

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0875

Date of Decision: 29 August 2018

#### Complaint

The customer states that he has been overbilled by the company for many years, as he has been billed on the basis of the rateable value of his home rather than on the basis of an assessed charge. He seeks reimbursement of £5,000.00 for the excess of rateable value billing over assessed charge for the past 19 years, including interest.

#### Defence

The company states that the customer has been billed properly, and that application of the assessed charge has already been backdated to the date on which an application for a water meter was made. No offer of settlement has been made.

#### Findings

The company has billed the customer correctly, and has provided its services to the standard to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

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

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0875

Date of Decision: 29 August 2018

## Party Details

Customer: [ ]

Company: [ ]

## Case Outline

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

- He has been in dispute with the company for a considerable time over the fact that he was being billed based on the rateable value of his home, which he regarded as an unfair system of billing.
- He was being billed twice the national average for a three-bedroom house, despite living in a two-bedroom flat.
- In September 2017 the company moved him to an assessed charge, reducing his annual bill from £576.00 to £311.00.
- He did not request at any time that the company install a water meter.
- The company is insisting that he should be billed based on rateable value for that portion of the year before he was moved to an assessed charge.
- He has declined to pay this bill, but has paid a sum sufficient to constitute annual payment of the assessed charge, once this sum is added to his previous payments.
- He has received numerous letters and telephone calls from the company threatening legal action or collection action, and threatening to damage his credit.
- Several neighbouring and similar flats are already billed on the basis of an assessed charge, as the company previously determined that they could not be metered.
- The company must therefore have known that his property could not be metered and so should have been billed based on an assessed charge.
- He claims reimbursement of £5,000.00 for the excess of rateable value billing over assessed charge billing for the past 19 years, including interest.

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

- The customer originally complained in 1998 that he was being billed based on the rateable value of his property.
- The company repeatedly explained to the customer that if he applied for a water meter and it was determined that one could not be fitted at his property, then he would be moved from rateable value to assessed charge. However, customers cannot be moved to an assessed charge until an application for a water meter has been made
- Water meter application forms were repeatedly sent to the customer to be filled out and returned, but they were not.
- The customer renewed his complaint in April 2016.
- In August 2016 the customer submitted an application to WATRS, which was decided in the company's favour.
- The customer renewed his complaint in March 2017, resulting in a series of exchanges between the parties.
- On 5 September 2017 an agent of the company completed an application for a water meter on the customer's behalf during a phone call with the customer. The company argues that the customer must have consented to this being done, as the application includes information on the number of bedrooms and residents at the customer's property, and the company would not have this information unless given it by the customer at the time the application was completed.
- A survey was undertaken of the customer's property on 2 October 2017, and it was determined that because of how the pipework was located within the property, the property could not be metered.
- The customer has now been placed on an assessed charge, backdated to 5 September 2017, the date on which the application for a water meter was completed.
- The company acknowledges making attempts to collect payment from the customer, but states that this has been done in accordance with standard processes.
- It acknowledges that neighbours of the customer have previously been placed on an assessed charge. However, the decision that a water meter could not be installed at the customer's property was based on features unique to that property. Thus, information on neighbouring properties could not have justified drawing a conclusion about whether the customer's property could be metered.
- It argues that the customer has been billed correctly.

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### **The customer's comments on the company's response are that:**

- He reiterates that he did not agree to an application for a water meter being made for his property.
- There are three people living in his property, not two as stated on the application.
- There have been changes to the piping at his property subsequent to one of his neighbours being placed on an assessed charge. When his neighbour's property was surveyed he and his neighbour shared a water supply, and this was the reason a water meter could not be fitted. The company, therefore, knew at this time that a water meter could not be fitted.
- The company has placed negative information on his credit report regarding an amount that is the subject of the current WATRS application.

### **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.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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 has a longstanding dispute with the company regarding the billing of his property. He feels strongly that billing based on the rateable value of a property is fundamentally unfair, particularly in an area such as London that has very high property prices. However, he is also

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strongly opposed to having a water meter, and has repeatedly refused to submit an application for one when doing so was suggested by the company.

2. The company argues that it has repeatedly explained to the customer that the only way that he can be billed on any basis other than the rateable value of his property is if he applies for a water meter and the company determines that one cannot be fitted at his property. The customer has, however, repeatedly refused to make such an application.
3. Sections 142-143 of the Water Industry Act 1991 allow water companies to charge customers in accordance with a charges scheme agreed with the Water Services Regulation Authority (Ofwat).
4. It is, therefore, not open to a WATRS adjudicator to evaluate the fairness or otherwise of a company's charges scheme. This is a role that has been legally delegated to Ofwat, and any complaints about the fairness of a company's charges scheme must be directed to Ofwat. A WATRS adjudicator may only examine whether the company has acted in accordance with the charges scheme that the company has agreed with Ofwat.
5. I acknowledge that the current charges scheme for the company expressly allows it to bill customers in accordance with the rateable value of their property, and no evidence has been provided that this has not consistently been the case throughout the period for which the customer is claiming reimbursement. Indeed, as billing on rateable value is a standard feature of billing by water companies in England, without express evidence that rateable value was not included within the company's charges scheme at a given time, I must conclude on the balance of probabilities that it was continually included.
6. The company's charges scheme, as approved by Ofwat, also states that it is only obligated to bill customers in accordance with an assessed charge when they have requested a meter but the company has decided that installing a meter "is not practical or too expensive", and the company has clarified that this has been a continual feature of its charges scheme.
7. While the customer states that he has never applied for a water meter, he nonetheless argues that the company was on notice that his property could not be metered as a neighbour had been placed on an assessed charge at a time that he shared a water supply with the customer.

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8. The customer argues that the company should, therefore, backdate application of the assessed charge to his property to the date on which it was first on notice that his property could not be metered. The customer accepts that he was advised to apply for a water meter during this period but declined to do so.
9. While the customer has supplied no evidence to support his statement regarding his neighbour, I accept that it is true.
10. Nonetheless, given the complexity of piping in many buildings, I find that it is reasonable for the company to insist that a survey be undertaken of each individual property prior to a determination being made that a property cannot have a water meter installed.
11. It is not disputed by the customer that the company has repeatedly suggested that he apply for a water meter as a means of qualifying for application of the assessed charge, and so there is no question whether this option was made known to the customer.
12. I find, therefore, that the company has provided its services to the customer to the standard to be reasonably expected by the average person with respect to the basis on which his property is billed. The company has a legal basis for its use of rateable billing, has a reasonable foundation for insisting on undertaking a survey of a property prior to deciding that a water meter cannot be fitted, and has repeatedly offered to undertake such a survey for the customer. In addition, the company has backdated application of the assessed charge to the customer's property to the date that an application for a water meter was made.
13. While I understand the customer's aversion to having a water meter installed, I find that the company has behaved reasonably and fairly in its attempts to accommodate the customer's wishes while still adhering to its policies.
14. Consequently, the customer's claim for reimbursement of £5,000.00 in previous charges and interest does not succeed.
15. The customer has also argued that he did not consent to an application for a water meter being filled out on his behalf.

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16. The company, on the other hand, has stated that while it cannot produce a recording of the phone call in question, the call was previously reviewed by a Senior Case Manager, who confirmed in a letter to the customer that in that phone call the customer had agreed to an application for a water meter being made on his behalf.
17. In many disputes, the evidence as to precisely what happened will be to some degree unclear, and the law addresses this uncertainty through what has come to be known as the “balance of probabilities” test. Under this test, the decision-maker must look at the evidence provided by the parties, and decide what is most likely to have happened based on that evidence. Importantly, this decision is only based on the evidence provided by the parties, and so is made with full knowledge that the evidence provided may in some way be misleading, or that there may be additional evidence that would justify a different conclusion. However, as a decision must be made, it must be made based on the evidence actually provided, not on the decision-maker’s unsupported speculations regarding what may or may not have happened.
18. In the present case, I accept that both parties are describing in good faith their account of the 5 September 2017 phone call, and on the balance of probabilities I find that the best explanation for these conflicting accounts is that the two parties understood differently what was being discussed. That is, that the customer answered questions about his property with the understanding that the questions were being asked to provide a foundation for possible application of an assessed charge, while the company’s agent asked those questions in the belief that the customer understood that an application for a water meter was being completed. I acknowledge, of course, that this interpretation may be incorrect, but I find it to be the most plausible interpretation of a dispute between two parties who I find are both acting in good faith.
19. Consequently, I find that the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the completion of an application for a water meter, as the dispute over this matter arose from a good faith misunderstanding between the parties.
20. The customer also objects that the company has commenced collection action regarding his unpaid bill, despite the customer having challenged that bill.
21. While I acknowledge that the customer’s objections to the bill are being offered in good faith, the customer has received services from the company and the company has demonstrated that it

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has seriously considered the customer's objections and has explained to the customer why it does not regard his objections as correct. The WATRS Scheme does not prevent companies undertaking collection action regarding bills that are the subject of a WATRS application, and instead provides a mechanism through which customers can be reimbursed amounts they should not have been required to pay, and receive compensation where appropriate. The company is, therefore, entitled to take action to collect amounts owed on the bill sent to the customer.

22. For the reasons given above, the customer's claim does not 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 September 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.



**Tony Cole, FCI Arb**

**Adjudicator**

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