# WATRS

## Water Redress Scheme

## ADJUDICATOR'S DECISION SUMMARY

### Adjudication Reference: WAT/ /1211

### Date of Decision: 30 January 2019

**Complaint**

The customer complains that his late mother was overcharged by the company for the provision of water and sewerage services from 1985 to the date of her death on 9 November 2012. The customer explains that the rateable value (RV) of his mother's property ("the Property") was reassessed in 1985 and changed from RV111 to RV74 when it ceased to be a commercial property and became a domestic property. The change in RV should have prompted a reduction in water and sewerage charges, but the Inland Revenue Valuations Office did not inform the company and therefore the charges were not reduced. The customer first raised this complaint with the company in 2013, but he does not accept that the company dealt with the complaint fairly at that time. The customer believes that he provided the company with evidence to prove that the revaluation took place in 1985, but the company refused to refund the overcharged amount. The customer estimates that the overcharges amount to £2,940.00 and seeks a refund in this amount to his mother's estate.

**Defence**

The company states that the claim is one of unjust enrichment and, as such, it is time-barred because it was not brought to this Scheme within six years of the date that the customer first became aware that his mother had been overcharged; 9 November 2012. In any event, the company denies that the customer's mother was overcharged and states that the charges levied were correct and payable, assessed in line with the RV of 111 assigned to the Property by the Inland Revenue Valuation Office up until 1991 and in accordance with its Annual Charges Scheme between 1991 and 9 November 2012. The company avers that there is no evidence that the Property was reassessed and assigned RV74 in 1985.

The company has not made an offer of settlement.

**Findings**

Article 5 of the Limitation Act 1980 states "an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued." The cause of action accrued on 9 November 2012 and the customer initiated this process by complaining to the company within the six year timeframe in March 2013 and September 2018. Therefore, I do not find that the claim is time-barred in accordance with the Limitation Act 1980. However, the customer has not shown on the balance of probabilities that the Property was reassessed by the Inland Revenue Valuations Office in 1985 and allocated RV74. Further, I find that the customer has not shown that the

company overcharged his mother's account by using RV111 as the charging value from 1985 until 1991, as instructed by the Inland Revenue Valuations Office, or by using its Annual Charges Scheme approved by Ofwat, the industry Regulator, as the basis for water and sewerage charges from 1991 to 2012. Therefore, I do not find that the company has failed to provide its services to the standard one would reasonably expect by charging for water and sewerage as required by the Inland Revenue Valuations Office and statute from 1985 until 9 November 2012.

**Outcome**

The company does not need to take any further action.

The customer must reply by 27 February 2019 to accept or reject this decision.

# ADJUDICATOR'S DECISION

## Adjudication Reference: WAT/ /1211

## Date of Decision: 30 January 2019

### Party Details

**Customer:** [ ].

**Company**:[ ].

### Case Outline

**The customers' complaint is that:**

- He is the occupier of the Property, known as 1A [ ]Lane which is a privately owned domestic property. The water and sewerage account for the Property has been in his name since 10 November 2012. Before this date, the water and sewerage account for the Property was in his late mother's name.
- On the date of his mother's death, the 9th of November 2012, he realised that she had been overcharged by the company for water and sewerage services since 1985.
- The RV of the Property was reassessed by the Inland Revenue Valuations Office in 1985 when the Property was changed from a shop to a domestic property. As a result of the reassessment, the RV was changed from RV111 to RV74. This should have prompted a significant reduction in the charges made by the company for unmetered water and sewerage services. However, the Inland Revenue Valuations Office omitted to inform the company of the reduction in RV and the charges applied to his mother's water and sewerage account were not reduced in line with RV74. Consequently, his mother was overcharged for 28 years from 1985 to 9 November 2012.
- He complains that a similar property, known as 15 [] Lane, was also changed from a commercial property to a domestic property and has historically been charged approximately £104.00 less per annum for unmetered water charges by the company.
- He first raised this complaint with the company on 11 March 2013 and sought assistance from a Solicitor and his MP who both corresponded with the company. In a letter dated 11 July 2014 from the company to his MP, the company agreed that overpayments had been made and offered a reimbursement of overpayments made from 10 November 2012, the date the water

and sewerage account for the Property was put into his name, to March 2013 when he had a meter fitted. This amounted to £33.00 and he did not accept the offer.

- In the same letter the company stated that if the RV used to bill the Property had been incorrect the company would have been willing to amend the charges, including those billed to his mother's account up until 2012.
- He subsequently provided the company with a copy of a letter from [ ]Council dated 5 December 2014 in order to prove that the revaluation took place in 1985, but the company reneged on its statement to his MP and refused to refund the overcharged amount.
- The company also refused to supply him with a transcript of a telephone conversation between the company and CCWater in which the company agreed that overpayments had been made. He states that the company initially stated that it had recorded the telephone call but then said that it could not supply a transcript as it did not have a recording.
- As a consequence of the above, he feels that the issue has not been resolved.
- The overcharges amount to approximately £2,940.00 and he seeks a refund of this amount to be paid by the company to his mother's estate.
- With regard to the company's position that the case is time-barred, he disputes that the case is out of time as he first raised this issue with the company in February 2013.

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

- It states that the right of a water undertaker to charge customers for water is outlined in Section 142 of The Water Industry Act 1991 and, prior to 1991, the Water Act 1973. Charges made under the Water Industry Act 1991 must be set out in an 'Annual Charges Scheme' that has to be approved by the Water Services Regulation Authority, Ofwat. Prior to 1991, water authorities set their charges in line with S.30 of the Water Act 1973 but, due to the passage of time, the company no longer holds records of charges made during the 1980's. However, it states that the charges were levied in line with the RV of 111, assigned to the property by the Inland Revenue Valuations Office on 1 April 1981, and the charges levied between then and November 2012 were correct and payable.
- It has provided the customer's mother's account record to confirm that the RV assigned to the Property was 111 and states that there is no evidence to demonstrate that the Property was reassessed and attributed RV74 in 1985.
- On 20 September 2013, it offered to backdate the customer's metered charges from 10 November 2012 to the date that the issue was first raised in March 2013. It states that this offer was made as a gesture of goodwill with a view to resolving the dispute, even though it

considered that the charges levied on the customer's account were correct and payable. The customer did not accept the offer.

- In any event, it states that the claim is time-barred as it relates to contractual charges made before 10 November 2012, so any claim would have had to be brought within six years of the date the customer asserts he became aware that his mother had been overcharged. As the customer states that he first realised that overcharges had been applied to his mother's account on 9 November 2012, any claim would have had to be brought by 9 November 2018. It states that the claim was referred to this Scheme on 28 November 2018 and, therefore, it is out of time. It refers to *Aspect Contracts (Asbestos) Ltd v Higgins Construction Plc. [2015] UKSC38* in which the Court held that the limitation period for a claim of unjust enrichment is six years.

## 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 judgement in the case cited by the company, *Aspect Contracts (Asbestos) Ltd v Higgins Construction Plc. [2015] UKSC38,* was based on the provisions of the Limitation Act 1980. Section 5 of the Limitation Act 1980 states that "an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."

2. I note that the definition of an “action” under the Limitation Act 1980 includes any proceeding in a court of law. Whilst this is not a proceeding in a court of law, I will make a decision in line with the law and therefore it is appropriate that I apply the Limitation Act 1980.

3. The date the cause of action accrued would be the date the customer believes his mother was overcharged by the company; the last day the customer’s mother was allegedly overcharged was 9 November 2012. Therefore, the date the action was brought must be no later than 9 November 2018.

4. The company’s position is that the action was brought on 28 November 2018, the date the customer referred the complaint to this Scheme. However, I consider that it would be unfair to bar the customer’s claim on the grounds that he missed the six year time limit by a few weeks, bearing in mind that the customer was required to complete the somewhat lengthy process of pursuing the complaint with the company and then with CCWater before it could be referred to this Scheme. I appreciate that the customer did not refer the complaint to WATRS in 2013 but he began the process again in September 2018. Therefore, I find that the date the action was brought is the date the customer initiated this claim by raising the complaint with the company; September 2018. As I find that the customer brought the claim within six years from the date on which the cause of action accrued, the claim is not time-barred under the Limitation Act 1980.

5. Having reviewed all the evidence presented, I accept that the RV of a domestic property refers to the charging value allocated by the Inland Revenue’s Valuations Office to a property for the purposes of billing for unmetered water and sewerage services prior to the privatisation of the water industry in 1990. RV’s for domestic properties were frozen in 1990 at which point the Inland Revenue Valuation Office notified water companies of the RV assigned to properties in their area. RV’s were worked out with regard to various factors but no records of how an individual property’s RV was calculated were passed from the Valuation Office to water companies and the Valuation Office no longer holds these historic documents.

6. The customer believes that his mother was overcharged between 1985 and the date of her death on the basis that the Property was assigned a RV of 111 in 1981, but it was reassessed by the Inland Revenue Valuations Office in 1985 and, as a result, the RV of the Property was reduced from 111 to 74. The customer states that the Inland Revenue Valuation Office failed to notify the company but believes that the company should amend the charges made to his mother’s account regardless of the Inland Revenue’s omission.

7. The customer's position is that the company agreed to refund the overcharges if he produced evidence to show that the wrong RV was used to charge his mother. In support of this, the customer refers to a letter from the company to his MP, dated 11 July 2014, in which the company states "Just to be clear, if the RV used to bill 1A [ ] Lane had been incorrect, we would have been happy to amend all the charges, including those billed to Mrs [ ] up to 2012."

8. The customer states that he provided the company with evidence to prove that the RV used to bill the Property was incorrect by forwarding the company a letter from [ ]Council to the customer dated 5 December 2014, but the company reneged on their statement and refused to refund the overpaid charges. However, having reviewed the letter, I do not find that it contains any evidence to support the customer's position that the Property was reassessed and attributed RV74 in 1985, or any evidence that RV111 was not the correct charging value for the Property; the letter states that the old rating lists were lost or destroyed and that [ ]Council could not advise the customer whether the RV of the Property changed when it was switched from commercial to domestic use.

9. The customer states that he was initially told that the company recorded a telephone call between itself and CCWater on 7 March 2014 and implies that a transcript of this telephone call could have been used to demonstrate that the company accepted that overcharges were levied on his mother's account. However, he states that when he requested a transcript of the recorded call, the company said that it could not supply a transcript after all as the call was not made on a recorded customer line. Having reviewed the relevant evidence I find that, on the balance of probabilities, the company made a mistake when it initially told the customer the call had been recorded and I am persuaded that the company is unable to provide a transcript of the telephone conversation because it was not made on a recorded customer line. Although I understand that the company's failure to provide a transcript frustrated the customer, I do not find that erroneously telling the customer it had recorded the telephone conversation amounts to a significant failure on the company's behalf. In any event, having reviewed the notes recorded on the customer's case file, I am not persuaded that the company accepted that the customer's mother had been overcharged. In particular, I am conscious that the case file notes demonstrate that the company advised CCWater that a refund would not be backdated.

10. With regard to the alleged disparity in water and sewerage charges between 1A [ ] Lane and 15 [] Lane, the information provided by CCWater satisfies me that various factors were considered when allocating a RV to a property and similar properties can have different RVs. The evidence demonstrates that the Inland Revenue Valuations Office was responsible for assessing RVs but it no longer holds specific information regarding how the RV for an individual property was calculated. In any event, having reviewed the evidence I am satisfied the company would have had no input into the valuation of either property. Therefore, if there was a disparity between the RV values of 1A [ ] Lane and 15 [] Lane, I do not find any failing on the company's behalf in this respect.

11. In view of the above, I find that prior to the Water Industry Act 1991 the Inland Revenue Valuation Office was responsible for assessing the RV of property and the company was required to charge the amount the Inland Revenue Valuation Office told it to charge. The customer, not the company, was responsible for raising any issue regarding the RV assigned to the Property with the Inland Revenue Valuation Office. The customer has not provided any substantive evidence to show that his mother queried the RV of 111 assigned to the Property, that the Property's RV was reassessed in 1985, or that the company was instructed by the Inland Revenue Valuation Office not to base its charges on a RV of 111. The company has supplied the record of the customer's mother's account and this confirms that the RV assigned to the Property was 111.

12. Since the Water Industry Act 1991 came into force, water companies continue to base water and sewerage charges on RV but they have been required to set out their charges in an Annual Charges Scheme reviewed and approved by Ofwat, the industry Regulator. Therefore, the charges levied against the customer's mother's account from 1991 to 9 November 2012 were based on the company's Annual Charges Scheme. Furthermore, under the provisions of the Water Industry Act 1991 water companies are prohibited from changing a property's RV. Unmeasured water charges based on RV are fixed and there is no appeals procedure for contesting a property's RV. The only alternative to paying charges based on RV is to have a water meter fitted. When a property is fitted with a meter, water and sewerage charges are based on the amount of water actually used. The company has provided a document entitled 'Meter Option Survey Request Survey' dated 31 August 2006 and a letter from the company to the customer's mother dated 14 September 2006. These documents demonstrate that the customer's mother applied for a meter in August 2006 but later changed her mind and decided to continue with her unmetered water supply.

13. In view of the lack of evidence that there was a reassessment of the Property's RV in 1985, I do not find that the company has failed to provide its service to the standard the average customer is entitled to expect by refusing to back-date the charges levied against the customer's mother's account since 1985 in line with a RV of 74. In any event, even if there had been clear evidence that the company had been basing its charges on the wrong RV since 1985, the company would not be liable to backdate the charges as it was not told to reduce the RV by the Inland Revenue Valuation Office. The only circumstance in which the company would be liable to backdate the charges would be where the company had been instructed to reduce the RV of the Property but had failed to do so. However, the customer accepts that the company was not told that the Property had been reassessed or that the RV had been reduced. Consequently, whilst I appreciate that the customer will be disappointed by my decision, I am not satisfied that the company failed to provide its services to the standard to be reasonably expected and, therefore, 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 27 February 2019 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.

KS Wilks

Katharine Wilks

**Adjudicator**