

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X321

Date of Decision: 05/05/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The customer says that she has been billed incorrectly by the company for several years. She requests a refund of that portion of her payments that represents the water usage of the barber shop below her flat.

Response

The company says that the customer has been billed correctly.

No offer of settlement has been made.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person by not adhering to the terms of its licence and its Charges Scheme.

Outcome

The company needs to take the following further actions: It must refund to the customer in full all payments it has received from the customer since taking over her account in 2017, and must contact X Company 2 on the customer's behalf, notifying it of its right to bill the customer for her water usage since the date on which the company took over her account in 2017, providing it with any information it needs to allow it to do so.

The customer must reply by 12/05/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X321

Date of Decision: 05/05/2021

Case Outline

The customer's complaint is that:

• She is a domestic customer who occupies a property above a shop. • For a number of years she has been paying for water for both her property and the shop below. • The meter is located in the shop. • She raised her concern to the company in 2017 and the company attended to examine the water supply. The company confirmed that the water supply was shared and recommended a separation of the water supplies so that the customer could be billed separately. • The company refuses to take action and insists this is a third party dispute. • She requests reimbursement of the portion of the payments she has made that represented usage by the shop.

The company's response is that:

• The customer's supply is shared with the shop below her flat. • As there is only one supply to the building, the company presents a single bill for the building as a whole, because it is impossible to differentiate usage between the two premises within the building. • The customer's request for a partial refund cannot be met as there is no objective method for allocating usage between the two premises. • It is not the company's responsibility if the owner of the building has chosen not to allocate supply between the two premises, and the company lacks the power to force the owner to do so. • The company's Charges Scheme allows it to treat one occupier of a property with a shared supply as the occupier of the whole property for billing purposes. • The company views this as ultimately a third party dispute. • The customer's account has been closed as of 5 December 2020. The company has attempted to contact the customer's landlord, but has received no response. • The company has set up an account in the landlord's name, but if the landlord refuses to cooperate and it is not possible to contact the other occupiers of the property, the company may resume billing 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.

How was this decision reached?

1. As a regulated water retailer, the company is required to bill its customers in accordance with a published charges scheme and to provide its services in accordance with its licence and any applicable Ofwat guidance. The company's charges scheme must adhere to rules made by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
2. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to decide on the fairness or correctness of a company's charges scheme, as this responsibility has been given by the Water Industry Act 1991 to Ofwat.
3. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may only examine whether the company has properly adhered to its published charges scheme and to its licence and any applicable Ofwat guidance, and whether it has fulfilled its customer service obligations to the customer.
4. In the present case, the company is a water retailer operating under Licence Number (redacted), granted on 30 September 2016. This licence provides the company with a limited "retail authorisation" that Ofwat confirms "allows the licensee to supply water to non-household premises using the public water networks operated by water undertakers whose areas are wholly or mainly in England".
5. The company, that is, is only permitted by its licence to supply water to "non-household premises". It does not have a licence to supply water to household premises, such as that of the customer.
6. This is also reflected in the company's Charges Scheme, as referenced in the company's Defence. This document is expressly restricted to "non-household" customers. There is no provision in the company's Charges Scheme for the billing of household customers, such as the customer, as would be expected given that

the company does not have a licence permitting it to supply water to household customers.

7. In short, the company does not have a licence permitting it to supply water to the customer and bill her for that water, and cannot have billed the customer in accordance with its Charges Scheme as that scheme only permits the company to bill non-household customers.

8. Moreover, the evidence provided by the company confirms that the company was aware as early as 7 August 2017 that the customer was a domestic customer. Nonetheless, it failed to take action to ensure that it did not continue to supply and bill the customer outside the permissions granted by its licence and inconsistently with its Charges Scheme.

9. I find, therefore, that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person by charging her for the water she received despite having no license to do so and being unable to do so under the terms of its Charges Scheme.

10. As the company did not have valid authority to bill the customer, I find that the appropriate remedy is that the company be required to refund to the customer in full all payments it has received from the customer since taking over her account in 2017.

11. To be clear, this does not mean that the customer has no responsibility to pay for the water that she has received, and I acknowledge that the customer has expressly confirmed that she is willing to do so. However, any payments made by the customer for the water she has used must be made to the wholesaler, X Company 2, which acts as the supplier of water to household premises in the customer's area, and has a licence permitting it to do so.

12. Therefore, the company must also contact X Company 2 on the customer's behalf, notifying it of its right to bill the customer for her water usage since the date on which the company took over her account in 2017, at the rate for a household property and only for her own water usage, providing it with any information it needs to allow it to do so.

13. It should be acknowledged that the company has argued that this is ultimately a third party dispute, as it has no power to compel the customer's landlord to separate the water supplies between the domestic and non-domestic premises in the building. This might, potentially, be a valid argument if the company were billing the landlord or the barber shop, with the customer then paying one of those parties for her water usage. In such a case, although a domestic customer was receiving water supplied by the company, the company was nonetheless only supplying the

water directly to a business and billing that business. This would be in accordance with its licence and its Charges Scheme. In the present case, however, the company billed a household customer directly, for water partially used by a non-household customer, and that is something it does not have the licence to do and that it cannot do in accordance with its Charges Scheme.

14. For the reasons given above, the company must refund to the customer in full all payments it has received from the customer since taking over her account in 2017, and must contact X Company 2 on the customer's behalf, notifying it of its right to bill the customer for her water usage since the date on which the company took over her account in 2017, providing it with any information it needs to allow it to do so.

Outcome

1. The company needs to take the following further actions: It must refund to the customer in full all payments it has received from the customer since taking over her account in 2017, and must contact X Company 2 on the customer's behalf, notifying it of its right to bill the customer for her water usage since the date on which the company took over her account in 2017, at the rate for a household property and only for her own water usage, providing it with any information it needs to allow it to do so.

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.

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.

-
-
-

Tony Cole
Adjudicator