

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0997

Date of Decision: 13 November 2018

#### Complaint

In January 2018, a sales representative from the company came out to the customer's shop. He said that the company could provide 5% cheaper bills than the customer's then current retailer. The customer switched to the company on this basis. When the customer received her first bill, however, it was almost double what she thought that she would be paying. She seeks a refund of her charges in excess of those that were agreed with the sales representative when he visited her shop.

#### Defence

The contract, signed by the customer, confirms that the 5% discount was to apply to the customer's 'area default rate' (rather than to the level of bills that the customer was receiving from her previous retailer). The company, therefore, is passing on charges correctly to the customer and in accordance with the market data and the agreement entered into.

No offer of settlement has been made.

#### Findings

Prior to the customer signing the contract, the sales representative did state that the company would provide a 5% discount against the bills that the customer was already paying to her then current retailer. However, the company's terms and conditions (which the customer accepted) were incorporated into the contract. The effect of clause 18 of the terms and conditions was that: (1) the sales representative's promise was 'replaced and extinguished' by the written provisions of the contract; and (2) the customer acknowledged that, when entering into the contract, she had placed no reliance on the sales representative's promise. The true agreement between the parties, therefore, was that the 5% discount would apply to the customer's 'area default rate'.

#### Outcome

The company does not need to take any further action.

The customer must reply by 11 December 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0997

Date of Decision: 13 November 2018

## Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

## Case Outline

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

- In January 2018, a sales representative from the company ("Mr Brown") came out to the customer's antiques shop. Mr Brown said that the company could provide 5% cheaper bills than her then current retailer, [ ]. The customer switched to the company on this basis.
- When the customer received her first bill from the company, however, it was almost double what she thought that she would be paying. She contacted the company and they investigated.
- The company informed her that the bill was correct. They maintained that the agreed basis of charging was that the customer would be eligible for a 5% discount off the 'default rates for the area'. The customer disputed this and pointed out that Mr Brown had promised that it would be 5% off what she was already paying.
- She attempted to contact Mr Brown directly but he no longer works for the company and has refused to make contact with her.
- She argues that the arrangement in question has been mis-sold to her and that there was a misrepresentation by Mr Brown, acting on the company's behalf.
- She seeks a refund of her charges in excess of those that were agreed with Mr Brown when he visited her shop.

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

- On 15 January 2018, the customer entered into a 1-year contract with the company for her water and wastewater services on Supply Point IDs 3[ ]0 and 3[ ]8 (“the Contract”).
- The front of the Contract that the customer signed (“the Frontsheet”), stated:
  - that the company would provide a 5% discount on the water, waste (excluding any trade effluent) and drainage charges; and
  - that this discount would be applied to the area default rate.
- The water and wastewater services were registered to [ ] (the licensed water provider for the company) on 16 February 2018. The company then commenced charging from this date based on the market data held in the core IT system known as CMOS (“CMOS”).
- The first invoice was issued by the company on 12 March 2018 and related to the period between 16 February 2018 and 1 April 2018. This included the water and wastewater charges at the default rate relevant to the area and provided a 5% discount to the total bill amount.
- The company is charging for Supply Point IDs 3[ ]0 and 3[ ]8 correctly based on the market data available.
- The Company Ainvoices provided by the customer show that she was billed for her surface water drainage charges on charging band 1, which is £135.95 per annum at the default rate. However, based on the market data, the surface water drainage area is 138m<sup>2</sup> and should therefore be charged on charging band 2, which is £337.67 per annum at the default rate. The company is providing a 5% discount on that rate, reducing the annual charge for the surface water drainage to £320.79.
- As a result of the increase to the surface water drainage charging band, the customer's monthly invoice amounts have increased since switching to the company.
- Due to the discrepancies between the [ ] bill and data held in CMOS, the company has raised a query with the wholesaler, [ ] (“the Wholesaler”), to confirm that the surface water drainage area recorded in CMOS is correct. A response is yet to be received from the Wholesaler.
- In the event that the Wholesaler advises that the data held in CMOS is incorrect, this will be rectified and all relevant credits passed on to the customer.
- However, unless and until the company receives such confirmation from the Wholesaler, the company is passing on charges for the surface water drainage correctly and in accordance with the market data.
- Unfortunately, in these circumstances, the resolution that the customer is requesting cannot be agreed.

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## 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. I have reviewed:
  - a. all of the materials attached to the customer's WATRS Application; and
  - b. the market data (and all the invoices) appended to the company's defence; and
  - c. the Frontsheet and all of the related contractual documentation, including the company's 'England Water Terms & Conditions' dated December 2017 ("the Terms & Conditions"). On 8 November 2018, I asked the company to supply a copy (which they did) of the Terms & Conditions applicable in January 2018, as these were the specific provisions in force at the time when the Contract was entered into.
2. I have also had the benefit of reading the customer's comments filed in response to the company's defence. These are contained in an email dated 3 November 2018.
3. As to the 5% discount, the dispute appears to boil down to what agreement was in fact reached between the parties when they entered into the Contract:

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- a. the customer argues that the company agreed to provide bills that were 5% cheaper than her then current retailer, Company A (because this was the promise made to her expressly by the sales representative, Mr Brown); but
  - b. the company's position is that the 5% discount was to be applied to the 'area default rate' (as opposed to being applied to the level of bills that the customer was receiving from her previous retailer).
4. With no evidence to the contrary – and on the balance of probability – I accept the customer's submissions as to what was said to her by Mr Brown, prior to her signing the Contract, about how the 5% discount would work ("Mr Brown's Representations"). The customer's account on this seems credible to me.
  5. However, in a dispute such as this, I consider that it is important to have the closest regard to what is written down in the contractual documentation.
  6. The right-hand section of the Frontsheet, headed "*FEATURES OF YOUR SERVICE ... 1 YEAR*", in the "*Rate Schedule*", clearly shows the relevant discount to be 5%. The "*Key Information*" section below there, I note, advises that:

*"... Your discount is applied to your area's default rates which can be found in Customer Zone at [www.\[redacted\].co.uk/customerzone](http://www.[redacted].co.uk/customerzone) ..."*

7. On the face of it, therefore, this is supportive of the case for which the company contends.
8. The section at the bottom of the Frontsheet contains the following confirmation, which the customer has signed and dated ("the Signed Confirmation"):

*"... Signed for and on behalf of the Customer, **having read, understood and accepted the terms of this Contract** [my emphasis]:*

*I am authorised to sign this contract. **I have read and accept** [my emphasis] the Key Terms of the contract as set out overleaf and understand they are a summary of the key provisions of the [redacted] standard terms of trading, a copy of which is available at [redacted].co.uk/terms and conditions **which I also accept** [my emphasis]. I consent to a credit check and confirm the information in this contract is true, complete and accurate ..."*

9. Significantly, as can be seen here, the Signed Confirmation:

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- a. cross-refers to the company's "*standard terms of trading*" (which I find to be the Terms & Conditions, in fact); and
  - b. makes plain that the customer has 'accepted' the Terms & Conditions.
10. Given the wording of the Signed Confirmation, I am satisfied (and find) that the Terms & Conditions were fully incorporated into the Contract.
11. Clause 18.1 of the Terms & Conditions ("Clause 18.1") provides as follows, I note:
- "... 18. Miscellaneous**
- 18.1 The Contract represents the entire understanding and the whole agreement between us and you relating to the Service, and replaces and extinguishes any other statement or representation we have made. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given on our behalf which is not set out in the Contract ..."*
12. By giving the Signed Confirmation as she did, I find that the customer agreed to be bound by Clause 18.1. The ultimate effect of the customer's agreement in this respect must be, I find:
- a. that Mr Brown's Representations were 'replaced and extinguished' by the written provisions of the Contract; and
  - b. that, additionally, the customer has acknowledged expressly that – in entering into the Contract – she placed no reliance on Mr Brown's Representations (anyway).
13. For the reasons set out above, on the key question of how the 5% discount was to apply, the company's case is persuasive.
14. Although I appreciate the impact of Mr Brown's Representations, I find that the true agreement reached between the parties (when they entered into the Contract) was that the 5% discount was to apply to the customer's 'area default rate' – rather than to the level of bills that the customer had previously been receiving from Company A.
15. I am satisfied, therefore, that the company has provided its services to the customer in this matter to the standard that one would reasonably expect.

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## 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 11 December 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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**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCI Arb

**Adjudicator**

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