

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1235

Date of Decision: 28 February 2019

Complaint

The customer has a dispute with the company regarding the installation of an AMR meter at the property she rents. She claims she did not give prior approval for the installation and that the action of the company places her in breach of her tenancy agreement. The customer has further concerns regarding her health and wellbeing being negatively impacted by the meter and worries that her personal data collected by the meter is not safe. The customer claims for the company to remove the AMR meter and re-install the previous analogue model.

Defence

The company accepts that it replaced a non-functioning analogue meter with an AMR meter and records that it no longer installs analogue meters. It denies that it was required to receive prior approval from the customer as legislation conveys on it the right to replace meters that it owns and to install meters of its choice. It further asserts that the meter is not harmful to health, and denies that personal data is collected or held on the meter. The company declines to re-install an analogue meter. The company has not made any offer of settlement to the customer.

Findings

The company has no legal obligation to re-install an analogue meter at the customer's property. The company has an obligation to ensure a functioning meter is installed so as to accurately record water consumption and calculate the measured charge. The choice of such meter is the prerogative of the company such that the most appropriate meter may be installed. The customer's tenancy contract is a private matter between her and her landlord. I find the claim regarding negative health issues resulting from the AMR meter to be unsupported, as is the claim regarding misuse of personal data held by the meter. Consequently, I find that the company has not failed to provide its services to the extent to be reasonably expected by the average person.

Outcome

The company does not need to take further action.

The customer must reply by 28 March 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1235

Date of Decision: 28 February 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She has experienced an ongoing dispute with the company regarding the fitting of an AMR (Automated Meter Reading) water meter at her rented property. She asserts that the company fitted the meter without her prior approval and that she only became aware of the company's intention when its workmen arrived on site to install the meter. Despite her ongoing communications with the company and the involvement of CCWater the dispute has not been settled.
- The customer states that the fitting of the AMR type of meter at the property places her in breach of her tenancy agreement, which forbids the replacement of the original analogue meter with any type of "smart" meter. The customer asserts that she has advised the landlord of the property of the change in meter type and while he accepts that she did not authorise the new installation he places on her the responsibility to have the original analogue type meter reinstalled. The customer is concerned that failure to reinstall the analogue meter may result in her being evicted from the property and because of this she has made known to the company her willingness to install an analogue meter at her own expense.
- The customer further claims that she understands that "smart" meters may be injurious to health, and has supplied the company with general documentation to support her concerns. She has additionally advised the company that her ten-year old son has a neurological condition that

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requires he be schooled at home to avoid RMF discharge at a school and thus he is constantly exposed to emissions emanating from the AMR meter. The customer is equally concerned about her own wellbeing and has reported that she is suffering ill health because of the radiation put out by the meter, and consequently requests that the company replace the AMR meter with a health-risk free analogue meter.

- The customer records that in addition to not giving the company permission to install the AMR meter, she also did not agree that her name and address could be connected to the serial number of the meter nor for data produced by the meter to be stored or shared with any third party. The customer relies upon the European Union General Data Protection Regulation 2016/679 and requests that the company remove the meter so as to be in compliance with the Regulation, as it did not seek her prior written permission to collect and share data generated by the meter.
- The customer notes that in response to an assertion by the company that analogue meters are no longer available for purchase she has sent it documentation showing where such meters may be obtained and states that the company retains the obligation to procure them.
- The customer has advised the company that she will not reinstate the Direct Debit raised in its favour as she intends to withhold payment of any invoices submitted to her until such time the AMR meter is removed. Additionally, the customer intends to charge the company a £10.00 per day fee for having its property installed on her land without permission until such time the meter is removed.
- On 13 November 2018, the customer escalated her complaint to CCWater who investigated the issues with the company on her behalf. Despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint.
- Consequently, the customer, on 17 January 2018, has referred the matter to the WATRS Scheme whereby she seeks to have the company replace the AMR meter with an analogue meter.

The company's response is that:

- The company states that the customer's property was first metered as from 08 January 1990 when it was included in a water metering trial under the auspices of the Public Utility Transfers & Water Charges Act 1988. From this time charges became measured charges and henceforth shall remain measured charges, meaning that a water meter must always be installed and that

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the meter type is at the discretion of the company. The meter installed initially in 1990 was replaced on 18 February 2002 and again on 22 October 2018 when it was recorded that the second meter was malfunctioning.

- The company notes that the type of meter installed is at its discretion under authority granted to it in the Water Industry Act 1991 and that, as such, it does not require the permission of landlord or tenant prior to installation. The company reviews all aspects of a meter's performance, including safety, and ensures that all meters comply with applicable UK and EU requirements.
- The company states the AMR meter is not a "smart" meter, as it uses different technology. The meter undertakes the automatic collection of consumption and diagnostic data that can be read remotely by drive-by or hand-held systems.
- The company regrets the installation of the AMR meter has impacted her tenancy agreement, but asserts that this is a private agreement between the customer and her landlord to which the company is not a party. Regarding the customer's statement that she is willing to undertake replacement of the meter at her own expense, the company notes that it owns the meter and surrounding pipework and that under the Water Industry Act 1991 it is a criminal offence to remove or interfere with a water meter.
- The company notes that the customer's assertion that her health is negatively affected by the meter is not supported by the provision of evidence. Additionally, the company relies upon a 2017 programme undertaken by Public Health England which indicated that the level of radio waves emitted by "smart" meters is within the safe limits set down by international guidelines.
- The company denies the customer's claim that it is in breach of the EU General Data Protection Regulation 2016/679. The company asserts that no personal data is held on the water meter, and that only the serial number of the meter, alerts, and consumption readings are retained on it. The serial number of the meter is shown on the customer's water services account as it is used to ensure the correct meter is allocated to each property. The company asserts that all personal data held on the customer is subject to the company's Privacy Statement and to the General Data Protection Regulations 2016.
- The company states that it no longer installs analogue meters.
- The Company notes that all metered charges are correct and payable by the customer. The company also states that the £10.00 daily charged proposed by the customer for having the meter installed on her property will not be paid if submitted.

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- Consequently, the company notes that the AMR meter installed in October 2018 is fully functioning and does not require replacing. It further believes that there is no evidence of negative health implications caused by the meter, and that under the terms of the Water Industry Act 1991 it does not need permission from landlords or tenants to install a water meter of its choosing. Consequently, the company declines to replace the AMR meter with an analogue meter.

The customer's comments on the company's response are that:

- The customer responded to the company's Defence paper on 18 February 2019 and reiterated her position regarding her tenancy agreement and attached a letter from her landlord. The customer again refers to replacing the AMR meter at her own expense, and again expresses her concerns regarding the company handling of her personal data, particularly its request to have sight of her medical records.
- The company responded to the customer comments on 19 February 2019, and again stated its position that any interference with the in-situ water meter would not be permitted. The company also clarified that it had not requested copies of the customer's medical records but offered to liaise directly with her GP should she still have concerns over the health impact of the meter.

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.

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I have carefully considered all 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 dispute relates to the customer's unhappiness that the company has installed an AMR meter at her rented property without obtaining her prior permission, or that of the owner. She is concerned over both the negative health implications and the use of personal data collected by the meter and by the fact that her tenancy agreement prohibits installing such meter as a replacement for the original analogue meter. Consequently, the customer requests that the company remove the AMR meter and re-install an analogue meter. The company believes the appropriate regulations set down in the Water Industry Act 1991 give it the authority to install meters of its choice as and when it deems necessary, and thus declines to re-install the previous analogue type meter.
2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. From the evidence submitted to me I am satisfied that the customer is the tenant of the property in question and that the tenancy agreement between her and the landlord states that no "smart" meter shall be installed at the property. The company asserts that its records show the customer has resided at the property since 16 February 2007 and thus the analogue meter installed in February 2002 would have been in-situ at the time she signed the tenancy agreement.
4. The company, in its Defence document has relied on both reference to the Water Industry Act 1991 and to the Public Utility Transfer and Water Charges Act 1998. I have taken account of both these sources and I am satisfied that the company has the authority to raise charges for all measured water, which, by definition, requires that the supply passes through a meter. I am further satisfied that the applicable legislation conveys on the company the entitlement to select and install the meter it deems most appropriate to carry out this function.
5. The company installed the AMR meter on 22 October 2018 after having established that the then existing meter had ceased to record consumption, and the meter installed was a type known as Arad Dialog3g Gladiator which the company asserts complies with ISO 4064 and the appropriate British Standard requirements. The company has supplied me with technical evidence to support its position.

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6. The company has included in its Defence document a considerable amount of detail to explain the difference between a “smart” meter and an AMR meter, but this is moot as I believe the crux of the dispute is the issue of installing an analogue meter against a non-analogue meter. I am satisfied from the evidence laid before me and by reference to the appropriate legislation that the company acted within its authority to measure consumption by use of a meter and to replace such meter when it malfunctioned. The company asserts that it no longer installs analogue meters when replacing faulty units and I find on a balance of probability that it acted appropriately when it installed the AMR meter to replace the faulty analogue version. I further find that the company has provided its services to a reasonable level and therefore, I shall not direct that the company remove the AMR meter and replace it with an analogue meter.
7. Regarding the customer’s complaint that the meter was installed without her prior permission, again, I find that the company acted within its authority. The Water Industry Act 1991 instructs that at any property where charges have become measured charges they shall remain measured irrespective of any change in use of the property or any change in occupier. The property rented by the customer became a measured charge property as from 08 January 1990 and as such this conveys on the company the obligation to ensure that a functioning meter is always operating at the property. The meter is the property of the company and thus I find that it was not obliged to seek the prior permission of the customer before replacing a faulty meter and as such, it follows that the company did not fail to provide its service to a reasonable standard.
8. Regarding the customer’s claim that the action of the company has placed her in a position of breaching her tenancy agreement I find that the company is not party to that agreement. I am sympathetic to the customer’s predicament and I understand her distress over this issue, but I have to find that the tenancy agreement is a private arrangement between the customer and the property owner and thus it is outside the jurisdiction of the WATRS Scheme and I shall not interfere in the conduct of this agreement.
9. The customer further claims that she is suffering ill health because of the radiation put out by the meter, and is concerned for the wellbeing of her son who suffers from a neurological problem requiring he be home-schooled. The customer has not supported her claim with evidence, and has responded negatively to the company’s offer to have her medical practitioner contact it directly to discuss any medical concerns regarding the customer and the AMR meter. Additionally, I understand that the company has advised the customer that should she request and pay for a survey it would be prepared to investigate possibly moving the meter to an alternative location away from the property and thus reduce the customer’s concerns. I am satisfied on the balance of probability that, again, the company has carried out its services to a

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level to be reasonably expected in regards to understanding the safety parameters of the Arad Dialog3g Gladiator meter. I am sympathetic to the customer's concerns about her health and that of her son but I have no evidence to support her anxieties, and as a consequence, I shall not direct that the company remove the AMR meter due to negative health concerns.

10. The customer is further concerned over the possibility that the company is incorrectly handling her personal data that it collects from the AMR meter. The company has provided evidence as to the technical characteristics of the AMR meter installed and has stated that no personal data is collected or retained by the meter. Having studied the evidence submitted and I find that on the balance of probabilities the data collected by the company from its reading of the meter is restricted to consumption quantities and diagnostic status reports regarding the integrity of the surrounding water supply system. I am further satisfied that the AMR meter is connected to the customer's name to ensure that she is charged appropriately for water usage and that the correct meter is addressed by the company when calculating charges for her property. The customer has not submitted any evidence to me to confirm that the company has misused any data collected from the meter and on a balance of probability I find that the company has not failed to act appropriately in this regard, and has conducted itself in a reasonable manner in dealing with any potential misuse of data.
11. Regarding the customer's stated intention to withhold payment to the company of any invoices submitted until such time as the meter is replaced I find this to be a matter for the parties to settle amicably together. I shall not interfere in the company's applicable payment procedures.
12. Regarding the customer's stated intention to levy a charge of £10.00 per day on the company until such time it removes the AMR meter, again, I find this to be a matter for the parties to resolve amicably, although I note that the company has expressly stated it would not pay such charges should the customer attempt to raise them.
13. My conclusion on the main issues is that the company has not broken a term of the contract between it and the customer nor has failed in the duty of care which it owed to the customer to manage the account to a standard to be reasonably expected by the average person. Therefore, my decision is that the claim does not succeed.

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Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 28 March 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.
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Peter R Sansom
MSc(Law); FCIArb; FAarb; Member London Court of International Arbitration;
Adjudicator

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