

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1734

Date of Decision: 6 March 2020

Complaint

The customer, [College I], received a cheque refund for £28,521.60. The customer queried this with RST Water (RST) which advised that the refund was correct, confirming that the customer would not be required to pay the money back. However, afterwards, RST realised that they had made a mistake and requested the customer to pay an outstanding bill for £20,733.64. The customer claims for the outstanding balance to be waived as RST made the mistake and the College budget has already been accounted for and therefore now it does not have the funds to pay the outstanding balance.

Defence

The company RST stated that the cheque was sent by error after the wholesaler asked RST to close one of the two customer accounts. However RST later found out that they should have merged the two accounts, so they invoiced the customer for part of the reimbursed charges. The company submitted that the cheque should not have been cashed because two days earlier the College had received an invoice showing the correct balance. The company offer to set up a payment plan to cover the debit over a 24-month period.

Findings

The customer received the cheque on 8 March 2018 and contacted the company who confirmed that the cheque was correct. Exactly a year later, the customer received a cheque for £24,600.52 for meter overcharges (unrelated to the first cheque). On 29 March 2019 the customer received an updated bill for £21,637.71 which included most of the mistaken refund made in 2018. The customer was made aware of this bill, but refused to pay it due to the mistakes made by the company. I find that the customer must pay the outstanding bill. However, I also find that the company failed to reach the standards expected in terms of customer services as it took nearly two years to identify that the two accounts should have been merged.

Outcome

The customer is required to pay the outstanding bill, but the company is directed to deduct £1,500.00 from the customer's arrears for the inconvenience caused by the incorrect billing.

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The customer must reply by 7 April 2020 to accept or reject this decision.

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Date of Decision: 6 March 2020

Party Details

Customer: Ms Stephanie Cooke from John Ferneley College.

Company: Water Plus, a water and sewerage company.

Case Outline

The customer's complaint is that:

- John Ferneley College received a cheque for £24,600.52 on 8 March 2019 from RST . This refund was due to an incorrect meter reading made in January 2018 which did not match the correct reading made in December 2018.
- The previous year, in March 2018, the customer received a cheque for £28,521.60 and contacted the company to confirm if the cheque had been sent in error. The company confirmed that the cheque was correct and that they would not claim it back.
- Subsequently, on 29 March 2019, the company required the customer to pay £20,733.64 of backdated bills from before 2018 but the College cannot pay it now as the budget has already been set for the financial year.
- As the mistake has been made by the company, the customer requested that the outstanding balance of £20,733.64 to be waived.

The company's response is that:

- The customer had two separate accounts, one (0537008519) for water and waste water and another one (0650402814) for surface water drainage.
- On 5 October 2017 the wholesaler requested the closure of the surface water drainage account which was active since 31 March 2014.
- The removal of the account generated a credit for £28,521.60 and a cheque was issued to the customer on 8 March 2018. The customer contacted the company on 14 March 2018 and the company confirmed that it was correct. The customer cashed the cheque on 31 March 2018.

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- The following year a new meter reading generated credit in favour of the customer as a result of correcting the previous estimated readings. The customer was given a new cheque for £24,600.52 which was cashed on 31 March 2019.
- However, four days earlier, the company realised that the charges for closed account should have been merged to the live account. Thus, the company issued a new updated invoice for 21,637.71 that showed a new balance for £3,866.68 credit, which meant that the refund made in the last cheque was incorrect as the customer had outstanding charges.
- The customer called two days before cashing the second cheque to enquire if the new invoice was correct, which the company confirmed. Hence, the company submitted that the cheque should not have been cashed.

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 customer had two water accounts until the 5 October 2017 when the wholesaler requested the company retailer RST to close one of the accounts. RST did so and instead of merging the accounts, it issued a refund cheque for £28,521.60 to the customer on the 8 March 2018. The customer contacted the company on the 14 March 2018 to confirm that the cheque was issued

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correctly and that the company would not claim the money back. The company confirmed that and the customer cashed the cheque on 31 March 2018.

2. The company realised nearly two years after closing the account that the closed account should have been merged with the live account. The company then issued an updated invoice on the 27 March 2019 for £21,637.71. This invoice reached the customer on the 29 March 2019 who then contacted the company who confirmed that the new invoice was correct as it included old charges which should not have been refunded in 2018.
3. Coincidentally, a few days before that, the company had sent another cheque to the customer for a different reason, namely, incorrect charges made over the last few months due to incorrect estimated meter readings. The cheque for £24,600.52 arose from an incorrect reading made in January 2018. The incorrect reading recorded was recorded at 6,570m³ but it was later corrected when the correct reading for 655m³ was made in December 2018. This correction led to the new cheque which was issued on 8 March 2019 and cashed on 31 March 2019.
4. The company submitted that since the updated invoice with the back charges, which accuracy had been confirmed to the customer by the company, was received on 29 March 2019, the customer should not have cashed the cheque for £24,600.52 on 31 May 2019. The new invoice showed that the customer was in credit by 3,866.88 after the charges of £21,637.71. I am mindful that the figures do not add up, but I find that they are close enough and that the customer was told that the new bill had to be paid.
5. The customer submitted that the first cheque for £28,521.60 (from which the back charges are here disputed) was confirmed by the company that they would not have to pay it back. With regards to the new cheque for £24,600.52, it related to overcharges made by the company, so the customer was entitled to cash it.
6. The general rule of payments made by mistake is that the recipient has to pay it back. The only possible defence, as it was established by the House of Lords in *Lipkin Gorman v Karpnale Ltd* [1988] UKHL 12, is having change of position. In other words, it is for the customer to demonstrate that they had adjusted their financial position as a result of the mistaken payment made in 2018 by incurring in an expenditure that they would not otherwise have incurred. I am mindful that the customer acted diligently enquiring whether the cheque had been issued corrected before it was cashed it, and that it was used in its annual budget, but I have not seen

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any evidence that it was used for a specific purpose within the College budget. Thus, I find, on a balance of probabilities that it was used for the general expenses of the College.

7. In view of the above, I find that the customer must pay the back the back charges of the water they used up to the limit established by the water regulator Ofwat. Therefore, the customer has to pay for the outstanding bill required by the company. As already offered by the company, the customer will be entitled to pay the arrears in instalments over two years.
8. I am mindful however that the billing mistake was made by the company and not by the consumer, and it took nearly two years to be corrected. Moreover the customer had contacted the company to verify the accuracy of the cheque and that this situation created a financial challenge for the customer.
9. Given the serious disruption experienced by the customer and the fault by the company, I find that the customer is entitled to compensation for the inconvenienced experience. Pursuant rule 6.4 of the WATRS Scheme and the WATRS Guide to Compensation for Inconvenience and Distress for non-financial loss, I find that the customer should be compensated according to tier 3, which provides a compensation range between £1,000.00 and £1,500.00. Given that the company has not met the reasonable standards expected by the industry as its mistake led to serious inconvenience to the customer and took two years to correct it, I direct the company to compensate to the customer to the highest amount of £1,500.00. Therefore I direct the company to deduct £1,500.00 from the customer's arrears.
10. In light of the above, I direct the customer to pay the outstanding balance and the company to deduct £1,500.00 from the customer's arrears for the inconvenience caused.

Outcome

The customer is required to pay the outstanding bill, but the company is directed to deduct £1,500.00 from the customer's arrears for the inconvenience caused by the incorrect billing.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 7 April 2020 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 from 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.
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Pablo Cortés Licenciado LLM, PhD

Adjudicator

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