

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0896

Date of Decision: 20 July 2018

Complaint

The customer, who raises this claim at the direction of the County Court pending hearing of an application to set aside a court judgment, claims that he has been wrongly billed by the company since 2010. He states this is because the company has not read or has incorrectly interpreted his water meter readings, has not been transparent in its billing in 2018 and is "too cosy" with the Consumer Council for Water (CCWater). He alleges fraud.

Defence

The company has said that the customer has been correctly billed in accordance with readings from his water meter and there is no evidence that his meter has operated incorrectly to the prejudice of the customer. The company has supplied its services to the standard that would reasonably be expected of it.

Findings

Although the company has obtained a default judgment against the customer, rule 3.5 of the WATRS scheme rules does not preclude this application. Allegations of fraud cannot be addressed under the WATRS Scheme but matters relating to billing and customer service fall within the Scheme. The customer has not shown, however, that the company has billed him incorrectly and nor has it been "too cosy" with CcWater. The company has supplied misleading bills in 2018, which fell short of the standard reasonably to be expected of it. These have now been explained and, in the unusual circumstances of this case, there is no evidence that the customer has suffered any disadvantage. No redress is awarded.

Outcome

The company does not need to take any further action.

- The customer must reply by 17 August 2018 to accept or reject this decision.

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Date of Decision: 20 July 2018

Party Details

Customer: []

Company:[].

Case Outline

The customer's complaint is that:

- He has been the subject of erroneous billing. When the company pursued legal proceedings for unpaid bills, the judge in the [] County Court required the company to take up the bill increases with "the regulator".
- He describes the information taken from the "miraculous" water meter as giving rise to bills that are too high and have been raised against him "fraudulently".
- He says that since 2010, the company has been charging him for water supplied to a five-bedroom house. The bill increased by 100% when, from 2013, only two residents occupied the house. There was a further very substantial increase when three residents occupied the house from 2015. The customer suggests that the bills have not been correctly prepared in reliance on meter readings.
- The company has in 2018 issued inconsistent bills.
- The customer further complains of "too cosy" a relationship between the company and the Consumer Council for Water (CCWater) in that (1) CCWater declined to assist the customer while the case was the subject of court proceedings; and (2) subsequently advised that the company's billing was acceptable and correct.
- He seeks:

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- Transparency from the company regarding its water charges;
- Repayment of sums paid since 2010;
- Compensation of £235.00 being the cost of the customer's application to set aside judgment.

The company's response is that:

- The company agrees that, on an application made by the customer to the County Court sitting at [] on 16 April 2018 to set aside a default judgment relating to arrears of water charge payments, the customer produced a letter from CCWater to the customer dated 26 January 2018. The District Judge directed that the customer's application should be adjourned pending the conclusion of this regulatory complaints process.
- The company says that this dispute has been ongoing since 2013.
- It explains that the customer has a metered water supply at his home and usage is modestly in excess of what would be expected. The company has investigated this and has found no leak.
- The meter was changed in 2015 and an agreement reached that the company would waive historic charges. The customer has been billed by reference to the new meter since that date.
- The Water (Meters) Regulations 1988 indicate that meters should be treated as evidence of use unless they are proved to be faulty. There is no evidence that the meters are faulty. There is no proof that the customer has not used the water for which he has been charged.

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?

Jurisdictional matters

1. Rule 3.5 of the WATRS Scheme rules states that there is no jurisdiction under the WATRS Scheme to decide disputes that are “subject to existing court action or on which a court has ruled unless the court’s decision has been set aside”. I note that there has been litigation between the company and the customer in respect of the issues raised in this application. The precise status of the litigation is that judgment has been entered against the customer but that an application to set aside the judgment has been made by the customer and adjourned by the court so that the matter can be dealt with under this Scheme. It follows that, technically, the court’s decision has not been set aside. I find, however, that it is fair and reasonable to interpret the rules of this alternative dispute resolution Scheme purposively. In this context, I note both that neither party has submitted that I should not reach a decision on the customer’s application and also the intention of the Rules is explained in Rule 1.1 of the Scheme, which indicates that “the Scheme provides an independent process for adjudicating unresolved disputes between participating water companies, water and sewerage companies and water supply and/or sewerage licensees (“the companies”) and their “customers”. There is no conflict between the adjournment decision of the court and the submission of an application to this Scheme. In these circumstances, where an application to set aside is afoot but not yet determined, I find that the judgment of the court cannot be treated as a final decision and the referral of the matter to this Scheme at the request of the court is within the purposes of the Scheme itself. I therefore conclude that I have jurisdiction to determine this application.
2. The customer has, however, raised certain matters in the documentation with which I cannot deal. These are, (1) an allegation that CCWater has also been at fault by being “too cosy” with the company and (2) an allegation that the company is in general charging its customers inflated and disproportionate prices for the services that the company supplies. I am unable to deal with the first of these matters because the WATRS Scheme rules only permit a customer to bring a claim against a company. It does not permit a customer to make a complaint about CCWater and CCWater (unlike the company) is not a party to the customer’s claim. I am unable to deal with the second of these matters because rule 3.5 of the WATRS Scheme rules precludes the

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use of the WATRS Scheme to address disputes relating to the fairness of contract terms and/or commercial practices and disputes concerning allegations of fraudulent or criminal activity. The customer's complaints about the company's pricing structure, use of its trading names and issues that are akin to this, are therefore beyond the scope of the Scheme.

3. Additionally, I note that the customer alleges that the company has raised its bills "fraudulently". By this I understand him to mean that instead of applying readings from a water meter at his premises, the company has made an assessment of the charge based on its perception of the occupation of the property or (perhaps) with a view to other improper gain. As to this, I find that I am permitted by the Scheme Rules to reach findings as to whether the company has applied its charges in accordance with meter readings taken by the company because rule 3.3 of the WATRS Scheme makes clear that such a dispute is within the scope of the Scheme. I have no jurisdiction, however, to reach a conclusion as to any allegation of fraudulent intent on the part of the company and I do not do so.
4. I turn now to the customer's expressed concerns. These fall into three categories:
 - a. The accuracy of the bills raised from 2010 to date;
 - b. The consistency of the bills raised since 2018; and
 - c. The company's relationship with CCWater.

I deal with each of these in turn.

Accuracy of the bills raised from 2010 to date

5. The customer complains that the company has raised inaccurate bills through the period from 2010 onwards. He asks in his application for the bills to reflect the real water consumption as the bills for water and sewerage for three people "are almost £1,000 for water and sewerage for 1 year", which the company denies. He argues that the company has wrongly challenged the figures that he has put forward and that this is evidence of lack of appropriate financial control from which I should draw an inference that the customer has been wrongly billed. He further relies on bills and statements from neighbours.
6. In a telephone call between the company and CCWater (29 January 2018), the company said that the customer's property had been metered since 2013. A potential doubt as to whether that assertion was intended to refer to the start of the metered period was resolved by correspondence in which CCWater made clear that they had seen evidence of the meter reading history that went back to 2010. This history is also included in the documents submitted

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by CCWater. The customer does not assert that he has never had a meter; he contends that the company has not used the meter readings to compile his bills because, at the outset of the relationship, he was asked how many residents lived at his address. He therefore contends that the company used this information to create the bills, whereas the company said that this information was required merely to see the correlation, from time to time, between water use and the number of occupants. As the customer has not challenged that a meter was present and as I have seen the meter reading history, I find that it is more likely than not that the property had a meter in 2010.

7. I find that it is improbable that the company used a method of assessing the bills other than the meter readings. The documentation submitted by the parties, including copy bills, indicate that meter readings have been used. I find that water companies generally encourage the use of meters and there would be no reason for employees of the company to ignore information provided from that source and to substitute it with a different measure of units used. Contrary to the customer's suggestion in correspondence of 23 April 2014 (referred to in the evidence of the company) there is no reason to conclude that higher bills lead to "bonuses for their staff and management". Furthermore, while I note that the customer complains that there has been no reduction in cost following a reduction in numbers at his household and that his usage is above average, I find that it does not follow that the company is using incorrect information to raise charges against the customer. Nor do I find that information provided by the customer, but relating to other consumers, is of assistance in knowing what was happening at the customer's property. Each household is likely to be different in respect of its water use. I am not therefore persuaded that the information and statements relating to other individuals show that the customer's usage is unusually high, though the customer's usage and bills may be higher and/or more costly than those of his neighbours.
8. I find that the correct approach to this issue is to look at the evidence of the company's billing procedures rather than making an assessment of the amount of the total bills. The company has set out its chronology to explain the steps that have been taken to try to evaluate the customer's contention that the company is charging incorrectly. I find that this chronology is likely to have been compiled from the company's own internal records and it is probable that the underlying records were made at the time of the events in question. It is therefore probable that the chronology is reasonably accurate as to the events shown.

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9. Having regard to the chronology, I find that the company carried out correct processes in order to ascertain whether the supply to the customer's property was in some way leading to incorrect charges. These included:

- A technician visit on 26 November 2013.
- A letter to the customer on 11 February 2014 confirming that the meter was being read and that the technician's visit had also shown the readings to be correct.
- An offer in February 2014 to fit a logger at that time.
- An explanation to the customer of how to read the meter in May 2014.
- The offer of a diary for the customer to keep track of meter readings in June 2014, although, through an error, the company did not provide this.
- Deployment of a logger between 19 and 26 June 2014.
- The attendance of a plumber on 16 July 2014 to make an adjustment to the customer's toilet that was thought by the company to have caused an increased use of water (although this is not agreed by the customer).
- A request that the customer should check his internal appliances.
- Advice on 7 November 2014 that consumption had begun to reduce following the cistern repair.
- Advice in April 2015 that the meter could be tested free of charge.
- Replacement of the meter on 7 May 2015 and advice that the same usage was being recorded as had been the case in the previous six months, although both were lower than in the previous year before the cistern repair. Results of testing of the removed meter in due course showed that the previous meter had been under-recording by 8%.
- Offer of an agreed arrangement for the customer to pay the outstanding amount of £630.22.
- Fitting of another logger in September 2015. This in due course led the company to believe that the customer was being correctly charged.
- The writing off in legal proceedings of the outstanding balance of £630.22.

10. The customer has consistently alleged that the company has manipulated the meter readings or has not read them at all. In the light of the steps taken above to ascertain the accuracy of the charges, I find that it is improbable that any readings other than those from the meter have been used. The starting point in relation to premises that have a water meter is that the best evidence of consumption of water is usually that given by the meter. The company submits that the Water (Meters) Regulations 1988 state that that a reading from a meter installed in relation to those

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premises, proved by way of certified copy of the reading, shall be evidence of the volume of water supplied to those premises, unless the meter is proved to register incorrectly. Although I have not seen certified copies of the meter readings, these are not necessary for the purpose of determining whether the company has supplied its services to the standard that is reasonably to be expected of it. I find that a company is entitled to rely upon its meter readings for the purposes of its billing without the need for certification.

11. It follows from the above that the customer has not proved that the company has fallen short of the service standards that would reasonably be expected of it. Furthermore, I find that the customer has not established any loss that would entitle him to a refund during the period complained of. The customer has already received in 2015 a waiver of £630.22 of unpaid bills in connection with earlier legal proceedings, in consequence of which the legal proceedings were discontinued. I find that the customer has benefitted from this waiver, had reached an agreement with the company and had not lost out as a consequence of the conduct of the company. I find that the customer has not proved that the company failed to supply its services to the standard that would reasonably be expected of it.

Consistency of bills raised from 2018

12. The customer sets out his claim as follows:

After our court appearance on 16 January in which I presented a reconciliation statement to judge, which shows that the company that [] indeed owes me, [] sent me a suspicious letter dated 22 January 2018 claiming that it was ready to accept £138.25 by return in satisfaction of what it said was its claim. After its failed attempt to extort another £138, which is now claimed was the amount I owed, [] sent another bill dated 10 April 2018 stating that the balance brought forward was 0.00 along with new charges from April 2017 to 27 March 2018 of £235.64. This was after I already paid this company £140 from for January to December 2018 for water only.

....

To further buttress the empirical evidence of the fraudulent practice of [], after sending its Bill dated 10 April 2018 clearly stating that the balance brought forward was 0.00 and new charges for 28 April 2017 to 27 March 2018 was £235.64, this company sent another bill dated 4 May 2018 stating that the last bill was £473.89 and new charge 27 March 2018 to 27 April 2018 is 26.99.

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13. The company says that the “reconciliation” referred to was a calculation made by the customer based upon his own research of his neighbours’ and acquaintances’ bills and had no relevance to the bills and charges raised by the company. It is agreed by the company that an attempt was made by the company to accept a reduced sum of £138.25 (abandoning costs and fees of the court case to conclude the matter proportionately). This offer was refused. The company says that all payments and debits were accounted for, including the payment for £140.00. It contends that the £235.64 bill for 12 months’ charges to the end of March 2018 reflected actual consumption and there was a reading of 157 cubic metres (the normal average consumption for the household). It argues that the customer now owes £473.89, which comprises:

- £138.25 (the balance of the claim for water charges following payment of £140.00 that was earlier offered to accept in satisfaction of the proceedings and refused);
- £100.00, representing fixed costs and fees of the claim (which the company earlier offered to abandon); and
- £235.64, being the bill dated 28 April 2018.

14. I find that the documents presented by the company show that, before the bill of January 2018, the customer owed from previous bills the sum of £278.25 towards which he had paid £140.00, leaving a sum due of £138.25. It follows, therefore, that the entry in the bill dated 10 April 2018, which showed the balance up to 27 March 2018 as £0.00, was confusing, because it did not reflect the sum of £138.25 owed from January 2018. The bill of 4 May 2018, which showed the sum of £473.89 as the figure brought forward from the last bill, was equally confusing, because this showed an amount that, as far as the papers in the case show, had not been billed and include an element of court costs. The breakdown of this figure and the contrast with the earlier bill was not apparent on the face of the bill. I find that the company at this point failed to supply its services to the standard that would reasonably be expected of it because the bills were not, on their face, sufficiently clear to communicate the amount owed to a person without background knowledge of the circumstances.

Relationship with CCWater

15. CCWater is a statutorily appointed body, the existence of which is secured by the Water Industry Act 1991. Section 29 of that Act confers upon CCWater the obligation in certain circumstances to investigate complaints and, where it appears to CCWater to be appropriate to do so in order to try to reach a satisfactory resolution of that complaint, it is required to make representations on behalf of a complainant to the company about anything to which the complaint relates. The

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company, in its own complaints procedure, acknowledges that the role of CCWater is to act as a “watchdog” through its own procedures and ask the company why it took the decisions in question and to inform the customer. Although the customer complains that there has been “too cosy” a relationship between the company and CCWater, having regard to the correspondence between the company and CCWater as set out in the documents supplied by CCWater, I find that there is nothing which indicates that the company in any way abused the relationship which it must have with CCWater or tried to exert any inappropriate influence. I find that the company’s actions were confined to explaining its decision-making to CCWater, which under its complaints procedure, it had indicated that it would do. It follows that I find that the customer has not shown that the company fell short of the service standards that could reasonably be expected of it in respect of the company’s relationship with CCWater.

Redress

16. In respect only of the bills dated 10 April and 4 May, therefore, I have found that the company has failed to supply its services to the standard that would reasonably be expected of it by an average customer because the calculation of the bills were in each case misleading. I therefore turn to the question of redress. The customer has requested by way of redress (1) transparency from the company regarding its water charges; (2) repayment of sums paid since 2010; and (3) compensation of £235.00, being the cost of the customer’s application to set aside judgment. In the light of my findings above, the customer has not succeeded in the contentions which are relevant to his claims at (2) and (3) and therefore he does not succeed in these. As for his claim at (1), although I have found that the 2018 bills were misleading, the company has given an explanation for these and supporting detail as set out in its defence to the customer’s application. The amount of the bills, I find, has been influenced by the ongoing court proceedings, which are exceptional circumstances. Moreover, I find that the customer was acutely aware of the amounts that were in issue between the parties. Although the bills were inaccurate, I find that these did not mislead the customer because he did not, in any event, accept them to be accurate. There is no evidence that the customer has suffered any financial loss or other disadvantage as a result of the failing by the company to give greater clarity in its bills and it follows that I find that the customer has not proved that he is entitled to compensation. Now that the meaning of the bills has been explained to the customer, I find that no further explanation is necessary, and that there is no reason to think that future bills will give rise to uncertainty as to the amount claimed by the company. Insofar as the customer seeks any wider direction than that in respect of his own bills, I am precluded from making any such direction because the company’s general business practices fall outside the scope of this

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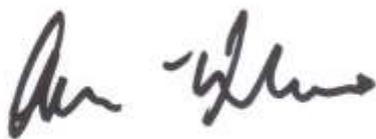
Scheme. Overall, I conclude that, in the unusual circumstances of this case, no direction shall be made.

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 17 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.



Claire Andrews, FCI Arb, Barrister

Adjudicator

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