

The complaint

Mr S complains about a water softener he hired from Harvey Water Softeners Limited (HWS).

What happened

In July 2022 Mr S entered into a hire agreement with HWS, in relation to a water softener. He says this device leaked, causing £1,300 of water damage to a kitchen worktop. In September 2022 he asked to cancel the agreement and to return the device. HWS agreed to do this, and to refund his rental payments. But HWS had still not collected the device by the time Mr S moved out of the property in April 2023. HWS said they did try to collect it in October 2022, but Mr S hadn't been in, and an alternative date a week later had been offered but had not been confirmed. Nevertheless, HWS offered him £100 as a gesture of good will for this delay.

Mr S didn't accept that offer. He said that he had been living in rented accommodation, and his landlord had said he would sue him for the damage. He wanted to be paid the full cost of the damage, and for HWS to remove the device. He also complained that HWS had told him on the phone that they would obtain his landlord's consent to install the water softener. HWS denied that it had told him that.

Mr S then brought this complaint to our service, but our investigator did not uphold it. She listened to a recording of part of the phone call in which Mr S had said he was told that HWS would contact his landlord for permission to install the water softener, but she didn't agree that this was what HWS had actually said. She said it had been Mr S's responsibility to deal with his landlord, and she referred to the hire agreement's terms and conditions. She compared photos of the premises before and after the installation, and decided that there was no evidence that the water damage had been caused by the installed device. She thought that there had been unnecessary delay in removing the device, but that £100 was fair compensation for that (HWS has confirmed that it will still honour that offer).

Mr S did not accept that opinion, and he asked for an ombudsman to review this case. I wrote a provisional decision which read as follows.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I am minded to uphold part of it, and to award Mr S £100 in addition to HWS's gesture of good will. I will explain why.

Mr S has provided photos which clearly show water damage in the area under the kitchen sink, where the water softener device had been installed; these pictures were taken after it was removed. But he has also provided a couple of photos of the same area taken on the day the device was installed, and water damage is also visible in those. HWS also provided photos of that area which were taken just prior to installation, and these show extensive

water damage already existed. So I don't think it would be safe for me to conclude that any damage was caused by the device.

I have listened to the relevant call recording. Mr S asked the HWS call handler if it was possible to install a water softener in a rented house. The call handler replied:

"It is possible to get it in a rented property, we just need to ask the landlord for permission."

I can see why Mr S understood this to mean that HWS would ask the landlord; after all, that is the grammatically literal meaning of that sentence. However, I don't think the call handler meant to be taken that literally. She used an imprecise way of speaking, but I don't think it was ever HWS's intention to approach the landlord itself – that would certainly be a tenant's responsibility. I am reinforced in that opinion by clause 6.3.4 of the terms and conditions, which sets out that it is the hirer's responsibility to obtain "all necessary consents and permissions". I also think that the call handler's error was mitigated by the fact that Mr S did not provide his landlord's name or contact details in the call, so HWS would not have been aware that he was expecting them to contact the landlord.

However, Mr S has dyslexia and autism. So his understanding of what the call handler told him was quite literal. It did not occur to him at the time, or afterwards, that he had neither volunteered nor been asked for his landlord's name or contact details, or that this might indicate that HWS had no intention of contacting the landlord. And although the terms and conditions were sent to him, he did not read them. He was of course still legally bound by them, and he was on constructive notice of what they said, but I mention his dyslexia here in the context that the hire agreement did not prompt him to realise that he had misunderstood the phone call and that he would actually need to seek his landlord's permission himself.

HWS did not know about Mr S's dyslexia or his autism at the time of the call; the first time he mentioned it to anyone connected with HWS was on the day the device was installed. So the call handler would not have realised that she was dealing with a vulnerable customer (there was nothing on the call to indicate to her that he had a disability). So I will award less compensation for the call handler's poor choice of words than I would have done if she had known that, or if I thought she should have known.

I will not speculate about what the landlord would have said if anyone had asked him for permission to install the water softener. He might have said no, in which case nothing would have gone amiss; or he might have said yes, in which case he would not have been in a position to sue Mr S for the alleged damage. In either case, I think that fair compensation for this issue would be £100.

The long delay in removing the device has not been adequately explained. Although Mr S was not in when the engineer visited in October 2022, it should still not have taken a further six months. However, as I am not satisfied that the device was causing damage in the meantime, I don't think the consequences of this delay were severe. £100 is in line with what I would have awarded if HWS had not made an offer already.

So I am minded to uphold this complaint. Subject to any further representations I receive from the parties ... I intend to order Harvey Water Softeners Limited to pay Mr S a total of £200.

Responses to my provisional decision

HWS accepted my provisional decision. Mr S did not. He said he had mentioned his learning difficulties and dyslexia during the call, and asked me to listen to it again. He also provided a

recording of a second phone call, which he made recently, in which he had asked another call handler some questions about the procedure for obtaining a landlord's permission and for verifying that permission has been obtained before the device is installed. He says no verification was sought when his device was installed, or when the installation was booked.

Mr S also said that the engineer who was supposed to remove the device in October 2022 had lied about visiting the property when Mr S was out, and that in fact he had never come. And he maintained that the device did cause water damage to the kitchen. He added that during installation, a couple of holes had been made to accommodate some pipes that were to be attached to the device, and his former landlord says that these holes are also damage (these holes can be seen in the photos already provided).

Meanwhile, HWS shared the full length, unedited call recording, because the call recording provided by Mr S was only the first minute and a half. The full recording is six minutes and 45 seconds long.

My findings

I have listened to the full call recording, and this time I noticed that at around 40 to 45 seconds into the call, Mr S did indeed mention his learning difficulties and dyslexia, which I had overlooked the first time I listened to it. So I have reconsidered this complaint in the light of that information.

However, now that I've heard the entire call, I can say that the call handler made it abundantly clear on numerous occasions that it was Mr S's responsibility to get his landlord's consent to install the device, and that HWS would not do that for him.

The bit I have already quoted (in my provisional decision), in which the call handler accidentally said "we just need to ask the landlord for permission," was at one minutes and 18 seconds (1:18). The incomplete recording which was originally provided ends there. But the unedited recording continues with Mr S asking a question about how he should provide his landlord's details. And the call handler replies:

"So what we would do is we'd book you in for a demonstration and then obviously we would just have to, obviously you would have to call your landlord or message him in between and obviously confirm ... if we were able to install it for you."

Mr S then asked for clarification of that answer, and the call handler responded (at 1:56):

"So on the day of demonstration, you'd have a conversation, he'd give you information, but maybe before the demonstration, maybe just give your landlord a text or message or call just booking in a demonstration for a water softener: *"Is it possible that we could have it installed?"* And then go from there."

Mr S clearly did not understand that answer, because at around 2:45 he asked:

"Just one more thing. You just mentioned that the landlord's permission and then you guys would make call landlord to make sure that ... he has given consent and all that. So for that would it be the details of my landlord has to be given to you now, or on the day when the guy come?"

The answer was:

"No. So we wouldn't have to call your landlord. You would have to call your landlord or you, you give him a message or call him. And because, yeah, where you can confirm with him your way."

Mr S then asked:

"OK, so how, how would you get the confirmation landlord has given consent or not?"

To which the reply was:

"So we would get that from you."

I think that was perfectly clear. However, at 4:45 Mr S said:

"OK, so it's totally at your end ... nothing to do with me."

The call handler answered:

"So we wouldn't be able to, we wouldn't be able to install without the landlord's permission. So you would have to confirm that with him and, and then all you have to do is get back to us."

Mr S then said:

"I get that. I get that."

Mr S then went on to ask a hypothetical question about what would happen if a customer didn't ask their landlord for permission, but pretended that he had got it. It is not entirely clear why he wanted to know that; he just said that he was curious. The call handler told him that HWS would take the customer's word for it. But she went on to add that it would be better if Mr S got a text message from his landlord which he could show to their engineer as proof.

Mr S said he understood, but then he asked what the call handler meant by a text message. This is what she told him (at 5:41):

"So let's, let's, let's make it easier. Let's, let's say you text your landlord, say, *"Can I have, I'm having a demonstration, can I get it booked in for installation?"* And then he will say either *"Yeah, you can have it installed."* And obviously that is proof. So on the day of demonstration you can show that to the demonstrator."

Mr S apparently understood that, because he said:

"OK, so he will need some sort of evidence. He will need some sort of evidence. There, that makes sense."

Nevertheless, the call handler added the following remark:

"Maybe just text him to confirm and then ... that might solve the issue."

Mr S said:

"OK, alright. Alright. Thank you. So basically you guys need an evidence to make sure that consent is there in place."

The call handler said: "I believe so, yes. So maybe just send a text would be better."

Mr S responded: "OK. Sure. Sure. Thank you. So, yeah, you can take my details."

Having listened carefully to all of that, I am quite satisfied that by the time the booking was made, Mr S understood what was required of him. I am also satisfied that the call handler patiently, clearly, and repeatedly stated what Mr S needed to do, until she was satisfied in her own mind that Mr S understood. I think she did enough to accommodate Mr S's learning difficulties, and that by the end of the call he had not been disadvantaged by them. Overall, I am satisfied that this call was conducted by HWS in a thorough, professional, and diligent manner, and that the error at the beginning of the call was entirely wiped out by everything that followed.

Given that the landlord told Mr S that he had not consented to the device being installed and that he would sue Mr S, and given that Mr S has told us that he did not ask his landlord for permission because he thought HWS was going to do that for him, I am also satisfied that Mr S did not in fact ask the landlord for permission after all. Perhaps he forgot what he had been told on the phone, but I cannot fairly hold HWS responsible for that. Whatever the reason is, I do not think that this is HWS's fault, and so I have changed my mind about awarding Mr S £100 for this phone call, as there was nothing wrong with it.

I remain of the view that there is not satisfactory evidence that the device caused water damage.

I am therefore of the view that HWS's offer of £100 was a fair offer, and so it does not need to do anything else. For that reason, I do not uphold this complaint after all.

My final decision

My decision is that I do not uphold this complaint.

I leave it to Mr S to decide whether he now wishes to accept HWS's offer of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 June 2024. But apart from that, this final decision brings to an end the Financial Ombudsman Service's involvement in this matter.

Richard Wood
Ombudsman