

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X212

Date of Final Decision: 15 November 2022

Party Details

Customer:

Company:

Complaint

The customer complains that the company has not met expected standards in permitting his business to be charged for a leak following nearly two years when the meter did not work and a consequent change of meter. The customer says that the high bill that occurred after the meter was exchanged was due to the previous actions of the wholesaler's technician who, during an inspection, left open a stop tap and water leaked into the soil because the associated pipe was uncapped. He complains that the company has billed him for the water used, has given an insufficient leak allowance and has delayed in arriving at a resolution. He asks for the company to work out its average quarterly usage and to bill the customer accordingly for the period between 14 November 2019 and 11 February 2020, which will reduce his business' bill.

Response

The company denies liability for this claim. It points out that the customer has had nearly two years when his business has not paid for the volume of water used and it denies that the customer is now being charged unfairly. The company says that it has taken up the customer's issues with the wholesaler but the wholesaler has not accepted responsibility for causing the discharge of water and has not been prepared to agree to a larger leak allowance. It has offered the customer £500.00 by way of a goodwill payment for service failures and the company has also applied a leak allowance.

Findings

I find that there are ways in which the company has not provided its services to the expected standard, namely by not advising the customer of a static meter in 2017 to 2019 and by not initiating a meter replacement as well as by taking a long time to resolve this dispute. However, I find that the company, having liaised with the wholesaler to try to persuade it to accept the customer's position, is not liable for the wholesaler's refusal to accept responsibility for causing the leak at the customer's premises. The company is also not liable because the wholesaler would not agree to a more generous leak allowance. I find that the offer made for the service failures that I have found is fair and

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reasonable and the company should be required to provide compensation in this amount. As the company says that this sum has already been credited to the customer's account, no further action by the company is required.

Outcome

The company does not need to take further action.

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Case Outline

The customer's complaint is that:

- In mid-August 2019, his business had a visit from REDACTED (now the wholesaler) informing him that there was a problem with the meter which was not recording usage and undertaking an inspection. The customer was told that the wholesaler was going to change the meter. Exchange of the meter was carried out on 22 August 2019.
- The wholesaler returned on 30 September 2019 to inform the customer's business that it had a leak which was of a considerable size - around 5000 litres per hour and that the customer would need to get it repaired as soon as possible.
- The customer repaired the leak within 48 hours. It turned out to be not a leak in the normal sense but a stopcock had been turned on during the inspection which was to an open-ended pipe. The customer has explained this to the wholesaler and to the company on several occasions as the inspector had left his stopcock key behind after the event.
- The customer says that it is clear from the first water bill his business received after the new meter was installed and the supposed leak happened, and from the correspondence received from the company, that the claim that there was a leak is an attempt by the wholesaler to recover losses from the period when the meter did not register any consumption.
- The customer feels very strongly that this whole scenario has been brought about by the wholesaler and the customer should not be made to pay for its mistakes, namely:
 1. The meter is the wholesaler's responsibility and is not the customer's fault that it took two years for them to replace it.

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2. It took the wholesaler one month to inform the customer of a supposed leak of that size.
 3. The customer has a 75,000 grey water tank which was installed in 2015 and would not have really noticed anything out the ordinary with the bills.
- What the customer has been offered so far to resolve this is not acceptable nor is the time it has taken to resolve the problem.
 - The customer would like the company to work out its average quarterly usage and to bill the customer accordingly for the period between 14 November 2019 and 11 February 2020, which will be around £10,000.00 not the sum which the company has calculated.
 - Secondly, the customer was told not to pay any further bills whilst this was being disputed. The customer now has an accumulation of bills due to the length of time it has taken to resolve and would ask for a monthly payment plan to settle the outstanding amount.

The company's response is that:

- The customer's account was transferred from the wholesaler to the company on 1 April 2017. As part of the transfer the wholesaler estimated the meter read in order to produce a final invoice. When the company obtained an actual meter read on 15 August 2017, the meter had stopped recording, and this therefore created an incorrect credit balance.
- All future invoices were therefore for fixed charges only and due to the credit balance, no payments were required until May 2019. The meter was then exchanged with effect from 8 August 2019.
- After the meter was exchanged, the customer advised the company that the wholesaler had left a stop tap on, which led to an increase in consumption.
- The company has challenged the wholesaler on numerous occasions in regard to the increase in consumption using all evidence provided by the customer. The wholesaler has advised that their team would have no reason to find a difficult-to-locate stop tap and then turn it on. The company notes that the customer advised that a stop tap key was found near the stop tap and that this was left by the wholesaler's inspector. However, the wholesaler says that stop tap keys are easily available to purchase by customers and this did not provide sufficient evidence that their inspector was responsible. The wholesaler has stated that this is their final position and without further evidence, the company is unable to challenge the wholesaler further.
- As the company is the retailer, it has been charged the wholesale costs based on actual meter readings taken. Therefore, it has a duty to pass these costs onto its customers.

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- The company explains that in the event that a wholesaler does not add an adjustment to the central market database in respect of a stopped meter, it does not pro-actively request that it does so in order to re-coup any lost consumption, as this is solely at the discretion of each wholesaler and not within the company's control.
- On this occasion, the wholesaler took the decision not to add an adjustment to the central market database in order to re-coup the lost volumetric charges from 1 April 2017 to 22 August 2019.
- The company sincerely apologises that at the time its policy regarding static meter reads was not as robust as it should have been. At the time it was thought all consistent static meter reads were the result of either no requirement for water (storage facility etc.) or due to the property being vacant. Its policy was amended in January 2020, whereby customers are now alerted to constant static meter reads to ensure that the company has the correct information and can detect faulty meters in a timely manner.
- In line with the company's internal Compensation and Redress policy it has placed an ex-gratia credit of £500.00 on to the customer's account as compensation for delays in having the faulty meter identified and exchanged. The wholesaler has agreed to a leak allowance of £628.69 as gesture of goodwill. Under normal circumstances no allowance would be due as the account is billed water charges only.

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.

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.

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I record that the company submitted agreement with the Preliminary Decision and the customer did not submit comment on this. The outcome of the Final Decision does not differ from the Preliminary Decision.

How was this decision reached?

1. I remind the parties that I have jurisdiction to consider only a claim that the company has failed to provide its services to the standard that would reasonably be expected. A claim that the wholesaler has failed to provide its services to the expected standard cannot fall within the scope of this Scheme because the wholesaler is not a party to this adjudication, even though the customer may hold the wholesaler to blame for what has happened. Moreover, the company is not liable for any actions or misconduct by the wholesaler, provided that it has acted appropriately in its liaison function between the wholesaler and the customer.
2. It follows, therefore, that I cannot consider a complaint that the wholesaler:
 - a. Did not change the meter promptly, so causing a lengthy period of in operation between 1 April 2017 and 22 August 2019.
 - b. Did not detect the presence of a leak between 22 August 2019 and 30 September 2019.
 - c. Opened a stop tap without closing it during an inspection and so caused a substantial waste of water for which the customer has been charged.
 - d. Has refused to accept liability for this.
 - e. Has allowed a leak allowance only based on a calculation which raises a notional charge for the period when the meter was not working.
 - f. Has acted in bad faith.
3. I can consider, however, whether the company:
 - a. Should have detected whether the customer's meter had stopped working.
 - b. Should have liaised with the company to ensure that the meter was changed.
 - c. Has raised with the wholesaler the customer's concerns that the wholesaler's technician had caused the leak.
 - d. Has taken steps to challenge the wholesaler's calculation of the leak allowance.
 - e. Has taken too long in resolving this issue such that the customer has a large outstanding balance.

Static meter

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4. The evidence submitted to me shows that at the time that the company acquired responsibility for the customer's account, the meter was not working, although there is no evidence that this was known to the company, the customer or the wholesaler.
5. The company says in its response to the customer's application that its policy regarding static meter readings "was not as robust as it should have been", and in responding to the Consumer Council for Water (CCWater) in December 2021, the company said that:

"...our Validations Team should pick [a static meter] up and identify that there may be an issue. I cannot find any notes from our system that show this was actioned or what made REDACTED attend to install a new meter, but I would presume that there was some communication between REDACTED and REDACTED which has not been documented. REDACTED should also be contacting the customer to advise that the meter is not recording, but again I cannot find anything showing that this was done. I have also checked our meter memos as when actual reads are taken it should be flagged that there is an issue but there are no notes. Notwithstanding this, there is also an onus on the customer to check bills to ensure they are being billed correctly. The customer received 8 bills showing the same read but we did not receive any contact until February 2020 when the customer contacted us regarding a high consumption letter we sent when the new meter was installed.

6. Taking these considerations together, while I find that an average customer would reasonably have expected the company to apply in 2017 to 2019 the policies that were then in force (and under rule 3.5 of the Scheme Rules, I have no jurisdiction to consider the fairness of such policy and/or commercial practice), I also find that the company's response to CCWater shows that even under the pre-2020 policies, the company would reasonably have been expected to take some action when a static meter was in place. I find that the company would not reasonably have been expected to allow a static situation to persist without question, so enabling a customer in fact using water to have recorded no volumetric use for a two-year period.
7. I therefore find that the company did not supply its services to the expected standard between 2017 and 2019, although I further find that:
 - a. The customer contributed to this situation by not spotting that only fixed charges were being raised for water use; and

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- b. The customer has, I find, benefitted from a lengthy period over which his business only paid fixed charges and in consequence no bills were paid until May 2019 because the account was in credit when it was taken over by the company.
8. I accept, however, that the lengthy period in which the meter did not work may have had the consequence of concealing the presence of a leak and I find also that this may have led to complications for the customer when the meter was in due course installed, because the water consumption would, if there had been a leak of 5000 litres per hour as the customer was later told, have quickly resulted in a large bill.
9. On the other hand, I would also observe that it was at all times primarily for the customer and not for the company to ensure that there was no leak at its premises. While on the one hand I accept that a leak is unlikely to be detected if the meter is not working, on the other hand, diligent consideration of the customer's water consumption would have identified that the extent of water use or water wastage was unknown during the period that the meter did not work. After the new meter was installed, the level of water consumption could have been established by checking the meter and this would reasonably have been expected after a long period when it was known that the meter had not been recording the true position.

Change of meter

10. In the correspondence mentioned above from December 2021 between the company and CCWater, the company also explained:

It is not usual policy to take so long to exchange a meter, however, I cannot comment further as there are no notes on our system to show that the issue with the same read was identified.

11. As stated above, I find that the company was unaware in 2021 whether it had triggered the meter change in 2019 or whether this had been done by the wholesaler. I find that an average customer would reasonably expect the company to have a record of what had happened within a period that was only two years earlier and I further find that if the company had played a role in initiating the change of meter, it would reasonably be expected that this would have been dealt with formally and written in the company's records. As I find that the company would not have been expected to have acted informally, I find that it is more likely than not that the absence of information about

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what had happened meant that the company played no role in causing the meter to be exchanged. I find that it is more likely than not that in some way the wholesaler became aware that the meter required to be changed and that the company played no role in this.

12. I find that the company did not meet expected standards in this regard, although for the reasons stated above, it does not follow that the company's failure led to financial loss on the part of the customer.

Liaison with the wholesaler

13. The customer complains that the company has failed to persuade the wholesaler that it should accept liability for the leak.
14. The customer's submission is that the wholesaler's technician carried out an inspection before the exchange of the meter and opened a stop tap. The customer says that it knows that this had happened because it later found a stop tap key near to the pipework in question. The pipe, however, was not connected or capped and the water then ran away. The wholesaler then complained to the customer of a leak at his premises and on 30 September 2019, the source of the leak was found to have been in the location of the open stop tap. Although this was quickly repaired it caused the customer to receive a bill of approximately £7,500.00. The customer says that the wholesaler is therefore liable for the loss that he has suffered.
15. The wholesaler denies that the technician caused the leak and does not accept that the presence of a stop tap key near to the stop tap is evidence that the technician opened the tap and did not close it.
16. Although as indicated above, this is not a matter that I can resolve because I have no jurisdiction to decide disputes between a customer and a wholesaler, I see from the documentation submitted to me that the company did take this issue up with the wholesaler, but the wholesaler was not prepared to make a change to its position (the final position being arrived at in 2022: see below). The wholesaler agreed that it would make a leak allowance of 465m³ and the financial value of this has been applied to the account.
17. Although I note that the customer rejected the company's goodwill offer of £500.00 in respect of the delay in reaching resolution (in addition to the leak allowance applied), his reasoning for this was concerned with the customer's dispute against the wholesaler. He said:

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And just because REDACTED hasn't accepted liability for causing this leak, it doesn't mean they didn't. And lets not forget that because of REDACTEDs actions whilst on site, they have already cost us £1500.00 to rectify the issue.

18. For the reasons stated above, however, I find that by taking up the customer's issue with the wholesaler and trying to persuade the wholesaler to accept that its technician caused the discharge of water from the stop tap, the company has taken the steps that would be reasonably expected of a water retailer. As indicated, the company is not liable for the actions and inactions of the wholesaler, even if (as to which I make no findings) these are unreasonable. As long as the company has performed its liaison function between the wholesaler and the customer, I find that it has met the standards of service that could reasonably be expected. In this case I am satisfied that the company has tried to persuade the wholesaler, but notwithstanding appropriate attempts, the customer continues to be liable to discharge the bill for water. (For my findings on the time that this has taken, see below.)

Leak allowance

19. It is notable that although the company took up the customer's complaint in relation to the cause of the leak with the wholesaler, it did not at first invite the wholesaler to apply a water leak allowance. On 12 January 2022, CCWater recorded that the company was denying that the customer was entitled to a leak allowance:

Handover Notes: I have reviewed Pre-Investigation response and company are denying the leak allowance based on the fact that it is unclear who turned the stopcock on causing the leak. I have determined that this is irrelevant because either way the company are fully aware that the water did not return to the sewer therefore they have not treated it and are charging the customer for a service that they did not benefit from. On that basis I have requested that a leak allowance is granted.

20. CCWater wrote to the company:

I request this on the basis that there has been a leak at the property, although not a conventional leak you are fully aware that the water has been lost through an open ended pipe into the ground and has not returned to the sewer. This is evidence from the meter readings

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of both the old and new meter. It is clear when the leak was fixed. Essentially you are asking the customer to pay for a service that they have not received i.e. the water has not returned to the sewer, therefore has not been cleaned etc.

21. In March 2022 the company confirmed that “a leak allowance challenge” had been sent to the wholesaler and by 25 March 2022, the company confirmed to CCWater that it was chasing up the wholesaler for a response.
22. In due course the wholesaler offered a leak allowance with a value of £628.69. In calculating this, the wholesaler also took into account the two-year period of non-measurement. It applied the consumption over the period from 7 February 2020 to 23 February 2021 (so after any leak had been resolved) and calculated the probable usage of water without the leak over the period when the meter was not recording. The company then provided a leak allowance based on the difference between actual consumption and the consumption that had probably occurred. Although the customer takes exception to this approach and says that his business is being penalised, I find that this is a fair and reasonable approach to the calculation of the leak allowance because it reflects the amount of water that the customer’s business is likely to have used in a period when this has not been measured.
23. I am mindful that a company (and a wholesaler) would reasonably be expected to charge customers generally for water services that have been received, whether these have been measured or not. This is because charging for water and sewerage services actually utilised in accordance with a company’s Charges Scheme, reflects fairness as between customers generally. I also find that the company would reasonably be expected to approach the calculation of a leak allowance on the same basis.
24. In summary, therefore, in respect of the leak allowance, I find that the late raising of a leak allowance challenge is a matter that has contributed to the delay on the part of the company in arriving at its final proposal. However, I do not find the calculation of the leak allowance to be based on principles that an average customer would believe to be unfair and in respect of the calculation of the leak allowance by the wholesaler, the company has not failed to meet expected standards.

Time taken to resolve the complaint

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25. The customer has identified that it has taken a very long time to resolve this matter. He says:

The time this has taken is frankly a joke, despite my constant chasing. Three years is unacceptable, and having told us not to pay anything further until the matter is rectified, our outstanding balance is now considerable.

26. I find that the customer is right that the time taken to arrive at a resolution has been unexpectedly long. The reason for this is not fully explained in the papers that I have seen, although I find that the delay in dealing with the customer's complaint after February 2020 has compounded an earlier standard of service that fell below expected standards from 2017 onwards (see above). Moreover, as indicated above the leak allowance challenge was not raised until 2022 at the suggestion of CCWater. I find that the company has not met expected standards in respect of the speed of resolution of this complaint.

27. I also find, however, that although the company may have told the customer that he did not need to make payment during the period of the dispute, it would always have been obvious to the customer that his business would need to meet a bill in the future. Moreover, if the customer did not succeed in his complaint, his business would need to pay the full billed amount. I am mindful that the customer was free to make undisputed payments and part-payments on account but it has not done so. It follows that I do not find that the delay by the company in reaching a final proposed resolution has caused the company's position to be more disadvantaged. I do not find that the company has caused the customer to be in a false position and by telling the customer that his business need not make payment pending resolution, it has not failed to meet expected standards.

28. In relation to the period between the customer's complaint and final resolution of this situation, I am mindful that the company has taken steps to provide redress. I note from the documentation that before the involvement of CCWater, the company agreed that in addition to the leak allowance it would offer a goodwill payment to the customer of £200.00 and on 24 August 2022, this was increased to £500.00 and payment credited to the customer's account. This offer of resolution also reflected the company's omission to alert the customer to the fact that there were static reads on his meter. I have considered the customer's rejection of this offer, but having read the customer's reasons for rejecting this, it is because the wholesaler has not accepted the customer's

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arguments set out above. As explained, I do not find that this reflects the expectations of an average customer in this situation.

29. Taking all the above factors into account, I find that notwithstanding the omissions to meet expected standards that I have recorded above, I find that the provision of compensation in the sum of £500.00 is fair and reasonable. As this has already been credited, it follows that the company does not need to take further action.

Outcome

The company does not need to take further action.

What happens next?

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

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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