

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X636

Date of Preliminary Decision: 12 November 2021

Party Details

Customer:

Company:

Complaint

The customer complains that the company overcharged him between 2001 and 2019 because the meter that was recorded as attributable to his house in fact supplied another home. He says that he has experienced hardship in consequence to which the company was unsympathetic and, although he was told that he will receive a rebate of £4-6,000.00, he has received nothing like that amount. He challenges the company's calculations of the rebate. He also says that the company has paid no attention to the change in value of money and has given poor customer service.

Response

The company says that the reason for the error was incorrect information from a property developer in 2001. When this was discovered in 2019, the customer was repaid the difference between the amount that he had paid and the amount that he should have paid. The customer's claim for compensation of £4-6,000.00 is unrealistic and a technician would not have been able to advise as to this. The company has made goodwill and Guaranteed Service Standards payments.

Findings

I find that the evidence does not support that the customer should have received £4-6,000.00 by way of compensation for the error and the customer has not shown other ways in which the company's calculation of rebate is incorrect. Moreover, compensation payments have been made for poor customer service and there is insufficient evidence on which I can make a finding that the customer has been treated uncompassionately. The customer has not been compensated for a change in the value of money. He has not ticked the box on the application form to say that he wants interest but his complaint about the value of money raises this claim. It should only be assessed within the limitation period that would apply to an action in the county court, however, namely 6 years. A fair and reasonable sum is £138.00.

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Outcome

The company needs to pay compensation to the customer of a further sum of £138.00.

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Case Outline

The customer's complaint is that:

- For the last eighteen years, the customer says that he has been receiving high water bills, even though he lived alone. Around 2004 he spoke to his neighbour who lived with his partner and child, and spoke about water bills etc. The customer found it odd that his neighbour was being billed for about £14.00 to £15.00 per month yet the customer was paying around £30.00 odd, per month. The customer called the company. The company said the amounts were correct. Even though the customer was still sceptical, he carried on paying.
- In 2009 the customer lost his job. When the customer complained to the company about the cost of his water, the company reduced this to about £38.00 per month. The company was not sympathetic to the customer's complaint that this was still too much.
- Between 2009 and 2019 the customer had a number of part time or temporary jobs. REDACTED. When the customer spoke to the company about this issue during 2015 / 2017 and the bills which had increased to £70.00 per month at one point, the company just said that it was "too bad, it's what you are using". In the end the customer got someone to come round in 2018 but, although the customer had asked for a call in advance as the intercom was not working, the company did not call and the company was not able to investigate.
- The customer was then busy with work and so the next appointment was in May 2019. An operative came round and opened the main meter drain and then said that his meter had been hooked up to his neighbour and to the customer. The operative said that this was a common

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mistake and that the customer should be compensated by around £4,000.00 to £6,000.00 over 18 years.

- The customer made a complaint to the company. The company paid the customer about £1,200.00 by way of rebate (even though the customer did not agree to accept this by way of settlement). The customer wrote to the company again but did not get a response to his second complaint until 24 May 2021. The company's representative then said that the customer should have been paid £1,200.00 more and said that it would pay the customer an extra £200.00 as a way of saying sorry for the mix up.
- The customer did not accept this and complained to the Consumer Council for Water (CCWater). The company reviewed the account and then offered the customer less.
- The customer says that he wants what is owing and he is being fobbed off by the company.

The company's response is that:

- The company would not have been responsible for the error in meter reading. The customer's home was a new build and the developer would have installed the water meters and provided the company with the relevant numbers. It is probable that the developer provided the wrong number for the customer's meter.
- On 29 April 2019, the company's engineer attended the customer's home and proved that meter number x was connected to his water supply. To do this, the engineer would have run the kitchen tap inside the customer's home and then returned to the meter pit outside the property to see which meter turned whilst the water supply was being used. The company discovered that the customer had been billed using readings taken from a meter that was connected to another supply since 17 September 2001.
- The company's billing policy states that the company will only cancel and re-bill charges for a maximum of six years (this was partly due to a billing system limitation at the time) so, as at April 2019, the last bill date (prior to the day before) was 18 February 2019, meaning the company would be able to correct the charges back six years from the bill dated 25 February 2013 up to 18 February 2019. The company therefore cancelled bills dated 25 February 2013, 22 August

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2013, 19 February 2014, 21 August 2014, 25 February 2015, 17 August 2015, 26 February 2016, 25 August 2016, 24 February 2017, 24 August 2017, 26 February 2018, 28 August 2018 and 18 February 2019. The total charges using the correct meter readings for 15 August 2012 to 24 August 2016 were £1,207.31.

- Although the company incorrectly re-raised a bill for the cancelled charges, in due course, the bill was also cancelled. After this bill, the customer's account was credited with the overpayment between these dates. The account was then in credit by £1,187.67.
- Notably, although between 15 August 2012 and 22 February 2013, 46m³ was recorded by the correct meter, the customer was not charged for this usage, and this is to his benefit.
- Additionally, the company subsequently manually calculated the overcharge for the period from 2001 to 2012. The agent calculated for the period 17 September 2001 (when the account was opened) to 15 August 2012 that the customer had been overcharged by 461m³ and this equated to £655.39. A credit of £655.39 was applied to the customer's account and another refund arranged for this amount which was later processed on 13 May 2019. It was subsequently realised that this second payment was incorrect and was a duplicate. This was reversed on 10 June 2021 and a £30.00 gesture of goodwill paid.
- Therefore, after these corrective actions, the customer was refunded a total of £1,229.03 in addition to goodwill payments which the company calculated to total £200.00..

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

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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.

How was this decision reached?

1. In this case, the parties are agreed that the customer was overcharged because the company has for a period between 2001 and 2019 raised its bills against meter readings for a meter that was not attached to the customer's supply. The company says that this would have been an error by the developer of the customer's home and that of his neighbour. There is no evidence to the contrary.
2. Following discovery in April 2019, the company initially provided payments backdated for slightly longer than six years before the date of this discovery, because it corrected the customer's payments from the bill preceding the date of discovery of this fact and waived liability for the period between 15 August and 22 February 2013. The company says that this was because its records enabled that calculation. The company then provided further back-dating which it says equates to payments for the period to 2001. The company carried out this exercise by applying an average daily usage figure for the period in question. The company has said that the total refunded payment was £1,229.03 although the company also says that this leaves a period for which the customer has been asked to make no payment.
3. The customer says that he has been caused considerable hardship by the company's over-billing and he argues that the amount of reimbursement is insufficient in relation to the overpayment since 2001. He summarises his concerns (also raised in his application) in reply to the company's response:

"The fact of the matter is that I should have only been paying approximately £12 to £18 per month in 2001, which was 20 years ago but because the meters were mixed up, because of Thames waters negligence, I was paying more than triple the amount, and please also bear in mind, the value of the pound has changed since 2021.

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During 2001 and 2019, I was in and out of work, and I was claiming JSA, and TW put me under more pressure to pay £45 per month, which even had arisen to £65 to £70 per month at one point.

A REDACTED. engineer came round, looked at the different amounts on both meters and said, sir you should have a difference of 4 to 6 thousand pounds paid back to you from what I can see”

4. The company says in respect of these matters that:
 - i. The company’s technician would never have been in a position to give advice as to the amount of reimbursement and anything said in that regard cannot be reliable.
 - ii. The customer has over the years made various approaches regarding the amount of his bills which the company tried to accommodate.
 - iii. The repayment of the precise amount does not take account of the change in value of money.
 - iv. In respect of the customer’s complaint about customer service, the company has made a £200.00 goodwill payment.

Rebate of £4-6,000.00.

5. I am mindful that the company has carried out an exercise in which it has tried to backdate the customer’s overpayments in their entirety. I am also mindful that although an application under the WATRS scheme does not involve a finding of breach of contract or of duty, the period of limitation of court actions for breach of contract or tort or claims arising under legislation is six years. I find that this means that, in respect of a similar claim in court for reimbursement of incorrect charges paid periodically, the court action might only be allowed in relation to the overcharges within the six-year period before the claimant began his court action. Although it is not for me to predict the outcome of court proceedings, I note that the company has not tried to take this view but has tried to reimburse the customer entirely for the overpayment. I approach the customer’s claim on the basis that he has shown the company that he was entitled to an adjustment, but I further find that the question of limitation of action is not irrelevant to decisions that I may make, particularly on the award of interest (see below).

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6. The company says that a repayment of the magnitude of the amount said to have been estimated by a technician could not be accurate. The company says:

“[It] has compiled a table which has the date and amount of every payment we’ve received from [the customer], this has been attached as Evidence 5. You’ll see that we’ve received payments from [the customer], totalling £5,005.06. Clearly, [the customer], would never have been entitled to a refund of £6,000 in 2019 as to date, he’s never paid us £6,000. By 7 May 2019 (when we amended [the customer’s] account), we had received payments totalling £4,781.72. As such, if we had refunded £4,000 to him then, that would have left payments received totalling £781.72. If you divide £781.72 by the 18 years we had been providing [the customer] our service at that time, this equates to £43.42 per year. Our customer’s metered bills are made up of two elements:

- The volumetric charge (m³ used)*
- Daily standing charge (also known as Fixed Charges)*

The volumetric charge is the cost of water used and wastewater returned through the drains and the daily standing charge is a cost which contributes to the service we provide. For example, maintenance of our network, meter reading, billing enquires etc. An annual payment of £43.42 wouldn’t have covered the daily standing charge over the course of the year at any time since 2001. Therefore, a refund to [the customer] of £4,000 to £6,000 would never have been correct.”

7. The company has set out supporting evidence in appendix 5 to its response showing the payments that have been made to the company by the customer. This is the best evidence available to me and it shows that as at 2019, the customer had made payments totalling £5005.06. It has also submitted evidence showing that the customer’s charges for water and wastewater on 7 May 2019 for the period 24 August 2016 to 28 April 2019, a period of two years and eight months) using readings from the new meter, were £679.03. This was a measurable sum and showed at that stage that the customer’s charges were approximately £255 per annum This makes it, I find, improbable that the customer’s annual charge, based on a supposed entitlement to return of £4,000.00 would have been £43.00.
8. I accept that the company has shown that the information said to have been given to the customer by the technician was inaccurate and I find that it is highly improbable that the customer is entitled to a rebate in the range of £4,000.00 to £6,000.00.

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9. In contrast with the company's own estimate of sums due, however, I find that the company has carried out careful calculations and the customer has not put forward another reason on which he bases his argument that the company has miscalculated. The company's explanation is complicated to follow because the provision of rebates also took into account the continuing accruing charges for water and wastewater. The upshot, however, is that the company has applied to the customer's account the sums of £573.64 on 10 May 2019 reflecting the period 2012 to 2019 and £655.39 on 13 May 2019 reflecting the period 2001 to 2012. (This has now been increased by £10.00 due to a rounding up calculation.) The customer has not given a reason other than the technician's comment as to why these figures might be wrong and it therefore follows that I do not find that the company's approach has been wrong or that the company has made a calculation error.
10. I take into account that the company initially applied an amount on two occasions in slightly different amounts which it has had to reverse. This was discovered because CCWater asked for a review. I find that this is likely to have been a source of distress to the customer, which has been compensated by a goodwill payment of £30.00. This error by the company does not, however, mean that the company's calculations are broadly incorrect, and I find that the slight discrepancy is likely to reflect marginally different approaches to the figures which cannot, after all this time, be an exact science.
11. Overall, I find that there is no evidence that the company, in seeking to apply a rebate from 2019 to 2001 by way of reversing and re-applying charges, has supplied its services to a standard below that expected by an average customer in this situation.

Billing uncompassionately

12. The customer complains that the company applied pressure on him to meet payments in 2003/2004 and 2009 onwards to make payments that were, in the circumstances excessive. The company has no evidence going back so far, although it does have evidence that in 2017 the company agreed to reduce the customer's payment plan and in 2019 the customer was placed on the Watersure tariff.
13. The company and customer are also in agreement that an attempt was made to measure the water use with a view to finding whether the customer had a leak in 2018. Due to a

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misunderstanding, the company was not able to carry out an inspection and this was not re-arranged until 2019.

14. While I empathise with the position of the customer in that he is now aware that he was being asked to pay more than would have been the case if the meter had been correctly connected, I find that there is insufficient evidence about the circumstances prior to 2012 to be able to reach a conclusion that the company had not supplied its services to the standard that would reasonably be expected.

15. I find that the customer does not succeed in relation to this aspect of his

complaint. Change in the value of money

16. The customer complains that there has been a change in the value of money. The company agrees that no part of its adjustment reflects change in the value of money, however, I note that rule 6.7 of the 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.

17. It is usual for changes in the value of money to be reflected by payments of interest. Notably, in the application form, the customer has not ticked the box that requests a calculation of interest and therefore strictly, rule 6.7 does not apply. Additionally, as I find that it is probable that a court placed in a similar position to me, would not be willing to apply interest for a claim for which the limitation period had expired.

18. I am mindful, however, that there would have been a change in the value of money and that the consequence of the billing error was that the customer was found in 2019 (when the sum was repaid) to have been out of pocket to the tune of £1,229.03. I confine my calculation to the preceding six years, however, taking into account the Limitation Act 1980. I find that the total sum by which the customer was out of pocket in 2019 was £573.64. Taking into account the uncertainties of this case and bearing in mind that the current rate of interest

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under section 69 of the County Courts Act 1974 is 8% per annum simple interest, I address this broadly and find that it is fair and reasonable to apply a sum of £138.00 by way of interest relating to that six-year period.

Complaint handling

19. As for the company's handling of the customer's complaint, the company accepts that "it could have done better". The company refers to the pandemic, but I find that this was not the only consideration and not all issues arose during the pandemic.
20. The company has, however, made goodwill payments as follows:
- £160.00 provided by the first Case Manager handling his complaint (already refunded)
 - £30.00 provided by the second Case Manager handling his complaint (already refunded) and relating to the payment and reversal of a further sum of more than £1,000.00 in 2021.
 - £10.00 provided on review
 - £20.00 statutory guaranteed service standards payments for delay in making timely payment of two refunds.
21. The company has explained that these amounts exceeded that to which the customer was entitled by a sum of £80.00, in part because some payments were made twice. There is an error or difference of opinion, therefore, between its staff members which have benefited the customer.
22. Although I am consequently satisfied that the company has failed to supply its complaints handling services in the manner that would reasonably be expected and I accept that in at least two opportunities to investigate the customer's complaint at a marginally earlier stage were lost, I find that the customer has been adequately compensated and I find that no further compensation under this head of claim is due.
23. It follows that my direction is that the company shall pay the customer a further sum of £138.00.

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Outcome

The company shall pay the customer a further sum of £138.00.

What happens next?

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

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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