WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: AT 1800

Date of Decision: 13 March 2020

Complaint

The customer complains that when he contacted the company about a high bill, it replaced the water meter without testing it, even though he had raised the possibility that the meter was faulty. He has been required to pay the bill. He seeks an acknowledgement that the company failed to obtain an inspection of the meter and waiver of the amount of the bills of £2,436.90 (4 December 2018) and £87.02 (4 April 2019), interest of £125.00 as well as compensation for inconvenience of £1,000.00, totalling £3,648.92.

Defence

The customer did not request that the meter be tested and, in any event, although there had been a spike in consumption, this had reduced before the meter was removed, suggesting that a leak had been found and removed.

Findings

The communications between the company and the customer indicated that the company would check the meter. The customer was not advised that this would be removed without checking, albeit that the company requested the wholesaler to replace the meter. Accordingly, the customer was deprived of the opportunity to prove that the meter was at fault and obtain a rebate. Taking into account that there was a spike in consumption, that there is no evidence of a repair to explain why the spike should have ended prior to the meter exchange, that the readings obtained by the company were from a damaged meter and that there is no evidence to confirm that the damage was restricted to scratches on the face of the meter, I find that it is probable that the customer would have proved his entitlement. The loss of opportunity is 51% of the increase in his bills. He is also entitled to compensation for inconvenience, but a County Court would not be likely to award interest in the light of non-payment of subsequent bills. No award of interest is made.

Outcome

The company needs to credit the customer's account with a compensation payment in the sum of £957.50.

The customer must reply by 14 April 2020 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 13 March 2020

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- The customer received a high bill and a representative of the customer spoke on the telephone to the company. The customer challenged the meter reading and informed the company that the meter was scratched and unreadable. The customer comments that the meter appeared to have suffered impact damage.
- The customer was informed that the wholesaler would be requested to repair the meter.
- On 7 February 2019, the customer emailed the company expressing the customer's understanding that the company thought that the meter was faulty and stating that it would expect a credit to be applied to the account if that turned out to be correct.
- The meter was, however, replaced on 27 February 2019. Although the company initially indicated that testing could be carried out, it transpired that the meter could not be tested once it had been removed.
- The company contacted the wholesaler on 3 April 2019 seeking reimbursement of the increased bill. The wholesaler rejected this. Only in the note of 17 May 2019 did it become obvious that there was a misunderstanding between the company and the wholesaler as to what could be done.
- The customer is dissatisfied that, following replacement of the meter, the company says that it cannot now be proved that the meter was faulty. He is adamant that no leak was repaired during the period in question and suggests that the discrepancy in readings can only be because the meter was faulty. The customer says that no charge should be raised for water that the company cannot show that the customer has used.

- He seeks an acknowledgement that the company failed to obtain an inspection of the meter and waiver of the amount of the bills of £2,436.90 (4 December 2018) and £87.02 (4 April 2019), interest of £125.00 as well as compensation for inconvenience of £1,000.00, totalling £3,648.92.

The company's response is that:

- A representative of the customer, "Joan" contacted the company on 17 January 2019 as a high invoice had been received. During that call, the company checked the photograph provided by its meter readers and could see that there appeared to be scratches to the meter screen.

- The customer advised that it was not possible to make out the numbers. As the customer could not therefore perform a self-leak test and the usage could not be substantiated, the company raised a request to the wholesaler for a meter replacement. The customer was informed by email on that date.

- A further email was sent on 31 January 2019 confirming that the company had raised a request to attend to repair the meter. On 7 February 2019, one Mr White sent the company an email. This suggested that the email of 17 January 2019 indicated that the company was sending the wholesaler to investigate a faulty meter.

- The meter exchange took place on 27 February 2019 with a final read of 2709m^3. The company did not respond to Mr White's email until 28 February 2019.

- Prior to the email sent by Mr White, the company had no reason to think that the meter was faulty. In order to determine if a meter is faulty, a meter accuracy test would be needed. Had such a test been requested, the wholesaler would have required an upfront payment by the customer of £144.00 as a contribution towards testing by an independent organisation; if the meter had been found to be faulty then this charge would have been refunded.

- The company accepts that the consumption remained elevated until the meter was exchanged but points out that if the meter had been faulty the average daily consumption would have remained at 2.54m^3 or increased up to the date of the meter exchange. However, the usage decreased by 1m^3 per day before the meter was exchanged, which indicates that a leak was repaired between the 13th September 2018 and the 27th February 2019.

- The company has paid £120.00 by way of gestures of goodwill:

    - Goodwill payment of £40.00 due to the length of time for a reply and incorrect process followed - applied on 6 September 2019.

    - Guaranteed Service Standard payment offered in error of £20.00 - applied on 18 September 2019.

- Payment of £20.00 because the customer was incorrectly informed that the meter could be tested after the exchange had already taken place - applied on 25 November 2019.
- Goodwill payment of £20.00 due to incorrect promises made to the customer - applied on 25 November 2019.
- Call back not carried out, payment of £20.00 - applied on 25 November 2019.

- On review of the account, the company further accepted that there has been confusion and that the emails sent to the customer were not clear as to the actions that the company had raised with the wholesaler. A further gesture of goodwill of £380.00 to the company's account was applied on 13 February 2020.

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. Having regard to the submissions of the parties and the documentation submitted by the Consumer Council for Water (CCWater), I note that the company has made a number of goodwill or GSS payments in respect of various aspects of the company's service provision which the company has agreed has not achieved the standard that the company would have hoped for. I find that these payments are appropriate in their amount and purpose, and where such payments have been made, I do not re-consider the issues which gave rise to these, save

in relation to the final goodwill payment of £380.00. This payment reflects the company's handling of the customer's complaint that the invoice of 4 December 2018 was too high. I find, therefore that this touches on the customer's central complaint that the water meter was removed without testing. The customer has not accepted this payment in settlement of his complaint, however, and I therefore go on to consider that company's handling of the customer's complaint that the bill of 4 December 2018, based on meter readings, was disproportionately high. I reach the following conclusions.

2. There are a number of matters that are common ground between the parties or that are not challenged. These are that:
    a. On the basis of readings taken from the water meter on 11 September 2018 and 27 February 2019, there had been a "spike" in in average daily consumption from about 0.2 – 0.3m^3 to 2.54m^3 per day in September 2018 and 1.54m^3 in February 2019. This spike did not continue after 27 February 2019. It is not agreed between the parties, however, that the high level of consumption persisted until 27 February 2019.
    b. As at January 2019, the water meter was unreadable due to damage to its face.
    c. Once the meter had been removed, the wholesaler was unable to arrange for testing. Although the company at one point requested testing, notwithstanding the removal, it transpired that the wholesaler was not then able to offer this service and neither party now contends that this could be done.

3. It follows from the above that there is no direct evidence as to the functionality of the water meter at the time that it was removed from the customer's premises and none can now be obtained. Against that background, the customer claims that he has been wrongly charged for water.

4. The customer first complained on 17 January 2019 about the high bill of 4 December 2018, and it is clear from the parties' submissions that the water meter was discussed. The company's entry for that date stated:

    Raised meter repair to check the meter so customer can confirm the read and carry out a self-leak test if necessary.

    On the same date the company informed the customer by email that it had asked for an engineer to come and "check" the water meter. There was no statement in this email that the meter would be replaced. While this communication does not rule out the possibility of water leaking from some part of the customer's pipework, it is also consistent with the company having

accepted that there was a something that could or should be detected at the meter. An email by the company on 31 January 2019 also referred to a meter repair, not a replacement. Notwithstanding this, the company's defence acknowledges that the company requested the wholesaler to carry out a replacement.

5. It is clear from the customer's email to the company of 7 February 2019 that the customer had understood the company to have advised in the email of 17 January 2019 that there was a fault in the meter and the customer asked for credit to be applied to the customer's account if this turned out to be the case. I find, therefore, that the customer had alerted the company to the customer's understanding and, as he sought compensation for a faulty meter, I find that he had further put the company on notice of his expectation that the meter should be, as the company had stated, "checked".

6. While I note the company's explanation that, for this to have happened, the customer would have needed to make a payment, the company did not explain this to the customer and, indeed, made no response until 28 February 2019. That correspondence also referred to a repair, although the meter was then removed, according to the documentation submitted, on 5 March 2019. The correspondence of the company with the wholesaler was therefore inconsistent with the correspondence with the customer and the customer's misunderstanding (if there was one) was therefore not corrected. I find that the customer was not provided with reliable information as to whether his liability could be reduced. I find that an average customer would have expected that a company, on receipt of the customer's email of 7 February 2019, would ensure that the customer was given an opportunity to request a meter test by explaining that investigation of the operation of the meter was an option that could be paid for, whether the customer had formally requested a meter reading or not. An average customer, I find, would not reasonably have expected a company to have left it to the customer to ascertain whether and when a request for a test would need to be made in order to challenge the reading that had been taken. As there is no evidence that the company suggested to the customer that this course of action could be taken, I find that the standard of service offered by the company did not meet the expectations of an average customer.

7. I find that the company's communications with the customer, therefore, fell short of the service standard that a customer could reasonably expect. A GSS payment has been made in respect of the late response, but I note the company has not acknowledged (except by the goodwill

payment of £380.00) that the content of the communication allowed the customer to be misled as to the situation and prevented him from having the meter "checked".

8. As the sum to be paid for a meter test was small in comparison with the increase in the size of the bill, I find that it was likely that the customer would have agreed to pay for a meter test.

9. I further find that, even in the goodwill payment of £380.00, it is not clear that the company has acknowledged the customer's claim that the customer has suffered detriment by the removal of the meter without an opportunity for testing. This, I find, is because the company has formed the view that, because the average daily usage decreased before the meter exchange, this shows that a leak was found and repaired by the customer at some point prior to the meter exchange. While I accept that this could have occurred because the customer's actual consumption had decreased, the company's argument is that there was a repair and I find that the company has reached this conclusion without supporting evidence that a repair was carried out, and its conclusion places no weight on the customer's assertion that there has been no such repair.

10. I find that the company's reasoning in this respect also fails to meet the standard that would reasonably be expected by an average customer. I reach that view for the following reasons:
    a. As indicated above, there is no direct evidence that the customer had carried out a repair and the customer denies that this occurred. There is also no evidence of any other remedial action taken by the customer prior to discovery of the high reading;
    b. In contrast, the spike in consumption has been ascertained at a meter that is acknowledged to have been damaged. Because there was no testing, there is no evidence that the damage that had been caused to the meter was limited only to scratches on the face of the meter. The customer says that the meter appeared to have suffered some impact damage. For the avoidance of doubt, I add that it is not suggested by the company that the customer was responsible for this damage. The company's position is therefore dependent upon a meter that is known to be defective in one respect, but the reasons for this and the extent of any defect have not been investigated or established. Instead, without evidence, the company has assumed that the meter is operating normally and that the customer is liable for what is accepted to be an abnormal reading.
    c. As the parties are agreed that the scratches to the face of the meter obscured the meter readings, it must, I find, also be questionable whether the meter reading of 11

September 2018 was correctly interpreted through the scratched meter face. If this were to have been the case, the company's hypothesis that the meter reading could not have slowed down in the second period would not have arisen.

d. On balance, although the company places weight on the fact that the meter reading had reduced before exchange, I find that, without evidence that there was no fault, the company could not reasonably have reached the conclusion that the fault could not have caused the readings in question, including the reduction in consumption after 11 September 2018.

11. I find therefore that the compensation paid by the company of £380.00 does not meet the loss that the customer has suffered in consequence of the failings identified above which the customer calculates at £2,523.92 plus interest.

12. The company has not challenged the calculation put forward by the customer, however, I do not find that the customer is entitled to the full amount of this payment. Although, by replacing the meter without the advice to the customer that he would reasonably have been entitled to expect, the company has been responsible for the removal of the means to challenge the liability for water charges, it does not follow that testing of the meter would certainly have proved that there was a fault in the meter. For the reasons set out above, I find that the customer may have been able to establish that there was a fault in the meter which led to increased readings, but, as this was not certain, his loss is that of the opportunity to prove his entitlement. The likelihood of his succeeding in his argument therefore needs to be taken into account. Taking into account that there was a spike in consumption, that there is no evidence of a repair to explain why the spike should have ended prior to the meter exchange, that the results obtained are from a damaged meter and that there is no evidence to confirm that the damage was restricted to scratches on the face of the meter, I assess the likelihood that the customer could have shown a meter fault at over 50%, but only marginally so. I find that the probability was 51%. I therefore find that it is fair and reasonable that compensation to the customer should reflect the probability that he would have been able to recover reimbursement from the wholesaler. namely, in the sum of £1,287.20. From this, I find, should be deducted the sum of £380.00 that he has already received by way of goodwill payment. This gives a figure of £907.20.

13. The customer also makes a claim for interest. Rule 6.7 of the WATRS Scheme rules states:

6.7 Subject to the limits set out in Rule 6.4 where in a dispute relating to incorrectly levied charges a customer requests a payment of interest, the adjudicator shall award interest at a

rate equivalent to the rate applicable under section 69 of the County Court Act 1984 from the date when payment of the incorrect sum was made until the date of the decision.

This makes payment of interest mandatory at the rate that a County Court would apply. However, I find that on a fair and purposive interpretation of this rule, it requires an adjudicator to make an award of interest in circumstances where a County Court, which has a discretion as to interest, would award this. I am not satisfied that a County Court Judge would award interest in this case. In reaching this conclusion, I am mindful that the purpose of interest is to compensate the customer for the loss of the use of its money over the period when it has not been available for use. The documentation submitted by the customer, however, shows that, although the disputed amounts were taken by way of direct debit, the customer then requested that the account should be put on hold and then he failed to make payments to the company during 2019 because he was withholding payments on account of the unresolved dispute. Claims for late payments are included dated 3 April, 2 June, 12 December and 24 December 2019. The customer therefore did not deprive himself of the use of the money that was taken by way of direct debit because he withheld this in part from the company. Interest would not be payable for this period on monies withheld and I have insufficient detail to calculate whether and in what amount interest could have applied over certain periods. I find that the customer has not proved his entitlement to interest and, in all the circumstances, it would be an unfair enrichment of the customer to award this.

14. Additionally, I accept that the customer has suffered inconvenience and distress, but I also take into account that the customer is a limited company and that, even if distress has been caused to the staff and directors this is not to the company. The company has been put to inconvenience, however, because staff time has been devoted to this issue. Although the customer claims £1000.00, I find, taking into account the scope and length of the dispute and the fact that £80.00 in goodwill payments has already been made, that the sum of £50.00 is fair and reasonable.

15. The total compensatory payment is thus £957.20. However, as the customer has failed to make payment to the company of subsequent bills, the company is entitled to set the compensatory payment against the amounts that are due to the company from the customer. I do not have information as to the precise state of the customer's account and therefore I direct that the compensatory payment to the customer shall be made by way of a credit to the customer's account, so as to allow the set-off described above.

16. Although the customer seeks an acknowledgement by the company that it has removed the meter without testing it, in the light of my findings above, such acknowledgment is not required and I do not make this.

Outcome

The company needs to credit the customer's account with a compensation payment in the sum of £957.50.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 14 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 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.

Claire Andrews, Barrister, FCI Arb

Adjudicator