

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1493

Date of Decision: 9 August 2019

Complaint

The company has incorrectly charged the customer's flat by reference to its Rateable Value, although the only water supply is via the customer's shop which is on a water meter. The company has refunded the incorrect charges. The customer requests interest on the refund and compensation for the inconvenience caused and expenses incurred when complaining. The total amount claimed is £885.20.

Defence

The company conducted a survey in 1997 before fitting a water meter to the shop. It would have been satisfied at the time that the flat was served separately, however its records have not been retained from that time. The company refunded payments relating to the flat as a goodwill gesture. It does not pay interest on refunded amounts because there is no provision for this in its Charges Schemes. The company has provided the customer with a cheque for £50.00 in relation to the missed engineer appointment.

Findings

Before determining whether an interest payment may be due, it is first necessary to determine whether the refund was legally due or made as a goodwill payment. The evidence indicated, on the balance of probabilities, that the flat had a separate water supply in 1997 based on the location of the shop water meter and action taken by the company following a survey. The evidence was not conclusive either way and, on the basis of this uncertainty, the company had opted to provide a full refund. This was as a goodwill gesture as the customer had not demonstrated that the company had been incorrectly charging. No interest can be due on a goodwill payment. The company did fail to provide customer service to the standard expected in relation to two issues, for which a small sum of compensation was warranted.

Outcome

The company needs to take the following further action:

Pay the customer the sum of £40.00 in compensation.

The customer must reply by 6 September 2019 to accept or reject this decision.

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Party Details

Customer:[]

Company: [].

Case Outline

The customer's complaint is that:

- The customer states that his property consists of a family shop and basement to the ground floor, and a flat on the first and second floor. The flat has a toilet and no other water use. The company installed a water meter internally to the shop in 1996 and charged the flat on the basis of its Rateable Value as it was not informed that the meter covered the usage for the whole building. The shop account was transferred to XYZ Water when the water market opened. The customer arranged a supply verification from the company and it was confirmed that there is only one supply that captures the water in the building. The company has agreed to refund £4,417.73 of overpayment relating to the flat. It has rejected the customer's request for interest payments on the basis that the company does not charge customers interest. The Consumer Council for Water has asked the company to consider a gesture of goodwill payment in line with what statutory interest would have been.
- The customer requests a refund of interest on 22 years of payments that were requested by the company in error, and compensation for the prolonged inconvenience experienced in receiving the refund. The compensation claimed totals £885.20.

The company's response is that:

- The company states that there is no evidence to confirm whether or not the customer has been charged twice. However, the company refunded all Rateable Value charges for the flat back to the opening date of the account on 1 April 1997. The company does not pay interest on any

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refunds and there is no Act, Regulation, Scheme or Code compelling it to do so. The company's regulator, Ofwat, has investigated its stance on paying interest and is satisfied with the company's position. The company will look to provide a goodwill gesture if there have been customer service failures. The company submits that, in this case, the company resolved the matter as quickly as it could by providing the customer with a full refund of the charges, despite there being no evidence to confirm that they were over charged. A recent WATRS case, escalated via the legal system, recognised that the claim for interest was exaggerated and the small gesture already provided by the company was deemed to be acceptable. The company has arranged a cheque for £50.00 to be sent to the customer for a missed appointment as the company has been unable to establish why it did not attend. The company denies that it is liable to the customer.

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 customer is requesting a payment of interest on a refund provided by the company in relation to charges imposed on the customer's flat from 1 April 1997. The company denies that it

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is liable to pay interest and further submits that there is no evidence that the customer was, in fact, incorrectly charged.

2. I find that, in order to determine whether there is any basis for an interest payment to be payable by the customer, it is first necessary to determine whether the company did incorrectly charge the customer or if the refund was processed, as the company submits, as a goodwill gesture.
3. The customer's property consists of a ground floor shop and basement and a flat that takes up the first and second floor. The shop and the flat received separate Rateable Values and are considered to be separate properties.
4. On or around 30 January 1997, the company completed a survey for the shop to be metered. The meter was then fitted on 14 February 1997. The meter was fitted internally to the rear of the shop, above the hand basin.
5. There is no further evidence available in respect of the outcome of the survey in January 1997. It is therefore not possible to determine conclusively whether the meter was fitted internally to the shop due to there being no suitable location to fit a meter externally, or whether it was fitted internally in order to record only the water usage for the shop.
6. I acknowledge that, after the company visited the premises on 21 August 2018, it found that the supply to the flat had been capped off and that the toilet in the flat uses water recorded on the shop meter.
7. However, I am mindful that there was a period in excess of 20 years between the survey for the shop meter and the visit in August 2018.
8. My decision must be made on the balance of probabilities from the evidence provided to me. In the absence of a full report from the 30 January 1997 survey, I find, on the balance of probabilities, that the decision to fit a meter internally is indicative that the flat had a separate water supply at that time. The company continued to bill the flat on the rateable value which is indicative that the company's survey confirmed that it was being supplied separately. The customer also did not query the separate bills until 2018, although I am satisfied that he was involved in the process of the shop being metered.

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9. I acknowledge that there also exists a possibility that, at the time of the survey to fit a meter to the shop, the separate supply to the flat was capped off and the toilet was served from the shop supply. I find this to be the less probable situation as, had this been the case, it is most likely that the company would have identified this situation and metered the shop externally or otherwise ceased to bill the flat on the rateable value.
10. I am therefore satisfied that, whilst it could not be conclusively demonstrated that the company had incorrectly charged the flat based on its Rateable Value since 1 April 1997, it has nevertheless provided a full refund of the Rateable Value charges on the basis that it is possible that an error has been made. I find that this refund constitutes a goodwill gesture as the customer has not met the evidential threshold to demonstrate that the company did, on the balance of probabilities, incorrectly bill the customer for the flat for a period in excess of 20 years.
11. This determination is key to the customer's dispute as, where the refund is provided as a goodwill gesture, there is no basis under which additional interest can be claimed. There was no legal obligation on the company to provide this refund and, accordingly, no basis under which a corresponding legal entitlement to interest could accrue.
12. For these reasons, I find that the customer is not entitled to recover an interest payment in relation to the refund.
13. The customer has also requested compensation in relation to customer services. The customer has claimed £20.00 for a missed engineer appointment, £64.20 for six letters, £95.00 for around 9 ½ hours of telephone calls, and £353.00 for distress and inconvenience for not having the overcharged monies in the customer's account.
14. The company has acknowledged that it missed an engineer appointment. It has provided a cheque to the customer for £50.00 for this. I am satisfied that this part of the claim has been settled prior to adjudication.
15. In respect of the remaining claims, I note that the company determined that the independent supply to the flat had been capped off on 21 August 2018. The company arranged for a refund of £179.32 immediately, relating to charges applied for the year April 2018 to April 2019. The customer requested that the charges be backdated further on 13 November 2018. The company

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advised that this had been passed to management on 16 November 2018. Senior management agreed to the refund of all charges on the flat account on 12 December 2018.

16. I am satisfied that the company did keep the customer properly informed as to the status of his request during this period. In view of the substantial sum to be refunded, the company requested confirmation of how the refund should be provided. I find this to be reasonable in view of the amount to be refunded.
17. In reviewing the correspondence, I find that the customer did not respond to either confirm that the refund should be process to the account from which direct debit payments had been made, or to provide another payment method. The evidence shows that the customer requested a breakdown of the refund by telephone on or around 31 December 2018 which the company did not provide until the customer repeated this request in writing on 12 January 2019.
18. The customer responded to the company on 25 January 2019 to request interest and a goodwill payment. I note that the customer concluded this letter by stating that the refund should be returned to the bank from which it was paid. The customer's letter dated 8 February 2019 confirmed that the refund would be sent to the customer's bank account by 18 February 2019. The company also clearly advised that it would not provide an interest payment to the customer. I note that the customer received the payment on 28 February 2019, 9 working days later than the company advised the funds would be transferred. I am mindful that ordinary banking processes may take 3 working days to clear. It therefore appears that the company did delay in providing the refund by around 6 working days.
19. I therefore find that the company did fall below the standard expected of a reasonable water supplier as it did not provide the breakdown of the refund when requested on 31 December 2018 and it took an additional 6 working days to process the refund to the customer. I consider that these issues will have caused the customer some inconvenience. However, I am not persuaded that the customer is entitled to the compensation requested where no evidence of costs has been provided.
20. In considering the amount of inconvenience and frustration experienced by the customer in respect of these two failings, I find the sum of £40.00 to be reasonable and proportionate compensation, being £20.00 per issue. I direct the company to pay this sum to the customer accordingly.

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Outcome

The company needs to take the following further action:

Pay the customer the sum of £40.00 in compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 September 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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