

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX23

Date of Decision: 16/12/2020

Complaint

The customer says he has been incorrectly billed by the company.

Response

The company says that the customer has been billed correctly, but the increased water usage appears to have started prior to market opening and so should have been highlighted to the customer by the wholesaler.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its billing of the customer and its handling of the customer's complaint.

Outcome

The company needs to take the following further actions: It must request that the wholesaler replace the meter and test it to determine whether it may have given misreadings; it must ask the wholesaler to investigate whether there is evidence that the increased water usage could have resulted from actions by one of its employees, such as leaving a tap on, requesting a clear and explanatory response; and it must pay the customer compensation of £750.00.

The customer must reply by 15/01/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX23

Date of Decision: 16/12/2020

Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. • He has received a substantial incorrect bill from the company. • He has been disputing this bill since 2017. • No consumption had been recorded on the meter for several years as it was no longer in use. • On 25 July 2017 he received a large bill. • He went to the field and could find no evidence of a leak, but noticed that the stop tap had been changed. • He told this to the company on 4 August 2017. • The company suggested that there must have been a leak and said that a leakage allowance form would be posted to him. • He was told not to do any work on the pipe until the form had arrived. • On 12 August 2017 he commenced excavating the pipe as the form had still not arrived. • On 18 August 2017 he received a letter from the company saying that the wholesaler had undertaken a pipe repair at the Property in October 2016. • He was unaware of any work having been done. • He contacted the company on 19 August 2017 as he had found no evidence of a leak and had still not received the leakage allowance form. • He received the leakage allowance form by email on 1 September 2017. • On 29 September 2017 he contacted the wholesaler to arrange for an engineer, as the company was not willing to do it on his behalf. • On 5 October 2017 the wholesaler cancelled the appointment, rescheduling it to 13 October 2017. • The wholesaler did not attend on 13 October 2017, and another appointment was made for 20 October 2017. • The company cancelled that appointment on the day of the appointment, making another appointment for 27 October 2017. • An engineer attended on 27 October 2017 and confirmed that it was not possible for so much water to have passed through his pipe in the time period in question. • He received a single £30.00 credit for one missed appointment. • He connected a new plastic supply pipe to the meter and tap on 4 November 2017. • He continued to receive invoices from the company, so contacted the company on 9 April 2018. He was told that he needed to fill in another leakage allowance form, but was not told why. • The second leakage allowance form was sent to the company on 14 April 2018. • On 8 May

2018, he was told that the leakage allowance had been denied because the repair had not been completed within 28 days. • There is no evidence of a leak and he has not used water from that supply for years. • He requests that the charge for the increased water usage be removed from his account.

The company's response is that:

1. • The customer made contact in August 2017 after receiving a large bill. • He said that he had not checked for leaks and would not do so. • He said that he thought the meter and stop tap had been exchanged. • The company requested that the customer undertake a leak test and asked the wholesaler about the stop tap. • The wholesaler responded that no work had been undertaken on the stop tap, but a pipe had been repaired in 2016. • On 10 August 2017, the customer confirmed that a leak had been found and would be repaired that weekend. • On 11 August 2017, the customer stated that the wholesaler would also need to undertake repairs and he would contact the wholesaler. • On 4 September 2017, the customer stated that he would not undertake his own repairs until the wholesaler had done its repairs. • A supply check was requested on 11 September 2017. • The customer made contact on 3 November 2017, saying that there had been delays with the wholesaler attending, but it had now occurred. • The customer said that he would now complete and submit the leakage allowance form, although this would take two weeks because of the need to take readings. • On 19 March 2018, the company told the customer that the leakage allowance form had been completed incorrectly. • On 9 April 2018, the customer said that he had finished the repair. • The amended leakage allowance form was received by the company on 19 April 2018. • The wholesaler rejected the leakage allowance because the customer had been made aware of the leak by the invoice received on 25 July 2017, but the wholesaler was not contacted until 22 September 2017. • The wholesaler confirmed there had been a delay in attending, but said that there was no record of its engineer fixing a leak, only replacing a boundary box. • On 26 June 2018, the customer's brother said that the pipework had been inspected and there had not been a leak. • The company again raised a leakage allowance request to the wholesaler, but it was rejected because the leak had not been repaired within 28 days. • There is no other explanation for the recorded spike in consumption than a leak. • The company has now identified that the elevated read was first recorded by the wholesaler on 6 December 2016, prior to market opening. • The company has escalated this observation to the wholesaler, as the wholesaler should have provided notification to the customer at the time. • Late payment fees totalling £430.00 have been removed from the customer's account, and the account has been placed on hold until 30 November 2020 to allow the wholesaler to respond.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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 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.

Customer: The Customer

How was this decision reached?

1. The present dispute between the parties is unavoidably entwined in the opening of the water market on 1 April 2017. Prior to this date the wholesaler itself was responsible for both billing the customer and acting as the water wholesaler. However, as the customer has brought the complaint now, the complaint must be directed to the company, even to the extent that it relates to actions taken by the wholesaler.
2. Moreover, and importantly for the present case, the opening of the water market has affected how the WATRS Scheme can operate with respect to certain disputes. Specifically, granting of a leakage allowance is a matter to be decided by the wholesaler in accordance with its leakage allowance policy, but the wholesaler is not a party to a WATRS case. As a result, even if a WATRS adjudicator were to believe that the wholesaler had not applied its leakage allowance policy correctly, the wholesaler could not be ordered to grant a leakage allowance, as it is not a party to the case. Instead, the only evaluation that can be made by a WATRS adjudicator is whether the company has acted appropriately as the designated representative of the customer to the wholesaler.
3. Nonetheless, the company also bears a duty of care to the customer with respect to its interactions with the wholesaler that arises from the opening of the water market. As the customer has no direct access to the wholesaler, and must rely on the company as an intermediary, the company's duty of care to the customer means that the company must make reasonable efforts to represent the

customer and obtain the customer's desired goal.

4. In other words, in the present context, the company was not merely a messaging service passing on to the wholesaler the customer's request for a leakage allowance, but was obligated to make a reasonable effort to present to the wholesaler the customer's best case for such an allowance.

5. The evidence shows that from the time the customer raised his complaint in July 2017, the company focused on a leak as the most likely explanation for the water usage. While the company's records show the customer confirming that a leak had been found, the customer states that he never found a leak.

6. I note that meter readings provided by the company to the Consumer Council for Water (CCWater) show that the only consumption recorded by the meter took place in the period from 6 June 2016 until 6 June 2017. The meter has recorded no water usage at all since 6 June 2017.

7. This is significant because the customer was only alerted to the raised water usage on 25 July 2017, after all water usage had ended. Because of this it is highly unlikely that the customer subsequently confirmed to the company that he had found a leak, since this would have required water passing through the meter so that it could be seen leaving the pipe. But no water passed through the meter in that period.

8. I find, therefore, that it is more likely than not that the customer did not tell the company that he had found a leak and planned to repair it and that the notes on the customer's account stating this reflect a misunderstanding or error by the company's agent.

9. This also relates to a further unusual part of the company's notes, when the customer is reported as stating that he will not repair the leak until the wholesaler has replaced the pipes on its side of the meter. This would be a surprising stance for the customer to take if he had found a leak, as he would have been aware that ongoing water loss would likely result in further costs for himself.

10. In his comments on the Proposed Decision, the customer has clarified that his discussion with the company at this time related to replacement pipes he had already laid and his responsibility for pipes outside his property. I find that it is more likely, and consistent with the evidence as a whole, that this was then again misunderstood by the company's agent as meaning the customer intended to repair/replace leaking pipes.

11. Given the above, I find that there was no leak discovered by the customer after he received the July 2017 bill, and no leak since at least June 2017.

12. I also find, based on the evidence provided by the parties, that the customer was misadvised by the company to see the problem as most likely reflecting a leak, despite the customer himself raising the possibility of a problem with the meter. This was then compounded by the company's subsequent misunderstanding of the customer's report on the condition of the pipes, which the company recorded as being a report of a leak.

13. Substantial delays then occurred because the customer was directed by the company into requesting a leakage allowance. The allowance was then denied by the wholesaler because it found the customer had delayed in resolving the leak, based on the inaccurate information contained in the notes on the customer's account.

14. Notably, the wholesaler's final rejection occurred after 7 December 2017, on which date the company took a meter reading that showed there had been no water usage since 6 June 2017. Despite this December reading making clear that the customer had not found and repaired a leak since receiving the July 2017 bill, the company failed to raise this point to the wholesaler, allowing the wholesaler to make its decision on the basis of the delayed repair to a leak.

15. Had the wholesaler been accurately informed by the company, it would have been required to undertake further investigations to determine the cause of the enhanced usage prior to June 2017.

16. That the water usage stopped completely at some time before 6 June 2017 strongly indicates that it did not result from a leak, as this would require that a substantial leak spontaneously sealed itself so perfectly that absolutely no water exited the pipe from that point on. While not impossible, it is obviously highly unlikely. Nonetheless, without a proper investigation it is not possible to reach a conclusion regarding the cause of the increased water usage, and no proper investigation was undertaken because of inaccurate information conveyed to the wholesaler by the company.

17. In addition, if the company had accurately informed the wholesaler about the pattern of water usage, the wholesaler would also have been placed on notice of a possible problem with the water meter itself, as originally suggested by the customer. It would also have given more consideration to the possibility suggested by its engineer that one of the wholesaler's own employees had left on a tap, which was then subsequently turned off. Neither of these situations would, of course, entitle the customer to a leakage allowance, but in neither situation would the customer appropriately be billed for the water usage.

18. In its Defence, the company states that it has since discovered that the wholesaler took a reading of 3,049 on 6 December 2016. As this is lower than the final reading of 4,850, it indicates that water loss was still ongoing at that time.

19. As noted by the company, the wholesaler was responsible at that time for billing the customer. However, the account notes produced by the company include an explicit reference to this reading on 27 January 2017 and the company has not stated that this reference was not available to its employees when they were subsequently interacting with the customer and the wholesaler.

20. Moreover, the company cannot simultaneously attempt to collect a debt owed to the wholesaler for services provided prior to the opening of the water market, while avoiding any responsibility for ensuring the accuracy of that debt. As the wholesaler is not a party to this case I make no finding as to whether it was obligated to notify the customer of the enhanced usage it recorded in December 2016, but the company unquestionably had an obligation to ensure that debt it was attempting to collect was indeed owed.

21. I find, therefore, on the balance of all the evidence submitted by the parties, that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its billing of the customer and its handling of the customer's complaint.

22. I have found above that the company's errors and focus on the possibility of a leak resulted in the wholesaler failing to properly investigate a potential problem with the meter.

23. Consequently, the company must request that the wholesaler replace the meter and test it to determine whether it may have given misreadings.

24. In addition, I have found that the company's errors and focus on the possibility of a leak resulted in the wholesaler failing to properly investigate whether the enhanced water usage could have resulted from actions by one of its employees.

25. Consequently, the company is to raise this possibility to the wholesaler and ask the wholesaler to investigate and provide a clear and explanatory response.

26. As I have explained above, it currently remains unclear what the cause was of the increased water usage, and the company has confirmed that it has again returned the matter to the wholesaler. As a result, I cannot order that the debt be removed from the customer's account, particularly in light of my orders above that additional evidence be gathered.

27. However, I will emphasise that I make no finding as to whether the amount

claimed by the company is indeed owed by the customer, as the current evidence is insufficient to justify a conclusion on this point and this matter has now been referred back to the wholesaler. Because of this, the customer retains the right to bring a subsequent claim to WATRS about this debt, providing that the eligibility requirements are met, should he believe that the additional evidence and explanation provided by the wholesaler, or any further additional evidence than what is currently available, supports a conclusion that he should not be billed for the increased usage.

28. Nonetheless, I accept that the longstanding nature of this complaint has caused the customer both significant inconvenience and substantial distress. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £750.00. This reflects the repeated errors that I have found have been made by the company and the substantial distress that the customer will have experienced given the sizeable debt the company was attempting to collect.

29. Consequently, the company must pay the customer compensation of £750.00. To reiterate, this payment does not affect any claim the customer may have about the validity of the outstanding debt, as that question has not been decided here.

30. For the reasons given above, the company must request that the wholesaler replace the meter and test it to determine whether it may have given misreadings; it must ask the wholesaler to investigate whether there is evidence that the increased water usage could have resulted from actions by one of its employees, such as leaving a tap on, requesting a clear and explanatory response; and it must pay the customer compensation of £750.00.

Outcome

1. The company needs to take the following further actions: It must request that the wholesaler replace the meter and test it to determine whether it may have given misreadings; it must ask the wholesaler to investigate whether there is evidence that the increased water usage could have resulted from actions by one of its employees, such as leaving a tap on, requesting a clear and explanatory response; and it must pay the customer compensation of £750.00.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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 in 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.

Tony Cole
Adjudicator