

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0987

Date of Decision: 6 December 2018

Complaint

The customer states that he submitted a meter application form to the company in 2011. Until recently, when he noticed he was still on unmeasured Rateable Value (RV) charges, he had been under the impression that he was being charged on a metered basis since submitting his application. However, the company states that it never received his application. The customer submits that the company has overcharged him by at least £526.00, which is the difference between his RV charge and what the company estimates would have been his metered charges had a meter been fitted at the time he requested it. The customer requests that the company move him to metered charges going forward and reimburse the £526.00.

Defence

The company submits that it has no record of the customer applying for a water meter in 2011, or any record of calls/correspondence from him since this time chasing the outcome of his alleged metering application. On every annual bill it has sent, it is clear that the charges were based on RV and not on a metered charge. It has advertised water meters to the customer on his bills and in its annual billing leaflets. It has also included information about how to apply for a water meter. It has not overcharged the customer. Under its Charges Scheme a customer must exercise "a statutory right to elect for charging by reference to volume" by way of an optional metering application form. The customer has never exercised this right and as such the RV charges levied are correct and payable. No offer of settlement was made.

Findings

There is no reason to believe that the customer did not send an application form for metering. However, the evidence indicates that the company did not receive the customer's application and that the customer was put on notice, via his bills and billing information, that the company had not received his application. The onus was therefore on the customer to contact the company and alert the company to the fact that he had sent an application form for metering. The customer did not do so. Under the company's Charges Scheme, a customer must apply for charging on a metered basis in writing, and until such time as a customer does so, an RV charge is the legal basis of charging. There is therefore no evidence to show that the company has charged the customer incorrectly on the RV basis since 2011. It falls outside of my remit to direct that the company move the customer to metered charges. The customer

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must make a new application to the company directly.

Outcome

The company does not need to take any further action.

The customer must reply by 8 January 2019 to accept or reject this decision.

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- On 14 February 2011, it sent the customer a letter inviting him to apply for a water meter. The customer never responded to this letter.
- It has also advertised water meters to the customer on his bills and in its annual billing leaflets. On every annual bill it has sent, it is clear that the charges were based on RV and not on a metered charge. It has included information about how to apply for a water meter, if he wished to be charged for the actual water he used.
- On 2 February 2018, as part of its Smart Metering Programme (SMP), whereby meters are fitted at customers' homes on a compulsory basis using legal powers set out in the Water Industry Act 1991 and the Water Industry Regulations 1999, it fitted a Smart Meter in the footpath outside the customer's home.
- On 22 February 2018, it sent the customer a letter informing him he had now begun a two year transitional period. This period is where it continues to bill customers the way it always had but, sends a series of comparison bills every three months, comparing their metered charge (calculated using readings taken from the Smart Meter now installed) against the unmeasured RV based charge they had historically paid and continue to, during the transitional period. Customers can choose to switch to metered billing at any time within the two year transitional period but, will be automatically switched to metered billing at the end of two years if they have not already switched earlier.
- The customer did not respond to its letter or make contact to query why it had not installed a meter in 2011.
- On 6 June 2018, it sent the customer a comparison bill showing what his metered charge would have been for the previous three months, against what he had been charged using the RV tariff.
- On 21 June 2018, it received a call from the customer. The customer stated that it had surveyed his home for a water meter some years earlier but was told he could not have one fitted. Its agents have confirmed to the customer that it had never received an application for a water meter from him and it has no records of ever surveying his home for a water meter.
- It has not overcharged the customer. It has the power to set a Charges Scheme under Section 143 of the Water Industry Act 1991. Under its Charges Scheme 2018/19 a customer must exercise "a statutory right to elect for charging by reference to volume" by way of an optional metering application form. The customer has never exercised his statutory right to elect for charging by reference to volume and as such the RV charges levied since he occupied the property in 4 September 1997 are correct and payable.

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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. I acknowledge the customer's complaints about WATRS. However, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any complaints about WATRS cannot be considered under this adjudication.
2. I must also remind the parties that adjudication is an evidence-based process. Submissions made without supporting evidence are unlikely to be accepted as proven.
3. 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.
4. I acknowledge the customer's Comments on the Defence including the customer's submissions about his date of birth on the company's system and data protection issues. However, I must remind the parties that under s.5.4.3 of the WATRS Rules, the customer cannot introduce new matters or evidence in their Comments on the company's Defence, the adjudicator must disregard any such material if submitted. Further, the matters which can be adjudicated under

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WATRS are set out in Section 3.3 of the WATRS Rules. Data protection issues do not fall within the scope of WATRS. WATRS is not the appropriate forum for such matters.

Metered charge basis

5. The customer states he submitted a meter application form to the company in 2011, and that following a number of persistent sales visits from representatives of the company to his home in 2011, he also agreed with these sales agents to convert to a metered supply. The customer's submissions indicate that he did not complete an application form with these agents or give the agents a copy of the application form. The company refutes receipt of an application from the customer.
6. The company has submitted in evidence copies of the customer's annual bills from 2007 and annual billing leaflets to support its submissions that on every annual bill sent, charges were based on RV and information about how to apply for a water meter was also given. The company has also submitted in evidence a copy of its 22 February 2018 letter to the customer that supports its submission that the customer was informed in February 2018 that a smart meter had been fitted at his property as part of the two year SMP transitional period. The company states that the customer did not respond to its letter or make contact to query why it had not installed a meter in 2011. The customer does not refute receipt of the bills/annual leaflets or the company's 22 February 2018 letter.
7. There is no reason to believe that the customer did not send an application form for metering. However, the evidence indicates that the company did not receive the customer's application and that, importantly, the customer was put on notice, via his bills and billing information, that the company had not received his application. The onus was therefore on the customer to contact the company and alert the company to the fact that he had sent an application form for metering.
8. I am also mindful that the customer, in his application to WATRS, submits that after he submitted his application he had been under the impression that he was being charged on a metered basis since 2011. However, the company has submitted contemporaneous account notes in evidence which supports its submission that when the customer first raised the complaint, on 21 June 2018, the customer informed its agent that his home had been surveyed

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some years earlier but he had been told that a water meter could not be fitted. The customer has not provided any clarification.

9. In view of the above, having carefully considered the parties' submissions and the evidence to support these submissions, the customer has not shown, on a balance of probability, that the company should have been charging him on a metered basis since 2011 and failed to provide its services to the customer to the standard to be reasonably expected by the average person.

Alleged overcharging

10. I accept the company's submission that under Section 143 of the Water Industry 1991 Act, it is entitled to make a Charges Scheme that fixes the charges for any services provided by the undertaker in the course of carrying out its functions.
11. A company's Charges Scheme must be approved by OFWAT. There is no evidence to show that the company's Charges Schemes have not been approved by OFWAT or do not comply with OFWAT's Charging Rules.
12. I accept the company's submission that notwithstanding the compulsory metering in place in the customer's area, under its Charges Scheme, a customer must elect for charging on a metered basis in writing, and until such time as a customer does so, an RV charge is the legal basis of charging. This is also confirmed by OFWAT in the link submitted by the company in evidence.
13. In the absence of evidence to show that the company received the customer's application form, there is therefore no evidence to show that the company has charged the customer incorrectly on the RV basis since 2011. In addition, until the company receives an application for metering or the two year SMP transitional period expires, there is no evidence to show that the company is acting contrary to any law or code by continuing to charge the customer on an RV basis. I note the customer's request that the company move him to metered charges going forward. However, it falls outside of my remit to direct that the company move the customer to metered charges. The customer must make a new application directly to the company.
14. For the avoidance of doubt, I note the customer's concerns about the fairness of the company's charge basis. However, I must remind the parties that the scope of the Scheme is set out under WATRS Rule 3.3. Under WATRS Rule 3.4.1, WATRS is not the appropriate forum to determine

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any complaints regarding the fairness of the company's charges. I acknowledge the customer's concerns and appreciate that the customer will be disappointed that I am not in a position to consider his complaint. However, my remit is limited to determining whether the company has acted in accordance with its Charges Scheme and the evidence confirms that the company has fulfilled its obligations.

15. In view of all of the above, the customer's claim is unable to 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 8 January 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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