

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1896 – Billing - Leak

Date of Decision: 17 April 2020

Complaint

The customer has a dispute with the company regarding responsibility for repair to a leaking supply pipe and the level of payment of a leak allowance subsequently awarded. The customer claims actions by the water company caused a heavy leak at his property and then it only allowed a maximum of 50% refund of the cost incurred in lost water. Consequently, the customer requests the company pay a full leak allowance and pay for the repair works to the leaking pipe.

Defence

The company states that it is not responsible for the maintenance and repair of the water supply network, and does not operate a leakage allowance policy. Both these are functions of the water wholesaler. Therefore, the company denies any responsibility in respect of the customer's claims. The company has not made any offer of settlement to the customer, and believes it has acted in a correct and reasonable manner in seeking a leak allowance from the wholesaler on behalf of the customer. It declines to accede to the customer's claims.

Findings

The customer has not presented sufficient evidence to support his claim that the company should pay a leakage allowance or pay for repairs to his supply pipe. I am satisfied the company has demonstrated that it has no liability under either head of claim of the customer. Additionally, I am satisfied that the company dealt at all times with the customer in a reasonable manner and made all reasonable efforts in seeking a leak allowance on his behalf. Consequently, I 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

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

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1896

Date of Decision: 17 April 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The customer claims he has experienced an ongoing dispute with the company regarding the payment of a leakage allowance. Despite the customer's continued communications with the company and the involvement of CCW (Consumer Council for Water), the dispute has not been settled.
- The customer records that he believes the water wholesaler has an inherited liability for the water network and thus is responsible for the water losses and repairs carried out. The customer asserts that the original water supply to the property was from three number wells until the 1950's when the original cast iron piping was replaced by black plastic (polyethylene) pipes. The customer further asserts that shortly after the pipe change the water supply was transferred to a public company.
- The customer asserts that a water leak occurred at his property in May 2018. He states the rate of leakage was at first slow and thus went undetected for approximately twelve months due to the nature of the underlying strata. The customer contends that the leak was probably caused by the wholesaler repairing a water main in the area.

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- The customer claims that in May 2019 the local water wholesaler repaired another burst water main located close to his property and the resulting increase in water pressure increased the rate of leakage from his supply pipe by some 46 times the average original rate.
- The customer also asserts that the massive increase in the volume of leakage was caused by a phenomenon known as Fluid Hammer, and this accounted for some 66% of the total volume of water lost. The customer states he wrote a detailed report on the issue which he sent to the wholesaler, and he further contends that the wholesaler denied being responsible for the leak on his supply pipe.
- The customer contends that it is not a coincidence that that the rapid and massive increase in the rate of leakage from his broken pipe happened at the same time as the repair to the water main was completed.
- The customer asserts that he repaired the leak as soon as possible after he became aware of it, and completed the repairs on 08 August 2019. He then applied to the company for a leak allowance who in turn recommended to the wholesaler a full 100% allowance be approved. The customer states that the wholesaler did not approve a full allowance and paid only £968.79, whereas the total bill rendered to him for the entire period of the leak (31 May 2018 to 08 August 2019) was £2,693.27.
- The customer acknowledges that the company, on 04 November 2019, made a further request to the wholesaler for an increased leak allowance and subsequently the customer received an additional £611.16, leaving him with an outstanding balance of £1,113.32. Despite additional requests for further payments the wholesaler has declined.
- The customer, dissatisfied with his interactions with the company, escalated his dispute on 29 January 2020 to CCW who took up his case with the company on his behalf. However, the customer further records that, despite the intervention of CCW, the dispute is ongoing and the company has not revised its standpoint and CCW are unable to facilitate a resolution between the parties.
- The customer remains dissatisfied with the response of the company and the wholesaler and consequently, on 26 February 2020, has referred the matter to the WATRS Scheme whereby he seeks to have the company pay the outstanding balance of a full leak allowance in the sum of £1,113.32 and have the wholesaler reimburse the unquantified repair costs of his broken supply pipe.

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The company's response is that:

- The company submitted its Defence paper to the claim on 26 March 2020.
- The company notes that the two remedies sought by the customer in his application to the WATRS Scheme are for the payment of an additional leak allowance and the reimbursement of the costs incurred in repairing the leak to his supply pipe. The company asserts both remedies are in fact only deliverable by the water wholesaler and thus it disputes liability for either remedy.
- The company states that its position on leak allowances is set out in its Charges Scheme, and its responsibilities are restricted to seeking an allowance from the wholesaler. The company also makes reference to the wholesaler's policy on water leak allowances.
- The company acknowledges that the customer first claimed a leak allowance on 26 September 2019, and it passed the application direct to the wholesaler as per procedure. The company confirms that the wholesaler awarded the sum of £968.79, and its review of this amount confirmed it was awarded in compliance with the wholesaler's leak allowance policy.
- The company states that the customer was unhappy with the amount and that communications continued between it and both the customer and the wholesaler and that in December 2019 the wholesaler approved a total allowance of 50% of the total leaked water costs, which equated to a further payment to the customer of £577.00. The company notes that this amount is in excess of the wholesaler's policy of capping leak allowances at the amount of water lost during a maximum period of 180 calendar days.
- The company confirms that the customer contacted it again in January 2020 to request it press the wholesaler for yet another increase in the allowance payment. The company claims it made a further application to the wholesaler who has denied to increase the amount paid.
- The company confirms that it received from the customer on 26 October 2019 his claim that the severe water leak to his supply pipe was caused by a Fluid Hammer effect, and that it passed the claim to the wholesaler. The company notes that the customer's assertion was not accepted by the wholesaler. The company also records that as with the leak allowance issue, it undertook

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numerous communications with both the customer and wholesaler but the wholesaler would not change its position to accept the leak was caused by Fluid Hammer.

- The company also notes that the wholesaler has stated that repairs to supply pipes are the responsibility of the owner and not of the wholesaler.
- In summary, the company believes it has correctly applied its procedures in respect of seeking a maximum amount of leak allowance for the customer, and has succeeded in achieving an amount in excess of the 180-day maximum rule that is normally applied. It is satisfied also that it attempted fully to have the wholesaler accept responsibility for repairing the customer's supply pipe, albeit without success. The company stresses that it is not responsible for maintenance of the water supply network and is not able to grant leak allowances. It thus declines to accede to the customer's requests.

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

- The customer, on 02 April 2020 submitted detailed comments on the company's Defence document. The customer asserts that he rejects the wholesaler's denial of responsibility for causing the leak to his supply pipe. The customer states the wholesaler's rejection of the Fluid Hammer effect is not correct. He also believes that the leak allowance policy of the wholesaler is not appropriate because his supply pipe network was installed in the 1950's and the charging policy does not reflect the age of the property and the pipes. The customer also declares, for clarity, that his dispute is not with the company but with the wholesaler.

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.

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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 over the value of a leak allowance paid to him, and the water wholesaler's refusal to pay for repairs to a leak on his supply pipe. The company asserts that it has followed its own procedures in respect of applying for a leak allowance on behalf of the customer.
2. I note that the WATRS adjudication scheme 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.
3. For the avoidance of doubt from the outset, I record that I am aware that both the water retailer and water wholesaler are referred to in the claim submitted by the customer. The retailer is XWater and the wholesaler is XWholesaler. In this WATRS adjudication decision, XWater is defined as the "company".
4. I note the different responsibilities of retailers and wholesalers. Simplistically, the wholesaler is responsible for the provision and maintenance of the water supply network and the retailer handles account management, billing, customer service etc. The wholesaler bills the retailer in bulk for the water consumed by its customers with the retailer subsequently billing the individual customer.
5. I note that throughout his application submission the customer refers to both the retailer and wholesaler. It thus may appear unclear at first sight who is the party the customer is claiming against, but I note from the WATRS Scheme application form that the company is named as the defending party. Additionally, it is XWater that has submitted a Defence to the claim.
6. The customer in his submission dated 02 April 2020, Comments on the company's Defence paper, states, "*.... my dispute is not with XWater it is (also) with XWholesaler....*".

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7. I shall deal first with the customer's request to receive an additional payment of £1,113.32 in the form of a leak allowance. The company has submitted to me details of its Charging Policy, which sets down that water from leaks is payable but relief may be sought from a leak allowance policy operated by the water wholesaler. The Policy also sets down that the company will seek on the customer's behalf to receive a leak allowance.
8. From the evidence set before me I am satisfied that the company liaised fully with the wholesaler in seeking the fullest possible leak allowance and that it succeeded in obtaining a total payment in excess of the amount normally due in terms of the wholesaler's allowance procedures. Regarding the leak allowance issue, I find that the company did not fail its duty of care to manage the customer's account with a reasonable level of skill and care.
9. For the avoidance of any doubt, I record that I am satisfied that the company does not operate a leak allowance policy. The wholesaler solely operates a leak allowance policy and thus I shall not direct that the company make any payment to the customer in respect of water losses.
10. As no additional payments in respect of a leak allowance are payable by the company I shall not address the customer's complaints in respect of the wholesaler's leak allowance policy and its applicability and application.
11. The second remedy claimed by the customer in his WATRS application is for XWholesaler to pay the full cost of repairing the leak to his water supply pipe. I cannot accept this head of claim as part of this adjudication, as the customer himself has clearly not requested such payment from the company. Thus, I shall not address the customer's complaints regarding fault and liability for his leaking supply pipe.
12. Overall, I am sympathetic to the frustrations of the customer inasmuch that he believed actions by the water wholesaler were responsible for a major leak in his supply pipe resulting in a water bill of £2,693.27, and subsequent to that has not applied a full leak allowance. However, the customer has brought his claim against the water retailer who has no responsibility to manage or repair water supply assets or to pay leak allowances.
13. My conclusion on the main issues is that the customer has not provided sufficient evidence to justify the claim, and the company has not failed to provide its services to a standard to be reasonably expected by the average person. My decision is that the claim does not succeed.

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 ** May 2020 to accept or reject this decision.
- 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
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Member, London Court of International Arbitration.
Member, CIArb Business Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Adjudicator

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