully completed (because of the issue over the inoperable ISV).
- It is disputed that the customer was "*told* [in 2010] *in unequivocal terms that* [his] *flat was unmeterable* ". Had this been the case:
    - the customer would have been switched to the relevant AHC tariff in 2010. The company has an automated process with regards to AHC that is to be applied to a customer's account following a metering survey. When a survey of the customer's flat for a water meter was actually finished on 1 August 2017, the customer received a letter dated 7 August 2017 advising that he had been switched to the relevant AHC tariff; and
    - the company would not have called the customer on six occasions after its last visit of 13 July 2010. This was done to determine if the ISV at the customer's flat had been repaired so that the company could complete the metering survey for him.
- It is incorrect to say that the company "… *acknowledged the error and brought down the rate to £307.38 a year going forward* …" No error had been made regarding the tariff charged to the customer since 2010.
- As to the customer's allegation that the company "… *suggested that we inspect the flat and verify, again, that it is unmeterable* …":
    - it has only been verified <u>*once*</u> that the customer' flat is unmeterable; that was on 1 August 2017; and
    - in 2010, an optional metering survey could not be completed at that time (because of the

need, first, to have the ISV repaired).

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. I should 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 probability.

2. I should also acknowledge that I have had the benefit of reading:
    a. **the customer's comments**, filed on 1 and 2 February 2018, in response to the company's defence ("Comments"); and
    b. **the company's response,** dated 5 February 2018, filed by way of reply to the Comments.
    c. **the customer's email of 7 February 2018** (timed at 07:12), by way of further Comments. To a large extent, in this email, it is apparent that the customer is introducing new evidence and/or arguments. Bearing in mind Scheme Rule 5.4.3, I have disregarded any such new evidence.

3. On pages 1 to 5 of its defence, the company has set out a very comprehensive chronology ("Chronology") of events. This runs from 6 January 2010 (when the customer first moved into

his flat) through to 19 January 2018 (when the company received the customer's WATRS application). As to the Chronology, I note that – from his Comments – the customer agrees the relevant history presented, stating: "… *I will not dispute the series of events as they enumerate them. I do not have detailed records and my memory fails me. So I accept them as stated* …"

4. I have given careful consideration to the key submissions made by the company, which – as I see them - are that:
    a. a water meter application was originally received from the customer in March 2010; and
    b. the 'optional metering process' was therefore opened for the customer at that stage; and
    c. on the occasion of the company's technician's visit to the flat on 13 July 2010, the work to fit a meter could not be completed because the Inside Stop Valve ("ISV") was found to be seized;
    d. the customer would at that stage have been told that he would need to have the ISV repaired before the company could continue with its meter installation work;
    e. thereafter, a number of attempts were made to reach the customer (principally to establish whether the ISV had been repaired, so that the installation work could continue); but
    f. there were problems making contact; and
    g. eventually, the optional metering process was closed without it (ever) being made clear whether the ISV had been attended to; and
    h. after April 2011, interactions with the customer then fell away for some six years

5. After examining the materials annexed to the company's defence, I am satisfied that – as a matter of fact – the relevant events did unfold in the way that the company describes. Specifically and on the balance of probability, I find that the customer *would* have been told (in July 2010) that it was necessary to have the ISV repaired before the company could continue with its meter installation work.

6. As far as the company is concerned, its survey procedure – to establish whether the customer's flat was 'meterable' – was never fully completed in this instance. This, it submits, was because of the inoperable ISV. I note (and I accept) the explanation that the company gives about this issue in its defence:

    "*an operational ISV … is needed to conclusively determine the layout of the pipework and to confirm a meter could be fitted which could capture which would capture all of [the customer's] water consumption* ***only*** *[my emphasis]* …"

7. I can see (and understand) the necessity of having an operational ISV before any assessment could be completed as to whether a meter could be fitted at any given property.

8. Taking the agreed Chronology into account, I accept the company's submissions and find that the eventual point at which the survey could be completed - with the flat then being deemed unmeterable - was *1 August 2017* and not before.

9. The company's defence, I note, is then developed along these lines: until such time as his flat could be fully surveyed and shown to be 'unmeterable', it was appropriate to keep the customer on the RV charging basis. I accept the company's arguments on this aspect. It seems to me that the company's position is substantiated by the reliance it places in its defence, on:
    a. the purpose of the AHC (and the extract from the Ofwat document entitled "*water meters – your questions answered*"); and
    b. the history behind the RV basis of charge; and
    c. its Charges Scheme, which it is empowered to make by virtue of section 143 of the Water Industry Act 1991.

10. Accordingly, it *was* appropriate and correct (I find) to keep the customer on the RV basis of charge prior to August 2017. I am satisfied that the customer has been charged in a way that was fair, reasonable and compliant with the company's relevant Charges Scheme.

11. For all the reasons set out above, I cannot find any failing on the part of the company in the provision of its services to the customer to the standard to be reasonably expected by the average person. It follows that the customer has not made out his case about being overcharged. His complaint in this regard – together with his request for a refund – is unable, therefore, to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 21 March 2018 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.

Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator