

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1855

Date of Decision: 11 March 2020

#### Complaint

The customer, a Residents Association/Managing Agents, disputes the accuracy of two leak allowances granted by the company for higher than expected usage recorded on the water meter serving forty-eight flats. The customer claims the allowances do not cover the overcharges in full and that the average daily usage used by the company to calculate the second allowance is too high, resulting in a lower allowance. The customer also raises a concern about an increase in consumption over the past seven to eight years. The customer requests a refund of overcharges (approximately £7,000.00 plus an amount for the current overcharges) and a new meter/individual meters installed for each flat.

#### Defence

The company asserts that it applied discretionary leak allowances due to high usage recorded on the meter that it attributed to an internal leak and "unexplained high usage". Leak allowances were calculated based on the customer's average daily usage (during normal periods of usage) and it does not accept that a higher leak allowance is warranted. The allowances provided are for fresh water only as, whilst it bills the customer for wastewater on behalf of RST Water, it would be for the customer to appeal to RST Water in relation to any allowance to cover wastewater charges during the high usage periods. It has replaced the water meter and submits that the readings taken since the new meter was installed do not indicate a high average daily usage. The company has not made any offer of settlement.

#### Findings

The company applied two discretionary leak allowances, totalling £23,365.23 for higher than expected water consumption recorded on the customer's meter and subsequently replaced the water meter. The company has shown on a balance of the evidence that the allowances it calculated are correct and reasonable. Whilst the leak allowances do not cover the full overcharges, I accept that the company is not responsible for any allowance attributable to the wastewater element of the charges as this falls to RST Water (the wholesaler) and therefore falls outside of the scope of this adjudication. As there is no evidence of the company failing to provide its services to a reasonably expected standard, it is not liable to provide the remedies sought.

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**Outcome**

The company does not need to take any further action.

**The customer must reply by 8 April 2020 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1855

Date of Decision: 9 March 2020

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

### The customer's complaint is that:

- [ ] is acting on behalf of the residents (including himself) of Green House and Green House Residents Association/ Managing Agents ABC Services Ltd.
- They are unhappy with the outcome from the Consumer Council of Water (CCW) because:
  1. The increase in annual consumption over the past seven to eight years has not been considered (it has doubled);
  2. They do not accept that the internal leak from a cistern reported to the company on 10 November 2015 and repaired on 14 December 2015 accounts for the extra charges of (approximately) £30,000.00;
  3. They dispute the accuracy of the two leak allowances provided (totalling around £23,000.00) which have been calculated based on the company's own criteria for "leak allowances" as they are less than what they have been overcharged (they just want a refund of these overcharges);
  4. The leak allowances were calculated based on their annual consumption which the company worked out by taking meter reads over a very short period of time; they contest this as the company already knew their annual consumption figures which are much lower;
    - a) Actual readings were:
      - i. 16638 on 09/01/2015 (2089 in consumption and 11.928m<sup>3</sup> average daily usage);
      - ii. 22331 on 13/07/2015 (5693 in consumption and 30.773m<sup>3</sup> average daily usage);
      - iii. 26398 on 04/01/2016 (54607 in consumption and 26.326m<sup>3</sup> average daily usage);

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- iv. 340288 on 05/07/2016 (7150 in consumption and 39.071m<sup>3</sup> average daily usage) and;
  - v. 40258 on 13/01/2017 (6170 in consumption and 32.135m<sup>3</sup> average daily usage).
- b) It can be seen from the above actual readings that on 09/01/2015 the average daily usage was 11.928m<sup>3</sup> and that it jumps to roughly three times that on 13/7/2015 (before the leak of the cistern (10/11/2015 to 14/12/2015), and also continues to be so subsequent to the repairs being completed. Therefore there appears to be “no logic” or relevance for the consumption figures to be three times than that in i). Further, during the “so-called” and reported leak period, the average daily usage was actually lower than it was after the repairs.

5. The water meter was changed on 16 May 2017 and the company then took a short “test” of their consumption over a week or so and claimed it was their average consumption for the whole year; they do not accept this method and photographs the company claimed they had of the meter reads have not been supplied.

- On the day the company was changing the meter, requests made by residents in their nineties for bottled water due to the water being cut for several hours, were refused by the company. This shows the “callous and unscrupulous attitude” of the company.
- If the water meter was faulty and went unnoticed, the company should class it as a commercial loss and “not saddle the losses on this retirement community”.
- They have observed water overflowing into nearby roads from underground for weeks with no repair or action taken. They believe their case “is just a symptom of what lies beneath the surface of this company...” and they recommends a “full investigation and audit of their activities and accounts with the full might of the law”.
- The customer requests: a refund of £7,000.00 for past overcharges.
- The customer also requests that the company stop overcharging “immediately” and provide a refund for current overcharges (to be assessed/recalculated) and for it to install a meter which works properly and is “tamper proof”.
- Further, the customer requests that the company install individual meters for each flat and a separate one for communal areas.

**The company’s response is that:**

- It contends that the root cause of the customer’s complaint is that they feel its policy regarding leakage and credits for leakage, to be unfair.

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- Its policy regarding leak allowances (contained in its 'Leakage Booklet') states: *'We do not usually make allowances for leaks from pipework or fittings beyond your internal stopcock, except where in our opinion, you could not reasonably have known about it'*. In this case, it has accepted that ABC could not have reasonably known about toilets leaking so they applied an allowance against freshwater costs.
- It bills the customer for wastewater services on behalf of RST Water and it is their policy that they do not process leak allowances for leaking toilets, so it was not appropriate for it to do so on their behalf.
- The RST Water Leakage Code of Practice states that an allowance for leakage will be applied if: *'The leak was on your external water supply pipe and not on your internal fixtures and fittings'*.
- With that said, it informed the customer that they can raise this matter with RST Water should they wish to do so, as per its email dated 2 July 2019.
- Its Leak Allowance policy is to apply one leak allowance for a period of up to twelve months only. However, in this case it has applied one allowance for the period 18 July 2014 to 4 January 2016, for £8,916.74 (applied to the account on 7 June 2016) and the second allowance covered the period 5 June 2016 to 15 May 2017, for £14,448.49 and was applied to the account on 24 October 2017. The second allowance was for 'unexplained high usage'.
- In response to the claim for it to stop overcharging "immediately" and install a meter which works properly and is "tamper proof", it asserts the meter readings illustrates that since the new meter was installed it has recorded 5957m<sup>3</sup>, at a daily average rate of 6.11m<sup>3</sup>. If this usage is divided across the forty-eight flats then the average is 127 litres a day, which indicates "nothing untoward and that there is no overcharging for water services".
- Given the above information, it can see no reason to exchange the water meter and there is no indication that it can be, nor has been, tampered with. Furthermore, there is no indication that any of the previously installed meters have been tampered with.
- In relation to the customer's request for individual supplies to be installed (and individually metered) at the block of flats rather than the one single bulk metered supply, this falls outside of the WATRS remit, under section 3.5 of the Scheme Rules, as it is currently considered a bulk supply, and bulk supply determinations cannot be determined under this scheme. There is already a functioning meter recording the usage at all flats and communal areas, which complies with the Water (Meters) Regulations 1988, therefore, it is not in a position to install new supplies and meters without the customer applying for individual supplies and incurring the costs involved.

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- In summary, it has provided two large credits following internal leakage and unexplained leakage. As it was informed by the customer that the initial increase in recorded consumption was due to toilets leaking, it applied a credit from the fresh water only and have informed the customer that they can apply to RST Water for a waste water allowance.

## Reply

- The customer submits that the company has not provided evidence of the first leak allowance (for £8,916.74) being applied to their account. The customer asserts that the company has “evaded” its question about the increase in water consumption over the past 7 years to 8 years (it has doubled) despite the same number of flats. It has also not addressed the issue of why the consumption of water to their building was three times higher than before the leak and lower during the leak period.
- The customer disputes aspects of the Defence highlighting its reference to average daily usage being 6.11m<sup>3</sup> since the new meter was installed on 16 May 2017, however, the company has re-billed their account based on an overestimation of 10.03m<sup>3</sup> of average daily usage.
- The customer asserts that the second leak allowance of £14,448.49 is inadequate to compensate for the unexplained high consumption figures recorded. The customer states: *“the credit given of 7,882 CM should have actually been 8,926.47 (average of the last 3 DA readings which were charged 10851.12 less the actual DA admitted in the Defence page 2 line 5, of 6.11x 315 days which comes to 1,924.65, giving a credit of 8,926.47, at the very least”*. This is an approximate figure based on common sense.

## 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

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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. As per WATRS Scheme rule 1.7, the customer (Green House Residents Association/ABC) is a non-household customer and the dispute relates to the water supply to Green House, [], consisting of forty-eight flats.
2. The customer's claim concerns overcharges based on water consumption recorded on the meter, particularly in relation to meter reads taken from 17 July 2014 up to 16 May 2017 (when the water meter was changed) and the accuracy of two leak allowances subsequently granted by the company in relation to the higher than expected usage. The customer has also raised a concern about the increase of recorded water usage over the past seven to eight years.
3. At this juncture, I remind the parties that the company is the Retailer and that RST Water (RST) is the wholesaler for the customer's region; this division between the Wholesaler and Retailer occurred as a result of government changes which opened up the water market which came into effect on 1 April 2017. I find that the company and RST are therefore two distinct and separate entities and further that a WATRS Application can only be brought against one party. In this instance, the customer's case has been defended by the company; the Retailer and therefore for the purposes of this decision, my remit is to determine the issues between the customer and the company. I am unable to consider any claims or complaints in relation to RST or other third parties (including CCW). I also remind the parties that under this WATRS adjudication process, whilst I am able to consider the claim and decide if the company has failed to provide its services to a reasonably expected standard based on the evidence supplied to me, I am unable to carry out an "investigation". Therefore, I find that the customer's request for the same falls outside of the remit of WATRS on this basis.

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4. Furthermore, I accept the company's assertion that the remedy sought for it to install individual meters for each flat and a separate one for communal areas, falls outside the remit of WATRS in accordance with Scheme Rule 3.5, as I find it relates to a bulk supply determination.
  
5. The customer asserts that the leak allowances provided do not cover the overcharges of £30,000.00. Having reviewed the case papers, I acknowledge that the company applied leak allowances totalling £23,365.23. In relation to the first allowance of £8,916.74 (applied on 7 June 2016) for a period of higher than expected usage between 18 July 2014 and 4 January 2016. The company has said this figure was calculated based on meter reads (during a period of normal usage) of 10,129m<sup>3</sup>, taken on 10 January 2013 and 12,666m<sup>3</sup>, taken on 11 January 2014 giving a daily average water allowance of 6.93 m<sup>3</sup>. I accept this and acknowledge this allowance was granted for internal water loss as the customer ([redacted]), site manager of ABC), had reported an internal leak on the toilet cistern on 10 November 2015 (reported as repaired by the customer on 14 December 2015). The company has highlighted its policy regarding leak allowances that states: *'we do not usually make allowances for leaks from pipe work or fittings beyond your internal stopcock, except where in our opinion, you could not reasonably have known about it'*. The company submits that, as it accepted the customer could not have reasonably known about toilets leaking, it applied the above allowance. I am mindful that, legally, the company is not responsible for internal leaks from pipe work or fittings (this responsibility falls to the owners) yet in this case, despite an internal leak reported, the company applied a leak allowance for the period of high usage (dating back to the July 2015 read), attributing it to the reported leak. As such, I find no evidence of the company failing to provide its services to a reasonably expected standard in this regard.
  
6. The customer contests that the leak allowance granted of £8,916.74 sufficiently accounts for overcharges during this period. Based on the evidence of transactions, submitted by customer, I accept that the two invoices dated 1 August 2015 and 22 January 2016 for £11,278.28 and £9,493.26 respectively, are considerably higher than the customer's invoices raised during a similar, earlier timeframe. I note that once the leak allowance of £8,916.74 was applied to the customer's account on 7 June 2016, the customer paid the remaining balance of the two invoices; £11,854.90 on 5 July 2016. I acknowledge this amount still appears relatively high when compared to 2014 when the customer paid

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£7,711.17 in total over a similar period (twelve-months). However, the company has explained that it bills the customer for wastewater services on behalf of [ ] and as [ ]'s Leakage Code of Practice states it does not process leak allowances for leaking toilets, it was not appropriate for it to do so on TW's behalf. The company has included RST's Leakage Code of Practice at Appendix 2, and in light of this, I accept its above submission. Therefore, it is clear that the allowance of £8,916.74 was for fresh water only, indicating that the discrepancy between the overcharges and leak allowance, is likely to be the wastewater element of charges (that are calculated based on the amount of water consumption). I accept that it would be up to RST to grant any allowance for the wastewater element of charges. I acknowledge that the company explained this to the customer in its response dated 19 July 2019 and provided contact details for RST for the customer to appeal its decision, if desired. The customer has responded that they are not a RST customer and therefore do not have a relationship with RST. I find that whilst ordinarily, as the customer's Retailer, it would be for the company to raise any such matters with the Wholesaler on the customer's behalf, in this case, I am mindful that the timeframe relates to pre 1 April 2017 (prior to when the company became responsible for the customer's billing issues). Therefore on balance, I accept it falls to the customer to raise this issue with directly RST if they wish. As such, I find that the issue of a leak allowance for the wastewater element of the disputed invoices, cannot be considered in this adjudication as it falls outside of remit of WATRS.

7. Based on the meter reads, I accept that the higher than expected usage recorded on the water meter continued after the repair of the customer's cistern on 14 December 2015 and increased further, resulting in invoices for £14,392.43 on 29 July 2016 and £12,734.75 on 14 January 2017 (these invoices were paid by the customer on 2 November 2016 and 1 February 2017 hence why the subsequent leak allowance granted of £14,448.49 was refunded by cheque to the customer). I acknowledge that the company exchanged the meter on 16 May 2017 following damage found to the meter display of the water meter. Further, the company calculated a second leak allowance from 5 June 2016 to 15 May 2017 (up to when the meter was replaced), which the company has attributed to 'unexplained high usage'. The customer has suggested the high water consumption was either due to a fault with the meter or leaks from roads observed in the vicinity. I accept the company's submission (in its response dated 2 July 2019, submitted at Appendix 3) that any leaks on the water mains would not affect the usage recorded on a water meter as the meter is beyond the communication pipe which links the mains to the customer's private service pipe.

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Although I accept there is a possibility that the higher than expected usage recorded was due to the meter being faulty, particularly in view of the damage found to the meter display, I find there is insufficient evidence to enable to conclude this was the cause. However, I am satisfied that in the circumstances, it was reasonable for the company to apply a further leak allowance for this period. The customer has contested the basis of the calculation; in the customer's accompanying letter (to the WATRS Application), it is suggested that the company used a higher ADU figure (by taking meter reads over a very short period) than if it had used historic meter reads. It appears from Appendix 5 (of the Defence) that the leak allowance of £14,448.49 was based on an ADU of 10.04m<sup>3</sup> from meter reads taken on 8 March 2016 and 4 April 2016 (this is reiterated in the company's response to the customer dated 14 May 2019). These meter reads are not included in the meter reads provided at Appendix 4 and whilst the company has said it photographed the said meter reads, this has not been provided. To me, it seems these meter reads were taken during the period of the unexplained high usage. In its Defence, the company has said the customer's ADU since the meter exchange has been 6.11m<sup>3</sup>, and so I consider this supports my above finding that the ADU used to calculate the leak allowance of 10.04m<sup>3</sup>, is relatively high. However, in its response dated 3 August 2019, the company submits that a leak allowance based on a higher ADU has resulted in a larger leak allowance for the customer (a credit has been provided for 7882m<sup>3</sup> of the water used based on the above ADU) and that if adjustments were made based on the customer's calculations (based on historic readings), the leak allowance would decrease. I find no clear evidence to the contrary has been provided, and based on the company's evidence and calculations, I accept the company's above assertion. As such, as I am satisfied that the basis of the company's calculations have resulted in a more favourable leak allowance. Therefore, I find there is a lack of evidence to support the claim for a higher leak allowance for this timeframe and I find no evidence of the company failing to provide its services to a reasonably expected standard.

8. The customer has also raised a concern about the increase in recorded water consumption during the past seven to eight years and asserts it has doubled during this timeframe despite the same number of flats. The company submits that since the new meter was installed, it has recorded 5957m<sup>3</sup>; an ADU of 6.11m<sup>3</sup>, and that if this is divided across the forty-eight flats, the average is 127 litres a day. The company says this does not indicate "anything untoward" or overcharging. Whilst I find the water usage per flat would depend on a number of factors, for example number of occupants, I am inclined to accept the company's above submission that an average daily usage of 127 litres per flat, cannot be considered "high".

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Furthermore, based on the meter reads at Appendix 4, excluding the periods of accepted unusual high usage, I do not find that they establish that annual usage has doubled over the past seven to eight years. Therefore, I do not consider this aspect of the claim has been substantiated. As a consequence, I find that the customer's request for a meter replacement has not been justified.

9. In relation to the customer's claim regarding the company's meter installation team not providing bottled water to residents, I cannot find any prior complaint having been raised by this therefore I find this element falls outside of the scope of WATRS.
10. Therefore, I am satisfied that by applying discretionary leak allowances for an internal leak and 'unexplained high usage', the company has acted reasonably. Although after the two leak allowances have been applied, the balance of the invoices paid by the customer was still higher than usual, I find that the leak allowance only accounts for the fresh water passed through the meter and no allowance has been provided for the wastewaters element of the invoices. I accept the company is not responsible for granting an allowance for the wastewater element; this would fall to RST and as such falls outside of the scope of WATRS for the reasons explained above.
11. As the claim has not succeeded the company is not liable to provide the remedies requested.

#### **Outcome**

The company does not need to take any further action.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 April 2020 to accept or reject this decision.

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- 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.
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**A. Jennings-Mitchell**, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb  
**Adjudicator**

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