

# **WATRS**

## **Water Redress Scheme**

### **ADJUDICATOR'S DECISION SUMMARY**

**Adjudication Reference: WAT/ /0822**

**Date of Decision: 18 July 2018**

#### **Complaint**

The customer seeks a determination that the company may not install a water meter at his property, must reimburse him a payment made for repair of a water pipe and water meter that he alleges should not have been on his property, must pay £500.00 to repair the verge on his property, and must apologise for his experiences.

#### **Defence**

The company argues that it is legally entitled to install a water meter at the customer's property, that it was legal entitled to have the water meter on the customers property, and it has nonetheless subsequently been relocated, and that it is willing to have the customer submit quotations for repair work on the verge of his property. In addition, it apologises for the customer's experiences.

#### **Findings**

The company is legally entitled to install a water meter on the customer's property. The customer has already been compensated for the payment he made regarding the water pipe and water meter. The customer may submit quotations to the company for the repair work needed on his verge. The company has already apologised to the customer for his experiences.

#### **Outcome**

The company does not need to take any further action.

The customer must reply by 15 August 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 18 July 2018

## Party Details

**Customer:** [ ]

**Company:** [ ].

## Case Outline

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

- He purchased [ ] ("the Premises"), a property consisting of 3 buildings (a 4 bedroom house, a garage block and a barn) on 4 August 2014.
- He advised both the company and [ ] Water of the change of ownership of the Premises.
- In January 2015 he was given permission to demolish the original 4 bedroom house and build a new house.
- An apartment was added above the garage block, and from September 2015 he lived in this apartment while the new house was built.
- In May 2016 a fencing contractor he had hired dislodged a water pipe from a water meter, causing a leak.
- He contacted [ ] Water, who informed him that his water was supplied by the company.
- The company did not have permission to place a water pipe or a water meter on his property to supply water to someone half a mile away.
- The company repaired the leak, but charged him £434.42.
- He has subsequently been repaid the £434.42 by the beneficiary of the water pipe.
- The water meter has now been moved off his property.
- He argues that a water meter can only be installed on change of ownership, and too much time has now passed for this to be done.
- The new house is a replacement, not a new build, and only one of the three buildings on the Premises has been replaced.

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- The company has destroyed part of his verge looking for the water pipe to his property.
- He requests that he be charged based on the rateable value of his property, not by a water meter; that he be reimbursed the £434.42 he was charged for the repair of the water leak; that the company pay him £500.00 to restore his verge; and that the company apologise for the difficulties he has experienced.

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

- The Premises constitutes a new build because of the replacement house, and as a result the company is legally permitted to require that a meter be installed.
- The council tax listings record that the replacement house is a new property.
- The company can install a meter at any property of which there has been a change of occupier as long as the company has not yet issued an unmeasured bill. This is true of the Premises.
- It acknowledges that there have been services failures regarding not responding to correspondence from the customer, and not issuing bills in a timely manner. In recognition of these failures it will only charge the customer from the date a meter is installed.
- The water pipe running under the customer's property is a private supply pipe.
- The private supply pipe and the water meter had been at its location for 50 years, giving the company prescriptive rights under common law. Nonetheless, the company has re-sited its meter outside the customer's property.
- Work to install a meter has temporarily been put on hold. When it is completed, the customer's verge will be returned to its previous state.
- The company will accept the customer securing quotes for undertaking the work on his verge, to be submitted to the company for approval.
- The company offers its apologies to the customer for the problems that have arisen.

**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 central concern of the customer relates to his desire to have the Premises billed on its rateable value, while the company wishes to install a water meter.
2. As the customer notes, the law provides a limited category of cases in which a company may install a water meter at a property against the wishes of the property owner. The company has argued both that the house built by customer constitutes a new build, and that the customer is a new occupier, both situations that would potentially allow the company to install a water meter.
3. Under Section 144B of the Water Industry Act 1991, restrictions on the power of the company to install a water meter at a “premises” only apply when “charges in respect of those premises have previously been fixed without reference to volume”. Thus, the first question that must be addressed is whether the term “premises” in this Section refers only to the house newly built by the customer, or to the entire complex of buildings. In the former case, the restriction laid out in Section 144B would not apply, as the house would constitute a new “premises”, while in the latter case the restriction would apply, as only part of the “premises” is new.
4. The term “premises” is not defined in the Water Industry Act 1991, and so it is properly interpreted as having the standard meaning given to the term under English law, which includes both buildings on a property and the land immediately surrounding them.
5. In this respect, I find that the “premises” to which water has previously been supplied consisted not only of the now-demolished house, but of the entire complex of three buildings, which were utilised as a unit and were sold to the customer as a unit.
6. The consequence of this is that the Premises remained the same even after the demolition of the original house and the construction of the replacement house.

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7. As a result, the company is not entitled to meter the Premises on the basis that it constitutes a new premises under the Water Industry Act 1991.
8. The company also argues that Section 144(B)(2)(b) of the Water Industry Act 1991 allows it to install a water meter where “there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer”. This description applies to the customer, who has not been issued an unmetered water bill.
9. The customer argues that this Section cannot properly be interpreted as imposing no time limitation, even though none is specified, and that as a result a “reasonable” time limitation must be imposed. He also argues that it is clear that any such reasonable time limitation has passed.
10. If no limitation at all were included in Section 144(B)(2)(b) then the customer’s argument might be correct. However, a specific limitation is imposed by this Section, namely that the company cannot have issued a bill to the customer. As a result, it would be improper to add any additional limitation without any textual support. Had Parliament wished to impose a further limitation, such as to specify a number of months within which a water company must issue a bill, it could have done so, but it chose not to.
11. As a result, I find that Section 144(B)(2)(b) allows the company to require that the Premises be billed via a water meter.
12. Consequently, this element of the customer’s claim does not succeed.
13. The customer also requests that he be reimbursed the £434.42 he was charged by the company for the repair of the water leak accidentally caused by his contractor.
14. The customer challenges the company’s right to have had its water meter on his property, and the company argues that the meter had been present on the property for such a length of time that the company had gained the legal right for it to be there.
15. Ultimately, however, it is unnecessary to resolve this question, as the customer acknowledges that he has already been reimbursed the £434.42 he paid to the company by the beneficiary of the water pipe in question.

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16. The United Kingdom Supreme Court has recently addressed, in Lowick Rose LLP v. Swynson Ltd [2017] UKSC 32, when money received from a third party should affect a party's right to claim compensation from an alleged wrongdoer. As stated by Lord Neuberger, "the types of payments to a claimant which are not to be taken into account when assessing damages, are either those which are effectively paid out of his own pocket (such as insurance which he has taken out, whether through his employer, an insurance company or the government), or which are the result of benevolence (whether from the government, a charity, or family and friends), all of which can be characterised as essentially collateral in nature."
17. The payment received by the customer does not fall into either of the categories described by Lord Neuberger, but rather reflects a payment specifically made to compensate the customer for the injury for which he is now seeking compensation from the company.
18. The consequence of his receiving that payment is, however, that in the eyes of the law he is no longer injured, and thus has no damages for which he can claim compensation from the company.
19. If the water meter remained on the customer's property it would be necessary to address whether the company has an ongoing right to keep it there. However, as the company has already re-sited its water meter off the customer's property, this issue does not need to be resolved.
20. Consequently, this element of the customer's claim does not succeed.
21. The customer also requests that the company pay him £500.00 to restore his verge to its original condition.
22. However, the customer has produced no evidence from which it would be possible to conclude that £500.00 is the correct amount for the work that will need to be undertaken.
23. In addition, the company has agreed that the customer may procure quotations for the work that needs to be done, from his preferred contractors, and that it will approve a reasonable quotation.

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24. In light of this statement by the company, and recognising that the customer retains the right to bring a further claim to the WATRS Scheme should the company unreasonably refuse to approve quotations presented by the customer, I find that there is no basis for ordering the company to make the payment requested by the customer.

25. Consequently, this element of the customer's claim does not succeed.

26. The customer also requests that the company apologise for the difficulties he has experienced.

27. However, the company has already apologised to the customer in its Defence. As a result, I find that no further apology need be ordered.

28. Consequently, this element of the customer's claim does not succeed.

29. 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 15 August 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.



Tony Cole

Tony Cole, FCIArb

Adjudicator

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