WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X322

Date of Final Decision: 26 February 2023

Party Details

Applicant: XX
Company: **XX**

Complaint

The applicant complains that the company has not provided its services to his late father to the expected standard because it declined to make a leak allowance in 2010 even though it knew that the housing association had carried out the repair and may not have told the customer within a period that might have permitted an application for an allowance to be made and required increased payments under his payment plan when arrears built up in 2014, Usage inexplicably increased following exchange of the meter and the company asked his father for increased payments in 2019. The applicant considers that the company has taken unfair advantage of his father's vulnerability and confusion. The applicant asks for £2,000.00 compensation and an apology.

Response

The provision of a leak allowance is discretionary and is dependent on repair of the leak within 30 days and application for a leak allowance within 18 months. Following a leak in 2010, the customer did not apply for a leak allowance. The company enabled the customer to make payment of his bills by way of payment plans, but arrears accrued. The company has provided its services to the standard that would reasonably be expected.

Findings

There is no evidence that the company had been notified that the customer was vulnerable or confused and therefore the company would not reasonably have been expected to make special adjustments. The company advised the customer that he needed to ensure that his landlord carried out the leak repair and apply for a leak allowance. Although a repair was carried out, the customer did not apply for a leak allowance. The customer has never explained a reason for this, but in the absence of evidence to the contrary, it must be presumed that he did so with full capacity. He also did not raise any challenge in 2014. There is no evidence that there was a leak following exchange of the meter in 2017. The company would therefore not reasonably be expected to make an allowance. but, following the applicant's approach to the company, it applied an

allowance in May 2022. It has now waived the balance on the account. The company has met and perhaps exceeded the standards that would reasonably be expected.

Outcome

The company does not need to take further action.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The applicant's complaint is that:

- The applicant complains that when he settled his late father's affairs following his death, he found that the company stated that his late father (the customer) was in debt to the tune of almost £2000.00, amassed over a period between 2010 and 2021. The applicant was told that there had been a reported leak, substantiated by the company's engineer in 2010 as an internal leak. The customer's inaction then caused him to be unnecessarily paying £55.00 per month for the two-year period prior to his passing whereas a leakage allowance could have been given.
- The problem was compounded by replacement of the water meter in 2017 when the water usage and charges increased substantially. The applicant says that it is Important to note that the customer was living in an upstairs flat with no garden and was not in possession of any type of equipment that required excessive usage of water.
- Both the company and the Consumer Council for Water (CCWater) concluded that there was no legal obligation to grant a leakage allowance.
- The applicant asks for an apology that accepts that the company could have managed the debt more effectively, in particular because an internal leak was not the customer's direct responsibility but that of the Housing Association which failed to notify the customer that the repair had been completed. As both the company and CCWater correctly state, in order to quality for a leak allowance, the customer would have been required to have completed the repair within 30 days and applied for the allowance within 18 months.
- However, the applicant says that the company's standards of basic customer care would have required the company to make follow-up checks when a clearly abnormal usage of water occurred (in this case charges between 25 September 2009 – 22 September 2010 with charges of £1,672.33 and a recorded water usage of 614 cubic litres). Also, the company did not take into account that the Housing Association failed to notify the customer that the repair had been completed.
- In 2014 when the customer questioned his monthly payments, the company acknowledged that the leak had been repaired by identifying from his bills and water usage that both had

substantially reduced but informed him that the leakage allowance would not be applied as the 18-month notification period had expired.

- The applicant says that the company failed in its duty of care to a vulnerable customer by forcing him to pay money, despite acknowledging from his water usage between 2011-2014 that the internal repair had been completed.
- The applicant asks that the bill be written off and his family compensated for the needless overpayments made. The applicant calculates, based on average costings and the total monthly payments by his father over a 155-month period as follows:
    - Average monthly payments between 06 January 2009 – 22 February 2022 - 155 payments = £47.22 per month
    - Average usage 90/365. 90 x £1.5 = £135, sewerage 81 X £1.50 = £121.50. daily charge 8p X 365 = £29.20, sewerage daily charge 23p X 365 = £83.95. Total average usage charges = £369.65 per year. Per month = £30.80
    - £16.42 X 155 = £2545.10 - £332.59 = £2,212.51
- The applicant says that his father was confused by what was being asked of him and in 2014 succumbed to the company's "threats and intimidation" that he would be reported to Experian if he did not agree to an extortionate payment plan, that, although it initially covered the repayments, failed to do so once the water meter was replaced in February 2017.
- At this point the charges/water usage again escalated steadily at first and then rose dramatically in 2018 and 2019.
    - Sept 2017 - (135 cubic litres /369 days) Charges (£522.11)
    - Sept 2018 - (174 cubic litres/351 days) Charges (£641.30)
    - Sept 2019 - (261 cubic litres/368 days) Charges (£935.09)
    - Sept 2020 - (338 cubic litres /378 days) Charges (£1144.41)
    - Sept 2021 (210 cubic litres /361 days) Charges (£732.93)
    - March 13 2022 - (36 cubic litres/170 days) - Charges (£162.86)
- There has been no recognisance from either the company or the Housing Association as to what caused this. The company stated that this was not due to the meter having been replaced even though the bills had clearly stabilised between 2011-2016. Another important factor to note is that either the company or the Housing Association was to blame for this secondary issue because the problem had rectified itself by the time the customer's father passed away, with a final recorded usage of 36 cubic litres over 170 days on 13 March 2022.

The company's response is that:

- There is no legislation or legal obligation on the company to provide an allowance for excess water consumed as a result of leakage. Therefore, any leakage allowance that may be considered and granted is discretionary. The company will consider a one-off ex gratia discretionary leakage allowance in accordance with the Company's Code of Practice if a leak is repaired within 30 days once confirmed and the claim is then made within 18 months. Furthermore, the Company's Core Customer Information sets out that all claims should be made within 12 months of the date the leak was repaired,

- The discretionary leakage allowance is calculated by using the average daily consumption and deducting this from the consumption recorded during the period in which the leak occurred. The allowance will be backdated for a maximum of 12 months up to the date the leak was repaired. Under Rule 3.5 of the Scheme, WATRS does not have the power to determine the fairness of those rules and guidelines and/or commercial practices.

- The company was first made aware of a potential internal leak at the property on 24 September 2010 when a higher than usual consumption through the meter was noted. The company then attempted to make contact with the customer. The location of the meter prevented a Leak and Flow test so an appointment was made for a Meter Technician to attend. The Technician attended the property on 12 November 2010, but no-one was home. The customer was renting the property through **XXX** and it was understood that the customer would discuss the position with his landlord. On or around 27 November 2010 the customer advised that the leak was still to be repaired.

- There was no further discussion about the leak until a handwritten letter was received from the customer on or around 8 September 2014. Following an attempt to contact the customer, the company wrote a letter confirming the payment plan Preliminary by the customer and advising that the company had not been told that the leak was fixed.

- No further communications were received from the customer until a telephone call with his relative on 1 April 2022 advising of his death.

- There is no eligibility for a leak allowance because no application was made within 18 months from when the leak became evident. The company has billed the customer on the basis of the meter readings. In respect of the applicant's claim for alleged overpayments following the meter replacement in 2017, there is no evidence that this was incorrectly recording.

- In an attempt to resolve this issue, the company has reviewed the account and credited it with £1,331.85 in order to bring the balance on the account to zero.
- Given the company has written off all outstanding charges, which is over and above what it would be expected to pay for any alleged customer service failure, the company feels that there is no additional recourse by the company to offer further compensation to the late customer's son.

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 also make clear that I have taken into account the applicant's comments on my Preliminary Decision, whether or not I have commented on these specifically below. The company has confirmed that it has no further comments at this stage.

How was this decision reached?

1. The documents indicate that the applicant is the executor of his father's estate, and he is therefore empowered to deal with the customer's account on behalf of his estate. No challenge has been raised to this.

2. Following the complaint raised by the applicant in this case, the company has by way of a credit, waived the £1,331.85 that it says was due from the customer at the point when his account was closed. The applicant has, however, asked for additional compensation as well as an apology and for this reason the in-house adjudicator found that this application had not been settled. The In-house adjudicator said:

> *Overall, therefore, I find that it cannot be said that this matter is settled in full such that WATRS will close the case through Rule 5.2.1.*
> *As such, I reject the settlement.*
> *However, the company are free to negotiate a settlement directly with the customer, as the customer may be satisfied with what has been offered.*

This has given rise to a misunderstanding that I wish to clear up. The applicant repeats in his comments in response to my Preliminary Decision that the above comments reflect a view by the in-house adjudicator that he should receive compensation in addition to the settlement offer that the company had made. The applicant says:

> *I also note that on the 9th January 2023 this matter was initially reviewed by **XXX**, an in- house adjudicator whom noted rejected the settlement based on me requesting compensation and an apology. **XXX** then suggests that the company should negotiate a compensatory settlement, which I believe should be the final outcome to successfully bring this matter to a conclusion. Granted, **XXX** hasn't been through the case as thoroughly as the adjudicator but I believe the counter arguments I have provided to many of the points raised should ensure my family and I get the resolution most beneficial to us.*

And

> ***XX** have already accepted responsibility that my Late Father was not liable for the water usage, by reluctantly writing off his debt, they should be prepared under the instruction of WATRS to negotiate a compensatory settlement. This resolution was also recommended by the in house adjudicator whom initially reviewed this complaint.*

3. I find that it is highly improbable that on 9 January 2023 the in-house adjudicator intended by her remarks to express any opinion as to whether or not the applicant should have received further compensation and I find that the remarks quoted above cannot reasonably be interpreted in this

way. The role of the in-house adjudicator at that point was to decide whether or not the company's offer and actions meant that under the Scheme rules this case was brought to an end. Under the Scheme rules, it was not the in-house adjudicator's role at that point to decide what the outcome should be if the case continued. **XXX** decided that the case could proceed because the applicant also asked for an apology and additional compensation, which the company had not addressed. The offer therefore did not encompass the entirety of the claim. Her reference to negotiating a settlement, I find, meant that the applicant and company were free to resolve the dispute on the basis of the offer made by the company (or indeed any other offer that might be put forward) but that this could happen only outside the framework of the WATRS Scheme. Contrary to the applicant's concern, therefore, there is no discrepancy between the position of the in-house adjudicator and my findings: the in-house adjudicator was not required to and did not consider the merits of the applicant's case.

4. I therefore turn to the considerations raised in this application.

5. I am mindful that the disputed issues occurred over a timescale commencing approximately twelve to thirteen years ago, and there is no evidence the company had been notified that the customer was vulnerable, even though it is alleged by the applicant as at the events of 2014 that the customer was vulnerable and confused. I am also mindful that my role is to consider whether the actions of the company meet expected standards and I take into account that the company cannot reasonably be expected to know the circumstances of each of their customers unless it has been specifically informed about these. It would not, I find, reasonably be expected that a would draw a conclusion that a customer was confused and vulnerable merely because he did not make optimal financial choices, Accordingly, although I note that the customer says in response to my Preliminary Decision that:

> *I have provided no evidence that my late Father was vulnerable per se. I do believe I have demonstrated enough evidence to suggest he was confused by the process and in my opinion **XXX** have taken full advantage of my late Father's confusion.*

I find that an average customer would have expected the company to have dealt with the customer on the same basis as any other customer without special adjustments for his circumstances.

6. I am also mindful that the primary liability of a customer is to make payment for the water that passes through the meter, and this is consistent with the company's Scheme of Charges and is the same for all customers. The company has submitted evidence that the application of a leak allowance is a discretionary activity and as a matter of the company's procedures, it will not exercise that discretion unless customers take certain actions within a specified timescale.

7. The evidence shows that in 2010:

   a. A potential leak was identified to the company due to high usage and the company investigated this in September 2010. As the customer was a tenant of a Housing Association with responsibility for the pipework and as the customer could not obtain access to carry out a Leak and Flow test due to the location of the stop valve, the customer was asked to bring the leak to an end by liaising with his landlord. In response to my Preliminary Decision, the applicant says that there is no evidence that the customer was asked to undertake this, but I draw attention to the Job Note dated 12 November 2010 (company's attachment 20b) that states:

      ***XX** will get **XXX** to find & fix internal leak, and will then be entitled to **XXX**.*

   b. The company records that the customer stated to it that this had not been done in October 2010.

   c. On 27 November 2010, the customer requested a breakdown of his bill. The company advised the customer in writing on 27 November 2010 that after getting his internal leak repaired, he should contact the company for the grant of a leakage allowance.

   d. There is no evidence that an application was made. As it must be presumed in the absence of evidence to the contrary that the customer had capacity to read the correspondence and decide for himself whether a leak allowance should be applied for, and as the company's procedures provide that a leakage allowance is only given if is asked for, I do not find that an average customer would reasonably expect the company unilaterally to have treated the customer as though an application had been made and nor does the failure to make an application mean that the company should have considered that the customer did not understand the leak allowance (as the customer suggests in response to my Preliminary Decision). .

8. I note that the applicant says that the leak could have been noted earlier or that further actions could have been taken to alert the customer to the need to apply for an allowance. He argues that this would particularly have been so because the customer was the tenant of a Housing Association which was responsible for undertaking the leak repair and that this would be "basic customer care". He repeats this argument in response to my Preliminary Decision. I am unable, however, to find that this is the case. The probability of a leak was brought to the attention of the company by a meter reader, but it does not follow that the company should have noted that a leak was present at an earlier point. Although the applicant says that the usage at that point was almost on an industrial scale (614 m3), I find this to be an exaggeration although I acknowledge that this would have been very usage for a single man living in a one-bedroom flat. The company was not to know, however, whether the customer was living alone and may not have had detailed knowledge as to the nature of his accommodation. The company has explained in correspondence that it has systems to detect increases in usage, which only become apparent over time and detection will be dependent on the circumstances and the amount of increase, especially as customer usage understandably varies. I find that the company cannot reasonably be expected to consider the usage patterns of all of its customers in detail and so prevent any wasted usage and there is no evidence that the level of usage triggered an alert on the company's systems, prior to the warning by the meter reader.

9. Nor I find can the company reasonably be expected to ensure that customers take actions that might be considered to be in their best interests such as applying for an allowance. It cannot reasonably be expected to monitor whether the customer or its landlord has done the repair because this would require the company to engage in enquiries into private arrangements between the customer and a third party. I find that by reminding the customer by letter that he needed to make an application to the company in order to claim an allowance once the repair had been completed, the company had done all that would reasonably be expected. I do not accept the customer's submission that the company should have followed up the situation by knocking on the customer's door, which might reasonably be viewed as intrusive. It follows that I do not find that the company fell short of expected standards in its dealings with the customer in 2010 and in the subsequent 18 months.

10. In 2014, it became apparent that the arrears that accrued during the period of the leak had not been fully paid off and reminders were sent to the customer, pointing out that the company

would be free to contact Experian. The customer contacted the company and Preliminary a repayment plan of £50.00 per month. The company wrote:

> *I've had a look back at your account and you had a problem with a suspected leak back in 2009/2010. We came out at that time and advised you there was an internal problem beyond the meter. You were going to speak to your Housing Association to have them get the problem sorted. We've not heard anything back from you since.*
>
> *What we advised*
> *At the time we advised that if you got the matter sorted out you would be entitled to a leakage allowance for the excess recorded by the meter. I'm afraid that as this was 4 years ago I can no longer offer any allowance. You are currently paying towards your on-going charges and also trying to clear down the arrears.*

11. Although the applicant regards this as "tantamount to theft" and suggests that the company was taking advantage of his father, I find that the company was merely looking to find a way of resolving an accrued debt that the customer was legally obliged to pay. Although the applicant complains about the company's actions, following this correspondence, the customer took no further steps to claim or persuade the company to apply the leak allowance earlier referred to. As indicated above, there is no evidence that the customer was vulnerable or confused at this point, and even if he was, there is also no evidence that the company would have known this. Contrary to the customer's comments on my Preliminary Decision, I do not find that these circumstances should in themselves have suggested to the company that the customer was confused or vulnerable.

12. The documentation supports the applicant's contention that following the meter replacement in 2017, the recorded usage increased. However, there is no evidence that the increase was linked to the replacement. The job notes indicate that the replacement was proactive and therefore I find that it is unlikely that this was done in response to concerns about a leak as the applicant alleges. Moreover, the replacement occurred in February 2017, whereas unusually high readings did not begin until September 2019 and these continued until the bill for September 2020. (In response to the applicant's comments on my Preliminary Decision, I do not say that there was "no discernable rise", just that the rise before September 2019 was not particularly significant.)

13. By March 2021, the customer's water usage became consistent with that prior to 2018. I note that there is no evidence of a leak nor of any malfunction in the meter. The evidence is therefore consistent with increased usage, particularly as the level of use fluctuates over this period. The reasons for this could be many-fold, including that the customer spent more time at home or increased the frequency of an activity that uses a large quantity of water such as bathing, laundry or showering. I take into account the applicant's comments on my Preliminary decision that:

> *… as previously mentioned neither the HA or **XXX** have any knowledge of repairs that were undertaken to account for the water usage suddenly normalising. I believe before this matter can be concluded and a final decision made enquiries have to made to establish if neighbouring flats within my late father's block were causing an issue*.

I also note, however, that I have no jurisdiction to make enquiries of third parties and as at the date when this Final Decision is required to be made, there is no evidence that indicates that the measured quantity of water was other than by way of usage by the customer.

14. However, in any event, in May 2022, following the customer's intervention, the company applied a leak allowance based on leaks occurring between 17 September 2019 and 28 September 2020, calculated according to the customer's average daily consumption. The company applied a credit of £778.94, so reducing the bill at that point to the balance before the final waiver of £1,331.85. The company then waived the final balance in attempted settlement of this claim to WATRS and applied it to the account.

15. Having reviewed the history of this account, therefore, while I note that the applicant says that the customer should have been given more assistance to avoid accruing an outstanding balance and having to address requests for increased payment plans in 2014 and 2019, I do not find that the company has supplied its services to a standard other than would reasonably be expected, consistently with its published Charges Scheme and other policies and procedures and as stated to the customer.

16. If anything, I find that by applying credits to the account that total £2,110.79 so as to waive its claim on the customer's estate, the company has provided services in excess of the standard that would reasonably be expected, and I find that no further remedy is due.

Outcome

The company does not need to take further action.

What happens next?

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

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator