

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0741

Date of Decision: 19 September 2018

#### Complaint

The customer was incorrectly billed on a 'sewerage only' basis and the fact that his name was put to that incorrect bill amounted to a data protection breach. This was compounded by the fact that (1) it took a year to fit a water meter and (2) the company continued to breach data protection by conflating the customer's complaint with one made by his landlord. The customer seeks a refund of £350.56 in respect of the incorrect 'sewerage only' bill, delivery of a correct bill, a written apology and £2500.00 compensation for distress and inconvenience.

#### Defence

A number of service failings are admitted. Both the wholesaler and the company are very sorry for the way in which the customer's account was handled together with the stress and time that he had to spend trying to sort out the issues. In March 2018, the wholesaler paid £350.56 to the customer as an acknowledgement for the time it took to fit the meter as well as all fixed charges prior to the meter being installed. As a gesture of goodwill, the company has also credited the balance on the customer's account of £50.72 so there is nothing currently to pay.

The company has offered the customer £100.00 by way of compensation.

#### Findings

The March 2018 payment of £350.56 was not compensatory; it should stand as a refund to the customer in respect of the originally incorrect 'sewerage only' bill. The apologies made by the company are warranted but should be re-stated in a letter addressed to the customer personally. The appropriate amount to award to the customer by way of compensation is £500.00.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum of £500 in compensation and to re-state its apologies to the customer by way of a letter addressed to him personally.

The customer must reply by 17 October 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 19 September 2018

## Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

## Case Outline

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

- He complained about billing and supply issues at his studio ("Gallery 3") in [ ] but was unhappy at the way that the matter was dealt with. The proposed resolution did not cover all aspects of the grievances that he had raised. He does not feel that the simple nature of his initial complaint was properly grasped.
- The background is as follows. He moved into Gallery 3 in September 2015. Gallery 3 had a single tap and a sink.
- He tried (online) to obtain a water meter but the system stated that he had made an invalid request, as there was apparently no record of a water supply to Gallery 3.
- He was billed £350.56 on a 'sewerage only' basis. He paid this in good faith and only because the bill was in his name but:
  - he expected that he would be refunded;
  - the charge could only have been for the water run-off from the roof of the property (because, as mentioned, the company had no record of the tap and sink inside Gallery 3);
  - the roof was in fact the landlord's roof (not his) and the landlord had already paid the company in that respect;
  - therefore, he was never responsible for that 'sewerage only' charge;
  - the company should not have breached data protection by unilaterally putting his name

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- on the incorrect bill (and without first checking that he was the party properly liable to pay); and
- the company continued to breach data protection by conflating his complaint with his landlord's (and only contacting his landlord about the matter).
  - He requested a water meter in writing in May 2016. It took the company a whole year to supply and fit the meter - not the one month specified by Ofwat on their website.
  - This was after he had spent an inordinate amount of hours on phone calls to the company, having to repeat his request for a water meter and to explain - time after time - that he was not responsible for 'sewerage only'.
  - After the water meter was eventually installed:
    - his water usage was so low that he calculated it would take him 16 months to use a single cubic metre; and
    - rather than read the meter, his usage was estimated by the company at 22 units, which would take 30 years and 2 months to use up; and
    - he was also incorrectly billed fixed charges.
  - No one at the company took responsibility for his account or complaints. He was passed from pillar to post. He continued to receive red bills and demands for payment and the whole situation has caused him many sleepless nights and a great deal of stress.
  - The company acknowledged that he was not responsible for the 'sewerage only' charge when, on 27 September 2017, it removed that element from the billing.
  - Then, in an email from the company sent on 22 December 2017:
    - the earlier incorrect 'sewerage only' billing was said to have been caused by a "*data error*"; and
    - there was also a comment that: "... *clearly, should it turn out that water should also have been charged for, these charges will not be backdated as this would be [ ]s error ...*" ("the Assurances")
  - In March 2018, he did receive £350.56 from [ ] Water ("the March 2018 Payment"). However, despite the Assurances, the March 2018 Payment was 'dressed up' as:
    - compensation (£221.75); and
    - a refund of fixed charges (£128.81) that had not been billed to him previously.
  - This alleged breakdown of the March 2018 Payment (and/or the premise on which it was made) is rejected by the customer. He asserts that he is still owed his incorrectly billed £350.56 and compensation in this matter.
  - The whole ordeal has been compounded by the complaints procedure, which he feels is

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completely skewed towards the water company and not the customer. It has left him let down by the whole experience and dreading the next communication. It has tainted his enjoyment of his workplace.

- In view of all of this, the customer would like:
  - an immediate refund of £350.56 in respect of the ‘sewerage only’ bill, which was incorrect and was never his to pay; and
  - a correct bill to be produced, which has still not been received in two years of asking; and
  - a written apology for the way in which his account has been handled; and
  - compensation of £2,500 for distress and inconvenience (and for all the time that he has spent in in trying to sort out the mess.)

**The company’s response is that:**

- Following the opening of the Non Household (NHH) water market in April 2017, the company was established as a completely independent retailer, legally separated from [ ] Water (“the Wholesaler”). The company has a different Board structure and adheres to strict Level Playing Field conditions to ensure fairness in the market.
- With regard to the customer’s complaint, he moved into Gallery 3 on 2 September 2015. This was before the opening of the Non Household water market in April 2017. The customer was initially billed, by the Wholesaler, for Gallery 3 for surface water drainage only. The customer contacted the Wholesaler to advise that he thought that this bill was incorrect and was included in the landlord’s bill for the gallery.
- In May 2016, the customer requested a water meter to be installed by the Wholesaler. Upon receipt of that request, the Wholesaler had to attend the site to assess the feasibility to install a meter (which took longer than then hoped due to appointments being necessary.)
- On 11 May 2017, the Wholesaler was able to install a water meter at Gallery 3 but still needed to carry out further checks to ensure that the landlord was not already paying for Gallery 3’s water on the gallery’s main meter. This was necessary to ensure that:
  - the customer was billed correctly; and
  - the Wholesaler could review previous unmeasured charges on the customer’s account to determine if any refund was due to him.
- On 15 November 2017, the customer was advised that the Wholesaler had stated that:
  - “... [the Wholesaler was] attempting to investigate what the main meter to the gallery is serving and whether the studios are served by this main meter. However, the stop tap is

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*broken and requires repair. We can't do this repair without a road closure which in turn we aren't able to do till January 2018 due to local restrictions. This work is planned and will be carried out in January. This delay is not due to [ ] Water but rather the local council and restrictions on road works in the area and regrettably cannot be moved forward. We apologise for the delay in resolving this query however we trust that given the information above, the customer appreciates why this delay is necessary ...”.*

- The company is sorry that, during this time, it could not amend any charges on the customer's account. It was awaiting confirmation of the results of the Wholesaler's investigations.
- In January 2018, the Wholesaler repaired the faulty stopcock which was preventing them performing the checks needed to resolve the customer's complaint about previous charges.
- In February 2018, the Wholesaler notified the company that - following its checks - it was able to refund the customer the sum of £350.56 relating to:
  - excess unmeasured charges due to the delay of installing a meter; and
  - fixed charges, which the customer would have been billed if a meter had been installed on the day that he moved in.
- A cheque was sent to the customer by the Wholesaler for this amount in February/March 2018. The customer confirmed receipt of this.
- The company accepts that there were delays in providing the customer with an accurate bill but confirms that his current bill is accurate. The delays were caused by a high volume of bill amendments, which the company did not have the resource available to action at that time.
- The company is very sorry for the distress that this caused the customer and admits that the service provided was not acceptable.
- The company is also sorry that its agents incorrectly informed the customer of when these amendments would be completed. Further training has subsequently taken place for all of its customer service team but agrees that its performance in these respects was not acceptable.
- The company accepts that the procedure is disjointed when complaints are both retailer and wholesaler-based. Communication between wholesaler and retailer is done by 'MOSL' forms, which are lengthy (but outside the control of the company, as retailer). The company disagrees that this is designed to deter customers from pursuing complaints. Communication of complaints from retailer to wholesaler is done via an 'F5 MOSL' form, as stated in the market code. It is in the company's interest to manage customers' complaints as sensitively and efficiently as possible as customers can change retailers if they feel that the service is not good enough.
- The company does accept that its handling of the customer's complaint could have been better regarding the level of communication given to him at each stage. On complaints, in order to

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have more in-depth conversations without the need to go backwards and forwards with MOSL forms, it has now introduced conference calls with the Wholesaler. This also ensures consistency with wholesaler and retailer responses.

- It understands that the customer would have liked a personal visit from one of the company's team. As the company is based in [ ], this option is only available to Key Account customers who pay for this service. However, the company accepts that - due to the length of time that this complaint took - this could have been an option as a one off and the company will look at doing this in future, if needed.
- Both the Wholesaler and the company are very sorry for the way in which the customer's account was handled together with the stress and time that he had to spend trying to sort out his issues.
- The Wholesaler has already refunded £350.56 to the customer as an acknowledgement for the time it took to fit the meter as well as all fixed charges prior to the meter being installed.
- For its part, the company proposes to compensate £100.00 to the customer for the way that his complaint was handled, the delay in billing him correctly and any distress and inconvenience this caused.
- As a gesture of goodwill, the company has also credited the balance on the customer's account of £50.72 so there is nothing currently to pay.

### 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.

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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. I note the submissions that the company makes at the start of its defence under its ‘Overview’ heading. In this section, the company explains its responsibilities, as retailer, in relation to those of the Wholesaler. I find the company’s submissions about this, on page 1 of its defence, to be both relevant and correct – and I accept those submissions.
2. I have also had the benefit of reading the customer’s comments, contained in an email dated 5 September 2018, in response to the company’s defence (“Comments”).
3. I have carefully reviewed the summary of events as set out in the defence and I have also taken account of the customer’s Comments in response. After he moved into Gallery 3 in September 2015, there evidently was a series of problems (“Problems”) in the interactions with the customer. As the customer recognises in his Comments, the relevant timespan covers a period both before the opening of the Non Household water market in April 2017 - and after:

*“... I am aware of the legal separation of [the company and the Wholesaler] which happened right in the middle of my complaint - that is also part of my complaint, as I was passed from pillar to post between the wholesaler and the retailer and this led to delay and conflicting responses and breach of data protection ...”*
4. I find that – so far as the period after April 2017 is concerned – these Problems constituted significant service failings on the part of the company (“Service Failings”).
5. From reading the defence, however, I am satisfied that the company:
  - a. has acknowledged and admitted its Service Failings in these respects and has not sought to dispute them (“Admissions”); and
  - b. has duly apologised for the Service Failings.
6. The company’s Admissions seem to me to be relatively extensive. The company, I note, states that:
  - a. it is sorry that, during the period from late 2017 to early 2018, when it was awaiting the

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results of the Wholesaler's investigations, it could not amend any charges on the customer's account; and

- b. it accepts that there were delays in providing the customer with an accurate bill; and
- c. it is very sorry for the distress that these delays caused the customer and admits that the service provided was not acceptable; and
- d. it is also sorry that its agents incorrectly informed the customer of when these amendments would be completed. It agrees that its performance in these respects was not acceptable; and
- e. when - as in this case - complaints are made that concern both retailer and wholesaler, it accepts that the relevant complaints procedure is disjointed; and
- f. it accepts that its handling of the customer's complaint could have been better regarding the level of communication given to him at each stage; and
- g. it is very sorry (generally) for the way in which the customer's account was handled together with the stress and time that he had to spend trying to sort out the issues that he encountered.

7. I appreciate that one of the outcomes sought by the customer in this case is for a correct bill to be produced to him. As indicated above, the company admits that there have been delays in providing the customer with an accurate bill. However, I accept the company's assertion in its defence that the bill currently with the customer is (finally) accurate. I do not understand the customer to be directly taking issue with that assertion.

8. I note that the customer - from the outset - has been pursuing a refund of the 'sewerage only' bill in the sum of £350.56 ("the Refund"). The customer still maintains his entitlement to the Refund notwithstanding that he has already received the March 2018 Payment from the Wholesaler. In his Comments, he explains why he takes this stance:

*"... I did receive £350.56 from [ ] wholesale but, despite admitting incorrect billing caused by a 'data error' in their e-mail of 22.12.17, on 7 March 2018 they dressed up the return of the wrongly billed amount as compensation (£221.75) and a refund of fixed charges (£128.81) which had not been billed to me. Yet in the same e-mail of 22.12.17 said, 'Clearly, should it turn out that water should also have been charged for, these charges will not be backdated as this would be [ ]s error'. Therefore, they still owe me my incorrectly billed £350.56 ..."*

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9. I accept the customer's argument in this respect. It is striking that the amount of the March 2018 Payment is exactly the same as the amount of the Refund for which the customer has been pressing. My finding is that, for all intents and purposes, the March 2018 Payment did represent the making of the Refund. It seems to me highly contrived (and insupportable) to suggest otherwise. It follows that:
- a. the customer should be regarded as having received the Refund (and therefore, this element of his claim has already been paid); but
  - b. for clarity, no part of the March 2018 Payment was compensatory. Rather, it consisted entirely and only of the Refund, I find.
10. Given my finding that the March 2018 Payment should stand as the Refund (in effect), I turn now to consider the question of the customer's entitlement to compensation for:
- a. the Service Failings; and/or
  - b. the distress and inconvenience that he submits that he endured as a result.
11. The company proposes compensation of £100.00 in these respects. I regard that proposal as too low. I take account of the fact that there were many Service Failings and not simply one or two. The poor customer experience prevailed over a long period of time. I accept the customer's submissions about:
- a. his feeling that he was being "*passed from pillar to post*"; and
  - b. "... *the whole situation [having] caused him many sleepless nights and a great deal of stress ...*"; and
  - c. the experience having been "*an ordeal*", which "*has left him let down ... and dreading the next communication ... [and that] it has tainted his enjoyment of his workplace*".
12. In terms of its response to the complaint, it is noteworthy (and I am satisfied) that the company:
- a. has taken the matter seriously; and
  - b. has adopted an appropriately sincere tone and been forthright in making Admissions in respect of its Service Failings; and
  - c. has reported action with a view to improving its services and preventing a recurrence of the Service Failings; and

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d. as a gesture of goodwill, has credited the balance on the customer's account of £50.72, leaving nothing for the customer currently to pay.

13. Weighing up all of these factors above, I consider that an appropriate amount to award the customer in compensation in this case is £500.00. In arriving at this figure, I have reflected particularly on the degree of stress that the customer describes: he says that the matter has left him "*despondent and depressed*" and unable to face revisiting the issues involved. I accept his submissions in these respects.

14. In its defence, the company has apologised for its Service Failings and for the impact that these Service Failings have had on the customer ("Apologies"). The making of the Apologies was warranted in this case, I find.

15. As to the adequacy of the Apologies, I note the reply given by the customer in his Comments:

*" ... Apologies to me immediately would have been heartfelt, apologies at the death and only to WATRS are hollow and insincere at best. Even at the death, [ ], like [ ], [ ] Business and CCWater before them, have not understood, referenced or resolved my complaint ..."*

16. Whilst I am not persuaded that they are/were hollow or made insincerely, I do take the point about the customer's perception that the Apologies are addressed only to WATRS. Accordingly, I shall direct that the company must re-state the Apologies, in writing, by way of a letter addressed to the customer personally.

#### **Outcome**

The company needs to take the following further action:

I direct the company to pay the customer the sum of £500 in compensation and to re-state its apologies to the customer by way of a letter addressed to him personally.

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

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- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 17 October 2018 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.
- 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.

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**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**

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