

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX78

Date of Decision: 28/01/2021

Complaint

The customers state that they have been billed incorrectly by the company.

Response

The company states that the customers have been billed correctly.

Findings

The company has billed the customers in accordance with the applicable law and its Charges Scheme.

Outcome

The company does not need to take any further action.

The customer must reply by 25/02/2021 to accept or reject this decision.

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Date of Decision: 28/01/2021

Party Details

Company: X Company

Case Outline

The customer's complaint is that:

- The customers expanded the Property by merging it with the neighbouring property. • The company argued that it was now entitled to require the Property to be metered. • The company stated that if the customers did not allow a meter survey to be completed they would be billed using an alternative tariff, either based on the combined rateable value of both properties or an assessed charge reserved for large properties. • The company subsequently imposed a tariff based on the combined rateable value of both properties. • The customers argue that they merely expanded the Property and as the Property has not previously been metered the company does not have the right to insist that it be metered now. • They request that they be billed on the basis of the company's assessed charge for "other household premises"; that the company acknowledge that it was not entitled to impose compulsory metering; that the company acknowledge that certain statements it made were incorrect; that the company's Customer Services Director explain the shortfalls in customer service they experienced; that the company's Customer Services Director apologise for the distress, upset and inconvenience that have been caused; that the company's Customer Services Director explain actions the company plans to take about the company's breach of its assurance to Ofwat that its charges scheme adhered to the company's legal obligations; that the company's Customer Services Director provides an assurance that the handling of the customers' complaint will be reviewed and that future complaints by other customers will be handled by appropriately trained individuals; that the company's Charges Scheme be clarified; and that compensation be paid.

The company's response is that:

- The customers' current property was created by the merging of two other properties, Property 1 and Property 2. • The name The Property has been retained for the merged property. • As a new property, the Property is subject to compulsory metering. • As the customers will not cooperate with metering, the company's

Charges Scheme allows the imposition of the Assessed Volume Charge for large properties. • As a compromise the company has offered to bill the customers on the basis of the combined rateable value of the two previous properties. • The customers remained unhappy and requested application of the Assessed Volume charge for other household premises. • This charge is only available if the company cannot meter a property, so cannot be applied because the customers have not allowed the company to attempt to install a meter. • The company believes that the information it has provided to the customers has been correct. • Where appropriate the company's legal team has been consulted. • The company intends to amend its Charges Scheme for 2021/22 to clarify the relevant language. • The company apologises to the customers for any distress caused by this matter. • It denies there is a basis for payment of compensation.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customers

How was this decision reached?

1. As a regulated water retailer, the company is required to bill its customers in accordance with a published charges scheme. This scheme must adhere to rules made by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
2. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to decide on the fairness or correctness of a company's charges scheme, as this responsibility has

been given by the Water Industry Act 1991 to Ofwat.

3. Instead, with respect to the type of claim brought by the customers, a WATRS adjudicator may only examine whether the company has properly adhered to its published charges scheme and has fulfilled its customer service obligations to the customers.

4. Under the Water Industry Act 1991, a water company only has limited power to require customers to be billed on the basis of a water meter. Relevant to the current dispute, Section 114B(2)(b) of the Act specifies that the company cannot require installation of a water meter in a property unless, among other things, “there has been a change in the occupation of the premises and no charges have yet been demanded from the person who has become the consumer.”

5. The situation underlying the current dispute is unusual and so it is perhaps unsurprising that there is no binding legal authority on how such a situation should be addressed, or that the two parties have reached very different understandings of the law. Ultimately, however, the emphasis in the Water Industry Act 1991 on the consequences of a change in ownership of a property mean that an appropriate analysis must start with the fact that there were originally two separate premises, Property 1 and Property 2. The customers took ownership of Property 2 on 1 August 2019 and in their Comments on the Proposed Decision in this case stated that they had already undertaken the works necessary to merge the two properties when this happened. While no evidence was provided to support this assertion, it will be accepted for the purposes of this Final Decision, as it does not alter the analysis and application of the applicable law and rules.

6. These background facts are important because it necessarily follows that there was a period, no matter how short, in which the customers owned both premises but they had not yet been merged for the purposes of the Water Industry Act 1991. While the customers argue that they commenced using the Property “as the extended portion of our premises The Property” on the date on which they took over ownership, a mere intention to use two properties as one cannot by itself be sufficient to combine properties under the Water Industry Act 1991. Rather, what matters is actual use and of necessity the customers were not able to actually use the two premises as a single premises for the purposes of the Water Industry Act 1991 until after they took ownership of Property 2.

7. In their comments on the Proposed Decision in this case the customers argued that “at the instant we acquired Property 2, we were immediately in occupation of the extended The Property by virtue of already being on the merged premises to sign and receive the title document”. No evidence was supplied in support of this assertion, however it is accepted for the purposes of this Final Decision as it does

not alter the analysis and application of the applicable law and rules. As stated in the preceding paragraph, the relevant consideration is the status of the two properties “for the purposes of the Water Industry Act 1991”, rather than with respect to any other law or practice. The two properties were independent for the purposes of the Water Industry Act 1991 prior to the customers taking ownership of Property 2, and this fact is not altered even if the physical merging of the two properties had already been completed, as they remained under separate ownership.

8. The consequence of this is that there was a period, no matter how short, in which the customers owned Property 2 but had not yet commenced using the two premises as a single premises. This remains true even if the physical works had already been completed and the relevant paperwork was signed in Property 2, as asserted by the customers. By way of comparison, if the customers had purchased Property 2 not to combine it with Property 1 but to re-sell it, and immediately after signing the documents to purchase Property 2 they had signed the documents selling it again, there would nonetheless have been a period, perhaps only seconds long (i.e. the time to turn from one piece of paper to the other), in which they owned Property 2. After all, if this were not true they could not have sold it. In the present situation, in parallel, there was a period in which the customers owned Property 2, but had not yet been able to implement their plan to use it as an extension of Property 1, no matter how short that period may have been. This remains true even if the physical works had already been completed.

9. This fact, though, has important consequences under the Water Industry Act 1991, as under Article 114B(2)(b) of the Act, the company gained the right to insist that a meter be installed in Property 2 upon the “change in the occupation of the premises”. While the company did not notify the customers of its intention to install a meter until October 2019, this was because of the customers’ delay in notifying the company of the change in ownership and no evidence has been provided that charges for Property 2 were “demanded from the person who has become the consumer” with knowledge of this change of ownership.

10. The company, therefore, was entitled to require that a meter be installed at Property 2, although not at Property 1.

11. The company argues that the merging of the two properties then created a new property that had never been billed on an unmetered basis. However, this is inconsistent with the language of the company’s Charges Scheme, which is given statutory backing by Article 143 of the Water Industry Act 1991. The Scheme explicitly defines a premises as having been “substantially altered” when, among other things, it is “merged with another premises”. A premises ceasing to exist must

be understood as being something more than a “substantial alteration”, and so the merging of two properties cannot result in those properties ceasing to exist.

12. Nonetheless, it is also significant that the reference in the Charges Scheme is to the “merging” of properties, not to the absorption of one property by another. That is, it is also the case under the Charges Scheme that one property does not simply absorb the other, such as Property 1 continuing to exist in an expanded form while Property 2 ceases to exist entirely. Both properties were “merged”.

13. I find, therefore, that the correct interpretation of the consequence of the merging of Property 1 and Property 2 is that under the Charges Scheme both properties were “substantially altered” by being merged. But that as a result the current property constitutes a continuation of both properties, rather than the creation of a new property or the absorption of Property 2 by Property 1.

14. This in turn has an important consequence because under the Charges Scheme the company is entitled to require that properties that have been “substantially altered” or that “do not have a charging value” because of a merger be metered unless “the occupier has received an unmeasured bill for those premises.”

15. The language of the Charges Scheme is unclear as to whether the word “premises” in this quotation refers to the newly merged single premises or both previous premises. However, the delegated authority of the company to create a Charges Scheme means that the scheme created by the company must be interpreted in a manner consistent with the Water Industry Act 1991 as the company’s authority is limited to creating a scheme consistent with that law.

16. Section 144 of the Act, however, carefully regulates the right of a water company to require billing on a metered basis, and the merging of pre-existing properties is not one of the grounds on which a water company is expressly permitted to require installation of a meter.

17. Nonetheless, the Act also does not contemplate a water company losing the right to install a meter after that right has been gained, except through the action of issuing a bill on a non-metered basis. Rather, Section 144 creates a system of measured expansion of metering, where customers can protect their right not to be metered, but once that right has been lost it cannot be regained.

18. I find, therefore, that the appropriate understanding of the company’s Charges Scheme, required for it to conform with the approach to metering adopted in Section 144 of the Water Industry Act 1991, is that the company may not require metering of merged properties where it did not have the right to require metering of either property prior to merger. However, in line with the progressive expansion of

metering clearly contemplated by Article 144, the company does not lose its right to require metering through the merging of two properties, one of which is subject to compulsory metering. Only this interpretation respects both the customers' right to resist metering within the limits articulated in Article 144, while also implementing the progressive expansion of metering on which Article 144 is based.

19. I find, that is, that correct interpretation of both the Water Industry Act 1991 and the company's Charges Scheme means that because the company had the right to require metering of Property 2, it also has the right to require metering of the Property, as the merged continuation of both previous properties.

20. In turn, because the company had the right to require that a water meter be installed at the merged Property, under its Charges Scheme it also had the right to bill the Property on the basis of the Assessed Charge for larger properties when the customers refused to cooperate with installation of a water meter.

21. Consequently, the customers' claim to be billed on the basis of the Assessed Charge for "other household premises" does not succeed.

22. The customers also request a series of remedies relating to what the customers see as the provision of incorrect information by the company or poor handling of the customers' complaint.

23. However, I acknowledge that the law on this point is unclear and I find that the company handled the customers' complaint in good faith and made good faith attempts to interpret the applicable law and its charging scheme in an unusual situation. I do not, therefore, find that these remedies requested by the customers are appropriate.

24. Consequently, these elements of the customers' claim do not succeed.

25. The customers also request compensation. However, an award of compensation is only appropriate when a company has breached its contract or otherwise failed in its responsibilities to a customer. As I have found that the company acted in good faith in a difficult situation I do not find that an award of compensation is appropriate.

26. Consequently, this element of the customers' claim does not succeed.

27. The customers also request that the company clarify the language in its Charges Scheme. However, the company has confirmed that it intends to do this.

28. Consequently, this element of the customers' claim has already been resolved.

29. For the reasons given above, the customers' claim does not succeed.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

Tony Cole
Adjudicator