

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1578

Date of Decision: 30 September 2019

#### Complaint

The customer complains that she has been wrongly billed on three occasions for the supply of water to the neighbouring farm from which she receives her domestic water supply. Although she notified the company of this in July/August 2018, it has taken approximately one year to resolve and the customer has had to construct a private borehole to provide her with a water supply. The customer claims compensation of £25,000.00, linked to the cost of construction of the borehole.

#### Defence

The company says that the dispute between the farm and the customer is in essence a private dispute which they have not resolved between them. The situation was complex and the complexity of the circumstances with ongoing conflicting communications throughout the period being received from both disputing parties caused confusion and misunderstandings. The company denies that it is liable to pay compensation related to the borehole and has offered a £100.00 goodwill payment for the delay in resolution of this dispute.

#### Findings

The company failed to supply its services to the standard that would reasonably be expected in billing the customer for the water supply to the farm, even though it had no evidence that she was other than a residential customer. The company, although it then investigated this, failed to do so within a reasonable time, which was not in accordance with the level of service that an average customer would reasonably expect. The customer had not shown that the construction of a borehole was a proportionate response, but was entitled to compensation for £30.00 for approximately one year while the uncertainty continued as to the company's intentions.

#### Outcome

The company needs to pay £360.00 to the customer.

**The customer must reply by 28 October 2019 to accept or reject this decision.**

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## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1578

Date of Decision: 30 September 2019

### Party Details

Customer: [ ]

Company: [ ].

### Case Outline

#### **The customer's complaint is that:**

- She has on two occasions been wrongly billed for services that should have been charged to the adjacent farm. She explains that she pays for water services to the farm owner, one Ms Brown.
- She says that in July 2018, the customer contacted the company to query why she had received an opening bill from them and was told that she had a new account that would result in charges of between £6,000.00 and £7,000.00 per year. The customer said that she was not liable for this bill, which was due from Green Farm and not from her.
- The company agreed to transfer the bill back to the farm. In December 2018, the customer received notification from Ms Brown's son who said that he would provide transfer documentation to the company that would prove that his mother was not liable. The customer, in conversation with the company, challenged this, stating that transfer documentation could not be provided for the farm. The farm had not been transferred. The customer had taken transfer only of Green House, which was one of the buildings belonging to the farm.
- In April 2019, the customer was again made the subject of the account, albeit that the company used the postcode of a property some 10 miles away. The customer complained, stating that she had not received transfer of the farm and that after the water meter had been installed, she would be liable only to pay Ms Brown for the measured water. The company did not reply to her, even when she said she wanted to make a complaint – and then sent an email stating that the account would be transferred out of her name as the company had discovered that the supply was to the farm.

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- The customer then received a further version of the bill, in which the section stating "Water Services Supplied" were said to have been for Green House rather than Green Farm, suggesting that the contract for the pipe should be with the house, which is incorrect.
- The customer denies that (as alleged by the company) she had received direct contact from Mr Joe Brown, but she has had contact with Joe Brown's brother Gary Brown, who is also a Director of Green Farms and has texted the customer repeating that the arrangement was to install a meter at the gate to pay his mother/the farm as her proxy.
- There were some anomalies about the correspondence and the customer, who works in finance, wanted confirmation that the bill was definitely not in her name. None was forthcoming.
- The customer explains that she also sought legal advice from the law firm [ ]. They reviewed all legal documents and advised not to waste money on the matter. They explained that the customer was not party to a contract with the water company; the water company should not have been able to make the customer a party to a contract without their agreement and could not assign a bill for multiple premises to the customer.
- The customer was nonetheless concerned that the water might be disconnected and was particularly vulnerable to this as she suffers from a medical condition that requires a continuous water supply. In the end, because no response was received for approximately one year, she arranged for a borehole to be drilled to serve the property at a cost of £26,000.00.
- The customer seeks compensation in the sum of £25,000.00.

**The company's response is that:**

- This case concerns a dispute between the customer and a third party. It is not the responsibility of the company to unravel this and it has caused uncertainty and delay.
- The Application Form includes a number of inaccurate statements. It is important to note that the Title Transfer agreement of Green House (the address in question, which was purchased from one Ms Brown) places a responsibility upon the customer to pay a 'reasonable amount' to Ms Brown for water use from the date of title transfer until the customer installs a water meter. The transfer does not state who was to have payment responsibility after the meter was installed: the contract is 'silent'. It is therefore open to interpretation as to whether it was intended that the customer should continue to pay Ms Brown for water consumed based on meter readings, or should take over the responsibility to pay the water company. As there is a dispute between Ms Brown and the customer, the company has not been paid.

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- The company has invited the customer and Ms Brown to resolve their dispute, but the company cannot do this. The company is unaware of the precise layout of pipes within the farm and the houses that have been sold, including that of the customer.
- Furthermore, the company is aware in respect of the point raised in the claim, namely that another property, 'Red House', has recently paid the farm a cheque. This appears to raise another legal issue because the farm 'Green Farm Limited' is a separate legal entity from Ms Brown. The company argues, however, that it is not familiar with the Red House's legal position in relation to the farm or indeed Ms Brown. In itself, therefore, it does not provide any conclusive evidence of any responsibility.
- CCWater raised the question as to whether the documentation provided by Mrs [ ] was sufficient proof that she was not responsible for water charges. Given the complexity of the case, this was escalated for a more senior review. This took some time to undertake. On 25 July 2019, however, the company laid out both the facts as it considered them and the uncertainty of responsibility for paying after the water meter was installed.
- The WATRS application form makes various allegations about [the company] not responding to the customer or the Consumer Council for Water (CCWater). A chronology of contact prepared by the company proves that communication has occurred. Although there have been some delays at times, the company argues that this needs to be seen in the context of the complexity of the circumstances.
- There was no need for a bore hole. The water supply was not at risk. This fact was confirmed in writing to the customer on the 1 March 2019, significantly prior to the bore hole being installed. Moreover, the parties have contributed to the delay and misunderstanding involved in this case because they have not engaged with each other.

### **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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If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. It is notable that in this case, the customer complains that she is not and never has been in a direct relationship with the company but has always received water through a third party, one Ms Brown, owner of a farm. Her home at one time formed part of the farm estate. Ms Brown is said by the customer to own a substantial area of land approximating 2000 acres in the locality. This includes Green Farm which is approximately 250 acres of sheep farm and game reserve and Green House at one time formed part of Green Farm. The company has not put forward any evidence to the contrary.
2. The documentation in this case shows that the customer purchased Green House in July 2018, although the customer says that it had been a separate property from Green Farm since 1959.
3. The documentation submitted by the parties and by CCWater shows that there are two aspects to this dispute between the parties: one relates to the customer's liability to make payment for water services to her home and the other relates to the customer services, especially the company's approach to the dispute situation and the response times for correspondence, provided by the company.

#### Liability to make payment for services

4. In relation to the potential liability of the customer, it is notable that the company does not now seek to say that the customer is liable for the water bill that serves her property and may serve also the farm and other homes that were at one time part of the Green Farm estate. On 2 May 2019, the company confirmed to the customer that her account had been closed  
*"..until such a time when this dispute can be resolved. The account is not going to be re-opened in any one else's name until [the company] have carried out a full investigation of supply".*

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Even in its submissions in this adjudication, however, the company does not clearly confirm that the customer has no liability for the water supply to the farm business, and instead points to difficulties in interpreting the legal documentation between the customer and her vendor, to which the company is not and never was a party.

5. I find as to the customer's complaint that she has been wrongly billed that, while the company was not in a position to resolve any continuing dispute between the customer and her vendor, the company would reasonably have been expected to have ascertained that the bills that it raised against the customer reflected, with reasonable probability, a liability on the part of the customer to pay the amount charged. As to this, I am mindful that:
  - a. The company states that when it was first informed by its previous customer that the customer was assuming responsibility for the water bill, it acted on the basis of that information to raise its bill against the customer. The CCWater information records that the company was told by the farm manager that "the business has been sold". The company says that it is common practice for it to be notified in this way, and I find that this is likely to be the case. In raising a bill against the customer on the first occasion, therefore, I find that the company had no reason to suppose that the information that it had been given by the farm manager was incorrect and therefore I further find that the company, in opening a new business account for the customer, acted in a way that would reasonably be expected of it.
  - b. However, after the company had been informed by the customer that she had not acquired the ownership of the farm business that had previously been the company's customer, the company was then upon notice that the customer denied the existence of a direct relationship with the company for business purposes. In these circumstances, I find that it would not reasonably be expected of a water company that it would raise a bill against that customer unless it could be satisfied on reasonable grounds that the customer was liable for the account.
  - c. It is clear that the company continued to investigate and to have discussions, including at least one meeting and to exchange correspondence with the customer. During that time, the customer pointed out that her home was not the only domestic residence on the estate making payment to Ms Brown. The customer also supplied a copy of the transfer document which suggests that it relates to a dwelling house and not to a business.
  - d. Taking into account the circumstances of this case, including that the company had received information from a member of the Green family that differed from the information given by the customer (whether directly or indirectly) and that the precise

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location of the pipes under the farm estate were unknown, I find that the company could not reasonably have been satisfied in April 2019 that the customer had accepted liability for payment of all the farm water for the following reasons:

- i. The company is, since the deregulation of the water market, a supplier of water to UK businesses. It does not describe itself as a supplier of water to residential homes. The customer argues that she is a domestic consumer and does not receive water for business purposes. Although the company has expressed uncertainty about the precise arrangements in relation to the water supply on the land in question, it has not put forward any independent evidence to show that the customer had acquired the farm or that she was anything other than a domestic customer who has purchased a farm dwelling. In those circumstances, I find that the company's decision in April 2019 to issue a further bill against the customer (including also a postcode for a farm for which she had no responsibility) was made without supporting evidence. I find that an average customer would not reasonably expect a water company to seek to pursue a customer for a bill in the such circumstances;
- ii. In relation to the transfer document, while the deed does not say that the customer would, after the meter was installed, continue to pay Ms Brown, it does not state either that the customer had taken on the property or business of the farm and nor does it say that the customer would be responsible for payment for an amount of water that exceeded a meter reading to her own property. I find that putting this document in the factual matrix, there was no reason for the company to have come to the conclusion that the effect of the deed was that the customer would pay for all the water of the farm. I find that an average customer would not reasonably have expected the company to have interpreted the deed in this way, especially as there was no other evidence that the customer was operating the farm business;
- iii. Overall, I find that the evidence suggests that the company may, when deciding to reissue the bills in the customer's name, have asked itself the wrong question. It was not, as the company suggests in its defence, merely a third party dispute nor was it for the customer to show by evidence that she was not responsible for the bill. Rather, I find that an average customer would expect a water company to satisfy itself that it was reasonably probable that a person to whom the bill was sent in April 2019 was the correct customer with liability for the account. Taking into account the matters indicated above, I find that the company was not in a

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position to reach that finding and that, in the absence of such finding, an average customer would not reasonably have expected the company to bill the customer in respect of the farm estate usage. .

6. It follows from the above that I find that, in billing the customer for the farm water in April 2019 and in issuing a subsequent bill suggesting that the services had been supplied to Green House, the company failed to supply its services to the standard that would reasonably be expected of it.

#### Customer Services

7. The customer complains that the company failed to answer her concerns when these were raised and has taken a long time in this investigation. I note that the company's first bill was raised in July 2018 and that discussions between the parties were ongoing. However, even as at May 2019, the company's correspondence indicated that an investigation of the supply would be necessary. Although it is clear at this stage that the wholesaler had been alerted to this dispute, the company has not put forward evidence of its attempts to resolve this situation expeditiously. It has explained that the company decided that it had to take legal advice, but the documents suggest that it did not do so until several months into 2019. It would have been foreseeable that this delay would and was causing distress and concern to the customer, as well as inconvenience. The customer has had to write numerous emails to the company and to CCWater, and, on a number of occasions has had to make the same point repeatedly because the company had attached weight to ideas that did not take the issue further forward, such that Mr Green might grant a tenancy agreement to the customer or that he was said to be "stealing" water. Moreover, there are a number of ways in which the documentation indicates that the company did not respond within a reasonable timescale to the customer. The documents submitted by CCWater satisfy me that in late April 2019 when the customer made a complaint that, despite investigation, the company had again raised an erroneously addressed bill against her without prior explanation, no adequate reply was given. The company point out that it was decided on 2 May 2019 that the company would not bill her again without having conducted further investigation and the account was to be taken out of her name, the company did not reply substantively to this complaint and did not say how it was to be resolved, despite being sent several emails at the end of May 2019 by CCWater. The company explains in its defence that during this time it was taking legal advice and discussing the position with the wholesaler, but this was not explained to the customer, even though the customer had told the company that she was looking for an alternative source of water.

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## Redress

8. The customer claims the maximum available compensation under the WATRS scheme for non-households, acknowledging that the cost of creating a private borehole exceeded this amount. She is, however, a householder rather than a business customer and the maximum limit of £10,000.00 compensation would, I find, apply in her case rather than the £25,000.00 that is applicable for non-households.
9. However, claims under the WATRS scheme must be justifiable and proportionate. I find that steps reasonably taken by a customer to avert the consequences of a failure by the company to provide its services to the requisite standard may justify the payment of compensation where such losses flow from the shortfall in the company's standard of service. I am not satisfied, however, that this is the case here.
10. In particular, I note that the customer's case is that her source of water was dependent upon the farm, for which she had no responsibility. The wholesaler, having investigated, had said that it would not relay the pipework affecting the farm to give the customer an independent source of water. The construction of the borehole therefore relieved the customer from dependence for its water supply on the actions of the farm owner. These are matters which would not justify the payment of compensation to the customer for construction of the borehole.
11. While I take into account that an adverse payment record would be likely to threaten the customer's employment and also that the customer has a medical condition that requires a constantly available water supply, I also note that construction of the borehole would not in itself eliminate the charges that the company might claim for the year in question. I note that the cost of drilling the borehole was nearly four times the disputed charge in the first year.
12. Moreover, before the borehole was constructed, the customer had been informed by the company that it could not cut off the water supply as a consequence of the dispute. On 8 March 2019, the company wrote:

*I do understand that you are worried about the situation here but as advised the water cannot be turned off due to non-payment of the water charges.*

Accordingly, as the customer had been told that she was not at risk of discontinuation of the supply, the construction of a private borehole was, while it might have been a beneficial action vis-a-vis the farm owners, was not, I find, a proportionate response to the company's conduct. In

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the light of these considerations, therefore, although I empathise with the customer's distress about the company's failure to acknowledge clearly that it would not pursue her for the costs of the water supply to the farm, I find that the construction of a private water source was not a cost that the customer is reasonably entitled to recover from the company either in full or (as would be necessary under the WATRS scheme) in part.

13. The customer is entitled, however, to compensation for distress and inconvenience caused by the company's failure to supply its services to the standard that would reasonably be expected. I find that the worry and uncertainty caused by this possibility of exposure to the payment of the business account of a neighbouring farm would have been considerable and that much effort has been put into communication with the company and with CCWater as a consequence. The company has offered a goodwill payment of £100.00, but I find that this does not sufficiently recognise the level of inconvenience caused. I find that a fair and reasonable sum by way of compensation is £30.00 per month from August 2018 when the company first had had an opportunity to try to resolve this problem until the date of the application in early August 2019. I take this to be a 12 month period and I find that a fair and reasonable sum by way of compensation is £360.00.

#### **Outcome**

The company shall pay £360.00 to the customer.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 October 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.

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- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Claire Andrews (Barrister, FCI Arb)

**Adjudicator**

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