

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/2012

Date of Decision: 2 October 2020

Complaint

The customer submits that the company and Wholesaler have refused to pay a leak allowance for a leak confirmed on 2 August 2019 (save for a refund of the waste water charges). She disputes the reasons given for the rejection of her application, namely that it was not repaired within 30 days. The customer is also dissatisfied with other aspects of the service provided, including that the meter was not read more regularly which meant the leak was not detected sooner. The customer requests £2,500.00 in compensation for stress and inconvenience caused and £4,800.00 to cover the difference paid in charges due to the leak.

Response

The company submits that the leak allowance is decided by the Wholesaler according to their policy and therefore the Wholesaler's rejection of the customer's application for an allowance against the water charges due to the leak, is beyond its control. It has challenged the Wholesaler on 8 occasions regarding this decision and therefore it has done all it can to help achieve a leak allowance. The company however does accept responsibility for the delay in escalating the request for a supply check to the Wholesaler and has applied a credit of £331.05 to cover the cost of charges arising from the leak during this timeframe (this includes an extra 30 days). It has also applied credits of £180.00 for service shortfalls when dealing with the customer's case as well as cancelled Debt Collection and late payment fees. It feels this is reasonable in the circumstances.

Findings

As the leak allowance is decided by the Wholesaler in line with its policy, this aspect of the claim falls outside the scope of this adjudication due to the Wholesaler being deemed as a third party in this adjudication. However, the company is responsible for raising matters with the Wholesaler on the customer's behalf. Whilst the company has demonstrated that it has challenged the Wholesaler on numerous occasions in relation to the request for a leak allowance, as the customer strongly refutes two reasons cited for the rejection of the leak allowance (the repair date and the location of the leak), on the customer providing evidence to the company to support her claim, I find it is reasonable for the company to go back to the Wholesaler with this evidence to request that they review their decision. There were also delays and errors on the

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part of the company when handling the customer's case and I find this amounts to evidence of it failing to provide its services to a reasonably expected standard. However, the company has applied credits to the customer's account totalling £511.05 in recognition of these (this should be £531.05 based on it agreeing to pay 5 x £20.00 whilst the evidence shows only £80.00 has been credited). Therefore, the company shall apply the missing credit of £20.00. However, as I am satisfied the credits provided plus the removal of Debt Collection and late payment fees, is reasonable recompense in the circumstances, the company is not required to pay the customer any further compensation.

Outcome

The company shall apply a further credit of £20.00 to the customer's account and on the customer submitting evidence to the company confirming the date of the repair and location of the leak (within 20 days of accepting this decision), the company shall firstly provide a written apology to the customer for accepting the Wholesaler's claim about the leak being repaired on 17 October 2019 rather than 30 August 2019 and secondly go back to the Wholesaler with this evidence to request that the Wholesaler review their decision over the leak allowance.

The customer must reply by 30 October 2020 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/2012

Date of Decision: 2 October 2020

Party Details

Customer: Customer

Company: XWater

Case Outline

The customer's complaint is that (as stated by the Consumer Council for Water):

- The customer it regarding the company's refusal to assist further with their application for a leakage allowance against a high consumption bill.
- There was a leak at the property, which was not visible and went undiagnosed due to the failure of both the company and the Wholesaler.
- A leak allowance was refused because the company (and the Wholesaler) assert that the leak was identified in June, yet was not repaired until the end of August (2019). However, the customer contends that they contacted the company as soon as the (high) bill was received and the company said they would look into it with the Wholesaler who, on several occasions, refused to attend.
- Once a leak and its location was confirmed by the Wholesaler's attendance, it was repaired promptly by the customer (within 28 days) on 30 August 2019.
- The Consumer Council for Water (CCW) challenged the company on this basis that it was the failure of the company, as the retailer and the Wholesaler to respond to the customer's contact/request for assistance which allowed the duration of the leak to run longer than it should have.
- Additionally, the company had failed to take previous regular meter readings, which 'masked' the leak. Therefore, CCW recommended that the customer be awarded a full leak allowance. Both the company and the Wholesaler refused and denied any failures.
- The customer summed up her frustrations with the complaint and the company response as follows:
"It is quite clear to me that the failure of Water Trust [Sic] and REMOVEDto read the meter, which is in the pavement, around the time that the leak probably started which was already 8 months since the last reading and their refusal to attend site to validate and investigate for a further six months was clearly

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negligent. This negligence is compounded by their slowness to respond when we started to chase them in June. They had 2 months to sort things out when we had raised all of the issues and requested urgent attention.”

- CCW made a further robust challenge to the company, however it again denied service failings despite these being outlined to it: failure to read the meter and failure to arrange a timely appointment with the Wholesaler.
- CCW, due to feeling strongly that the high bill was in no way the fault of the customer, wrote to the company challenging its conclusions however both the company and the Wholesaler refute culpability for the issue and the case has reached deadlock.
- Due to the company's failure to carry out regular reads and a delay in raising the matter with the Wholesaler, it has failed to provide a service which the customer can reasonably have expected to receive and therefore the company should work with the Wholesaler to provide an appropriate leak allowance to defray the customer's liability for the large bill.
- The customer has continued to outline her concerns about the accuracy of the information provided by the company in her most recent email.
- The customer requests £2,500.00 for stress and inconvenience for days spent trying to resolve the issue(s).
- The customer requests £4,800.00 for the difference in charges between June 2020 account and March 2019 account less normal usage for 15 months (i.e. £5,400.00 - £600.00).

The company's response is that:

- The customer called regarding a high bill received in June 2019. This was following a successful meter reading taken on 30 May 2019 (5390). Prior to this it had made attempts to read the meter on 5 December 2018 and 11 February 2019 but due to construction work on the neighbouring property its meter readers were unable to read the meter as it was obstructed by this work. It wrote to the customer advising of this.
- The last actual read obtained prior to this was 19 June 2018. The Ofwat Code of Practice <https://www.ofwat.gov.uk/wp-content/uploads/2019/06/CPCoP-v1.3.pdf> requires the retailer to read the water meter once every 12 months and therefore, it has fulfilled its obligation to read the meter once every 12 months.

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- During the customer's call of 28 June 2019, she advised she believed the reason for the high consumption was the neighbouring property tapping into her supply and she requested a supply check to confirm this fact. Unfortunately, it did not action this request until the customer called again on 29 July 2019 insisting that a supply check was raised on the basis of this being the cause of the high bill.
- The Wholesaler carried out the supply check on 2 August 2019 and confirmed that the meter is only supplying the customer and that there is a private leak on the property. It sent an email to the customer on 9 August 2019 advising of the supply check result, confirming the leak and informing the customer that private leaks are the responsibility of the customer to locate and fix.
- It then received an email from the customer advising the leak had not been detected on the internal stop tap and that the leak will be repaired by REMOVEDOperations under job reference 2004314245. It responded advising that if REMOVEDis responsible for fixing, the customer can apply for a leak allowance by filling in the leak allowance claim form once the leak is repaired by REMOVEDOperations (attached).
- It received the completed leak form from the customer on 16 September 2019 but due to contradictory information provided (stating that the date when the customer became aware of the leak was 25 June 2019 in one section and 2 August 2019 in another section), it emailed the customer on 25 September 2019 and supplied another form. The form also stated that the leak was repaired by a plumber on 30 August 2019, which contradicted the previous statement that the leak would be repaired by Severn Trent. It advised the customer to list the date of 2 August 2019 as the date when they became aware of the leak as this would ensure the repair was done within the 28 days window required by the Wholesaler's leak allowance policy.
- It received the corrected form back from the customer on 25 September 2019 and forwarded to the Wholesaler on 4 October 2019. On 22 October 2019, the Wholesaler confirmed that it had granted a leak allowance against all wastewater charges resulted from the leak for the period 19 June 2018 to 2 September 2019. The allowance was applied as a credit to the customer's account on 28 October 2019 for £1,945.57. However, the Wholesaler refused the allowance against the water charges resulted from the leak on the grounds that the customer has been aware of the problem since 25 June 2019 when she received the large invoice but did not repair the leak within 28 days of becoming aware of the issue. This information was communicated to the customer on 28 October 2019 via email.
- It challenged the Wholesaler (on 28 October 2019) over its stance that the customer had become aware of the leak on 25 June 2019, however, the Wholesaler reiterated its position and it communicated this to the customer on 2 December 2019.

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- Following CCW's involvement, it escalated the dispute back to the Wholesaler on further occasions and in response, the Wholesaler claimed it was responsible for not raising a supply check when the customer called on 28 June 2019 and also said that as the customer did not repair the leak until 17 October 2019 and therefore, even if 2 August 2019 is used as the date the customer became aware of the leak, the customer took more than 28 days to repair the leak. It also said that regardless of this as the leak was on the customer's fixtures and fittings and its policy does not cover leaks on fixtures and fittings.
- It has challenged the Wholesaler on 8 occasions in total and regardless of the angle it has approached the matter, the Wholesaler has said the customer is not eligible. Therefore, it believes it has exhausted all avenues of pursuing the Wholesaler to reconsider their refusal of granting a water allowance.
- The company accepts responsibility for the delay between 28 June 2019 and 29 July 2019 (31 days) in which the supply check was not requested from the Wholesaler. For this delay, it agreed to cover all water charges resulted from the leak during the period of the delay and as an additional goodwill gesture, has also covered the water charges resulted from the leak for the 30 days prior to the delay (£331.05 which equates to water charges resulting from the leak during this period). Further, it accepts responsibility for the following service failures: no contact with customer (£20.00); Wholesaler request raised on wrong form (£20.00); Wholesaler response communicated to customer outside SLA (£20.00); No response sent to the customer (£20 x 2 instances) and has applied £80.00.00 on this basis. However it submits the above service failures occurred after the leak was repaired and therefore, had no influence over the outcome of the case.
- Additionally, it has applied a further £100.00 for stress and inconvenience and also removed the late payment fees applied to the customer's account:

Reply

- The customer stands by her claim in particular that she called the company immediately (on 28 June 2019) after receiving the high invoice for £3,582.63 and the company agreed to arrange a visit from the Wholesaler to get to the bottom of this. It failed to action this request. She called the company again on 11 July 2019 and on 23 July 2019 when she asked to speak to a manager and requested confirmation in writing that it had made the request for the Wholesaler to investigate the issue.
- When the Wholesaler visited on 2 August 2019, the engineer confirmed that there was a leak but that he would arrange a further visit to try to find the source. He said that he did not have the diagnostic device that can find the source (there was only one in the city) and someone else had it. On 5 August

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2019, she received a missed call and voice mail advised someone would call back to discuss possible high consumption tomorrow.

- Another engineer did attend the following week but he did not have the diagnostic device and she was advised to see if their insurance company would cover the repair.
- The customer says she turned off the water on 10 August 2019 and their insurance company agreed that they would be covered for the repair and they completed the repair late on Friday August 30. They returned on Monday 2 September 2019 to tidy up the site and replace the AstroTurf ready for their children to use the outside area again.
- The customer strongly disputes aspect of the company's Response including its allegation that she lied about when the leak was fixed; as above it was fixed on 30 August 2019. She received a letter from the Wholesaler on 10 September 2019 (dated 21 August 2019) saying that there was still a leak on the property and that they were coming out on 15 September 2019 to repair it. She phoned the Wholesaler on 13 September 2019 to say that there was no leak; it had been repaired on 30 August 2019. She was concerned that the Wholesaler would turn up on 15 September 2019 to fix the leak that had already been fixed but no one did.
- Therefore she denies the claims that she confirmed the leak was not repaired or that she contacted them on 17 October 2019 to confirm the leak was repaired; this "is complete fabrication". She is "utterly appalled by REMOVEDfabrication of evidence by inventing conversations and expects there to be consequences for such dishonesty".
- This matter has caused ongoing stress and consumed hours and hours.

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. The customer is a business customer (a small Children's Charity - REMOVED) and the dispute relates to the supply at the business address:
2. The dispute concerns a leak at the property and the lack of a full leakage allowance provided by the company / REMOVEDWater. At this juncture, I remind that parties that the company is the Retailer and that REMOVEDWater is the Wholesaler for the customer's region. I note the division between the Wholesaler and Retailer occurred as a result of government changes opening up the water market which came into effect on 1 April 2017. I find that the company and REMOVEDWater are therefore two distinct and separate entities and further that a WATRS Application can only be brought against one party. In this instance, the customer's case has been defended by the company (ie. the Retailer) and therefore for the purposes of this decision, my remit is to determine the issues between the customer and the company. Therefore I am unable to consider the customer's claims or complaints against REMOVEDWater including its decision to reject the application for a leak allowance and its service provided on visits to the customer's Property during August 2019 when identifying the leak or during phone conversations. However, as a Retailer, the company is responsible for a customer's billing and for raising any issue with the Wholesaler on behalf of the customer regarding any matter that the Wholesaler is responsible for, including leakage allowances. I shall proceed with deciding the claim on this basis.
3. I acknowledge that the company applied to the Wholesaler for a leak allowance on the customer's behalf on 4 October 2019 and the Wholesaler subsequently awarded an allowance of £1,945.57 for all wastewater charges resulting from the leak for the period 19 June 2018 to 2 September 2019 (this was for 1976 m³ waste water and was applied to the customer's account on 28 October 2019). However, the Wholesaler refused to provide an allowance against the water charges resulting from the leak on various grounds including that the customer had not repaired the leak within 28 days, contrary to the "28 day rule". The customer strongly disputed this on the basis that the repair was fixed within three weeks of the Wholesaler confirming the presence of a leak. I acknowledge that between 11 November 2019 and 14 May 2020, the company challenged the Wholesaler regarding this

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decision on at least 6 different occasions which did not result in the Wholesaler paying the customer a leak allowance for water or changing its position in relation to her application. As well as the lack of a leak allowance provided against the water charges that resulted from the leak, the customer is dissatisfied with the length of time taken for the Wholesaler to attend to investigate the high consumption after she queried the high consumption with the company on 28 June 2019 immediately after receiving the bill dated 25 June 2019 for £3,582.63. The customer also complains that the company failed to carry out regular meter reads which “masked” the leak.

4. In regards to the Wholesaler’s refusal to provide a leak allowance, I am mindful that the Wholesaler is responsible for deciding and awarding leak allowances based on its leak policy. Therefore, I am unable to consider either its handling of the customer’s application for a leak allowance, or the validity of its assessment in relation to the application, due to this involving a decision taken by a third party which, as explained above, falls outside the remit this adjudication. However, I am able to consider if the company, in its capacity as Retailer, sufficiently challenged the Wholesaler over its above decision when disputed by the customer. As above, the company challenged the Wholesaler on numerous occasions citing different grounds, all of which were rejected by the Wholesaler. Therefore, I am satisfied that the company has demonstrated it made reasonable attempts to achieve a successful outcome in relation to the leak allowance on behalf of the customer. However, I am mindful that in her Reply, the customer disputes the accuracy of two claims made by the company in its Response, namely that the leak was on the internal stop tap and that the leak was not repaired until around 17 October 2019. I find the company has made these claims based on what the Wholesaler has said in its responses during the company’s communications with them regarding the customer’s application for a leak allowance. Regarding the date of the leak repair, whilst I cannot see any substantive evidence (for example, evidence from the insurance company who arranged the repair) submitted from the customer to confirm the date was 30 August 2019, neither can I find any evidence to support the suggestion that the customer did not repair the leak until 17 October 2019. I find this seems contrary to all of the evidence in the account notes referring to the repair date being 30 August 2019. Regarding the location of the leak, the customer in her Reply refutes the leak was on the internal stop tap; she asserts the leak was located was under the playground; however, again I find that there is insufficient evidence submitted to establish the location of the leak either way. It is unclear if the above contested issues will potentially affect the outcome of the customer’s leak allowance (the Wholesaler’s leak allowance policy does state that leaks on internal fixtures and fittings will be rejected whereas it does not appear to state leaks on private or underground pipes will rejected). In

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these circumstances, I find it reasonable to direct that on the customer providing evidence to the company confirming the above (within 14 days of accepting the decision), i.e. that the leak was repaired on 30 August 2019 and that the location of the leak was in the playground and not on the stop tap, the company shall firstly provide an apology to the customer for suggesting it was not repaired until 17 October 2019 and secondly go back to the Wholesaler with this evidence to request it review its decision over the leak allowance.

5. In regards to the regularity of meter reads, I accept that prior to the read taken by the company on 29 May 2019 (of 5390 m³) which indicated higher than usual consumption, the last read taken was on 19 June 2018 (of 3976 m³). However, the company has provided evidence (including photographs) that I find supports its assertion that its meter readers had attempted to read the customer's meter on two occasions before 29 May 2019 but that they were unable to obtain reads due to construction work on the neighbouring building obstructing access to the meter. I note that the company sent letters to the customer advising of the same and that an estimate had been used for the bill and it also asked the customer to submit a meter reading. Moreover, based on the minimum standard as set out in the Ofwat document titled 'Customer protection Code of Practice for the non-household retail market' (dated March 2019) supplied by the company in the link provided in its Response, I accept that a retailer is only required (as a minimum) to provide one bill a year based on an actual read. Therefore, whilst I acknowledge the customer's point that an earlier actual read may have revealed the presence of a leak earlier, as the gap between the two meter reads (19 June 2018 and 29 May 2019) is less than 12 months (and the company has shown it tried to read the meter on two other occasions), I find there is no evidence to establish any service shortfall by the company in this regard.

6. In relation the length of time taken before the Wholesaler attended the customer's property to investigate the high consumption after the customer queried this with the company on 28 June 2019 (immediately following her receipt of the bill dated 25 June 2019 for £3,582.63), I accept that five weeks (to 2 August 2019) was unacceptable. I consider that due to the nature of the issue (high consumption indicating a potential leak), the company should have raised this matter urgently with the Wholesaler or advised the customer to do a flow test (which would have likely indicated a leak). I note that in one of the Wholesaler's responses to the company (dated 2 December 2019), I can see it stated that the company should have advised the customer to do a flow test or call its leak line on 0800 783 444. The company acknowledges this and whilst it has said it accepts responsibility for this

failure, it has also said the customer is partly responsible for this delay on the basis she was adamant the cause of the high bill was due to her supply being tapped. Whilst the customer may have thought this to be a potential reason for the high bill, I consider the company still ought to have raised the possibility of a leak being the cause and asked the customer to do a leak test so that, as a minimum, this could be eliminated as a potential cause. It did not do so. Due to this failure and the company not escalating the matter to the Wholesaler either, on this occasion or following the customer's calls on further occasions during July until her call of 29 July 2019, I am satisfied this constitutes evidence of a failure by the company to provide its services to a reasonably expected standard. Therefore, I find that the company is responsible for the leak during this period due to its lack of action taken. The company has confirmed it applied a credit of £331.05 equating to 31 days of inaction plus a further 30 days as a goodwill gesture. It has explained it reached this figure by deducting the customer's normal average daily usage (0.51 m^3 based on earlier undisputed meter reads) from the average daily usage of 4.11 m^3 recorded during the leak period for 61 days (29 May 2019 to 29 July 2019). I accept the basis of this calculation and I am satisfied this is a reasonable amount in the circumstances as it covers the charges incurred for the leak during this period.

7. The company admits to other instances of it failing to provide its service either to an acceptable standard or as per the Service Level Agreement (SLA) when handling the customer's case (during the timeframe from July 2019 up to January 2020). This is evidence of the company failing to provide its services to a reasonably acceptable standard. I note it has outlined five instances of service shortfalls in its Response all of which entitles the customer to £20.00 compensation; however, it says it has applied a goodwill gesture of £80.00 for these. Therefore, it appears the company is required to pay the customer a further £20.00 for the fifth service shortfall mentioned above (No response to the customer). Upon a review of the evidence, apart from those mentioned above, I find no further instances of customer service shortfalls by the company when handling the customer's case.

8. Therefore, due to aspects of the claim falling outside of the remit of this adjudication due to them relating to services that the Wholesaler is responsible for, I cannot uphold the claim for the leak allowance against the charges caused by the leak of approximately £4,000.00. However, in light of my above findings, I direct that on the customer submitting evidence to the company confirming the date of the repair and location of the leak, the company shall firstly provide a written apology to the customer for accepting the Wholesaler's claim about the leak being repaired on 17 October 2019

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rather than 30 August 2019 and secondly go back to the Wholesaler with this evidence to request it review its decision over the leak allowance. Regarding the service provided by the company in its role as Retailer, as I have found there were service shortfalls including when it failed to suggest the customer do a leak test in the first instance or escalating the matter to the Wholesaler until 5 weeks after the customer first requested this, I find that the company is responsible to pay the customer compensation to cover the cost of charges arising from the leak during this timeframe. As above, the company has applied a credit (on 7 September 2020) of £331.05 equating to 31 days plus a further 30 days as a goodwill gesture and on balance I am satisfied this is reasonable. Due to further shortfalls, the company has applied a credit of £80.00 for five instances of this at £20.00 for each occasion (this should total £100.00) and a further £100.00 for "stress and inconvenience" caused by its failures. Further, I acknowledge it has cancelled Debt Collection and late payment fees (of £180.00 and £170.00 respectively). I acknowledge the customer has requested £2,500.00 for days spent trying to resolve the matter. However, I am not satisfied that this amount has been substantiated because, whilst I accept that the customer has spent significant time on this matter in particular when pursuing a leak allowance, I am restricted to only considering the company's responsibilities in this matter and on balance I find the credits already applied totalling £513.05 (save for the missing £20.00) plus the removal of the above mentioned fees, are reasonable remedies that are proportionate to the company's proven failings. Therefore, apart from the company applying the missing £20.00 mentioned above for the fifth service shortfall (entitling the customer to £20.00), I find that the company is not required to pay the customer any further amount of compensation.

Outcome

The company shall apply a further credit of £20.00 to the customer's account and on the customer submitting evidence to the company confirming the date of the repair and location of the leak (within 14 days of accepting the decision), the company shall firstly provide a written apology to the customer for accepting the Wholesaler's claim about the leak being repaired on 17 October 2019 rather than 30 August 2019 and secondly go back to the Wholesaler with this evidence to request that the Wholesaler review its decision over the leak allowance.

What happens next?

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- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 30 October 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.
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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCIArb

Adjudicator

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