

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT//1888 – Metering – Problems with metered and unmeasured bills

Date of Decision: 24 April 2020

Complaint

The customer requested a water meter be fitted in 2003. The customer's representative states that the customer lacked the mental capacity to make such a decision and that the meter should be removed. The customer also requested to revert to the unmeasured tariff within 12 months of the meter being fitted. The customer requests the meter be removed and the account be reverted to unmeasured charges.

Defence

The customer requested a water meter be fitted in 2003. The company did not receive any request to revert to unmeasured charges until 2006, by which time it was not possible to revert. The company was not made aware of the customer's mental health issues until 2013. There is no evidence that the customer lacked mental capacity at the time he requested the meter. The company is willing to review this upon receipt of a Lasting Power of Attorney registered at the time of the request. This has not been received. The company denies the claim.

Findings

The customer requested the water meter in 2003. There was nothing to suggest the company was aware or should have been aware that the customer had mental health difficulties at that time. Agreements entered into by a person will be binding unless they can show that they lacked the mental capacity to do so, and the company was aware that he lacked mental capacity. The company was not aware of the customer's potential lack of capacity, and the lack of capacity has also not been demonstrated. Alternatively, where the customer's affairs are subject to the control of the court through a Power of Attorney, he will also have lacked capacity. The evidence showed only that a Power of Attorney for the customer was registered on 22 March 2017. There was insufficient evidence to find the meter request was void on capacity grounds. There was also no evidence that the customer requested to revert to unmeasured charges within 12 months. The customer's account must remain on metered charges, albeit that he qualifies for the Water Sure Scheme to cap the charges.

Outcome

The company does not need to take any further action.

The customer must reply by XXXX to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/STW/1888

Date of Decision: xxxxx

Party Details

Customer: The Customer

Customer's Representative: The Representative

Company: XWater

Case Outline

The customer's complaint is that:

- The customer is disabled. The representative submits that, at the time the customer requested a water meter be fitted, he was not aware of what was going on. The customer requested the meter be removed within the first 12 months after it was installed but the company states that it has no record of this. The customer does not have the ability to understand what it means to have a water meter, the long-term consequences of it, or that it would be permanent. The customer has been mentally incapacitated since the 1980s and was not able to give his consent to the installation of a water meter, making the installation invalid.
- The customer requests that the water meter is removed and that bills are returned to the unmeasured tariff.

The company's response is that:

- The customer applied for a water meter to be installed as part of the company's Free Meter Option Scheme on 28 March 2003. The meter was installed on 21 July 2003. The customer had 12 months to request to revert the account back to unmeasured charges. No request was received within this time. The first request to revert the account was made on 5 January 2006. The company was not made aware of the customer's mental health problems until 6 September 2013. The company is not able to remove the water meter but, on the advice of its legal team, it will review this on receipt of a Lasting Power of Attorney that was registered at the time of the

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meter application in 2003. There is no evidence to demonstrate that, as a matter of law, the customer lacked the mental capacity in 2003 to decide whether to have a meter installed and the company is legally entitled to assume that he was able, at that time, to manage his own affairs and to make decisions of this nature. It remains unclear what extent the advised mental health issues affect the customer's mental capacity.

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 company received a request to install a water meter at the customer's property on 28 March 2003. A water meter was installed on 21 July 2003 inside the customer's property. This was later replaced with a meter fitted at the boundary of the customer's property on 17 December 2004.
2. The customer's representative has requested that the water meter is removed and that the customer's account is billed on unmeasured charges on the basis that the customer lacked the mental capacity required to request and agree to the water meter, and was not able to

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understand the implications of that decision. The representative states that the customer has lacked the relevant mental capacity since the 1980s.

3. I note that the customer's property was fitted with a meter as a result of a request for a meter under the company's Free Meter Option Scheme; the meter was not installed as part of any compulsory metering scheme. The customer made a request for a water meter in 2003 and it is this decision that may be reviewed in respect of the customer's capacity to have made that request.
4. I also note that, under the terms of the Free Meter Option Scheme, the company provided customers with a period of 12 months to review the new metered charges and to revert to unmetered charges if they wished. The customer's representative states that they contacted the company during the first 12 months to request the meter be removed; the company denies this. I find that it is also necessary to determine whether the customer did make such a request within 12 months.
5. Should the decision find that the request for a water meter has not been rendered invalid due to capacity, and that no request was made within the first 12 months for the meter to be removed, I am satisfied that there is no other basis for the water meter to be removed or the charges to be reverted to an unmeasured basis. The company must charge by reference to a water meter where one is fitted except in very limited circumstances.
6. I note that one such circumstance is where a customer qualifies for the Water Sure Scheme that places a cap on the water bills to reflect that the customer uses more water for health reasons. The customer qualifies for this Scheme and the charges are capped on this basis, subject only to the customer, or his representative, renewing this as required by the rules of that Scheme.
7. For the avoidance of doubt, I acknowledge the submission that the customer's property is unsuitable to be metered due to its size, and I also note that the supply was subject to a leak for which an allowance has been granted by the company. The size of a property is not a relevant consideration for whether a water meter is appropriate as it measures the amount of water actually used. By contrast, unmeasured charges are based on the rateable value of the property and will be greater for a larger property, irrespective of the number of persons living there.

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8. In respect of the leak, whilst all water lost will be recorded as use on a water meter, the increase in bills will usually enable leaks to be identified earlier than on an unmeasured scheme. This reduces water wastage and the company provides leakage allowances to minimise the financial impact of a leak on a customer.
9. I find that these matters contribute to the policy reasons for why water meters will not ordinarily be removed once fitted. The WATRS Scheme is not able to review the fairness of the company's policies, or the statutory obligations in respect of metering and charging. I am only able to review whether the company has properly followed the applicable legislation and policies. As such, I am satisfied that there is no basis for the water meter to be removed unless the customer's representative can successfully demonstrate that the customer lacked the capacity to request the meter in 2003, or where the customer did request to be placed back on unmeasured charges within 12 months of the meter being fitted.

Capacity

10. The customer's representative states that the customer has lacked the capacity to enter into contracts since the 1980s. The evidence provided in this case includes a letter from the customer's doctor dated 25 March 2015. This states that the customer has "personal information removed". The letter continued to state that the complications from diabetes meant that the customer was having to use more water than normal and requested that the customer be moved to an annual charging scheme unaffected by the amount of water use.
11. The customer's representative states that, when the customer requested the water meter, he lacked the necessary mental capacity to do so due to suffering from "personal information removed" at the time. I note that, whilst the doctor's letter does not expressly confirm that the customer's [personal information removed] meant he lacked the capacity to enter into contracts, it does confirm that the customer has this diagnosed mental illness.
12. I am mindful that the Mental Capacity Act 2005 is largely consistent with the previous test applied by the courts at common law. A person will lack capacity where, "at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain".

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13. As above, this definition is largely consistent with the common law position that asked whether a person had an understanding of what “was going on and what was involved in the transaction involved”. The fact that the Mental Capacity Act 2005 was not in force at the time the customer requested the water meter is therefore unlikely to affect any finding as to the customer’s capacity to make that decision.
14. I am satisfied that, due to the customer’s diagnosis of [personal information removed], it is possible that he lacked the mental capacity required to knowingly enter into the agreement with the company for the water meter to be fitted. However, it must be noted that the letter from the doctor simply confirms the diagnosis of [personal information removed]. It does not state that this diagnosis means that the customer never has capacity, nor does it state that the customer was experiencing [personal information removed] at the time the water meter was requested that would have diminished his capacity to enter into that agreement.
15. In the circumstance where a person lacks mental capacity, a contract he purports to enter into will nevertheless be valid unless that person or their representatives can demonstrate either a) that the other contracting party knew of the person’s incapacity, or b) that the customer’s affairs were subject to the control of the court, such as through a registered power of attorney.
16. The reason for this is that the law seeks to balance the fact that a person should not be liable under contracts that he did not have the capacity to consent to, with the fact that a party who enters into a contract in good faith may experience hardship where the other party is allowed to void the contract. Whilst it may not be the case that the company would experience hardship in respect of the agreement for the water meter, the law is applicable to all agreements entered into by a person who lacks mental capacity.
17. In view of this, I find that it is necessary for the customer’s representative to demonstrate either that the customer did lack the necessary mental capacity to agree to a water meter being fitted *and* that the company was aware or should have reasonably been aware that he did lack that capacity. Alternatively, the customer’s representative may demonstrate that the customer’s capacity had been removed by the court through a registered power of attorney that was in effect at the time the customer requested the water meter.

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18. As above, the customer has provided evidence that the customer has a diagnosis of schizophrenia. However, this does not confirm that the customer lacked mental capacity generally or specifically at the time the customer requested the water meter.
19. I also find that there is no evidence that the company was notified of the customer's mental health problems prior to 2 September 2013.
20. I therefore must find that it has not been demonstrated that the customer did lack the mental capacity to enter into an agreement for a water meter to be fitted in 2003, and that it has not been demonstrated that the company was made aware or should have been aware of the customer's mental health difficulties at this time. I find that the customer is not able to unwind the agreement to have a water meter fitted and move to metered charges on the basis that he lacked capacity and the company was aware of this.
21. Accordingly, in order to find that the agreement was not binding, it is necessary for the customer's representative to demonstrate that there was a registered power of attorney in place at the time the water meter was requested, or that the customer's affairs were otherwise subject to the control of the courts at that time.
22. I note that the customer's representative has provided a screenshot that confirms that a Lasting Power of Attorney for the customer was registered, with the representative as the attorney, on 22 March 2017. This is 14 years after the water meter was requested and therefore does not demonstrate that the customer lacked capacity in 2003.
23. The company has requested a copy of a registered Power of Attorney that was in effect in 2003. The customer's representative has not been able to provide such a document,
24. I find that, in the absence of evidence that a Power of Attorney was registered with the Office of the Public Guardian in 2003, or evidence that the customer was otherwise subject to the control of the court, there is no basis for finding that the customer lacked the mental capacity to request a water meter.
25. I am therefore satisfied that, whilst the customer may have lacked the mental capacity in fact to enter into an agreement for a water meter, this is not itself sufficient to unwind the agreement. The company was not aware that the customer lacked or may have lacked the capacity required

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to request a water meter and there is no evidence that the court or a registered attorney had taken control of his affairs. As such, I find that the agreement for a water meter must be considered valid.

26. The company's submissions are clear that it is willing to review this position upon provision of a valid and registered Power of Attorney covering dates in 2003. I find that this is the extent of the company's obligations. Unless and until such a document is provided to the company, there is no basis for finding that the request for a water meter and the agreement that charges should be based on the meter readings is invalid or voidable.

Request to Reinstate Unmeasured Charges Within 12 Months

27. As above, where the agreement for a water meter to be fitted is found to be valid, the customer must be charged on the basis of the meter readings unless he utilised the option to revert to unmeasured charges within 12 months of the water meter being fitted.

28. The water meter was first installed on 21 July 2003; the customer therefore had until 20 July 2004 to contact the company and request to be placed back on unmeasured charges.

29. I note from the defence that the customer contacted the company on one occasion in this timeframe, on 4 June 2004. The company states that the call notes state "Customer phoned to query the bill date".

30. The company's evidence commenced with a call note from 2006. I therefore requested the company provide a screenshot to confirm the contents of the call from 4 June 2004. The company has provided this to me. The screenshot confirms that the note states only "Cust phoned to query bill date".

31. I am satisfied that the customer did contact the company before 20 July 2004. However, the evidence available shows only that the customer queried the date of his next bill. There is no suggestion that the customer requested to have the water meter removed at this time, that he asked to revert to unmeasured charges, or that he raised any concerns about the water meter or the way his bill was being calculated.

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32. I also note that the company replaced the customer's internal water meter with one fitted to the boundary of his property on 17 December 2004. There is nothing to suggest that the customer raised concerns about the water meter at this time. Whilst this is outside the 12 month timeframe to revert to unmeasured charges, it would have been indicative that the customer was unhappy with the water meter, especially as it was being replaced and moved so soon after being fitted.
33. In light of this, I am unable to find that the customer did request that the meter be removed, or his account be reverted to unmeasured charges within 12 months of the water meter being installed. The company is not now able to revert the customer's account to unmeasured charges and it must charge him in accordance with the usage recorded on the water meter, subject only to the customer qualifying for some scheme to limit the charges. As above, the customer qualifies for the Water Sure Scheme.
34. I also note that the cap applied by the Water Sure Scheme is lower than the amount of the charges that the company would apply to the customer's account were he charged on an unmeasured basis. The customer is therefore in a better position by having a water meter as he qualifies for the Water Sure Scheme. Any direction to revert the customer to unmeasured charges would only result in an increase to the customer's bills. I acknowledge the representative's concerns that changes to the Water Sure Scheme may cause the customer's bills to increase, however this scheme is in place to ensure disabled customers do not incur excessive water charges solely as a result of their disability. The Scheme is required by Ofwat, the regulatory body, and the customer and his representative may therefore be reassured that it is not a company-only policy that may be withdrawn at any time.
35. As above, I find that there is no basis to revert to unmeasured charges, or for the water meter to be removed from the customer's property. The customer's claim is therefore unable to succeed.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by XXXX 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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Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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