

SPSO decision report



Case: 201901145, Business Stream
Sector: Water
Subject: incorrect billing
Decision: upheld, recommendations

Summary

Whilst C was carrying out works to replace their business's boiler, they discovered that water running through their meter had been supplying two neighbouring businesses, because the meter had been incorrectly fitted years before. They complained to Business Stream (BS) and requested a refund for the amount they had been overcharged. BS accepted liability for the incorrect charging but only offered to refund five years' worth of charges, asserting that the older charges had prescribed (expired) under the five-year limit in the Prescription and Limitation (Scotland) Act 1973 (the 1973 Act). C complained to BS that this was unfair, particularly considering that the company had been paid twice, as their neighbours were also BS customers, but BS refused this. C's said that BS had unfairly failed to consider refunding them the full amount.

We found no evidence that BS had fully considered the complexities of the 1973 Act, in order to calculate when, and if, the debt should have prescribed. Despite repeated requests from C and this office to provide an explanation of their legal position, they were unable to explain this in sufficient depth to justify their approach. In addition, their policies on prescription were suggestive of a blanket approach to applying the five-year limit in all cases, without considering potential exceptions. We considered that these factors were evidence that BS had failed to fairly consider refunding C in full. Towards the end of our investigation, BS did provide a reasonable legal rationale to suggest that the debt should be prescribed. However, we were critical of the fact that C had to resort to complaining to our office before this was forthcoming.

In addition to refunds that were legally required, BS told us it was their policy was to consider whether an ex-gratia (voluntary) payment was appropriate to extend refunds beyond the usual five years, taking account of the specific circumstances of the case. However, there was no evidence that they had considered C's specific circumstances, despite their request, insisting it was unfair for them not to pay. In addition, their policies on ex-gratia payments lacked clarity and consistency. Again, we considered these factors were evidence that BS had failed to fairly consider refunding C in full. Ultimately, we were of the view that, regardless of any legal liability, it was fundamentally unfair for a business providing a public service to refuse to refund the full amount. This was because BS recognised they were incorrectly paid twice for the services in question and so a refund would not represent a loss for them. For these reasons, we upheld the complaint.

Recommendations

What we asked the organisation to do in this case:

- Apologise to C for failing to fairly consider their request for a full refund and for unfairly withholding the refund. The apology should meet the standards set out in the SPSO guidelines on apology available at www.spsso.org.uk/informationleaflets
- Business Stream should provide C with a full refund for the amount they were overcharged. This should be calculated using historic consumption of the other properties in question, where available. Otherwise a fair and justifiable methodology, consistent with that previously used, should be employed to calculate the refundable amount.

What we said should change to put things right in future:

- Whenever considering whether to apply a prescriptive limit to refunds, Business Stream should fully consider a customer's personal circumstances against all of the relevant legislative requirements and clearly record their rationale.

We have asked the organisation to provide us with evidence that they have implemented the recommendations we have made on this case by the deadline we set.