

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X796

Date of Final Decision: 20 March 2022

Party Details

Customer:

Company:

Complaint

The customer, who is his brother's executor reclaims payments made to the company for water at times when his brother was in hospital. He says that the company should have been aware of this and/or should make a repayment due to the merits of the case. He asks for a refund of sums paid by his brother from 2007 to 2017 inclusive.

Response

The company said that it was only aware of the account holder's long-term hospitalisation in 2016 and 2017 when it agreed to suspend his account. It was notified of the account holder's return from hospital by REDACTED in 2017 and the customer has liaised with the company since that point. The company has offered a discounted rate and the account holder has paid all bills. The company has offered a goodwill payment of £200.00.

Preliminary Findings

There is no evidence that the company was aware of the account holder's illness before 2016 when it learned that the account holder was in hospital on a long-term basis, and it suspended the account. The account was resumed, however, on information provided by REDACTED and a discounted tariff was later applied. There is no evidence that the account holder agreed to these steps, and he was in hospital, on the evidence, until July 2017. Although liability for water consumption is not dependent on agreement by a consumer, an average customer would reasonably have expected that the company would have ascertained with greater accuracy, including confirming the situation with the account holder, when billing should be recommenced, and a tariff applied. Accordingly, the company fell short of expected standards and would reasonably be expected to make a goodwill payment. Thereafter he was in his home for less

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than two months until the end of the year and there is no evidence that he was at home in 2018 so it would be fair and reasonable for the company to take as a basis of assessment of the amount of a goodwill payment, the sums that had been paid by the customer during 2017 and 2018. This was £195.63. I find that a goodwill payment of £200.00 was a fair and reasonable offer and this sum should be paid to the customer.

Preliminary
Outcome

The company needs to pay £200.00 to the customer.

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Case Outline

The customer's complaint is that:

- The company charged the account holder for water use at the property despite the fact that he was in hospital from 2011 and was not using water at the property.
- The company has said that it knew nothing about the account holder's mental/physical state despite contact from him in 2016 and the making of a refund of £301.08 issued in 2016 for his stay in hospital. The customer is seeking a refund of charges for all of his brother's stay in hospital as the property was vacant.
- Following the intervention of the Consumer Council for Water (CCWater) the company made a goodwill offer of £200.00 as a goodwill gesture but will not increase this to cover charges for every day that the customer's brother was in hospital.
- The customer maintains that a further refund should be made in relation to the years between 2007 (when he first was in hospital) or 2011 (when he was rarely out of hospital) and 2017.

The company's response is that:

- The company says that it was aware of a period spent in hospital between 1 May 2016 and February 2017 when the account holder's account was closed. It has offered a goodwill gesture

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of £200.00 because it appreciates that there were other times when the account holder was in hospital and not using water at his home address.

- However, the company argues that it is not obliged to make a refund to a customer who has been in hospital especially as the rateable value basis of charge is for having the services connected, whether water is used or not.
- The company says that it was not informed at the time of any periods other than in 2016 and 2017 when the account holder was in hospital.
- The account holder contacted the company regularly to make payments when his bills were due. The company says that had it been made aware of problems with the customer's health at other times, it would have been happy to offer appropriate additional support at the time.
- The company confirms that it remains willing to make a goodwill payment of £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 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 also taken into account the comments made by the customer in response to my Preliminary Decision dated 8 March 2022, notwithstanding that no change has been made to the Outcome in this Final Decision.

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How was this decision reached?

1. The customer in this case is the brother of the late account holder and is his executor.
2. It is common ground that the account holder had telephoned the company from his hospital bedside on 17 November 2016 to inform the company of his mental and physical state and to say that he was not using water at the property. He said he had been in hospital since May 2016 and asked for a refund, which the company in due course made. He also said that he would be in hospital long-term, and the company closed the account holder's account. There is no evidence that the account holder had informed the company of his illness prior to that date.
3. On 9 March 2017 the company received a memo from REDACTED to advise that the account holder had contacted them to say he was moving back into the property as of 15 February 2017. The company took this as a cue to reopen the customer's account and on 10 March 2017, an opening bill was sent for £383.30. There is no evidence that this information was authorised by the account holder or was accurate. The evidence shows that the account holder did not leave hospital until July 2017.
4. On 16 May 2017, a call was received from the account holder to advise that he was then in hospital, so the company applied the social tariff as of this date to provide a discount on his bills. Notably, the account record for that date stated:

Customer is elderly and is currently in hospital, he is not at this property yet, i did discuss with him meter application, is did not want to discuss that, passed to customer care to will discuss with him social tariff, I believe he is a vulnerable person, unsure how long he has been in hospital

5. The account holder was sent a letter about the discounted social tariff to his home address. The letter referred to the account holder having made an application for the social tariff (although this is not clear from the note above) and reminded him of the need to make a declaration. There is no evidence that this letter was received by the account holder as he had told the company that he was in hospital at that time, and this is supported by other evidence as to the periods of the account holder's admissions to hospital.

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6. On 17 May 2017 a revised bill was sent to the account holder with a balance due of £220.66 to include the social tariff discount. On 14 June 2017, payment was received for £49.16 although it would appear that the account holder was still in hospital.
7. The evidence submitted by the customer shows that he had only a few days out of hospital from July 2017 onwards and in January 2018, a call was received from the account holder to close his water account. On 21 January 2018, a closing bill was sent for £146.47. On 26 June 2018 a call was received from the account holder to make a card payment for the final balance of £146.47 on his account - balance paid in full.
8. On 30 November 2020, a call was received from the customer to advise that his brother (by this time, deceased) had been paying for water services for a period when he was in and out of hospital.
9. The customer has submitted evidence to CCWater and the company that the period away from his property due to ill health amounted to approximately 1,262 days spent in hospital or in a care home (although reference is also made to 1,246 days). This is said to cover a period from 2007 to 2017. The customer further complains that the company's stated information about the support that it gives to consumers with physical and mental health issues is inconsistent with its current stance that it is entitled to retain the payments that have been made by the account holder. The customer also indicates that his brother did not know that he was suffering from dementia. The customer has repeated his concerns in his comments on my Preliminary Decision that the company does not give real support.
10. Against this background, I am mindful that it is common ground that the charging in this case was in accordance with the rateable value of the property. A water meter had been applied for in 2015 but this application had not been pursued and therefore lapsed on the closing of the account holder's account retrospectively in 2016. Therefore, the nature of the charging arrangement was linked to the property and not at all to water use.
11. In these circumstances, I find that there is no evidence that between 2007 and 2016, the company was on notice that the customer may be vulnerable or in need of assistance with his water billing arrangements. I find that the average customer would not have expected the company to have made specific inquiry during this time as to the whereabouts of the account holder or as to the

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state of his health. In billing the account holder, the company did not fall short of the appropriate standard.

12. Moreover, I do not find that, generally, a company should draw an inference from notification of an admission to hospital due to a consumer's ill health at one or some points in time (such as in 2016) that the ill health would or should be continuing after the customer has left hospital and the water use has been resumed. However, I am mindful that in this case, information that the account holder was to return home in 2017 came, not from the account holder, but from a third party, another water services company. There is no evidence that the third party was authorised on behalf of the account holder to tell the company that the water account should be reopened, and the customer has submitted evidence that the account holder did in fact not return home until July 2017. I find that in these circumstances, even though liability for water charges is not dependent on agreement, an average customer would reasonably have expected the company to have obtained confirmation from the account holder himself that he had left hospital and required water services to be resumed or to have satisfied itself that the property was then occupied. I find that there is no evidence that this occurred and I find further, therefore, that the customer has established that the company failed to provide its services to the correct standard in this respect.
13. Moreover, there is no evidence that the account holder agreed to discounted services while in hospital and it is notable that the time spent in his home throughout 2017 amounted to less than two months. I find that at this point the company had resumed billing without adequate information about the customer's circumstances and this also fell short of the standard of service that an average customer would expect to be taken for a very vulnerable consumer.
14. It follows from the above, that I find that an average customer would expect a company, taking a compassionate view of the account holder's expenditure during the time when he was known by the company to be seriously ill, to make a goodwill payment to his executor broadly resembling the burden of payments at a time when the account holder's benefit from the company's services could be no more than minimal. This is all the more the case, I find, as the customer has submitted some evidence that due to illness, the account holder would not have used water for washing. The account holder's expenditure on water after 2017 was £195.63. In this context, I find that the company's goodwill offer of £200.00 is fair and reasonable.
15. As for whether the company should, on a compassionate basis, be reasonably expected to make a refund for the period from 2007 to 2017 because the account holder had not been at his home

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making use of the company's services, I do not find that an average customer would reasonably expect this. The customer has put forward no evidence that the company's published policies state that a payment would be made in these circumstances and, as indicated above, the basis of calculations of payment to the company were not dependent on the amounts of water used. I find that an average customer would not expect a compassionate payment to be made for periods of which the company was unaware - and the period of which the company was aware has been covered by the goodwill payment of £200.00.

16. It follows from the above that I find that the company should reasonably be required to make a payment to the customer of £200.00 but that the evidence does not support that any further payment should be made. Nor, for the avoidance of doubt, has the customer put forward arguments or evidence which persuade me that the company was in breach of the Equality Act.

Outcome

The company needs to pay £200.00 to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- 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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Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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