

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1909 – Billing & Charges – Problems with metered & unmeasured bills

Date of Decision: 20 April 2020

Complaint

The customer complains that the company failed to take payment by direct debit, despite repeatedly assuring him that it was doing so. This resulted in the customer being charged a large amount at once, which the company pursued aggressively, causing the customer distress and inconvenience. The customer also complains that the company's predecessor informed him that his tanning salon was on a separate supply from the residential flat situated above it, which was not the case. The customer considers that he has therefore been overpaying for his water and sewerage. The customer requests that the company pay for the separation of the water supply, that all payments to the company should be frozen until the separation is carried out, that the company apologise for its conduct, and that it reimburse him for the excess payments he has made for water and for a late payment fee of £70. He also claims £1,000 for distress and inconvenience.

Defence

The company acknowledges its failure to set up a direct debit and states that it has now made a goodwill payment of £260 as a result. It also accepts that the customer was misadvised regarding whether his water supply was separate, but considers that this should be dealt with by way of a compensation payment by XWholesaler, which can be calculated once the customer has put in place a separation of his supply.

Findings

I find that the company is responsible for both the failure to charge the customer by direct debit over an extended period of time and the misinformation about whether his supply was shared. I also consider that the company did not behave reasonably in chasing the customer for payment, and in adding late fees to his account, despite its error with the direct debit. I consider that this situation caused the customer distress and inconvenience. The company should compensate the customer for the excess payments he has made due to the supply being shared, but I do not consider that it would be reasonable to hold the company responsible for the cost of separating the supply.

Outcome

If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, credit the customer's account with the following sums: (1) £260 in respect of the goodwill payment mentioned in the company's defence (unless this has already been credited); (2) £200 in respect of distress and inconvenience; (3) £70 in respect of the wrongly imposed late payment fee; and (4) £965 in respect of the amount that he

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has overpaid for water used by the residential flat, being a total of **£1,495**. To the extent that this brings the customer's account into credit, the company must reimburse the excess amount to the customer.

The customer must reply by **1** May 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 20 April 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is as follows:

- Firstly, the customer complains that the company failed to set up a direct debit for his payments, despite having agreed to do so. As a result, the customer was suddenly confronted with a large water bill, which he was required to pay under an onerous payment plan that has caused difficulties for the cash flow of his business. Secondly, the customer complains that he has now discovered that has been charged not just for the water used by his business, but also for water used by the residential flat located above his tanning salon, despite having been assured that the two properties were on separate water supplies.
- The customer summarises the facts as follows. The customer purchased his premises (personal information removed) on 24 June 2016. Before the purchase he informed the water provider, which at the time was XWholesaler, of the purchase and requested a supply check in order to ascertain whether the two properties were on the same supply. On 13 June 2016, XWholesaler informed him that the two properties were on separate supplies. On the basis of this information, the customer set up separate water accounts for the tanning salon and the residential property (which he let out to tenants).
- On 23 August 2016, the customer telephoned XWholesaler and set up a direct debit payment for the commercial premises. He was told that this was a "phone and forget exercise". XWholesaler sent him a letter confirming that the direct debit had been set up, and asking him to check his bank account details, which he did.
- On 23 May 2017, the company wrote to him saying that they had taken over responsibility for his account from XWholesaler, but saying that he did not need to take any further action. Later in

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2017, in 2018 and in 2019, the company wrote to increase the amount of the customer's direct debit. However, the customer understood this to reflect price increases, and did not understand that they resulted from non-payment of the direct debit. On each occasion, the letter stated that the customer did not need to take any further steps.

- On 30 September 2019, the company called the customer and told him that he owed the sum of £1,582.72 and that the arrears dated back to December 2016. The customer was shocked and distressed as he had understood that his bills were being paid by direct debit. The company subsequently admitted that they had failed to take payments under the direct debit, but nevertheless chased the customer aggressively for the outstanding payment. In particular, despite assuring the customer that it would not take any action while the customer investigated, it instructed a debt collector, Engage, who threatened to visit the customer's premises, cut off his water supply, and charge additional fees. The customer was particularly distressed by the fact that this letter was received by his partner, who is recovering from treatment for cancer.
- The customer feels that the company then pressured him into accepting an onerous payment plan of £175.92 per month, which endangered the cash flow of his business.
- The customer initiated a complaint, but considers that he did not receive a satisfactory response. At the same time, he received a number of calls and letters from the company demanding immediate payment, and the company also added a late payment charge of £70 to his account, despite the fact that he had already agreed to a payment plan.
- This situation caused the customer considerable distress, in particular because the customer considers that the company refused to acknowledge their errors and simply treated him as another debtor who should be forced to pay as soon as possible.
- On 18 January 2020, on the customer's request, an engineer from XWholesaler visited the property and discovered that the tanning salon and the residential flat were in fact both connected to the same water meter. As a result, the customer notes that he has been charged for water supplied to both properties (although he attaches bills which show that XWholesaler has also charged the tenant of the residential flat for water on an unmetered basis during the same period). He also notes that as there were two covers on the pavement marked "water", he had reasonably believed that there were two separate water supplies, although it turned out that one of the covers was for the meter and the other for the stop-cock.
- As a result, the customer requests:
 - That the company pay for the separation of the water supplies to the tanning salon and the residential property, including the pipework for the new connections needed to do this. The customer considers that this claim is justified because if he had been correctly

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advised when he purchased the property that the two premises were on a shared supply, he would have carried out the separation of the supply as part of his initial renovation works.

- That all payments to the company should be frozen until the separation of supplies is carried out.
- That the company issue an apology because it repeatedly assured the customer that a direct debit was in place, and then aggressively chased an inflated payment, including instructing a debt collector at a time when the customer had already put in place a payment plan.
- That the company credit his account with the sum of £1,325.09, which is the customer's estimate of the amount of water used by the residential property which he had been incorrectly informed was on a separate supply.
- That the company reimburse a late payment fee of £70.
- That the company pay him £1,000 for the distress and inconvenience caused by the events described above.

The company's response is that:

- The company contests the customer's claim.
- Regarding the direct debit issue, the company acknowledges that the customer requested XWholesaler to set up a direct debit but that this was not done. The company also notes that it itself tried to set up a direct debit to be taken quarterly on 8 June 2017 and on 21 June 2018 but that neither of these direct debits were ever successfully taken. The company states that it is very sorry for the inconvenience that this may have caused to the customer.
- However, the company considers that the customer should have become aware of the issue sooner, given that the invoices that the company sent to him did not show any payments being made.
- The company nevertheless acknowledges that 13 invoices were issued to the customer which did state that payment was being taken by direct debit, and that it has therefore applied a gesture of goodwill of £260 to the customer's account.
- The company also acknowledges that XWholesaler did state to the customer that the supplies for the shop and residential flat were separate, and that this was not correct. The company explains that this was because XWholesaler only carried out a desk-top study in response to the customer's query, and did not visit the property.

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- However, the company considers that it is for XWholesaler, as the water wholesaler, to calculate an allowance for the additional amount that the customer has been charged. The company states that XWholesaler has informed it that in order to do this, the customer will have to arrange for the pipework for the two properties to be separated, following which XWholesaler will fit a second meter (if possible). This will then allow for a calculation to be made of the respective amounts of water that are usually used by the tanning salon and the residential property.

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. Please note that 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's first complaint is that the company and its predecessor XWholesaler repeatedly assured him that he was paying his bills by direct debit, but in fact failed to implement the direct debit. As a result, no payments were taken from December 2016 until September 2019. The customer was then faced with a large water bill of £1,582.72 which he has difficulty paying, even under the payment plan set up by the company.

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2. I note that the company accepts that its predecessor, XWholesaler, agreed to set up a direct debit. It also accepts that, after taking over the customer's account, the company itself wrote to the customer on several occasions to say that his payments would be taken by means of the direct debit. The company also acknowledges that this was not done. It appears, from the account notes supplied by the company with its defence, that this was due to an error in its system related to the frequency of the payments, and it was therefore not due to any fault on the part of the customer.
3. I have considered the letters attached to the Application, from both XWholesaler and the company, and I consider that it was reasonable for the customer to believe, on the basis of these letters, that his payments were made by direct debit. Although the amount of the direct debit did increase over time, the letters did not expressly state that this was because of any failure to make payment. On the contrary, the company wrote on 21 June 2017, 10 July 2018 and 6 July 2019, "Thank you for arranging to pay for your water and wastewater services charges by Direct Debit". This was in contrast to the reality, which was that the company (through no fault of the customer) had been unable to set up the direct debit.
4. While it is true that the customer could have checked his invoices to see whether payments were recorded, and/or checked his bank account to see if the payments had been made, I do not consider that it was unreasonable for him to believe, on the strength of these assurances from the company, that he did not need to do so. I find that the company (and its predecessor XWholesaler) should have done more to inform the customer clearly that the payments had not been made.
5. I also consider that the company did not react reasonably when the mistake was discovered. Although the company allowed the customer to set up a payment plan, it did not immediately cancel its instructions to a debt collector, and it added a late payment charge of £70 to the customer's account which it then refused to remove. The customer also complains that the company's tone was "aggressive" and that it continued to demand immediate payment even after the payment plan had been agreed. The company does not address these allegations in its defence and I find the customer's allegations in this regard are credible.
6. I consider that given that the arrears had arisen as a result of the company's failure to take direct debit payments, and its failure to inform the customer clearly that it was not doing so, the company should not have imposed a late payment fee. In addition, once the mistake had been

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discovered, I consider that the company was unreasonable in the amount of pressure it put on the customer to pay immediately. It also appears to have been disorganised in the way that it handled his account, given that it continued to demand immediate payment after a payment plan had been agreed.

7. I find that this situation caused the customer distress and inconvenience. The company initially credited the customer with £20, which I do not consider to be adequate compensation for the consequences of the mistake. Although the company, in its defence to the customer's Application, agreed to pay the further amount of £260, the customer states that this amount has not yet been credited to his account. I consider that this amount was still inadequate. In any event, this £260 was only intended to compensate the customer for the error in his invoices, and did not compensate him for the further distress caused by the company's failure to manage the customer's debt appropriately. I find that the company should ensure that this amount of £260 is credited to the customer's account, and should credit the customer with a further amount of £200 to compensate for the distress and inconvenience caused by the events described above.
8. I note that the company has already apologised to the customer, so I do not order any further apology, but I do also consider that the company should reimburse the sum of £70 which it charged as a late payment fee.
9. The customer's second complaint relates to the fact that the company's predecessor, XWholesaler, informed the customer that the tanning salon and the residential flat at his premises were on separate water supplies. When the customer asked for a second supply check in January 2020, it turned out that they were in fact on a shared supply.
10. The company does not deny that the customer was misinformed by its predecessor about this issue. The customer has provided a letter (Document 2) from XWholesaler in which they clearly state that "I can confirm that the meter in the shop down stairs does not supply the maisonette", and on that basis I find that the customer was indeed misinformed about the state of the water supply.
11. The customer argues that if he had known that the two properties were on a shared supply, he would have separated the water supply during his initial renovations when he purchased the property. He also claims that as a result of the shared supply, his water bill was considerably

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inflated: the tanning salon only uses water for a toilet, whereas the residential property uses water for all normal domestic purposes.

12. The company considers that the customer should first carry out the works to separate the supplies, which would enable a calculation of how much water is in fact used by each property.
13. I find that the customer was in fact misinformed about whether the two properties were on a separate supply, and as a result, he has paid for water usage that would otherwise have been paid for by his tenant. Although the initial supply check was carried out by XWholesaler, responsibility for the account was subsequently taken over by the company. I therefore consider that the company should take responsibility for the error made by XWholesaler, and should compensate the customer for the fact that he has been charged for water that he would otherwise not have paid for.
14. Contrary to the company's submissions, I do not accept that the customer should be required to claim compensation from the wholesaler, XWholesaler, for this situation. Although the initial error was made by XWholesaler, it did so in its capacity as the customer's water company. Given that the company took over responsibility for the customer's account, it must also take responsibility for the consequences of this error.
15. Also contrary to the company's submissions, I do not consider that it is reasonable for the customer to have to carry out the separation of the supply and then wait for a sufficiently long period of time to determine the average water consumption of the two properties. The customer has asked for the issue to be determined now, and although it is difficult to determine precisely how much the customer has been overcharged, I have to make the best estimate possible on the evidence before me.
16. I note that the customer has, in Appendix B to his application form, set out an estimate of how much the commercial premises should have been charged, on the basis of an assumption that the toilet would have been flushed four times a day, using 16l of water per day. In his comments on the company's defence, the customer has proposed as an alternative solution that the company should make use of the fact that the tanning salon has now been closed due to the Covid-19 crisis and take meter readings to determine the average water usage of the residential premises.

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17. I do not consider that it would be reasonable to require the company to take particular steps to measure the water usage of the residential flat, given that the highly unusual circumstances of the Covid-19 crisis may make it difficult, both for the company to accomplish this task, and to obtain an accurate average reading.
18. I will therefore base my decision on the customer's estimation of his water usage as set out in his Appendix B. I note that the company chose not to comment on this estimation, and I do not consider it to be unreasonable. The customer estimates that his charges for water and sewerage should have been in the region of £617, while his total bill for this (approximate) period was for £1,582.72. This estimate suggests that just over a third of the water on the shared supply was used by the tanning salon, with just under two thirds used by the residential flat. I consider that this appears to be a reasonable proportion for each property, on the basis of the facts described by the customer.
19. The difference between what the customer paid and what he should have paid, is therefore (approximately) £965, and I find that the company should credit this sum to the customer's account.
20. I note for completeness that in his Appendix B, the customer states that he has already made payments of £359. However, these payments will show up as credits on his account. I therefore do not need to take account of them separately.
21. Finally, the customer has also asked for the company to pay for the costs of separating the water supply between the tanning salon and the residential flat. However, I do not consider that it would be reasonable for the company to be responsible for this cost. The fact that the supply is shared between the two properties is not causally related to XWholesalers' error. Although XWholesaler wrongly advised the customer that the supply was separate, the reality is that the supply has always been shared. If the customer wanted the supply separated when he purchased the property, he would have had to pay for the pipework to be altered.
22. I consider that now that the customer is aware of the true situation, it is his responsibility to take appropriate measures as a result, either by separating the supply or by coming to some other arrangement with the tenant in the residential flat. As a result, I am also unable to accept the customer's request that the payments on his account are frozen until the separation of supply is carried out.

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Outcome

If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, credit the customer's account with the following sums:

- £260 in respect of the goodwill payment mentioned in the company's defence (unless this has already been credited);
- £200 in respect of distress and inconvenience;
- £70 in respect of the wrongly imposed late payment fee;
- £965 in respect of the amount that he has overpaid for water used by the residential flat

Being a total of £1,495. To the extent that this brings the customer's account into credit, the company must reimburse the excess amount to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 10 May 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 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.
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Natasha Peter (Barrister, FCIArb)

Adjudicator

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