

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0867

Date of Decision: 28 June 2018

Complaint

In 2007, the customer telephoned the company to enquire about alternative tariffs. He was told that (1) there was no alternative to the Rateable Value ("RV")-based charge he was paying at that time and (2) it was impossible for his property to be fitted with a water meter. In 2017, however, he became aware that his bills could be calculated on an 'Assessed Household Charge' ("AHC") basis, which would be a much lower charge. The company did not inform him about the AHC tariff in 2007. He seeks a refund of overpayments made, therefore, calculated to reflect the difference between his RV charge between January 2007 and September 2017 and the applicable AHC tariff for the same period.

Defence

There is no evidence to suggest that the customer was ever told that there was no alternative to his being charged on the RV basis. Before July 2017, the company has no record of the customer mentioning the subject of water meters or the cost of his bill and how he could reduce it. The company contends that the charges it has levied in this case are consistent with its billing policies as well as the methodologies that it is required to follow in law.

No offer of settlement has been made.

Findings

That, on the balance of probability, there was no mention during the telephone call in 2007 of (1) there being no alternative to the customer being charged on the RV basis or (2) that it was impossible for a water meter to be installed at the customer's property. That the company's charges in respect of water usage have been calculated appropriately and that no backdating or refund of charges is due to the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 26 July 2018 to accept or reject this decision.

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Party Details

Customer: []

Company:[].

Case Outline

The customer's complaint is that:

- Over the period between January 2007 and September 2017, he has been overcharged by the company in respect of his property at [] ("Flat").
- Until September 2017, he was charged on the Rateable Value ("RV") basis (approximately £800 p.a.) but this has now been reduced to approximately £300 p.a. on the Assessed Household Charge basis.
- His claim is for the difference between these charges each year, plus interest.
- He has had his Flat since the 1980's and had always assumed that he was being charged the correct amount for water. He decided to look into the matter in January 2007. He telephoned the company and asked about the RV basis of charging (as he had read about the increasing number of water meters being fitted.) He was told that there was no alternative for him: he had to be charged on the basis of the RV and could not have a water meter.
- He then asked about the RVs of all the flats in the block, this being information that he needed for another purpose (connected with his service charges). After some discussion, he was told that he should send an email with this request. This resulted in many emails and telephone conversations. He was consistently told that he could not have this information but was eventually given it.
- Having been told that he had to be charged on the RV basis, he gave the matter no more consideration except to think that - each time that he received his annual bill - the charge was unreasonably high given his circumstances (the Flat being very small and being used only once

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- or twice a week.)
- In mid-2017, he received his usual bill from the company in respect of the Flat. The bill was for £794.47. At about the same time, he received his bill from [] Water for his house in []. His house is large and it has a swimming pool and a large garden that needs watering in the summer. The water use is metered and the bill for the year was estimated at about £370.00. This enormous discrepancy infuriated him, so he telephoned the company to complain. He did this knowing that nothing could be done as he had already been told years earlier that he could not have metered water in London and that he had to pay on the basis of the RV. He was well aware that each bill from the company states that a water meter can be requested but he already knew that this was an impossibility so far as installation at the Flat was concerned.
 - The person with whom he spoke at the company suggested that he should nevertheless complete a form for a meter because this would trigger a survey and - if the survey confirmed that he could not have a meter - he could then be charged on the basis of an 'Assessed Household Charge' ("AHC"), which would be a very low charge. This is what happened, in fact, and his charge from September 2017 (on the basis of AHC Band 1) is now less than £300.00 p.a.
 - He complained that he had never previously been told about this AHC, he had never heard of it and the annual bill from the company made no mention of it. He knew only of the two possible charging methods, i.e.
 - RV; or
 - water meter. (The company had already told him that he could not have a water meter and so therefore, as he saw it, there had never been any point in his requesting one.)
 - The person at the company with whom he spoke on 2 August 2017 ('Jane') said that he should have known about the AHC. He replied that he did not know and asked how he should have known. She then asked him to wait while she checked this. Eventually, she came back to the phone and said that she could not find how the customer could know. Apparently, this is kept a secret.
 - In all circumstances, he asked for a refund of the overcharged amount since he was told in 2007 that there was no alternative to his being charged on the RV basis.
 - The company rejected his request on the basis that they said they had no note of having told him in 2007 that he had to be charged on the RV basis. The company's notes relate to his request for information about the RVs of all the flats in the block and the subsequent discussion about their understanding of data protection law. The notes, as far as they go, seem accurate but they are not complete. He suggests that this is not surprising as his question about his water

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charges was dealt with in a matter of seconds, while his other question was complicated and led to considerable discussion.

- It is not his fault if the company's notes are incomplete and he should not be prejudiced by this. If he had not asked the question and been given the answer, he would have reacted to the statement in every company bill suggesting an application for a meter if the RV charge seemed too high.
- By way of compensation, therefore, the customer requests:
 - that his bills be backdated such that the AHC charge is applied with effect from January 2007; and
 - that the company be required to repay the amount overcharged and overpaid, together with interest.

The company's response is that:

- The customer has not been "overcharged". Rather, he has historically paid an unmeasured rate based charge, known as RV, which is the only basis of charge available (without a water meter fitted at a property that captures that property's water consumption specifically.)
- RV is the correct and legal basis of charge to levy until such time as a customer applies for a water meter. All customers have the right to request a meter and are encouraged to do so. Where, however, for practical reasons, a meter cannot be installed – as in this case - 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 company cannot find any evidence suggesting that the customer was ever told that there was no alternative to his being charged on an RV basis.
- All of the company's agents are trained:
 - to discuss metering with its customers as a way to reduce their charges when asked; and/or
 - to raise the subject themselves (if the customer happens to be calling to advise that they are struggling to pay); and
 - to leave notes that explain all conversations held.
- The customer's metering application was made on his behalf by one of the company's call centre agents on 24 July 2017 ("the 24 July 2017 Call"). It was then discovered, on 30 August 2017, that a meter could not be fitted at the Flat.

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- The company refers to its notes of the 24 July 2017 Call, which show that:
 - the customer did not once state that the company had told him years before that he could not have a meter at his Flat; and
 - notably, it was the company's agent who offered the option of metering as a way possibly to reduce the charges that he was paying for his Flat; and
 - when the customer questioned whether it would be possible to fit a water meter in a flat, the agent quite rightly explained that all properties are different. It was also explained that the AHC tariff could be applied if it transpired that it was not possible to fit a meter at his Flat.
- The company has no record of any conversations or contacts with the customer, prior to the 24 July 2017 Call, regarding the way that he was being charged for his water services. Before that date, the customer did not appear – at any stage - to mention the subject of water meters or the cost of his bill and how he could reduce it.
- As to the customer's contact made on 2 January 2007, there was neither any question regarding the charge basis for his Flat nor any request for a water meter. Rather, the enquiry then was said to be made: "... *For reasons connected with our service charges (and nothing to do with our water supply), I need to know the rateable values of the flats in the block ...*"
- The AHC is not a tariff that customers can apply for. As in this sense the AHC is not optional, details of it are not included on the company's bills. Details regarding an option to apply for a water meter, however, are included.
- Every annual bill received by the customer has included information about water meters and how a water meter could potentially save money. Added to this, included with every annual bill sent out was an 'annual billing leaflet'. These leaflets also included information on metering and some of these leaflets (up to 2009/10) also explained the alternative available if it was not possible to fit a meter (i.e. the Average or Assessed Household Charge). On all of its 'annual billing leaflets', the company's telephone number and website address are listed for more information on metering. The AHC tariff is certainly not "*kept a secret*". AHC in its previous and current form has always been included in information on the company's website.
- The company emphasizes that every property is different in terms of the plumbing that it has. Most buildings with multiple properties inside will only have one supply to the building. However, what is important (it is submitted) is how that supply is then configured inside the property. Providing that a meter can be fitted that captures only one individual property's water consumption then that property will be suitable to have a meter fitted. Sometimes, properties are altered over the years and this could entail plumbing work, for example when newer-style

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combination boilers are fitted. For these reasons, the company points out that it can never deem a property 'unmeterable' without conducting a survey first of all. This is why the company is convinced that – in the past - it would not have told the customer that it was impossible to have a meter fitted at his Flat in London.

- As to its call with the customer on 2 August 2017, the company points to its agent's notes. It is submitted that these notes:
 - do show that the agent asked a colleague to check the company's records for any previous meter application form and to check whether the company had any record of a discussion about metering in the past with the customer; but
 - do not indicate, however, that the agent had asked a colleague about information on the AHC.
- It is noted that the customer is requesting a refund comprising of the difference between his RV charge between January 2007 and September 2017 (on the one hand) and the applicable AHC tariff for the same period (on the other). However, the company argues that the charges it has levied are entirely consistent with the company's billing policy as well as the methodologies that it is required to follow in law. In general, refunds are processed on a case-by-case basis, usually as a result of an administrative error or as compensation for problems that the company's network has caused. Neither circumstance applies in this case and therefore, the customer's claim to entitlement to compensation is contested.

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.

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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 their case on the balance of probability.
2. I should also say that I have had the benefit of reading the customer's comments, dated 9 June 2018, in response to the company's defence ("Comments").
3. The essence of the customer's complaint is encapsulated in his remark in paragraph 8 of his Comments:

"... I have been charged thousands of pounds for water I have never used because [the company] effectively keep secret the AHC system of charging ..."
4. The customer's case seems to me to hinge on what was said during his call to the company on 2 January 2007 ("the 2007 Call"). The contents of the 2007 Call are disputed.
5. For his part, the customer submits that – prior to making the 2007 Call - he had been reading *"about the increasing number of water meters being fitted"*. He explains that, he *"had always just assumed"* that he had been charged correctly for his water usage at the Flat but that, in January 2007, he had *"decided to look into the matter"*. He says that he then telephoned the company to *"ask about the RV basis of charging"*.
6. The customer is clear that he received a definitive response from the company: *"I was told that there was no alternative for me: I had to be charged on the basis of the RV and could not have a water meter"*. The customer asserts that he is *"certain"* in his recollection of this conversation.
7. As the customer observes in his Comments, it appears that the AHC basis of charging is only mentioned *"... following a formal application for a meter and a survey confirming that a meter cannot be fitted ..."* I find this to be correct. Having taken account of the relevant Ofwat guidance, I am satisfied that the procedure by which the AHC charging basis typically comes to be mentioned is indeed as summarised by the company in its defence. The gateway to information about the AHC, therefore, is the customer's request for a water meter. I also accept the company's submission that: *"... All of [its] customers have the right to request a meter and*

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... [the company encourages] them to do so ...” I am not persuaded by the customer’s suggestions that the company has engaged in any sort of programme to “keep secret” the AHC charging basis from its customers.

8. I do, however, note the compelling point that the customer makes in his Comments:

“... *Why would I apply for a meter as is suggested in successive bills when I had already been told that this was simply not possible? ...*”
9. As I see it, this only brings the analysis back to the crux of this case: as a matter of fact, was the customer told, during the 2007 Call:
 - a. that there was no alternative to his being charged on the basis of the RV; and
 - b. that he could not have a water meter installed at the Flat? (together: “**the Key Information**”).
10. This is not an easy determination to make. The company states that there is ‘no evidence’ to suggest that the customer was ever advised in the terms for which he contends.
11. I have examined the ‘screenshot’ system notes relied upon by the company, presented as its ‘Evidence 1’ attachment (“Notes”). The customer argues that the Notes are ‘incomplete’. However, in my assessment, they constitute the best available written record of exchanges between the parties at the relevant time. It is significant, I consider, that the Notes do not mention anything about the Key Information.
12. On the balance of probability, I find that the Key Information was not confirmed to the customer during the course of the 2007 Call. The following factors have also influenced me in arriving at this determination:
 - a. the customer himself acknowledges that the first part of the 2007 Call was very short and was “*dealt with in a matter of seconds*”. I consider that it would be difficult to recall reliably a few seconds of conversation that took place over eleven years ago; and
 - b. I regard the company’s submission – that it would be unlikely to deem a property ‘unmeterable’ without conducting a survey first of all - to be a reasonable one;
 - c. the procedure followed during the 24 July 2017 Call can probably be used as a ‘check’ and comparison against what was (or was not) discussed during the 2007 Call. I do not consider that there is any particular basis for supposing that the company’s practices – in

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speaking to customers over the telephone – would have changed materially between 2007 and 2017.

13. For all the reasons alluded to above, I cannot find any failure on the part of the company in the provision of its services in this matter. It seems to me that the company's charges in respect of water usage at the Flat have been calculated appropriately and that no backdating or refund of charges is due to the customer.

14. The customer's complaint, therefore, is unable 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 26 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.



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

Adjudicator

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