WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0916

Date of Decision: 5 September 2018

Complaint

The customer states that the company has overcharged him for water between 2008 and 2015; has wrongly shared personal information about his account with a credit reference agency and not deleted this; and has bullied him. He seeks: revision of the bills and reimbursement based on usage of 78 cubic metres per annum; removal of the adverse credit markers in relation to his account; an apology; and compensation of £500.00

Defence

The company says that all charges were made in accordance with its policies and with meter readings. On investigation of high usage, no leak was discovered and no shared usage. The evidence suggests that the meter was working correctly but the customer failed to make payments when due. The company's declared policy is to report the status of an account to credit reference agencies. The customer was warned in various ways that this would happen. The practice is lawful and is allowed by the regulator OFWAT. I find that no bullying occurred.

Findings

Because there is a previous County Court Judgment, the customer cannot succeed in respect of part of the period covered by his claim. In any event, the company has tried to investigate the customer's level of usage and no explanation has been found, other than that the customer used the water in question. Consequently, I find that the customer has not been overcharged. I am also satisfied that the customer fell into arrears of payment and the company was entitled to report this to a credit reference agency. As I result, I find he is not eligible to exercise "the right to be forgotten". Further, I find that there is no evidence of bullying.

Outcome

The company does not need to take any further action.

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

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0916

Date of Decision: 5 September 2018

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- In seven consecutive years, the company has overcharged him. The company has claimed that from 2008 to 2015, he had water use of 200 litres per day in the home that he occupied, even though this was a small two bedroom house, with a gas boiler serving five radiators, one of which was never turned on. He had no washing machine, no dishwasher, took only one shower per day and no baths, did no car cleaning nor used water on the garden. He argues that the boiler was only switched on in very cold times of the year and for hot water usage.
- Since moving to [ ] Water, his bills show water use at a rate of approximately 78 cubic metres per annum and he is regarded as a low user, but his lifestyle is identical.
- The company has unfairly reported him to a credit reference agency without warning, which is a non-permitted use of his personal data because he had no contract with the company that could have permitted this. He has made a claim under article 17 of the General Data Protection Regulation (GDPR).
- The customer complains of bullying by the company.
- The customer seeks:
    - A revision of the bills and reimbursement, based on usage of 78 cubic metres per annum;
    - Removal of the adverse credit markers in relation to the customer's account;
    - An apology; and
    - Compensation of £500.00.

The company's response is that:

- The company explains that the charges relate to the customer's occupation of a property in [ ] from 20 February 2008 to 25 May 2015.
- The company's charges are raised in accordance with a statutory charges scheme provided for in sections 142 to 145 Water Industry Act 1991. The customer is legally obliged to pay those charges.
- Approval was given by OFWAT in 2010 for water companies to report customers to credit reference agencies in the event of non-payment of charges. The company is a member of Experian's consumer credit account information sharing scheme. As such, it must have, and has, published its privacy clauses to its customers prior to joining this scheme. The company's privacy policy is available online or by calling the company's customer services line. A shortened version of the policy is printed on every bill. Information is published in accordance with the "legitimate interests" exception of the Data Protection Act 1998 (now repealed and replaced by the GDPR). The company is therefore compliant with the regulatory aspects of its data sharing and it was entitled to share information about the customer's payment pattern.
- The customer's property was the subject of metered charges and therefore the charges were imposed either on the basis of a meter reading or an estimate. The water usage remained reasonably constant throughout the period in question.
- The company does not believe the water usage readings to be incorrect. The company states:
    - That no leak has been found:
        - The customer reported one "gushing leak" in September 2008. There was no leak, but there was a stop-tap problem.
        - On 30 August 2012, the customer reported a further leak. This was investigated on 5 September 2012 but no leak was found.
        - On various occasions, the company suggested to the customer that he carry out further leak testing or apply for a leak allowance, but this has not occurred.
    - That there is no evidence of shared supply;
    - That there is no evidence that the meter was incorrect;
        - Around 12 March 2011, the customer reported that there was a problem with his meter as the amount of water used was excessive. The meter was

changed, but the amount of water used was similar before and after the change.

- The subsequent occupiers have the same meter but use less water than the customer did.

The company therefore concludes that the issue is one of usage and contrasts certain aspects of his occupation in [ ] with that in [ ].

- When the customer went into default of payment in 2011, the company sent three warning letters before issuing a default notice. These warned that the company was entitled to and would issue a default in respect of non-payment of charges.
- The company has not been responsible for bullying behaviour.
- The company may not give preferential treatment to its customers and therefore it may not waive charges or seek to make alterations to information on the customer's credit file. It would also be misleading to make such changes.

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 raises three issues: (1) that he has been overcharged because the company has alleged that he has used more water than was in fact the case over a period of seven years, ending in 2015, and which the company has not been prepared to remedy; (2) that the company

has wrongfully shared his personal data and (3) that the company has bullied him. I deal with each of these in turn.

Overcharging

2. The customer seeks reimbursement of, and/or release of liability for, sums for which he says the company should not have charged during his occupation of a property in [ ]. The period for which he claims commenced in 2008.

3. However, I note that the papers indicate that on 27 August 2011, the company made an application for judgment in respect of arrears of payment of £810.97 plus costs and fees. Although full information about this is not available in the papers, it appears that judgment was entered in or before October 2011 and that an agreement was made between the company and the customer in respect of the payment of costs. The customer in about 2012 discharged the amount of the judgment and the company gave a discount of £70.00 in respect of the costs. I am unable to deal with any dispute that has been the subject of a court judgment and this is expressly excluded by rule 3.5 of the WATS scheme rules. Consequently, I will be limited to considering the claim from October 2011 onwards only.

4. The customer states in his comments in reply that the company has overcharged him because his usage was disproportionately high, especially when contrasted with his current use at his address in [ ]. He says that the company has "a leak or malfunction in [its] distribution system which supplied the water to [his home in] [ ]". He does not, however, state where that leak or malfunction was to be found and he does not suggest that the company has made any sort of arithmetical error in calculating his bills.

5. I am not satisfied that the customer has shown that the company has overcharged him. I find that it is more likely than not that the water for which he was charged was used at his property. Even if this was due to an undiscovered leak at his property, I am conscious that the customer would still primarily be liable for the water use, subject to applying to the company for a leak allowance, which the customer has not done. In reaching the conclusion that the customer has not been overcharged, I take into account that the other potential causes of high water usage have been investigated and have not been found.
    - The documentation submitted in this case shows that no leak was found at the property despite investigation by a water engineer sent by the company in September 2008 and

September 2012. The customer said that he thought he had a leak in his garage and in his toilet in 2013 and invitations were made to the customer to carry out leak testing by carrying out periodic readings and applying for a leak allowance, but there is no record that the customer did so. A similar situation occurred in September 2013, when the customer argued that he had a leak in his shower. I find, therefore that no evidence of a leak exists.

- The possibility of a shared supply was investigated on 5 September 2012, but this was not found.
- Similarly, I am mindful that the meter readings taken after the meter was changed correlated with those taken before the change of meter, which I find suggests that neither meter gave incorrect readings.

The company has also submitted evidence that the water use by subsequent occupants is noticeably lower. This also suggests that the previous higher water usage volumes at the address were caused neither by a leak nor by a fault with the meter. I therefore find that the meter was working correctly and measured only the water supplied to the customer's property. Further, this also precludes there being some error in the distribution system affecting the customer, because water usage was measured at the customer's meter.

6. As for the customer's complaint that he now uses only 78 cubic metres per year, as opposed to more than 200 litres of water per day, he states that the annual usage while a Thames Water customer has been 69 cubic metres, 78 cubic metres and 87 cubic metres respectively and he takes the median figure. I note that 78 cubic metres equates to 78,000 litres of water per annum, which, per day, is approximately 214 litres. On the basis of the customer's submissions, therefore, I am not persuaded that there is a significant difference between the quantity of water used at his home in [ ] and that used while in his new property in [ ]. However, I note that in the table of meter readings supplied by the company to CCWater, the readings are very variable and range from an average daily unit reading assessed from time to time of 0.140 units to 0.552 units. The CCWater analysis, which I find is likely to be correct, shows average water use of 277 litres per day for his home in [ ]. I therefore acknowledge that this usage is greater than that of even the highest yearly average reading in his [ ] address, which is 238 litres per day.

7. Notwithstanding this, as discussed in the correspondence between the company, the customer and CCWater, there are potential reasons associated with the design, equipment and use of the two properties that may account for any difference. These include that the [ ] property was a

house rather than a flat; it is likely to have had a different boiler and other equipment; and the customer appears to have had an office at his [ ] home, which suggests that he worked from home and may have spent longer at the property. Although I note that the customer challenges these differences, I find that without detailed information about the comparative nature of the properties and the detail of the customer's lifestyle (which is information not available to me) I am unable to draw any inference from the fact that the customer uses less water at his [ ] address.

8. Taking all the above considerations into account, I find that the customer has not shown that he was overcharged by the company. it therefore follows that he has not shown that the company has failed in this regard to supply its services to the standard that an average person would reasonably expect.

Data sharing

9. The customer complains that the company had improperly shared his data because he had not given consent and nor had he been given any warning that information relating to his account would be passed to a credit reference agency. The company has submitted evidence that supports its contention that, as with other utilities companies, it is standard practice that such information is given to credit reference agencies and that the customer was given notice of this in a number of different ways. The company states that it had a legitimate interest in disclosing this information and that its actions were lawful.

10. Although the customer says that he was not given warnings that his data would be shared, I am satisfied that the documents submitted by the company show that from 2011 onwards, the customer was told that this could occur. Specifically, these state that if he failed to make payments to the company, this information would be reported to a credit reference agency and that, once such information was filed, it would have adverse consequences for other transactions. In a default notice dated 3 June 2011, I can see that it was detailed that a default marking was said to be likely to affect his ability to obtain other financial services. Similarly, on 27 June 2012, in a final notice of default, it was explained that the adverse impact might relate to his ability to obtain "products and services" from other credit organisations and on 19 July 2014 it was explained in a further default notice for arrears of £467.22 that this would apply to other credit agreements such as for satellite television and mobile phones. In addition, the company has drawn attention to, and submitted copies of, a privacy leaflet sent to customers in 2014, information on its website and a shortened version on the back of bills indicating that it would

refer default information to credit reference agencies. Although the customer states that he did not receive the default warning in 2014, the CCWater documents include the customer's complaint to the company that both followed, and referred to, the default notice in 2012. The customer had therefore, I find, been put on notice that it was the company's practice to report defaults in payment. Overall, I am satisfied that the company took appropriate steps to give the customer warning of its intention to report the customer's account status to a credit reference agency and the consequence of a default rating was explained. I find that in terms of warning the customer, it did not fall short of the standard reasonably to be expected.

11. The parties are agreed that the relevant provisions at the time were those of the Data Protection Act 1998. Questions about data protection issues, as such, are matters that properly fall within the jurisdiction of another forum, such as the court or by application to the Information Commissioners Office. Having regard to rule 3.4.1 I find that these therefore fall outside the scope of the WATRS rules. However, I find that the customer's concerns about the company's conduct can be considered as a matter of the standards of customer service applied by the company.

12. I note that the company has explained in detail the basis on which the legitimate interest principle is invoked in its current Customer Privacy Statement (a publication now required by GDPR) in which it explains the 19 reasons why this applies to the operation of their business and for the wider benefit. The company has also supported this practice by referring to authorisation by the regulatory body, OFWAT, given in 2010. I find that the customer has submitted no evidence that shows that the company was not entitled as a matter of customer service to share his data with a credit reference agency and no evidence has been put forward to suggest that the company was in breach of relevant data principles. There is no evidence that in making the report to a credit reference agency, the company acted otherwise than in accordance with industry standards, and therefore I find that the customer has not proved that the company has failed to supply its services in a way that would reasonably be expected of it.

13. Furthermore, following the coming into force of the General Data Protection Regulation (GDPR) in 2018, the customer has served notice under article 17 (the "right to be forgotten"). The company has refused to cooperate in removal of the credit file entries because it contends that its engagement in the exchange of information is supported by its legitimate interests as listed in its published privacy policy. I find that the customer has not shown that he has a right to erasure of the entries on his credit record, either on the basis that he has withdrawn consent or on the

basis that these should not have been placed on his record in the first place. The company does not rely on the customer's consent to publication and the exercise of the right to be forgotten does not permit the erasure of information where there is a legitimate interest in the data processing activity. The company has explained the 19 reasons why it argues that it has a legitimate interest. I therefore find that the customer has not shown that its refusal was a failure to provide its services in relation to data processing otherwise than would reasonably be expected by an average person..

Bullying

14. The customer has complained that he has been bullied by the company. While I acknowledge that he has undoubtedly found the experience unpleasant, I do not agree that the actions taken by the company were unreasonable. The company was entitled to make demands on the customer for payment and was required to explain its practices in relation to data protection issues. I find that there is no evidence of conduct that could constitute bullying and therefore the customer's claim does not succeed.

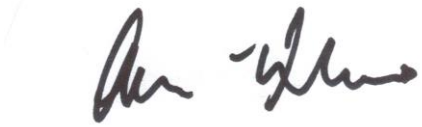
15. It follows from the matters set out above that the customer has not succeeded in showing that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person, and therefore I find that he is not able to succeed in his claim for redress.

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 3 October 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.



Claire Andrews, FCI Arb, Barrister, Adjudicator