

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1893 – Billing & Charges – Account Information

Date of Decision: 8 April 2020

Complaint

The customer has a dispute with the company regarding a delay in repairing a supply pipe and the non-payment of a subsequent leak allowance. The customer claims the company unduly delayed in identifying the location of a supply pipe leak and reneged upon a commitment to fund the costs of the works. The customer also alleges customer service failings. Consequently, the customer requests the company pay a leak allowance or similar, and pay numerous other compensations payments and contribute to costs for repairing the existing supply pipe and laying a new pipe.

Defence

The company states that it was only in a service agreement with the customer as his water retailer for a short two-month period, and that the incidents leading to the customer's claims all occurred before or after its association with the customer. The company has not made any offer of settlement to the customer, and contends it has acted in a correct and reasonable manner. It declines to accede to the customer's claims.

Findings

The customer has not presented sufficient evidence to support its claims. I find that the company was the water retailer to the customer for a very short period and that the claims contained in the WATRS application would be better directed to the wholesaler and the customer's actual retailer. Additionally, I am satisfied that the company dealt at all times with the customer and CCW in a reasonable manner and assisted with information where possible. 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/ /1893

Date of Decision: 8 April 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The customer claims it has experienced an ongoing dispute with the company regarding awarding a leak allowance payment and other claims for compensation. Despite the customer's ongoing communications with the company and the involvement of the Consumer Council for Water (CCW), the dispute has not been settled.
- The customer states that on 09 November 2016 it was made aware by the company of a higher than average level of water consumption during the recent billing period.
- The customer claims that it contacted the company who sent an engineer to the premises on 01 December 2016 to investigate. The customer asserts that the company engineer advised them at the time that the spike in consumption was the result of a broken or leaking water meter.
- The customer asserts that the bill received from the company for the period August to October 2016 was in the sum of £1,897.02, well in excess of its normal value. The customer states that it received payment reminders from the company on 19 and 23 January 2017.
- The customer notes that it contacted the company again on 26 January 2017 to enquire on what progress the company was making regarding the high water consumption, particularly having regard to the fact the leak was first identified in November 2016. The customer asserts that it

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was advised that a leak detection technician would be sent to investigate, but that this never occurred.

- The customer claims that it received an e-mail communication from the company dated 21 February 2017 in which it confirmed that the company would refund all excess consumption calculated, but following the replacement of the existing water meter. Additionally, the customer believes the e-mail confirmed that the company was committed to paying compensation after the consumption issue had been brought under control.
- The customer also refers to a letter from the company dated 08 June 2017, which it believes again committed the company to writing off the charges for the lost water. The customer believes the company has reneged on the commitments made in its two communications.
- The customer asserts that on 23 March 2017 the company replaced the water meter and sent the original meter for testing. The customer claims that the meter was tested on 03 April 2017 but the results were not shared with it by the company until 08 May 2017.
- The customer states that on 24 May 2017 it changed its water retailer and moved from the company to an alternative retailer named XWater. However, on 30 June 2017 the customer requested to be transferred back to the company and was informed by XWater that the transfer had been completed.
- The customer states that the company informed it that it did not undertake repair works and advised that it should contact a sub-contract firm named M&S. The company confirms that M&S first attended upon the site on 04 September 2017 but the leak repair was not undertaken until 03 July 2018 primarily due to issues with the relevant local authority.
- The customer asserts that following the repair of the leak it engaged in ongoing discussions with XWater regarding compensation for the high water bills and time wasted by its employees in dealing with the long-running problem. The customer notes that on 21 March 2019 it finally received a response to its complaint of 16 September 2018 and was advised by XWater that the transfer of its account back to the customer had never taken place and XWater had remained its retailer.
- The customer, in early October 2019, escalated the dispute to CCW who took up the case with the company on its behalf. The customer notes that CCW supported its claim and attempted to have the company change its position. However, despite ongoing communication with various stakeholders, CCW was unable to achieve a change in the company's standpoint.

- The customer remains dissatisfied with the response of the company and has on 12 February 2020, referred the matter to the WATRS Scheme whereby its seeks to have the company provide an appropriate leak allowance, contribute to the costs of the repair works undertaken, pay for the laying of a new supply pipe, and pay compensation for service failures, lost time of its employees, and for stress and anxiety.

The company's response is that:

- The company submitted its Defence paper to the claim on 17 March 2020.
- The Defence paper notes that the customer has named XWater Ltd as the customer in the application form. XWater Ltd (XW) has provided the Defence to the claim as it believes the customer intended the claim be directed towards it and not XWater.
- XW notes that the customer throughout its application, refers to both XWater and XWater Ltd and appears to be unaware of the difference between the water retailer and water wholesaler. The company explains the changes to the business water sector since 01 April 2017, and confirms that it did not serve the customer before this date.
- XW also clarified the leakage allowance policy of the wholesaler, and confirmed that business customers could be granted a discretionary leak allowance prior to 01 April 2017 but the policy was discontinued after the opening of the market.
- XW also notes that it served the customer for a very short period only, between 01 April 2017 and 25 May 2017 before the customer changed retailer and moved to an alternative provider. XW states that consequently it was not involved in subsequent proceedings nor had any control of correspondence between the customer and the other retailer.
- XW contends that the leak on the customer's supply pipe was identified on 26 May 2017 but the leak was not repaired until 22 August 2018. XW stresses again that it was not the retailer to the customer during this period.
- XW acknowledges that it referred the customer to a third-party company to possibly fix the leak, but it again stresses that it was an independent contractor with no connection to XW
- Regarding the e-mail sent by AFB on 21 February 2017, it states that it was an explanatory communication to outline the process of re-calculating charges in the event of a fault being identified in the customer's water meter. XW denies that its e-mail dated 21 February 2017 made any commitment to cover all excess water consumption due to its own failings and notes

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that at that time the fault was unknown and XW stated it would await the testing of the water meter to review the customer's bill.

- XW further contends that under relevant regulations it is the responsibility of a customer to repair leaks on its supply pipe. XW also states that its representative did not commit XW to contribute towards the repair costs of the supply pipe.
- Regarding the third-party contractor who fixed the leak, XW states that it merely requested the firm to contact the customer and repeats that it has no connection to it. XW acknowledges that it did not follow the repair status as it was not its responsibility.
- XW addressed the remedies requested by the customer in its WATRS application. It believes no leak allowance was applicable at the time the leak was detected, and rejects any obligation to contribute to the cost of the supply pipe repairs.
- XW acknowledges customer service dropped below a sufficient level during early 2017 and has compensated the customer with a £500.00 payment. In respect of the claim for recompense for lost time, XW notes that it had not been the customer's water retailer since May 2017.
- Regarding the issue of stress and anxiety, XW notes, again, that this appears to have been the result of interactions between the customer and its current retailer. In respect of XW paying for the cost of laying a new supply pipe, XW consider this is a matter the customer should have his retailer take up with the wholesaler.
- In summary, the company believes it has acted reasonably in complying with requests for co-operation from both the customer and CCW even though it was only serving the customer for a short two-month period. Consequently, XW declines to accede to the requests made by the customer in its WATRS application.

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

- The customer has submitted comments on the XW Defence document. It reiterates its belief that it was reasonable to understand that it was still a customer of XW after receiving the notification from XWater on 30 June 2017 that the transfer back to XW had been arranged. The customer also contends that XW clearly committed to waive charges for consumption during the period of the leak and it is thus committed to fulfil its agreement despite the legal position being that it is for the customer to repair any leaks in the supply pipe. Furthermore, the customer states that

XW is acting frivolously in denying its agent had committed to contribute to the cost of repairing the supply pipe.

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 over the time taken to repair a leaking supply pipe and the subsequent non-payment of a leak allowance. The company asserts that it acted as the water retailer to the customer for only a two-month period and is not responsible for events before and after this brief association.
2. I note that the Water Redress Scheme (WATRS) is an evidence-based adjudication 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

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XWater Ltd [XW] and the wholesaler is XWater Ltd [XWW]. In this WATRS adjudication decision, Affinity for Business (Retail) Ltd [XW] is defined as the “company”.

4. The company, in its Defence paper, has set out the different responsibilities of retailers and wholesalers in respect of business customers. 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 its application submission the customer refers to both XW and XWW in an interchangeable manner. On page 3 of its WATRS application it states the company as being XWater. It thus may appear unclear at first sight who is the party the customer is claiming against, but I note that XW has accepted the claim is against it and thus has provided the Defence to the claim. I am also satisfied that by its words and actions the company has intended its claim to be against XW.
6. The company came into existence on 01 April 2017. The leak at the customer’s property was first identified on 01 December 2016 following a site inspection by an engineer from XWW. The customer asserts that the engineer stated he would arrange to repair or replace the meter but does not provide me with any substantiation of this other than an internal note made by an employee. The customer notes that in later contact with the company he was advised that the engineer had made no report of needing to repair or replace the meter.
7. On 23 March 2017, the company replaced the meter, and after testing was found to be functioning correctly. I am not persuaded that the customer took all reasonable steps to mitigate the effects of the leak, insomuch that it took no action between 01 December 2016 and 23 March 2017 other than to “chase” the company over a purported commitment to repair or replace the meter that it does not record as having been given at the site inspection.
8. In its application to WATRS the customer requests six remedies, (i) adjustment to water bill (leak allowance); (ii) 75% contribution to cost of supply pipe repair; (iii) compensation for multiple service failures; (iv) compensation for time spent seeking a resolution; (v) compensation for stress and anxiety; (vi) pay to lay new supply pipe;
9. Reference to the website of XWW at the time the consumption increase was identified would have detailed the leak detection and leak allowance policies of the then water supplier. The customer should have been aware that a leak allowance for non-household customers was discretionary and not automatic, and predicated upon the leak being repaired within a stated period after being first identified.

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10. I further note that repairs to a supply pipe are the responsibility of a customer. The company will at its discretion repair supply pipes under its statutory responsibility to prevent wastage of water. The responsibility to repair a supply pipe inside or under a building rests solely with the occupier.
11. The customer, in its document "Response to Defence" states "*That it is the legal responsibility of customers to repair leaks does not absolve the company of its contractually liability to fulfil its agreements*". The customer does not define the agreement to which it refers.
12. I note that the customer places great import upon the e-mail communication dated 21 February 2017 from the company. I am not satisfied that this conveys a commitment upon the company to either repair or pay for a leaking supply pipe, and indeed the e-mail states that any work done by the company would be chargeable. I note that the e-mail states that the company "can" assist, and this is not a commitment that it will assist. I am satisfied, on balance, that the company advising the customer on a possible works contractor to undertake detection and repair of a leak can be construed as a reasonable level of assistance. Thus, I find that remedy (i) does not stand.
13. In respect of remedy (ii), regarding the customer's assertion that the e-mail further commits the company to refund consumption charges during the period up to repair of the pipe in July 2018, again I am not persuaded that the text of the e-mail does impose such a commitment. The e-mail states "*.... we will be in a position to refund the difference*". Being in a position to refund is not the same as committing to make a refund, and I am not satisfied on balance, that the customer has shown it was the company's intent to guarantee such refund.
14. Under the third head of claim submitted by the customer, it further asserts that the e-mail shows the company intended to pay compensation for customer service failings, predicated upon the water consumption being under control. I note that the company has, belatedly, on 17 October 2019 credited the customer with the sum of £500.00 for delays in assisting the customer in the period before 01 April 2017.
15. The customer has asserted that another e-mail from the company dated 08 June 2017 reconfirms its intent not to charge for "lost water". However, from evidence submitted to me I note that the customer switched retailers on 25 May 2017 and thus the company was not the retailer to the customer in June 2017 and could not commit to refund any charges.
16. The customer has stated, at remedy four of his claim, that it was forced to reallocate funding to increase its salary budget to facilitate preparation of necessary documents, reports, etc and for man-hours spent in liaising with various stakeholders. The customer does not provide me with

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either a breakdown or substantiation of any such costs. However, I note again that overwhelmingly any costs incurred have been post May 2017 when the leak was identified by the works contractor and therefore the company was not the retailer of the customer during the period post May 2017. Thus, I shall not direct that the company refund any of the in-house costs possibly incurred by the customer and claimed under this head.

17. Similarly, the customer, at remedy (v), is seeking compensation for stress and anxiety caused by numerous notices threatening disconnection of water services due to non-payment of charges. Once again, I note that the company is not the customer's retailer and thus cannot issue bills or disconnect the water supply. This is a matter the customer should take up with his own retailer and thus I shall not make any direction in respect of this head of claim.
18. The customer has also requested that the company cover the cost of laying a new supply pipe especially as the water meter lies some 35 metres from the property. I am aware that the water meter is an asset of the wholesaler and not the retailer and the supply pipe is the responsibility of the property owner. Thus, I find this head of claim at remedy (vi) fails.
19. Overall, I am sympathetic to the frustrations of the customer insomuch that the water leak remained unrepaired for a period in excess of eighteen months. However, I have to take note that the customer was in a service agreement with the company for a period of less than two months in Q2 of 2017. I am satisfied, based on the evidence submitted to me, that the issues raised by the customer, and which form the basis of its compensation claims, occurred before and after the two-month association between the parties. I further note that the company made a £500.00 gesture of goodwill to the customer for delays occurring prior to its official launch on 01 April 2017.
20. In summary, I note that the customer has provided a voluminous amount of evidence spread over six bundles, but I find it has not provided sufficient specific evidence to justify the claim.
21. 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 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
MSc(Law); FCIArb; FAarb;
Member, London Court of International Arbitration.
Member, CIArb Business Arbitration Panel.
Member, CEDR Arbitration Panel.

Adjudicator

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