

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X999

Date of Final Decision: 11 July 2022

Party Details

Customer:

Representative:

Company:

Complaint

The Representative states the customer did not enter into any contracts with the company and therefore denies liability for the charges raised. After paying for water consumption at the premises, the company prevented the customer from transferring his supply to another provider by putting a block on the account. The company has added £3000.00 of charges for "non-existent" services thereby preventing the customer from engaging another water supplier. The customer seeks an apology and compensation (unspecified amount).

Response

The company states the customer verbally entered into a one-year fixed contract for his supply of water in July 2020. Due to an outstanding balance on his account, in accordance with its Terms and Conditions, it does not agree to allow the customer to cancel his water contact or transfer the supply to an alternative provider. It offered £90.00 for customer service failures which it deems is reasonable.

Findings

The company's continued refusal to allow the customer to cancel his water contract despite requests within a few days of agreeing the contract and then again near expiry of the fixed term, was unreasonable and unjustified in the circumstances. Its refusal to allow the customer to transfer his water supply to another provider was also unreasonable.

The company did not make any settlement offer to the customer.

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Outcome

The company needs to take the following further action:

- Provide a written apology to the customer.
- Allow the customer to terminate the contract free of charge and allow the customer to transfer the supply to another provider within one month of the date of acceptance of the Decision.
- Pay the customer the £90.00 goodwill gesture offered in its complaints process if it has not already done so.
- Pay the customer additional compensation of £500.00. The company may deduct water charge applied since 1 December 2021 from this amount, paying the remaining balance to the customer.
- Remove any water/sewerage charges applied to the customer's account for the period 1 September 2019 to the start of the contract on 29 July 2020.

The customer must reply by 8 August 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- The customer did not enter into contracts with the company for supply of its services including the supply of water. A third party contacted the company on 29 July 2020 and gave the name of the customer, who is the owner of the business premises. The company is alleging that they set up a contract with the company for the provision of water, telecoms and broadband.
- The customer stated that he did not give consent to anyone to act on his behalf with respect to the contracts, as alleged, and therefore, no contract existed between himself and the company.
- When the customer received written notification that an alleged contract was set up with the company, he instructed the company to terminate the contract immediately.
- Despite repeated written requests, the company refused to nullify the contracts for water, telecoms and broadband.
- The account name for the direct debit instruction is the former leaseholder. By disclosing a third party's account to another person without that party's consent, this is a breach of the General Data Protection Regulation (GDPR) and the Data Protection Act and. It is also "tantamount to fraud" for which he would be entitled to damages.
- The company has continued to pursue the customer for payment the sum of £3,615.40, which includes termination charges for the telecoms and broadband contracts. These services have never been used.
- The company has also placed a block on the water account and has prevented the customer from transferring to a different supplier. Notwithstanding repeated requests to the company to remove the block, it has refused to do so.
- In November 2021, in order to prevent the company terminating the water supply at the premises, the customer paid the sum of £615.40 for the alleged water consumption, on a without prejudice basis. The alleged consumption covers the period until 1 December 2021. It was

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understood that this payment settled the alleged water consumption at the premises and terminated all and any alleged accounts for water with it.

- The company retained the sum paid to it by the previous leaseholder, as well as seeking to “extort” payments for three non-existent contracts from the customer, which is “fraud”.
- The company seeks to penalise the customer by claiming in excess of charges of £3,000.00 (and adding daily interest) for non-existent services, thereby preventing the customer from engaging another service provider.
- The customer seeks an apology and compensation (unspecified amount) for representing falsely that he entered into a contract with it.

The company’s response is that:

- On 29 July 2020, an agent on behalf of customer agreed to enter into a contract on a 36-month term for the telecoms and broadband service and a 12-month term for the water supply. During this call the agent confirmed they had authority to enter into the contract on behalf of the customer’s business. As this was a change in occupancy, the contracts began straight away as it already held the supplies.
- The agent stated at the end of the call that the customer was responsible for the premises from 1 September 2019 and they wanted these supplies backdated to then when he became responsible. This was interpreted as the change of occupancy occurring on 1 September 2019. This would not change the start dates of the contracts agreed on 29 July 2020. When backdating the telecoms and broadband was completed, this produced a credit on the previous leaseholder’s account.
- The customer contacted it on 3 August 2020 as he was aware of the contracts agreed on 29 July 2022 and stated his intentions were to take over the previous owner’s contracts. It explained this would not be feasible as the previous contract was agreed with the previous occupant. It referenced advice provided in the 29 July 2020 call that the customer was entering into a new contract with it under the terms highlighted previously. In addition, the contract agreed on 29 July 2020 began straight away as all services were with it.
- Following this it received correspondence from the customer’s Representative in August disputing that the contracts were in place. On 7 August 2020 it called the Representative who advised that the law allowed the customer to cancel the contracts but before this could be discussed, the Representative advised they would see the company in court.
- Its August 2020 invoice was not paid and its credit control team began attempting to contact the customer from September 2020.

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- The customer's telecoms and broadband contracts were terminated for non-payment and early termination fees were applied.
- Following correspondence from the customer's representative in December 2020, its Customer Resolution Team offered £30.00 as a gesture of goodwill due to inconvenience experienced. This was increased to £50.00 in its 4 February 2021 communication when it gave further elaboration that the charges were valid per the contract agreed in August 2020 responsibility backdated to September 2019. This offer was rejected by the customer's Representative.
- On 16 April 2021, it received a transfer request for the water supply. This was objected to as the customer was in a valid contract for the supply of water and sewage and no termination notice had been served in accordance with the contract. Further, in accordance with section 3.6.b of its Term and Conditions, if there is an outstanding balance for the supply which is over 90 days old, it can raise objections to new registrations for the supply. As the customer had an outstanding balance older than 90 days this was objected to.
- It received a letter from the Representative dated 7 July 2021 requesting termination of the customer's account.
- It received a further transfer request for the water supply. It objected to this.
- Following contact from Consumer Council for Water (CCW) on 3 August 2021 it requested a Letter of Authority (LOA) from the Representative. It reviewed the complaint and provided response to the Representative on 3 September 2021 increasing its gesture of goodwill to £90 due to the shortfall in requesting a letter of authority when discussion had already been held with the Representative. This offer was rejected and it issued a final position letter to the Representative reiterating its previous position.
- In November 2021, the customer made payment for water charges raised of £615.40 whilst disputing the validity of the contracts.
- On 4 April 2022, it received further correspondence from the Representative which advised that no contracts had been agreed and water charges had been paid in full and final settlement of the account.
- Following contact from CCW on 12 April 2022, it provided relevant documentation to them including its a final position had been issued in September 2021.
- Regarding charges raised, whilst the customer did make a payment of £615.40 in November 2021 to address water charges that had been raised, further charges remain for non-payment which are valid as per sections 9.5 and 9.11 of REDACTED Terms and Conditions.

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- It believes it has acted in accordance with the Terms and Conditions of the contract agreed. Charges have been raised in accordance with this and it believes the gesture of goodwill offered to be reasonable.

Company's comments on the Preliminary Decision

- The company acknowledged its failure to apply the cooling off period when the customer requested cancellation in August 2020 was a shortfall in its service. It has raised this as a training point with its customer facing team to address this.
- However, it disputed that it should remove water charges backdated to 1 September 2019 as, by adjusting the customer's account to reflect that his occupancy started at that date, it was acting in accordance with his advice that there had been a change in occupancy. It disagrees that it needed to make clear that this would generate charges.
- It reiterated that it objected to the water supply transferring away to another provider in April and July 2021 due to the outstanding debt on the account (greater than 90 days) only. It disputed the suggestion that it received a request to terminate the fixed term contract on 7 July 2021 and said it only received orders to transfer the service to another provider.
- It clarified that that receiving a request to terminate the contract and receiving a transfer order are separate processes and governed by different sections in the Terms and Conditions. A transfer order in isolation does not constitute termination notice of the fixed term.

Customer's comments on the Preliminary Decision

- The customer agreed with the outcome in the Preliminary Decision.

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.

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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. The customer's claim concerns water supply services and bill payments.
2. The customer is a non-household customer. He is the freeholder of the business premises.
3. I remind the parties that the dispute regarding the validity of broadband and telecoms contracts and related charges falls outside of the scope of the Scheme by virtue of WATRS Rule 3.5 which sets out the types of disputes that can be settled under the Scheme. Therefore, I will not address further these aspects of the dispute, any reference to these contracts/services is for context only.
4. Any disputes concerning alleged breaches of data protection laws also fall outside the scope on the same basis.
5. Further, I am unable to consider the allegations of fraud in accordance with WATRS Rule 3.5 therefore this aspect of the claim falls outside the scope of the Scheme. As previously stated this adjudication will only consider whether the company has met the standard to be reasonably expected and not the allegation of fraud.
6. Regarding the disputed water supply contract, having reviewing the recording of the call of 29 July 2020 provided by the company, on balance, it was reasonable for the company to believe it was talking to an authorised representative of the customer's business as the person represented to be the named individual stated in the WATRS Application (REDACTED) and the freeholder of the business premises. On balance, the company's representative made clear that they would be entering a new one-year contract for water supply. Therefore, this evidence suggests the contract was properly entered into.
7. However, it is evident that based on the conversation at the point of sale, the company backdated charges to 1 September 2019 on its understanding that the customer had requested it to do so.

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On reviewing the recording of the call, whilst the customer asked to put the account in his name from 1 September 2019, it was not made clear by the company during the conversation that it would add charges for this period to the customer's new contract/account. Further, there is no reference in the written confirmation sent to the customer on 30 July 2020 that the request equated to it adding charges for this period to the customer's account. Therefore, on balance, it was unreasonable for the company to interpret the call as an implied agreement to add these charges to his account. As such, an appropriate direction has been included below for the company to remove any charges added to the customer's account in relation to the supply of water/sewerage for the period 1 September 2019 to the contract start date on or around 29 July 2020.

8. It is not in dispute between the parties that the customer called the company on 3 August 2020 querying the written contract for the supply of water received dated 30 July 2020. The company has not supplied a recording of this call however based on its notes of the call, the customer reported they believed they were "taking over" the water supply contract in place previously taken out by the previous leaseholder (business associate) with the same contract end date. The notes of the call indicate the customer told the company he did not want to take out a new contract and said it was not made clear to him that they would be signing up to a new contract out. He asked to cancel the contract.

9. It is noted that under the heading titled 'Ending the Contract', clause 13.2 of the company's Terms and Conditions included in the CCW bundle, it states: "You may end the contract during the Cooling Off Period with no termination charge". There is no information about the Cooling Off Period in the summary of the main terms in the contract sent to the customer dated 30 July 2020. As the cancellation request was made only a few days after the verbal contract, it is reasonable to expect the customer's cancellation request of 3 August 2020 to have been within the Cooling Off Period. Based on the evidence, the company did not take steps to terminate the contract as instructed and at no stage has the company explained why the Cooling Off Period was not applicable at that time. The company confirms the Representative reiterated the cancellation request during a call on 7 August 2020 which it is clear the company also failed to act on and again has not provide any explanation for. It may be that the outstanding balance resulting from its account rollback prevented the activation of the cancellation clause however the company has not said this. Moreover, based on my above finding that there was no agreement for the backdating of charges, this would not justify the failure to apply the cancellation request under the

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Cooling Off Period. In the circumstance, the approach taken by the company in this regard is evidence of it failing to provide its service to a reasonable standard.

10. The company continued to supply water services to the business premises over the subsequent months whilst the Representative disputed the contract on behalf of the customer. During this period it is noted that the company offered a £30.00 goodwill gesture in its 26 January 2021 response to the Representative which it increased to £50.00 on 4 February 2021. It said this was for the inconvenience caused however this offer this was rejected by the Representative on the basis its offer did not resolve the issues.
11. In April 2021, the company received an order for the customer's water supply to transfer to another provider however it blocked this request due to an unpaid outstanding balance on the customer's account. The company acknowledges that on 7 July 2021, it also received a letter from the Representative dated 6 July 2021 requesting termination of the contract. This termination request is included in the CCW file and clearly shows a request was made to cancel the fixed term contract. The company's notes of the same date refers its receipt of the Representative's letter and states this request was not accepted due to high outstanding balance on the customer's account. It subsequently blocked a further order received on 14 July 2021 for the customer's water supply to transfer to another provider on the same basis.
12. Within its Defence, the company says that its Terms and Conditions allow it to block transfers when there is an outstanding account balance. It is acknowledged that at the time of the above-mentioned transfer requests, charges for the water and sewerage services supplied to the premises had built up. Whilst section 3.6.b of the Terms and Conditions state the company can block transfers when there is an outstanding account balance, under 'Ending the contract', there is no provision which permits the company to reject a termination request at the end of a fixed term on account of an outstanding balance (and there is no signposting to section 3.6.b in 'Ending the contract'). As such I find that there is no clear provision in the contract which allows the company to refuse a termination request at the end of a fixed term. In view of this and the customer's previous termination requests of 3 and 7 August 2020, the company's refusal to allow the customer to terminate the water contract and transfer the service to an alternative provider at this stage, is further evidence of the company failing to provide its service to a reasonable standard.

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13. Whilst the customer remained in dispute with the company regarding the validity of the water contract, on 18 November 2021, he paid the company £615.40 in settlement of the water charges up to 1 December 2021. There is no evidence to show the customer attempted to transfer the supply to another provider or terminate the service immediately following making payment. However, when the Representative contacted CCW in April 2022 seeking a resolution, in its response to CCW dated 19 April 2022, the company reiterated that the customer would not be able to transfer the supply to a different provider due to charges on his account from other (non-water) services. In this circumstances where the customer had made a payment in respect of the water charges, the company's continued refusal to allow the customer to transfer the supply to an alternative provider is unreasonable and demonstrates an unwillingness to resolve the complaint. This is further evidence of the company failing to provide its service to a reasonable standard. The lack of resolution provided lead to the Representative contacting WATRS for redress.

14. In Summary, the company's refusal to: allow the customer to cancel the contract when requested in the days after the initial call of 29 July 2020, again in July 2021 at expiry of the one-year fixed term and when requested during the CCW process and; its refusal to allow the customer to transfer the supply to another provider throughout, demonstrates it failed to provide its service to a reasonable standard when dealing with the customer's water contract. In the circumstances, it is fair and reasonable to direct that it allow the customer to terminate the contract free of charge and to allow him to transfer the supply to another provider. I also direct that the company pay the customer the compensation offered in its stage two complaint response dated 17 September 2021 of £90.00; it is noted the company increased its previous offer of £50.00 to £90.00 at that time in recognition of its untimely request for a Letter of Authority from the Representative. Furthermore, in the circumstances, it is reasonable to direct that the company pay the customer additional compensation of £500.00 for the stress and inconvenience caused by failures identified in this adjudication. This falls into the highest end of Tier 2 of the WATRS Compensation for Inconvenience and Distress. In view of the length of time the customer has been unjustly prevented from cancelling his water contract and moving his supply elsewhere, I find this amount to be fair and proportionate to the stress and inconvenience. Any water charges applied to the customer's account since the customer's payment of £615.40 for water charges up to 1 December 2021, can be deducted from this compensation sum with the company paying the remaining balance to the customer.

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15. The company's comments have been carefully considered however they do not affect the decision as on balance, I am satisfied that: the dispute stemmed from the company's admitted failure to apply cancellation when requested during the cooling off period and; the remedies ordered are fair and proportionate to the service issues encountered.

Outcome

The company needs to take the following further action(s):

- Provide a written apology to the customer.
- Allow the customer to terminate the contract free of charge and allow the customer to transfer the supply to another provider within one month of the date of acceptance of the Decision..
- Pay the customer the £90.00 goodwill gesture offered in its complaints process if it has not already done so.
- Pay the customer additional compensation of £500.00. The company may deduct water charge applied since 1 December 2021 from this amount, paying the remaining balance to the customer.
- Remove any water/sewerage charges applied to the customer's account for the period 1 September 2019 to the start of the contract on 30 July 2020.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 August 2022 to accept or reject this decision.

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- 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.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)

Adjudicator

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