

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X862

Date of Final Decision: 19 April 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer says the company delayed switching her to a metered tariff; failed to activate her analogue meter and; installed a smart meter despite her concerns and her request that it retain the analogue meter as a reasonable adjustment to prevent ill health given her electro-sensitivity. She seeks that the company replace the smart meter with an analogue meter.

#### Response

The company says it accepted some customer service failings and had made payments totaling £330.00 to the customer for these. It was entitled to install a smart meter and it had assured the customer there was no risk to health. The remedy claimed was outside the scope of WATRS. It denied the claim.

#### Findings

The evidence shows the company did not provide its services to the standard to be reasonably expected because it provided poor customer service and it did not properly consider the customer's request for an adjustment to its service.

#### Outcome

The company should provide the customer with an apology and pay her compensation in the sum of £150.00 for distress.

The customer must reply by 18 May 2022 to accept or reject this decision.

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## Case Outline

### The customer's complaint is that:

- She paid for water on an unmetered basis.
- In October 2020 she received correspondence that the company intended to install smart water meters in her area.
- She asked for the company to activate her analogue water meter instead. She explained she did not want a smart meter as she suffers from electro-sensitivity.
- The company did not activate her analogue meter and she complained in January 2021.
- The company then installed a smart meter against her wishes.
- She asked for the company to revert to the analogue meter but it refused.
- She also asked for this as a reasonable adjustment as she suffers from electro-sensitivity, but the company refused.
- She wants the company to replace her smart meter with an analogue meter.
- In comments on the company's response the customer says electro-sensitivity is now a recognised health condition and disability. She had provided evidence of the impact of the smart meters to health and knew others who were able to keep their analogue meters.
- In comments on the preliminary decision the customer says:
  - She did not want the company to adjust its services she simply wanted to retain her analogue meter;
  - The company activated the 'analogue meter', billed her on the first analogue meter reading and promised she could keep the analogue meter;
  - It is insulting for the company to say her medical condition does not exist;
  - Smart meters are not compulsory;
  - She had offered to purchase an analogue meter but the company refused this offer;
  - She has provided further information about her health condition.

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### **The company's response is that:**

- It has provided records of its communications with the customer.
- In December 2020 it asked the customer to confirm she wanted to move to a metered tariff. Further that this would not change its decision to install a smart meter. It repeated health and safety information about the smart meters.
- Upon the customer's complaint in January it paid her £40.00 for the delay in switching her to a metered tariff. In February it checked the analogue meter worked and switched the customer to a metered tariff.
- The customer then complained it had installed a smart meter without her consent and despite assuring her it would not do this.
- It recognised staff gave the customer incorrect information about what they would do and did not call her back as agreed. It paid her £70.00 as a goodwill gesture for these failings.
- It has also paid a further £200.00 under its Customer Guarantee Scheme (CGS) for times when it did not respond to her written complaints within 10 working days (£20.00 per occasion).
- Water companies can decide which type of meter to install. It was entitled to install a smart meter and did not have analogue meters in stock to replace the customer's meter in any event.
- WATRS cannot instruct it on what type of meter to install and so the remedy claimed is outside the scope of the scheme.
- It denies the claim.
- In comments on the customer's comments, it adds that it has not seen evidence of a link between the customer's health condition and its smart meters. Further, the example of a customer keeping an analogue meter was not in an area it serviced.
- In comments on a preliminary decision the company asserts:
  - Smart meters are safe;
  - It would be outside of WATRS jurisdiction to direct that it install a meter type contrary to that set out in its Charges Scheme;
  - The World Health Organisation, Public Health England and the NHS do not recognise electro-sensitivity as a medical condition or disability.
  - WATRS does not have the jurisdiction to say the customer has a disability or that the company should make a reasonable adjustment under the Equality Act 2010. Further this is a complicated area of law.
  - The customer did not seek a payment and it questions what this is for.

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## 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.

## How was this decision reached?

1. WATRS cannot adjudicate on disputes about a company's commercial practices or direct that it install certain types of water meter in general, in accordance with WATRS rule 3.5. But, I can consider individual disputes about metering and consider whether a change in meter is a suitable remedy in the circumstances of a particular case. I therefore do not agree the claim is outside the scope of WATRS.
2. WATRS cannot say whether a person has a disability under the Equality Act 2010 or say whether the company must make a reasonable adjustment to its services under the Act. Only the courts can make such findings.
3. The company accepts it delayed switching the customer to a metered tariff. I therefore find it failed to provide its services to the standard to be reasonably expected. I am satisfied it made a suitable payment to remedy this.

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4. The company accepts it gave the customer incorrect information and that she could not in fact retain her analogue meter. I therefore find it failed to provide its services to the standard to be reasonably expected. I am also satisfied it made a suitable payment to remedy this.
5. The company did install a smart meter against the customer's wishes. However, the company did not need the customer's permission and it had fully explained its smart metering programme. Other than the fact it provided incorrect information, I do not find the company necessarily at fault.
6. However, the customer had requested that the company not install a smart meter because of a health condition she had, which was triggered by such electronic items. By email of 15 October 2020 the customer said:  
REDACTED
7. One would reasonably expect a service provider to adjust their services, if possible, where a person says they would otherwise face a disadvantage to their health. Given the customer's assertions in this case, one would reasonably expect the company to give due consideration as to whether it could and should adjust its service provision.
8. I would therefore expect to see some evidence that the company properly considered this and communicated its decision and reasons to the customer. However, the records and correspondence provided by the company do not show any such consideration. The company did not address this specifically in correspondence with the customer. Rather, it only explained its entitlement to install a smart meter and referred to evidence that showed, in its view, that these were safe.

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9. The customer had emailed the company multiple times reiterating her medical condition, objecting to a smart meter and requesting the company instead activate her analogue meter. In its response, of 22 December 2020, the company “noted” the customer’s “health concerns” but referred to information it had sent in 2015 and said its “comments about the safety of smart water meters remain[ed] the same”. It then referred to its legal powers to install water meters on a compulsory basis under the Water Industry Act.
10. I acknowledge the company has evidence to show smart meters are safe and that it is legally entitled to install smart meters (whether compulsory or not). But this did not directly address the customer’s request that it adjust its service provision in her case, given her health condition. The company did not turn its mind as to whether the customer herself would face a disadvantage or whether the customer was seeking a reasonable adjustment to its services. I consider the evidence shows the company failed to provide its services to the standard to be reasonably expected in this regard.
11. The customer says she did not want the company to “adjust” its services. However, it is clear the company’s intention was to install smart water meters. That the customer wanted to keep her analogue meter meant she wanted the company to provide a different service to her i.e to make a change or adjustment to its usual practice.
12. The customer seeks that the company replace her smart meter with an analogue meter. I cannot instruct the company do this because, even if it had properly considered the requested adjustment it may have decided this was not a reasonable request and so refused. However, as I have upheld the complaint, I am able to consider whether another remedy is appropriate. In this case I consider it fair and reasonable to direct the company provide the customer with a written apology and pay her compensation in the sum of £150.00 for the distress caused to her. For clarity, I have made this direction because I am satisfied the customer has suffered distress due to the company’s failure to show proper consideration to her request, as one would reasonably expect.
13. I have considered the company’s response to the preliminary decision. I maintain that WATRS has jurisdiction to consider the dispute, as already set out. However, I have clarified that only the courts can decide on whether the company has met its Equality Act duties. My remit is limited to a consideration as to whether the company has provided its services to the standard to be reasonably expected. For the reasons set out above I have found it did not.

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14. I have also considered the customer's comments on the preliminary decision. I acknowledge the customer is disappointed with the decision outcome and would like me to insist the company install an analogue meter. However, I can only provide a remedy for the losses arising directly from the company's service failing. In this case I cannot say that the company should have agreed for the customer to keep her analogue meter, I can only say it did not properly consider the request; the outcome may have been the same in any event.

#### **Outcome**

The company should provide the customer with an apology and pay her compensation in the sum of £150.00 for distress.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 18 May 2022 to accept or reject this 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.



J Mensa-Bonsu LLB (Hons) PgDL (BVC)  
**Adjudicator**

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