

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0812

Date of Decision: 5 June 2018

Complaint

The customer submits that he has been incorrectly charged in respect of the metered standing charge from 1985 to 1996. He requests a refund of £550.00, calculated against the unmetered standing charges for the same period.

Defence

The customer's claim is time barred. The company is entitled to charge customers for services under statute. The customer's claim would therefore be one of alleged unjust enrichment or similar, providing the customer with six years to bring a claim. In any event, the company no longer holds details regarding the charges from 1980 and there is no evidence to suggest they were wrongly or improperly calculated.

The company has not made any offer of settlement.

Findings

The company is entitled to charge customers by way of authority granted by statute, rather than contract. The customer's claim is founded in tort. He therefore had six years to bring a claim; the latest date he could have brought a claim was in 2002. In any event, it is reasonable for the company to no longer have records detailing decision making from over 20 years ago.

Outcome

The company does not need to take any further action.

The customer must reply by 3 July 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0812

Date of Decision: 5 June 2018

Party Details

Customer: []

Company:[].

Case Outline

The customer's complaint is that:

- The customer submits that the metered standing charge was incorrectly calculated by the company from 1985 to 1996. The initial standing charges were high as the company used the same charges for commercial and industrial properties and housing. The company has not been able to explain why there was a difference between the standing charges for metered and unmetered services. The standing charge for unmetered services is now higher than that for metered services. The customer submits that if this is a correct calculation then the standing charges from 1985 to 1990 should have been the other way around.
- The customer requests a refund of the incorrect charges, calculated as the difference between the standing charges for metered services and the unmetered standing charges.

The company's response is that:

- The company submits that the customer's claim is time barred. The ability of the company to charge customers for services is enshrined in statute. As a statutory relationship, the customer's claim would be one of alleged unjust enrichment. The limitation period for an unjust enrichment claim is 6 years. The customer's claim overlaps the period when the water industry was privatised in 1989. From 1991 onwards, the company had to set out its charges in an annual Charges Scheme, reviewed and approved by Ofwat. The company submits that its charges were correctly reviewed and approved. It no longer holds details relating to charges from the

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1980's. There is no evidence to suggest that the charges were calculated other than as thought fit at the time.

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 customer's complaint relates to the standing charges applied to his water account between 1985 and 1996. After this time, the standing charge for metered services was approximately the same as or less than the standing charge for unmetered services.
2. I note that the customer has requested an explanation for why the standing charge for metered services was significantly higher than the standing charge for unmetered services. The company states that it is unable to provide a satisfactory explanation for the standing charge amounts due to the amount of time that has passed. I find that this is reasonable as the customer is requesting information about charging decisions taken 22-33 years ago. Further, some of the charges pre-date privatisation of the water industry in 1989. I am not persuaded that it would be reasonable for the company to have retained detailed records of decision making from these dates.
3. The company submits that the customer's claim is time barred. It has referred me to the Limitation Act 1980, suggested that the customer's claim is one of alleged unjust enrichment,

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and provided a copy of the Supreme Court case of Aspect Contracts (Asbestos) Limited v Higgins Construction Plc.

4. I note that section 2 of the Limitation Act 1980 states that an “action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued”.
5. I am satisfied from the company’s evidence that it does not have contracts with its customers. Instead it is entitled to charge customers for the provision of water and sewerage services by way of authority granted by statute.
6. In order to claim against the company, I am persuaded that such a claim would have to be one of unjust enrichment, argued on the basis that the company has been enriched at the expense of the customer in a manner that is unjust, i.e. through standing charges that were improperly calculated.
7. I am satisfied that a claim of unjust enrichment is one founded on tort. I am satisfied from the evidence that the customer had six years from the date that the cause of action accrued, i.e. the date that he was made aware of the charges.
8. As the customer is disputing the standing charges applied up to 1996, I find that any claim against the company would have had to have been brought, at the very latest, by 2002. The date of the customer’s claim to WATRS is 9 April 2018.
9. I therefore find that, even if the customer could demonstrate that the company had overcharged him or improperly charged him in respect of the standing charge, he could not now bring a claim against the company as he did not do so within the six year prescribed period. The customer’s claim is therefore unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

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- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 3 July 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.
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Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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