

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX41

Date of Decision: 22/12/2020

Complaint

The customer raised concerns about the fact that the company failed to read her meter in October 2019, despite a statement in its terms and conditions that it would seek to read her meter every 6 months. As a result, the customer was not alerted to a high level of water consumption until a meter reading was taken in January 2020. Following this, the customer says that the company was slow to follow up with the wholesaler on the leakage investigation. The customer therefore requests an adjustment to her bills to reflect the financial consequences of the company's service failings.

Response

The company contests the claim. It states that under its terms and conditions, it is not responsible for leaks and it is not required to take meter readings every 6 months, because the terms and conditions only say that it will "seek" to do so. The company also argues that it has made a payment under the Guaranteed Service Standards in respect of its delays in responding to the customer, and it therefore says that it should not be required to take any further liability for these delays.

Findings

I find that the company's terms and conditions require the company to "seek" to take a meter reading and it did not take adequate steps to fulfil this obligation. If the company had fulfilled its obligation and therefore read the customer's meter in October 2019, she would have been able to investigate and remedy her high water usage at that point. The company should therefore compensate the customer for its service failure in this regard. I do not consider that the payment made by the company under the GSS is sufficient compensation, and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 do not prevent the company from being held liable otherwise than under the regulations.

If the customer accepts this decision, the company must adjust the

Outcome

customer's billing to reflect an assumption that (1) from 13 April 2019 to 30 November 2019, the customer's average daily consumption was 6.86 m³ but that (2) from 1 December 2019 to 17 January 2020 the customer's average daily consumption was 2.43 m³, and must submit to the customer a revised bill within 20 working days of notification of this acceptance.

The customer must reply by 21/01/2021 to accept or reject this decision.

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Date of Decision: 22/12/2020

Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. The customer says that the level of her water bills does not reflect the water that she has actually used. She explains that, under the company's terms and conditions, the company should have read her meter every 6 months. The company was therefore due to read her meter in October 2019 but it did not do so. When it did read the meter in January 2020, the customer considered that the water usage shown on the meter was too high and did not reflect her actual usage. The company requested the water wholesaler to investigate this, but the customer considers that the company did not do enough to follow up with the wholesaler when the wholesaler was slow to respond. When the investigation did take place in July 2020, a leaking internal stop valve was discovered, which the customer repaired. However, both the company and the wholesaler have refused to grant a leakage allowance. The customer explains that she did not instruct a private plumber to investigate the leak because she believed that the company was in the process of doing so. She considers that if the company had read her meter when it should have, and/or had followed up to ensure that the wholesaler's investigation took place efficiently, she would have discovered the leak earlier. The customer therefore asks for an adjustment to her bills to remove the charges for excess consumption between 11 April 2019 and 14 January 2020, to bring them into line with current consumption or even with the consumption between 5 April 2018 and 11 April 2019.

The company's response is that:

1. The company contests the customer's claim. It says that its terms and conditions make clear that it is not responsible for leaks, and there is no other legal provision that would make it liable for a leak suffered by a customer. It explains that it raised the leakage issue with the water wholesaler, who has refused to grant a leakage allowance. The time taken by the wholesaler to investigate and reach its conclusion

was reasonable, due to the restrictions imposed as a result of the Covid-19 outbreak. In particular, the wholesaler decided not to visit properties during lockdown unless there was an emergency. If the wholesaler had granted an allowance, the company would have passed this on to the customer. However, in this situation they have not done so and the company therefore argues that it should not be held liable for the leak. The company also says that the terms and conditions only provide that it will "seek" to read the meter every six months, so it cannot be liable for the fact that it did not read the meter in October 2019. The customer could have taken her own meter reading, but she did not do so. Finally, the company argues that it has made a payment of £50 under the Guaranteed Service Standards in respect of its delays in responding to the customer, and it therefore says that it should not be required to take any further liability for these delays. For all these reasons, the company says that it should not be required to make any further payments to the customer.

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 customer's complaint concerns her water bills for the period between 11 April 2019 and 14 January 2020, which she considers to be too high. She argues that the company did not read her meter when it should have, and was unduly slow in responding to her complaints.
2. As a preliminary point, I should highlight that in this adjudication, I can only

consider matters that arise out of the relationship between the company and the customer. I can therefore not make any findings about any potential service failures by the wholesaler who is not a party to this adjudication, nor can I order the company to pay compensation for any failures by the wholesaler. I can only make findings about any potential failings by the company itself in the way in which it handled the issues at stake.

3. The customer and the company agree that the company took a meter reading in April 2019 and then again in January 2020. The reading in January 2020 suggested a level of water usage that was high by comparison to the customer's previous usage.

4. The company's "Deemed Contract Terms and Conditions for the Supply of Water for Retail Exit Customers 2020/21", on p. 1, states that the company "will seek to read your meter (where appropriate) bi-annually". The company argues that this does not mean that they are obliged to read the meter every six months, but rather that this is their goal, and that they cannot be held liable for a failure to do so.

5. I do not agree with the company's position that this provision does not impose any responsibility on the company. The terms and conditions provide that the company will "seek" to read the meter, and as a matter of ordinary language, I consider that this means that the company was required at least to make some effort to read the customer's meter twice a year.

6. In this case, the company did not read the meter in October 2019, six months after its last reading in April 2019, and it also does not put forward any evidence to suggest that it tried to do so. In fact, it appears from the papers that the customer contacted the company on 3 October 2019 to request a meter reading. The company wrote back to say that another meter reading was due, but also to suggest that the customer could take a reading herself if she wished to do so. The customer informed the company that she did not have access to the meter so could not take a meter reading herself.

7. The customer then contacted the company again on 29 November 2019 to request an update on the meter reading. She wrote again on 6 December and 28 December 2019 and 4 January 2020 to complain about the size of her bills and to say that she would not pay unless a meter reading was taken.

8. The company nevertheless did not manage to obtain a meter reading until 17 January 2020. I understand that they had some difficulty identifying which entity should have taken the meter reading. Nevertheless, and in particular in a situation where the customer had raised concerns about the size of her bill and had indicated that she was unable to read the meter herself, I find that the company did

not take adequate steps to fulfil its obligation to "seek" to take a meter reading six months after its April 2019 reading.

9. For the avoidance of doubt, I note that these delays cannot have been caused by the Covid-19 restrictions or lockdown, as these only entered into force in March 2020.

10. The meter reading of 17 January 2020 revealed that the customer's water consumption was higher than she expected. The company therefore submitted a leak check request to the water wholesaler, Anglian Water, on 28 January 2020. It appears that there were some delays in the wholesaler's investigation of the leak. From March 2020, these could be explained by the fact that the wholesaler had adopted a policy that, during lockdown, it would only carry out home visits in an emergency, although the delays before this time are not explained.

11. I understand from the CC Water papers that the wholesaler visited the customer's property on 7 July 2020 and discovered that there was a dripping leak from a stop tap on the customer's property. The customer repaired the stop valve on around 9 or 10 July 2020. Another reading was taken on 14 August 2020, which showed that the customer's water usage was at a lower level.

12. As explained above, I cannot make any findings about the liability of the wholesaler for the leak or for its response times. I also note that the company is correct to say that it is not itself liable for the leak. As set out in Clause 15.1 of the company's terms and conditions, the customer is responsible for the state of her own pipework. The company is therefore not liable for the leak given that it was on the customer's own pipework. In addition, given that the wholesaler decided, as a matter of its discretion, not to grant a leakage allowance, there was no obligation on the company to pass any leakage allowance on to the customer.

13. However, the company can be held liable for the consequences of any failings in the services that the company itself (as opposed to the wholesaler) provides. In this case, the customer argues that if the company had read her meter in October 2019, and/or had been more efficient in chasing the wholesaler to investigate the suspected leak from January 2020, the leak would have been fixed sooner and her water bills would therefore have been lower.

14. I agree with the customer that this is the case. It is clear from the papers that, once the customer received the meter reading of January 2020, she was proactive in chasing both the company and the wholesaler to investigate the high water usage. If the company had taken a meter reading in or around October 2019, the customer would have been put on notice of the problem. Given that the wholesaler, in the absence of Covid-19 restrictions, aims to conduct such investigations in 21

days, it is likely that the leak would have been discovered and repaired in or around November 2019.

15. The company's view is that the customer's large bill in January 2020 was not due to a leak but was rather due to an unexpected spike in water usage. It refers to an Excel table from the wholesaler which shows that the customer's average daily consumption from April 2019 to January 2020 was 6.86 m³ (by comparison to an average daily consumption of 2.43 m³ in the period from September 2018 to April 2019). However, the company points out that the customer's water usage between January 2020 and July 2020 then went down. It was 0.72 m³ between January and March 2020, then 0.18 m³ between March and July 2020. Given that the leak on the stop valve was only detected in July 2020, the company considers that this leak could not have been the cause of the high consumption shown in the reading of January 2020.

16. However, I note that the period from January to July 2020 was far from usual. The customer's premises is a restaurant and it is reasonable to expect that it was affected by the global pandemic even before the lockdown of March 2020. In addition, I understand from the CC Water papers that the customer's business had gone down in the period leading up to the lockdown. It may therefore be that the drop in water usage between January and July 2020 can be explained by the fact that there was still a leak, but that the leak was slowed and the overall usage decreased because the restaurant was using less water.

17. In any event, I consider that if the company had read the customer's meter in October 2019, she would have been able to investigate the high water usage at that point. Whatever the cause of that high usage, she would have been able to address it at that time.

18. Finally, I note that the company argues that the amount of its liability should be limited to the amount of £50 that it paid to the customer under the Guaranteed Standards Scheme, for the delay in its responses to the customer.

19. The Guaranteed Standards Scheme is provided for by the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. Regulation 15(2) of these Regulations provides that "the acceptance by a customer of a payment or credit made in consequence of these Regulations does not affect any liability of the undertaker to the customer other than its liability under these Regulations". The fact that the company has made a GSS payment therefore does not preclude me from holding the company liable for the consequences of a failure to provide an appropriate standard of service, or a failure to comply with its terms and conditions, under the Water Redress Scheme Rules (2020 edition).

20. In its comments on the Preliminary Decision, the company argues that it should not be held liable for its failure to read the customer's meter in October 2019 because Ofwat only imposes on it an obligation to read the meter once a year. However, Ofwat imposes a minimum standard on the company, which does not prevent the company from making further commitments to its customers in its terms and conditions. In this case, as set out above, the company's "Deemed Contract Terms and Conditions for the Supply of Water for Retail Exit Customers 2020/21" state that the company "will seek to read your meter (where appropriate) bi-annually". For the reasons explained above, this provision imposes an additional obligation on the company to (at the least) attempt to read the customer's meter twice a year.

21. The company also objects that the Preliminary Decision does not cite any case law or court ruling for the principle that "seek" should be read as "will". However, the interpretation of the company's terms and conditions falls within the scope of the adjudicator's powers. As explained above, I find that the terms and conditions impose on the company an obligation to attempt to read the customer's meter twice a year - this is the ordinary meaning of the word "seek". While the company is correct that the terms do not say that it "will" read the meter every six months, so there is not an absolute obligation to read the meter every six months in all circumstances, the terms do state that the company must "seek" to read the meter. In this case, I find that the company did not take any steps to attempt to read the meter at the relevant time, so it did not meet its obligation to "seek" to read the meter.

22. Finally, in its comments on the Preliminary Decision, the company states that Ofwat has said that the cost of a dripping tap can be 10,000 litres per year, which is approximately £14.06 per year. However, the company does not take into account that this is an average figure, which does not necessarily reflect what happened in this case. While, as explained above, I agree that the customer is responsible for its own consumption and for leaks on its own pipework, I have also explained above that the company is responsible for the consequences of its own service failings. In this case, the company's failure to live up to the undertaking in its terms and conditions had consequences for the customer, and the company is required to compensate the customer for these consequences.

23. I therefore find that the company should be held liable for the financial impact that its failure to take a meter reading in October 2019 had on the customer. I note that the customer has also complained that the company failed to take adequate steps to chase the wholesaler to investigate the leak in the period from January to July 2020. While I consider that the company could have been more proactive during this period, I do not consider that any failures in this regard had a significant

financial impact on the customer. This is because, during this period, the customer's water usage was at a lower level in any event.

24. Determining the consequences of the company's failure to take a meter reading in October 2019 with precision is not an easy task, and it is necessary to proceed on the basis of assumptions. I will therefore assume that, if the company had taken a meter reading in October 2019, the customer would have requested a leakage investigation which would have been completed, and the problem addressed, by the end of November 2019.

25. I therefore find that, in the absence of the company's service failings, the customer would not have incurred charges for water consumption at the same level in the period between 1 December 2019 and 17 January 2020. I note that the customer has asked for an adjustment of her water bill for a longer period - from 11 April 2019 to 14 January 2020. However, I find that the high water consumption from 11 April 2019 to 1 December 2019 is not causally related to the company's service failings. Even if the company had fulfilled its obligations to seek to take a meter reading every six months, the customer would still have incurred high water usage during that period.

26. The customer has argued that during the relevant period, in the absence of the leak, her water consumption would have been what it is now - that is, according to the Anglian Water Excel spreadsheet provided by the company, an average daily consumption of 0.35 m³. I do not consider that this is a realistic assumption. As explained above, due to the ongoing Covid-19 pandemic and associated restrictions, the current situation is far from typical, in particular for a restaurant. I believe that a more realistic assumption is that the customer's water usage would have been similar to the usage from September 2018 to April 2019, that is, according to the Anglian Water excel spreadsheet, an average daily consumption of 2.43 m³.

27. I therefore consider that the company should adjust the customer's billing to reflect an assumption that (1) from 13 April 2019 to 30 November 2019, the customer's average daily consumption was 6.86 m³ but that (2) from 1 December 2019 to 17 January 2020 the customer's average daily consumption was 2.43 m³.

28. Finally, I note that in her comments on the Preliminary Decision, the customer requests an allowance for the waste water part of her bill from 11th April 2019 to 1st December 2019. However, Rule 5.5.3 of the WATRS Rules states that "The customer may highlight factual inaccuracies and errors in law in the Preliminary Decision, as well as submit additional evidence relating to points already raised in the case. The customer cannot introduce any new complaints at this stage". I find

that the request for a waste water allowance is in effect a new complaint rather than a further comment on matters that the customer had already raised. I am therefore unable to grant this request.

Outcome

1. If the customer accepts this decision, the company must adjust the customer's billing to reflect an assumption that (1) from 13 April 2019 to 30 November 2019, the customer's average daily consumption was 6.86 m³ but that (2) from 1 December 2019 to 17 January 2020 the customer's average daily consumption was 2.43 m³, and must submit to the customer a revised bill within 20 working days of notification of this acceptance.

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.

Natasha Peter
Adjudicator