

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1552

Date of Decision: 12 August 2019

Complaint

The customer considers that the company has overcharged him for installation of a communication pipe and that it has been dishonest and provided unsatisfactory service whilst dealing with his complaints. Furthermore, the customer states that the company has failed to charge his property on a metered basis from May 2017 to the present date. The customer therefore claims redress for these issues.

Defence

The company accepts that there have been various oversights on its part but it does not accept full liability for the customer's claims. In recognition of the customer's issues, the company submits that it has now taken appropriate remedial action.

Findings

Under the circumstances, I am satisfied that there have been failures on the part of the company to provide its services to the standard to be reasonably expected. Having regard for the nature and extent of these established failures, I find it fair and reasonable to direct that the company pays the customer a degree of compensation.

Outcome

The company shall pay the customer compensation in the sum of £250.00. The customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

The customer must reply by 09 September 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

completed the work to an unacceptable standard, conceded this, and reinstated the surface in response to his complaint. The customer therefore seeks £200.00 in compensation for his time and inconvenience chasing the company, on multiple occasions, to complete the work to an acceptable standard.

- *Reasonableness of charges:* The customer states that the quote supplied by the company for £2555.64 was for the trenching and laying of an 11 metre communication pipe. However, no price was agreed for moleing (a different technique from trenching) of a 6 metre communication pipe. Accordingly the company are only permitted to charge a reasonable price for this service. Furthermore, the company states that it paid its contractor £1258.72 but it has not provided any evidence of this. The customer states that, in any event, the price the company paid cannot be held to be reasonable.
- *Unreasonable overheads:* The customer states that the company's 25% overhead charge is unreasonable.
- *Dishonesty:* The customer asserts that the company has committed fraud and made false statements in relation to the cost of the works carried out. He is therefore claiming compensation of £1161.86 from the company on the grounds of fraud.
- *Prior refund by the company:* The customer states that against its original quote of £2555.64, the company has already refunded £658.49 because it was able to mole (rather than trench) the communication pipe. Therefore, the customer believes that the adjustment for this existing refund should be "5/11ths of (£2555.64 - £658.49), being compensation in the amount of £862.34".
- *Reasonable charge a determination of fact:* The customer goes on to submit that the company have not provided evidence to substantiate that their charges were reasonable. The customer states that "The 2017 independent comparison of new connection costs from OFWAT puts the mean cost of a trenched 6 metre connection at between £1020.67 (4m) and £1623.99 (9m) (given that this was a carriageway). This puts the amount charged by SES Water at almost double the market rate. OFWAT does not publish comparable figures for the use of moleing devices. However, [] publish their approximate costs online and estimate the cost of moleing a 10 metre connection at £1476". The customer states that based on this information, a reasonable charge for a trenched connection should be £1261.99 and a reasonable charge for a moled connection should be £885.60. The customer therefore states that the company's charges of £2555.64/£1897.15 are extravagant and unlawful. The customer goes on to states that "work took place at the same time other utilities at my property were replaced. [], who had to trench approximately 5 metres charged £682.80, and [], who had to

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

trench approximately 15 metres over a mix of footpath and verge, only charged £1089". Therefore, the customer seeks compensation in the amount of £1011.55 (being the difference between the balance paid and £885.60).

- *Lead replacement and the duty to supply wholesome water:* The customer states that the company should have undertaken the majority/all the works without charge. He asserts that the existing communication pipe is made of lead and the company failed to act on this information, it also failed to inform the customer that there was a lead pipe replacement scheme and committed fraud by stating that there was no lead found. The customer does not dispute that the original fitting notice states that copper was used for the pipe; however, this document is from 1954 and therefore does not show what has happened since that time. The customer asserts that the company has always known that the communication pipe was lead (or otherwise defective) and has deliberately made false statements to gain a financial advantage by deception. The customer submits that he is therefore seeking compensation in the sum of £1897.15 from the company for acting dishonestly.
- *Compensation for dishonesty:* The customer believes that in light of the time and inconvenience dealing with this matter, a compensation payment in the sum of £1000.00 would be proportionate.
- *Failure to supply on a metered-basis:* The customer states that the company advised him that *"The decision was made to take your account off the change of occupancy metering scheme due to the delay in fitting the meter. As a result of this, your opening bill was released and we did not fit a water meter."* The customer submits that the company made no attempt to install the water meter at a later date, nor did they offer any discount to him. The customer states that at present he is paying £627.70 a year for a fixed-cost water supply. He submits that the Consumer Council for Water online calculator estimate that his water usage should cost him £316.20. The customer therefore submits that the company has been overcharging him for two years and he is seeking £623.00 in compensation from the company. Additionally, the customer is claiming for the company to ensure that he is supplied on a metered basis.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

The company's response is that:

- The company accepts that there have been some oversights on its part. However, it does not accept full liability for the customer's claims.
- As explained to the customer during their previous communications, the company initially completes an interim reinstatement of an excavated area. This is done to minimise disruption until the final reinstatement can be completed at a later date. The company confirms that the final reinstatement was completed on 16 April 2019, in line with the six month time-frame as set out in the New Roads and Street Works Act 1991.
- The company states that its letter of 1 March 2019 was not an admission of any liability and apologises if the wording of the letter was not clear. The company confirms that the reinstatement team attended the customer's property (following his complaint) and was satisfied that the site was safe and compliant. Therefore, no remedial work was required at that time. The company confirms that its connections are made with blue polyethylene pipes; therefore, the black piping shown in the customer's evidence does not belong to the company. Nonetheless, the company accepts that its communications with the customer were not sufficiently clear and may have caused confusion; it therefore accepts the customer's claim for £200.00 in compensation.
- The company notes that the customer feels that it has not acted lawfully in relation to the quotations and invoices for his new connection. The company explains that, in accordance with its standard commercial practice, it conducts an initial survey and measure the length of pipe required for the new connection and information is used to produce a quotation. This is based on an 'open cut' excavation which is costly (due to the need to rebuild the road after works). If the trenchless moleing method can be used for the works, any identified savings can be refunded back to the customer. The company explains that, at the quotation stage, it is unable to determine whether moleing is possible. Therefore, its quotation was for an 11 metre pipe installation.
- The company goes on to explain that it was able to utilise the trenchless method for 6 metres of the communication pipe, whilst the remaining length was completed using open cut techniques. The company states that it has provided a PDF of the works as completed (the Clancy Docwra Job Sheet). The company understands that this Job Sheet could be perceived as contradictory lengths of pipe as they refer to both the entire length and the section that the company was able to use the trenchless method of installation. The company apologises for any confusion caused to the customer.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The company explains that its quotes are based on the maximum amount that a customer may need to pay for the works based on the open cut method. It is sorry that the customer has misinterpreted this as being dishonest or fraudulent; however, this is standard industry/commercial practice and supports an honest and realistic charging structure (so that the quote does not increase after the works are completed).
- The company states that it would not be appropriate to provide the customer with itemised breakdowns of how much its contractors are paid, as this is commercially sensitive information regarding its business practices. Nonetheless, it confirms that all legislation is followed and its charges are regularly reviewed by OFWAT.
- The company states that, as it was able to mole 6 metres of pipe, this allowed the cost savings to be passed onto the customer. Furthermore, the company explains that it only pays its contractors for actual works carried out, subject to re-measure. In any event, in recognition of the customer's confusion about the invoicing process, the company agrees to refund the 25% overhead charge (£332.00) to the customer as a gesture of goodwill. The company makes clear that it does not accept liability for any wrongdoing.
- The company acknowledges that the customer has provided information relating to industry and independent contracted figures. However, the company explains that it is not possible to compare figures due to the significant variables that may be applied by a contractor inclusive/exclusive of its rates (such as type of surface being worked on and traffic management costs). The company confirms that its contracted rates are subject to a very detailed and competitive tendering process and it only charges customers for the contractor price with its company overhead and VAT. Accordingly, the company does not accept that the customer should be awarded with the compensation claimed for this issue.
- The company confirms that there is no evidence of lead pipework found on its side. It confirms that it has located the original installation paperwork (from 1954) and this proves that the customer's pipework is copper. The company explains that lead pipework was phased out in the 1950s and there is no evidence that any further works have been carried out after 1954. The company explains that, as there is no evidence that the customer's pipes are lead, there was no reason to provide information to him relating to the lead pipe replacement scheme (as it is not relevant to his situation). The company confirms that there has been no evidence whatsoever that the customer's pipes are made of lead. Accordingly, the company states that cannot agree to the customer's claim for £1897.15.
- The company accepts that, during the course of its communications with the customer, there have been several response delays. Accordingly, it has applied £60.00 of credit to the customer

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

in accordance with its Guaranteed Standards of Service (GSS). In addition, the company accepts that the response to the customer's complaint of May 2018 was not sufficiently substantive and it has therefore applied a further £30.00 in credit for this issue. Whilst the company does not accept the customer's claims that it has acted dishonestly, as a gesture of goodwill (in recognition of its shortcomings as accepted above), it agrees to provide the customer with a payment of £250.00.

- The company confirms that an administration error occurred when the customer's account was first opened. This meant that the meter installation request was not passed through to the survey team. Furthermore, the customer's account had been placed on hold until he brought the matter to its attention. At this stage, the customer's bill was released and was based on unmeasured charges (rateable value). The company submits that it is truly sorry for the inconvenience caused and will remove all unmeasured charges from the customer's account from the date it was opened. This totals £1420.68. The company will then charge the customer on a metered basis since his first meter reading only (therefore, the customer will not pay for any water charges before his first meter reading). The company confirms that it will therefore refund the customer a total of £1232.58.
- The company hopes that the above is satisfactory for the customer.

The customer's reply is that:

- He accepts the company's settlement of £200.00 in compensation for delay.
- He accepts the company's settlement of £332.00 in compensation for overheads.
- He does not accept the company's position in relation to his allegations of its dishonesty. The customer has also raised a new complaint that the company has photographed his property without authority, breaching the European Convention of Human Rights. The customer therefore seeks that the adjudicator makes a determination on the allegation of fraud against the company.
- The customer does not accept the company's position in relation to charges and requests that the adjudicator independently determines what a reasonable price for the works should be and then award the balance as compensation.
- The customer does not accept the company's position in relation to his belief that his pipe is made of lead. The customer submits that the company is liable and he should be awarded compensation.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The customer notes that the company has offered £250.00 as compensation for his time and inconvenience dealing with this matter. The customer submits this is not enough and is seeking a higher sum.
- The customer accepts the company's settlement in relation to its failure to charge him on a metered basis.

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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How was this decision reached?

1. The customer's complaint is that he believes the company has overcharged him for installation of a communication pipe and that it has been dishonest and provided unsatisfactory service whilst dealing with his complaints. Furthermore, the customer states that the company has failed to charge his property on a metered basis from May 2017 to the present date. The customer therefore claims redress for these issues.
2. I draw attention to the fact that adjudication is an evidence-based process and in order for any remedy to be awarded, the customer must show with substantive evidence that the company has not provided its services to the standard that would reasonably be expected of it.
3. I note that, in his reply comments, the customer appears to have raised a new complaint regarding a breach of the European Convention of Human Rights. I draw attention to the fact that, in accordance with the rules of this scheme, any new complaints introduced at the comments stage must be disregarded by the adjudicator.
4. I acknowledge that, during the course of their WATRS submissions, the parties have reached settlements regarding the customer's claims for compensation for delay, company overheads and the company's failure to charge him on a metered basis. As these settlement agreements between the parties have already been arranged by a clear offer and acceptance, I find no reason to address/examine these settled issues any further. Accordingly, I will now proceed to examine the elements of complaint which remain unresolved.
5. I note that the customer has raised allegations of fraudulent dishonesty on the part of the company. At this juncture, I believe that it may be important to highlight that my powers as a WATRS adjudicator are limited (as expressly detailed in the scheme rules). Specifically, I should make it clear that it is beyond my remit to review any complaints surrounding allegations of fraudulent activity. Accordingly, I am unable to address this particular element of concern and the parties may wish to refer this matter to a more appropriate forum for resolution.
6. I am mindful the customer continues to assert that the company's work charges are unreasonable, despite the company's provision of detailed explanations that they are in line with

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

its standard commercial practices. I note the customer has requested that the adjudicator review the extent of the works and independently determine a reasonable charge. I must draw attention to the fact that I am not a water construction engineer or an expert cost-assessor in this field. I have no specialist knowledge regarding the costs of the water construction processes required to effectively carry out the works in question. For the avoidance of any doubt, I am unable to make any independent determinations regarding specialist matters such as the pricing of water construction works. Additionally, in any event, I should also make it clear that it is outside the scope of this scheme to examine or challenge the fairness of a company's contract terms/commercial practices (such as the company's commercial practices relating to contractor pricing/agreements). As such, I am unable to examine this particular matter and the parties may wish to refer this issue to a more appropriate forum for resolution.

7. I acknowledge that the customer has expressed concerns that the water pipe serving his property is made of lead and is displeased with the company's position of relying on the only evidence available showing that it is made of copper. The customer's position is that the company has not satisfactorily substantiated that the water pipe is not made of lead. It is not in dispute that the available evidence (a works document from 1954) shows that the water pipe in question was constructed from copper. Whilst I appreciate the customer's assertion that changes may have been made since 1954, I find no evidence that would enable me to objectively conclude that the original copper piping was ever replaced with lead piping. As the party making an assertion contrary to the available evidence, I find that the onus of proof in this instance falls to the customer. Based on the evidence provided, I am not satisfied that the customer has sufficiently discharged this burden with substantive evidence. Consequently, I am unable to objectively conclude that the company's overall actions in response to this matter amount to a failure to provide its services to the standard to be reasonably expected by the average person.
8. With regards to the customer's claim for compensation for the time and inconvenience in dealing with this matter, I note he does not accept the company's offer of £250.00 and indicates that he is seeking a much higher sum. It is not in dispute that there were failures on the part of the company and accordingly, I am satisfied of such. However, taking into account the nature and extent of these established oversights, reasonable degree of stress and inconvenience that would have been experienced as a direct result of these failures and the remedial steps already taken by the company, I am satisfied that a compensation payment of £250.00 is fair and

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

reasonable. Accordingly, under the circumstances, I find that it is fair and reasonable to direct that the company provides the customer with compensation the sum of £250.00.

9. In summary, I am satisfied that oversights on the part of the company have been established. Consequently, having regard for the nature and extent of the company's established oversights, I find that it fair and reasonable to direct that the company provides the customer with compensation in the sum of £250.00.
10. This concludes the WATRS stage of the customer's complaint. I remind the parties that the customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

Outcome

The company shall pay the customer compensation in the sum of £250.00. The customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 09 September 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.



E. Higashi LLB (Hons), PGDip (LPC), MCIArb.

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.