

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1566

Date of Decision: 25 October 2019

Complaint

The customer has a dispute with the company regarding billing and the payment of compensation for losses incurred by failings of the company. The customer asserts that assets belonging to the company were inadequately maintained and caused damage to farm equipment and the loss of livestock. The customer asserts that despite repeated requests compensation has not been paid and thus he has denied paying his water bills until such compensation is agreed and a suitable payment plan put in place. Despite the involvement of CCWater the dispute is unresolved and the customer has escalated his claim to the Water Redress Scheme (WATRS) whereby he seeks the company to agree a mutually acceptable payment plan and pay £8,930.00 in compensation.

Defence

The company asserts that it has liaised closely with the customer in respect of his claim. The company states that it is not responsible for the compensation claim as this is being handled by the original water wholesaler. Since April 2017 the company has been the retailer responsible for billing the customer, and is a separate company from the wholesaler. The company asserts it has agreed several payment plans previously with the customer but he has not complied with the terms and the plans have been cancelled. The company has not made any offer of settlement to the customer, and declines to accept the most recent plan proposed by the customer. The company confirms the customer has outstanding bills it and retains all its rights to collect the sum owing.

Findings

I am satisfied the company acted reasonably in its dealings with the customer. I am satisfied that the company is not responsible for settling the long outstanding claim by the customer for compensation. I am further satisfied that the company is entitled to collect payment for water supplied and thus the customer cannot set off the compensation claimed against his outstanding balance for water supply. I thus find the company has not failed to provide its services to the extent to be reasonably expected by the average person.

Outcome

The company needs to take no further action.

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ADJUDICATOR'S DECISION

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Date of Decision: 25 October 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company regarding billing, outstanding compensation for damage to farm equipment occasioned by the company, and loss of livestock. The dispute has been ongoing since 2016 and despite the customer's regular communications with the company, and the involvement of CCWater, the dispute has not been settled.
- The original water supply company had allowed a water meter and a manhole cover to fall into disrepair and as a consequence, sometime in 2016, these company assets caused damage to some of his farm equipment and the loss of livestock (a cow). Additionally, the leaking water meter had caused him financial loss, in addition to the repair cost of his equipment and the loss of value of the cow.
- During subsequent discussions with the water supplier it verbally agreed to compensate him for his losses, but that after the departure from the supplier of the person he was dealing with it reneged on the verbal agreement, and thus his compensation claim remains outstanding.
- The customer further asserts that the dispute with the original water supply company contains a further strand in so much as he contends that an area of easement had been incorrectly fenced off. The customer asserts that despite many requests to the water supply company the easement remains incorrectly fenced, and has been incorrect for more than eight years.
- The customer accepts that he has an outstanding bill issued by the company, and states that he is willing to make an offer of payment to clear the current outstanding balance of £17,452.63 but contends that his compensation claim with the original water supply company should be settled first so that the balance of charges owing can be calculated.

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- The customer further asserts that in 2016 representatives of the water supply company visited his farm to examine his complaints and view its assets. He states that photographs were taken, notes made, and a report was prepared. He believes that the transfer of responsibilities in April 2017 from the original water supply company to the company resulted in the report etc being lost. The customer asserts that the wholesaler is now placing the emphasis back on him to provide evidence of the damage to his farm machinery and the death of the cow.
- The customer states that a leakage allowance was agreed due to the leaking water meter, and that he has previously negotiated payment plans with the company to settle the outstanding balance on his account. However, he has not fully complied with the plans as he believes the company has not seriously addressed his compensation claims, and he further believes that he has received a very poor level of customer service.
- The customer asserts that the company's insistence that the compensation issue is separate from the outstanding bill is not correct. He states that the wholesaler and retailer are parts of the same parent company and that the dispute began before the water supply company split in 2017 and as such his dispute should be dealt with as part of the same compensation/billing issue.
- On 29 May 2019, the customer escalated his complaint to CCWater, who took up his complaint with the company on his behalf. The customer records that, despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint and CCWater are unable to facilitate a resolution between the parties. The customer remains dissatisfied with the response of the company and consequently, on 16 September 2019, has referred the matter to WATRS whereby he seeks to have the company write off his outstanding bill, correct the fencing to the easement, agree to a mutually acceptable payment plan, and pay £8,930.00 in compensation.

The company's response is that:

- The company submitted its Defence paper to the claim on 15 October 2019.
- The company asserts that it believes the customer is not entitled to any of the remedies that he requests in his WATRS application. The company further asserts that it is beneficial to explain the history of the complaint, and to clarify how the customer's request to offset his outstanding bill against his compensation claim concerning the original water supply company is not correct.
- The company explains that the customer originally received water supply services from RST Water, but that in April 2017 the industry was split into wholesalers and retailers, the former

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supplying clean water and the latter selling it to business consumers. The company took over the business accounts of RST Water and the debts associated with them, but existing liabilities towards customers remained with RST Water.

- The company asserts that this split of responsibilities meant, in this specific case, that the outstanding bill of the customer passed from RST Water to the company but that the compensation claim raised by the customer did not. Thus, the company asserts that it is not responsible for the actions or the position of RST Water, that it is not involved in the compensation claim, nor is responsible for the purported lack of customer service received by the customer.
- The company further states that it and RST Water are separate and distinct companies and that the customer should pursue his compensation claim against his original water supply company and not against the company.
- The company asserts that notwithstanding the separation between it and the wholesaler it has attempted to offer assistance to the customer to progress his compensation claim with the wholesaler. The company asserts that in September 2017 it contacted the wholesaler for an update on the customer's claim and that again 11 March 2019 it referred to the wholesaler a timeline of events, received from the customer, for its consideration. The company states that a response was received from the wholesaler on 20 March 2019 stating that the dispute was being handled by the customer's land agent, and that it did not accept any liability and no compensation had been or was likely to be paid to the customer.
- The company confirms that at the time of preparing its Defence paper the customer's outstanding debt stood at £17,928.99. The company confirms that previous payment plans had been negotiated with the customer but that he had failed to comply with them, and as such the company issued a notice to the customer in October 2018 proposing a new payment plan which was not accepted by the customer. He referred the dispute to CCWater and at such time the company suspended its debt recovery process pending the conclusion of CCWater's investigation.
- The company acknowledges that the customer has offered to pay the sum of £700.00 per month but states this is not acceptable as the customer currently uses ± £700.00 of water per month and this level of monthly payment will not contribute to reducing his outstanding debt.
- In summary, the company believes it has acted reasonably and taken all possible measures to assist the customer. The company states that it has explained to the customer on many occasions that his dispute with the wholesaler is a separate issue and is not a valid reason to

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withhold payment of his outstanding bill. The company does not accept the payment plan proposed by the customer and reserves the right to secure payment of the outstanding debt in the manner it deems appropriate.

The customer's comments on the company's response are that:

- The customer has not submitted comments on the company's Defence document.

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 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 dispute relates to the customer's dissatisfaction that he still awaits payment for a compensation claim raised in 2016 against his original water supply company. The customer asserts that the separation of residential and non-household consumers within the water supply services in April 2017, and the introduction of wholesalers and retailers, has allowed the original supply company to avoid payment of the compensation.
2. I note that WATRS is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.

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3. Based on my review of all the available information, I am satisfied that the main issue of this WATRS Application is whether the customer is correct in his desire to set off the compensation payment claimed against his outstanding water bill.
4. I note the company states that, at the time of preparing the Defence paper on 15 October 2019, the outstanding amount owed by the customer stands at £17,928.99. In his application to WATRS the customer seeks compensation in the amount of £8,930.00. I have recorded these amounts for the purpose of clarity, but I find they are immaterial to this decision as the dispute concerns matters of principle and not quantum.
5. I have sympathy for the customer in so much as this is a long-standing dispute that has its origins in 2015 or 2016, and that the situation has been hindered somewhat by the changes in the water industry as from 01 April 2017. From the evidence laid before me I am satisfied prior to April 2017 the customer was supplied with water by RST Water who was also responsible for collection of fees for the supply.
6. I further understand that the customer raised a claim for compensation against RST Water sometime in 2016 for acts and omissions of the supplier that he believed led directly to financial loss in respect of damage/loss to equipment and livestock. The customer claims that he had successful negotiations with a representative of RST Water who verbally accepted the compensation claim and advised him to secure the services of a land agent to process his claim to conclusion. The customer claims that while he was following this advice the company representative departed and subsequently RST Water now dispute the claim.
7. The company, in its Defence document, states that In April 2017, RST Water changed its role to that of wholesaler and RST Water Business [the company in this referral] took over the responsibility of billing customer's and managing customer accounts. At that time the outstanding bill of the customer passed to the company, while the wholesaler retained the liability for dealing with the customer's compensation claim.
8. I find, on balance, from the evidence supplied to me, that the company is correct in its stated position that it has no responsibility for the compensation claim lodged with RST Water sometime in 2016. As such, I am further satisfied, on balance, that the customer cannot set-off the value of his compensation claim against the amount stated by the company to be outstanding for water supplied and billed. Again, from the evidence laid before me, I am satisfied that the customer has not supplied me with justification for withholding payment and as such I will not direct that the company write off the outstanding balance of his account.

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9. Regarding the customer's request to have the company agree to a payment plan that is acceptable to both parties, I refer to the customer's proposal to pay £700.00 per month. The company has rejected this as being inadequate based on the fact that the customer uses almost this value of water each month and thus would not pay any significant amount off the outstanding balance. I find the company's position to be reasonable and I will not direct the company to accept the customer's proposal. I further find that any such payment plan should be negotiated directly between the parties and not be subject to a direction by me as an independent adjudicator.
10. The customer has requested compensation in the amount of £8,930.00 and to have the easement fence relocated. I have found earlier in this award that the company is not the responsible party to deal with the compensation claim raised by the customer as this liability rests with RST Water, and as such I find that the compensation claim in this WATRS application does not stand.
11. In summary, I find that the company has acted reasonably in dealing with the customer in attempting to find solutions to his long running dispute with RST Water, and in attempting to reach an amicable settlement for the payment of the outstanding balance on his account. The customer has provided me with evidence to support the quantum of his claim but has not provided sufficient evidence to persuade me, on balance, that the company is liable to settle his long-standing claim against RST Water.
12. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person, and therefore, my decision is that the claim fails.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 November 2019 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.



Peter R Sansom
MSc(Law); FCI Arb; FA Arb;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CEDR Arbitration Panel.

Adjudicator

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