

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X461

Date of Decision: 26/07/2021

Party Details

Customer:

Company:

Complaint

The customer complains that when she contacted the company on 5 February 2021 to inform them that they were sending letters to two individuals at her house that was unoccupied, she was told that she was liable for water charges following a change of policy in November 2020. The customer was subsequently sent a bill. She complains that this policy is unfair, the definition of occupier is "peculiar" and the company does not follow Ofwat's recommendation to water companies. The customer also she says that she should have been given notice of the change. The customer asks for an apology, cancellation of the bill and a direction that no further bill should be raised for the property and compensation of £100.00.

Response

The company says that its Charges Scheme sets out that charges will be raised for every piped supply of water 'to or used' by household properties and also describes the persons chargeable as the 'occupier'. In the circumstances, this would include the customer because her house is empty, so she is the responsible person. The charges prior to 5 February 2021 have been waived, but the company says that the customer is liable from that date.

Findings

The Water Industry Act 1991 makes clear that it is for the water companies, not Ofwat, to decide on their Charges Scheme. This is also stated by Ofwat. The company has decided that it will impose charges on properties that are connected for water. The definition of "occupier" corresponds with commonly used descriptions in law of occupiers of land. The fairness of this policy is for the company to decide, not an adjudicator under this scheme. An average customer would expect a company to

supply services in accordance with its published Charges Scheme and this has occurred in this case and the company has waived its charges for the period when she did not know of her liability. The customer is not able to succeed in her claim for a remedy.



The company is not required to take further action.

The customer must reply by 23/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

• Without prior notification, the company demanded payment for its unmetered services to the customer's unoccupied house. • The demand was made over the phone by "REDACTED" of the company on 5 February 2021, when the customer contacted the company about a different problem: the company had sent two letters addressed to someone else at her unoccupied house. The customer had returned both of these, unopened, to the company, marked "Not known at this address". On 5 February 2021, after this conversation, the company then sent her a bill. • The customer made two letters of complaint to the company: on 26 February 2021 and 16 March 2021. The company refused to uphold the customer's complaints, except to send a cheque for £20.00 as a goodwill payment, which she has not cashed because she regards this as a derisory amount, and she believes that she deserves a larger gesture of goodwill or compensation. • The customer asks for an apology, cancellation of the bill and a direction that no further bill should be raised for the property and compensation of £100.00.

The company's response is that:

• The company's Charges Scheme sets out that charges will be raised for every piped supply of water 'to or used' by household properties and also describes the persons chargeable as the 'occupier'. The section of the Charges Scheme relating to the interpretation of the occupier sets out examples of who may fall into the category of an occupier. This means customers do not have to be living in a property to become liable for the bills. An occupier can be someone who owns a property but may live elsewhere and still be legally responsible. The Charges Scheme does not describe any exclusions – just whether a connection has been made to the network to accommodate a supply. • The company is required to maintain, repair and improve the network that serves all connections to ensure that access to safe, clean water is readily available for each supply. This is regardless of whether water is being used or not. The company also collects and treats sewerage and surface water which is then returned to the network. • The customer telephoned the company on 5 February 2021 as she had received mail from the company addressed to a third party at her property. The company explained that it had acted in good faith on information provided to it that the third party had moved in. As this was incorrect, the company advised the customer that it would cancel the account in the name of the third party. The customer was then told

that as the owner of the vacant property, she was responsible for the charges. As a goodwill gesture the company agreed only to bill her from 5 February 2021, despite the fact that the property had been vacant for many years (and the charges remained unpaid for this time). • The company has made the customer aware of the option to have a meter fitted to reduce her charges while the property is vacant and also advised that she can apply to have the supply disconnected free of charge. If the company's services are required in the future, the customer can then apply and pay for a new supply. • The company then received two written complaints from the customer in March 2021. The company has replied and explained in detail that the charges are correct and payable. However, it has apologised that the customer was disappointed with the way her telephone call was handled on 5 February 2021 and sent her a goodwill payment of £20.00.

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.

I have additionally considered the submissions made by the customer in response to my Proposed Decision. The company did not submit comments.

How was this decision reached?

1. The customer is dissatisfied with the company's charging scheme, and in particular, its policy of raising a charge for connected services at a property that is vacant. She complains that she was sent no information about these charges before they were imposed with immediate effect on 5 February 2021. The customer also complains about the "peculiar" definition of occupier that the company has supplied, namely, "theperson who has sufficient control over premises to put him under a duty of care towards lawful visitors".

2. In her comments in reply to the company's response, the customer says that the company has "little concept of fairness to owners of unoccupied houses" and also points out that the company's cancellation of the unpaid charges for the property that had accrued before 5 February 2021 is not a substantial goodwill gesture because the company had "changed[its] approach to billing empty properties in November 2020". The customer refers to "four major failings", which includes that it and only one other water company, has not followed Ofwat's recommendation of 2006, namely that the water company should not raise charges in respect of empty properties if they are unfurnished. The customer argues that Ofwat and the other companies have the right idea as to what is fair. The customer also complains that the company did not send a letter to her unoccupied house about its change in charging policy in November 2020, but nonetheless decided that it is right to bill her on the same day that she first phoned them on 5 February 2021 to ask why they had sent letters to her unoccupied house addressed to someone else. She says:

"Not only that, but they have billed me for their unmetered services, which I understand are charged at the same rate as for an occupying family of up to 5 people. This is outrageous."

3. The customer additionally complains that she asked the company's employee on 5 February 2021, to write to her about the new charges but he refused, and instead sent the customer a bill. The customer said that she asked him to explain the new charging policy, and what her rights were since the company had given no prior notice. Such a letter would have given the customer the opportunity to decide whether she wanted a water meter fitted, or whether she wanted disconnection of her supply. The only letters which the company had previously sent to her unoccupied house were letters which stated that if the house was unoccupied there was no need to reply.

4. I deal with the customer's concerns in my reasons below.

5. I note that the Water Industry Act 1991 does not contain a definition of "occupier" but it does provide in section 142 that water undertakers have a right "to demand and recover charges fixed under this section from any persons to whom the undertaker provides services or in relation to whom it carries out trade effluent functions" and (by section 143) must set this out in its charges scheme. Section 144 deals with the liability of occupiers. Although the customer complains that the definition of an occupier in the company's charges scheme is peculiar, I find that it fairly reflects the liabilities for land that might arise under other relevant laws, such as the Occupier's Liability Act 1957. I find that the company's understanding reflects the meaning of the word when it is used in a formal sense and I find that it would be reasonably understood in this way by many consumers. Whether the customer herself has visitors, is therefore, I find, irrelevant for this purpose; the

definition of “occupier” is to do with legal liability for persons whom the customer may have permitted to go on to her land (visitors) whether they go there or not. I find that if no-one else is living in her house and looking after it, the customer is likely to be the occupier and services have been provided to her house because she is connected to the water supply and receives sewerage services, including the removal of surface water.

6. The water undertaker, therefore (that is, the company, rather than Ofwat) may decide whom shall be liable to pay charges for water and sewerage as long as it is providing services to that person. The company has in its submission made clear that the information relied on by the customer as to the approach of Ofwat is qualified by Ofwat’s statement in the same communication that it is for the individual water companies to decide what each will do. The question of fairness is thus a matter for the company and is not a decision that can be reviewed in an application to WATRS because it is a decision that must be taken by the company and not by an adjudicator under a dispute resolution scheme.

7. In this case the company has reached a decision as to the circumstances in which it will raise charges against empty properties and has published this in its charges scheme (which is not challenged by the customer). I find that an average customer would reasonably expect that a company will impose charges in accordance with its charges scheme. Although the customer says that she was not sent a copy of the charges scheme and received no letters about it and therefore (she argues) she did not agree to it and is not bound by it, this, I find, is not the situation. The company is not dependent upon the agreement of or contract with an individual customer to raise its charges: it is permitted to raise the charges that it has set out in its charges scheme because this is stated by the Water Industry Act 1991 – see paragraph 4 above. Any supervisory review of a company’s charging arrangements is a matter for Ofwat (the regulator) and not, as indicated above, an adjudicator under this Scheme. Under rule 3.5 of the Scheme I do not have jurisdiction to decide a matter that is the responsibility of Ofwat.

8. It follows that the customer became liable under the company’s charges scheme to pay water charges to the company from November 2020. The company was at that point unaware that the house was not occupied by other persons, to whom the company and the customer agree that letters were written by the company. Although the customer complains that the company has imposed a charge on her for water in accordance with the rateable value from the date when she notified the company that the house was unoccupied, I find that this is what an average customer would reasonably expect. I accept that the company has waived her liability for the previous period because she was unaware of the change in policy, but this was not, I find, a reason why the company should not ask her to pay for the service that she was receiving once she became aware of the change. I find that

an average customer would reasonably expect that persons would pay for services if these were being supplied to her property.

9. Moreover, although the customer says that the company declined to write a letter to her explaining the change in policy, the company says that the customer was referred to the website. The customer makes clear in her response to my Proposed Decision that she was told this and she asked W where on the website she could find the reference and he could not tell her. The customer said that she looked at the website but could not find a reference to “unoccupied” or “vacant”. I am nonetheless satisfied that, whatever search terms the customer may have used to try to investigate the explanation that had previously been given by Wes, the charges scheme was on the website and could have been read by the customer. The customer also says that she was referred to the Ofwat website where she found that Ofwat recommends that companies do not raise charges for empty unfurnished properties. I have dealt above with the customer’s argument that I should therefore find that the company shall not impose such charges. As indicated above, however, it is for the company and not for me to decide whether the company will take up that recommendation.

10. The company has stated that the customer has a liability for water charges at the rateable value of the house, which she says equates to the cost for 5 residents. This, I find, is because this charging by reference to the rateable value is the default tariff that will always apply if a property has not water meter. The company has made clear that if the house is disconnected from the supply she will have no liability at all and she can reduce her liability if she installs a water meter. Whilst I note that the customer argues that she ought to be given time to do this, I do not find this to be so: at the moment, she has a connection to the company’s services for which the company is entitled to ask for payment and I find that an average customer would reasonably expect that payment should be made in accordance with the company’s charges scheme.

11. Although I note that in her response to my Proposed Decision, the customer has asked that I direct the company to make an appropriately timed offer regarding a water meter or disconnection, I cannot make such a direction unless I find that the company has failed to supply its services to the correct standard. I have not reached that finding, but I make clear that nothing prevents the customer from asking the company to assist her with installing a meter or disconnecting her supply.

12. The company has also explained that it made a £20.00 gesture of goodwill to the customer because she complained that “W” had been rude to her. In all the circumstances, I find that this was a fair and reasonable decision, and the customer

has not shown that she is entitled to a larger goodwill payment for this.

13. Overall, I find that the customer has not shown that company failed to supply its services to the standard that would reasonably be expected by an average customer. Accordingly, I do not direct the company to take any further action.

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.

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Claire Andrews
Adjudicator