

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/

XXX/X384 Date of Final Decision: 25

March 2023

#### Party Details

**Customer:** The Customer

**Company:** The Company

#### Complaint

The customer states that they dispute water charges of £138,909.00 as they were incurred for water that was never actually "consumed" but merely recirculated around the system due to a faulty piece of equipment. Due to the company failing to take proper meter reads, it was "complicit" in allowing the water charges to accrue to the extent they did until their independent engineer identified and resolved the issue. The customer requests that the company remove the overcharges of £138,909.00.

#### Response

The company states the customer should have been alerted to the higher water consumption on receipt of the first high bill. It has applied to the wholesaler for an allowance to cover the disputed charges on the customer's behalf however this has been rejected on both occasions. It therefore cannot provide an allowance until the wholesaler has agreed to credit it with the wholesale costs. It acknowledges it disregarded subsequent actual meter reads due to the quality of the photographs supplied by its meter reader however it has offered £200.00 in compensation in acknowledgement of this issue. It is not responsible to pay any further compensation. The company made no offer of settlement.

#### Findings

This review has not considered the wholesaler's decision not to grant an allowance to the customer, as this aspect falls outside of WATRS as this concerns a third party not privy to these proceedings. My review however found that there were multiple failings by the company when dealing with the disputed matter in its role as retailer, in particular it did not take sufficient steps to bring high reads to the attention of the customer in a timely manner. Overall, I find that the company did not treat the issue with sufficient care or urgency. This demonstrates that the company did not provide its service to the standard to be reasonably expected.



## Outcome

The company needs to take the following further action:

- Pay the customer compensation which equates to the cost of 8,788.92 m<sup>3</sup> of water, capped at £22,500.00.
- Pay the customer further compensation of £2,500.00 in respect of its service failings whilst handling the disputed issue. The company can deduct this amount from the customer's outstanding balance.

The customer has until 24 April 2023 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT/XXX/X384

Date of Final Decision: 25 March 2023

## Case Outline


### **The customer's complaint is that:**

- Between June and September 2019, they experienced very high-water readings. The company are claiming a value of £138,909.00 for water consumption during this period.
- The claim that the charges incurred are for water that was never actually “consumed” but merely recirculated around the system due to a faulty piece of equipment and that; the company's actions in failing to take proper meter reads are complicit in the value disputed being so high.
- Upon being made aware of the abnormal readings, they appointed an independent engineer to investigate and their report highlighted that installed within the property was an historic water main bypass. This was concealed behind a wall in the plant room. The origins of the bypass are unknown and predate their acquisition of the hotel in 2015. During the period of high readings, the bypass had become open leading to mains water pressure being higher than the pressure fed from the Hotels booster pumps. This in turn started to feed water back into the water main and circulate back to the break tank, causing a false reading on the water meter.
- Their water reads taken since 2015 show an average usage far below that recorded between June and September 2019. The customer states they can confirm that activity at the hotel remained consistent and there were no operational circumstances that would have given rise to a spike in usage of that magnitude.
- They queried the initial high bill in June 2019 which was subsequently credited by the company, although it later reinstated the charges with no explanation given for the abnormal read. Further, whilst reads were taken by the company in the meantime, due to the poor image quality of the reads, they were disregarded with estimated reads used instead. No further actual read was taken until 19 August 2019 at which point they had instructed an independent inspection leading to the discovery of the issue.
- The customer states that had the company followed up on their earlier poor quality reads, the problem would have been identified sooner and the quantum of the dispute would have been significantly lower.
- Since August 2019 they have attempted to resolve this dispute with the company however have been frustrated by their:

- Lack of engagement in the process. Over the past three years they have had to regularly chase it for progress in the dispute. Their inaction has caused significant administration time expended in chasing with no response, sometimes for months on end.
- Inability to accept that the water in question was never “consumed” as supported by the independent report provided. The report clearly states “false” readings.
- Decision to refuse to credit the excess charges based upon their inability to gain the offsetting credit from the wholesaler, Southern Water. The customer states it is not their concern or responsibility whether the company can recover the costs from the wholesaler and their decision to refuse their claim should not be influenced as such.
- The customer requests that the company remove the excessive overcharges of £139,909.00.

**The company’s response is that:**

- The customer received a higher than normal invoice on 7 June 2019 based on an actual read taken. This should have alerted them to the higher than usual consumption being recorded.
- It has no records to show the customer queried the invoice until 17 July 2019 when the customer spoke to it and was advised to contact a plumber due to the potential leak.
- It reiterated to the customer that they should have a plumber attend on four further occasions on 30 July 2019, 1 August 2019, 14 August 2019 and 19 August 2019.
- The customer provided it with the plumber report however, whilst this mentions the bypass valve, it does not state it was turned off after the wholesaler’s visit (ADI) and there was no visible leak or water damage found at the time of the inspection.
- A further report provided by the customer dated 29 August 2019 stated the bypass valve was old and contravened bylaws and therefore should be removed. It said in certain circumstances water going via the unmetered bypass valve could feed into the water mains and circulate water back in the break tank. However for this to happen the mains water pressure would need to be constantly below the set point of the booster set.
- It asked the wholesaler to provide an allowance due to the report however they refused this request on the basis that it was a private matter and the balance was a result of incorrect use of the bypass valve.
- It issued its formal response to the customer on 11 August 2020 and it did not receive any further communication from the customer until 1 July 2021. It opened a new complaint case and further challenged the wholesaler’s refusal to provide an allowance however they again declined to give an allowance for the high water consumption.
- The wholesaler does not keep records of water pressure as normal daily process, therefore it cannot submit proof to the wholesaler that meter reads were false due to the changes in their mains water pressure.


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- It has asked the customer to provide further information in respect of pipework layout and water pressure as this may support a further challenge with the wholesaler in respect of granting an allowance. The customer has said they will provide this information as soon as possible. On receipt of this it will continue its investigations.
  - It has a duty to treat all customers fairly and equally says it is unable to apply for an allowance without the wholesaler agreeing to credit it for the wholesale cost in the first instances.

## **Reply**

- In their 2 February 2023 submissions, the customer disputes the company's comment that it did not query the higher than usual invoice until 17 July 2023 and reiterates they contacted the company immediately upon receiving the invoice and as a result of its contact, it issued a credit note on 18 June 2019.
- The customer states they believed the high invoice was due to a billing error and by providing a credit, the company supported this approach. Subsequent reads taken by the company after the customer queried the invoice were not used by the company as the photograph of the reads were of poor quality, leading the company to raise a revised bill on 31 July 2019 based on an estimated read.
- Regarding the company's request of records from the wholesaler of water pressure in their area, the customer says the company has only now three years after the invoice was first queried taken steps to request further information from the wholesaler that could support the claim that the business could never have consumer the amount of water billed for. The customer says the company ought to have made more effort at the time they first challenged the charges in 2019.
- The company has, in the past week, requested further information from them in regards to pipework layout and water pressure records. Despite disputing the bill for the past three years, the company has not approached him for this information before and feels it has only done so now due to his WATRS Application. Whilst he will do his best to provide this information the dispute should not be determined on the ability to obtain the information requested.
- In their comments provided on 7 March 2023, the customer states the response from the wholesaler (provided by the company in response to my further information request) failed to recognise that the independent engineer found the issue had caused false readings. They are also unaware of any follow up investigation carried out, as indicated in their response.

## **Comments on Preliminary Decision**

- The company provides comments dated 16 March 2023 in which it acknowledges that there were service failures in regard to the accuracy of the meter reads and the timeliness of the




communication in regards to increased consumption. Whilst it has already credited £300.00 in recognition of this, it agrees to apply a further credit of £2,500.00. However, it requests a reconsideration of the proposed award for compensation up to £22,500.00 due to:

- 90% of the disputed charges relates to the fixed and volumetric charges which are applied to by the wholesaler. It has no control over the charging decisions of the wholesaler.
- The element of the customer charge which covers its costs as a retailer is small by comparison, as such the award feels overly punitive.
- It reiterates it has challenged the wholesaler on a number of occasions and provides further details. The company states that it feels the best outcome for the customer would be to allow another time constrained opportunity to resolve this collaboratively with the wholesaler, as this could result in a greater reduction in the level of charges applied.
- A point of clarification is that the previous credit to the value of £18,162.33 was a correction to fixed charges and not in anyway related to the high consumption.
- It will however accept the adjudicator's request for it to apply a further credit of £22,500.00 for consumption charges between 5 June 2019 and 17 July 2019. The full amount will be credited to the customer's account upon confirmation by the customer that they have accepted the adjudicator's final decision.
- The customer provides comments dated 13 March 2023 in which they state they are broadly in agreement with the findings, however, reiterates that the matter would have been closed much sooner, and at a lower cost if the company had acted with more care when taking the meter reads during June and July 2019.
- The customer states that they accept that the limit of any award is capped at £25,000.00 and this limit has already been reached. However, the customer requests the adjudicator to reconsider the 50/50 split of responsibility for the period from 5 June to 17 July 2019 and make the company wholly responsible for the increased water usage given that it was their actions that led to no activity undertaken to identify the leak earlier.

### **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.

### How was this decision reached?

1. The customer is a business customer and the premises to which the complaint relates is known as **XXX** ("the Premises").
2. The dispute relates to the customer's higher than usual charges in respect to water consumption for the period from June to September 2019. The customer states that overcharges totalling £138,909.00, relate to water that was not actually "consumed", as such they dispute the company's refusal to provide an allowance to cover the overcharges.
3. At this juncture, I remind that parties that the company is the retailer and that **XXX** is the wholesaler for the customer's region. I note the division between the wholesaler and retailer occurred as a result of government changes which opened up the water market which came into effect on 1 April 2017. I find that the company and **XXX** 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; the retailer and therefore for the purposes of this decision, my remit is to determine the issues between the customer and the company. I am unable to consider any claims or complaints in relation to **XXX**.
4. I accept that it is **XXX** as wholesaler that decides if a customer is eligible for an allowance, therefore, I am unable to direct the wholesaler to either remove the charges as sought by the customer or grant an allowance to the same value. This is because the wholesaler is a third party to these proceedings and I do not have jurisdiction under WATRS to decide this aspect of the claim.
5. However, the company is responsible for bills, customer service and raising any wholesale issues with **XXX** on the customer's behalf. Therefore, I am able to consider if the company provided its service to the standard to be reasonably expected in its role as the customer's







retailer when handling the matter in dispute. I will proceed to consider these aspects of the complaint raised by the customer. Nonetheless, I remind the parties that in accordance with Scheme Rule 6.4 the maximum claim amount for non-household customers is £25,000.00. For these reasons, any compensation awarded will not exceed the maximum amount allowed under the Scheme Rules.

6. Based on evidence of monthly meter reads for the Premises between 2 December 2019 and 2 March 2020, the four reads between 5 June 2019 and 4 September 2019 indicate consumption during this period was significantly higher than usual in particular, when compared with the monthly reads taken prior and post this timeframe. It is clear from the meter reads that water consumption reduced back to pre-June 2019 levels after the customer's independent engineer attended the Premises, identified the problem and resolved this by closing the water mains pass (in the first instance). The customer's return to 'normal' water consumption was confirmed by the company in its email to the customer dated 11 August 2020.
7. The independent engineer's report dated 28 August 2019 provided by the customer states that it found the bypass had at some point become opened, which was the cause of the high water consumption and booster set operation. The report explains that, with the mains bypass open and the mains water pressure greater than the premises booster pumps, the hotel will be fed by the unmetered mains water bypass and when water pressure drops, this will cause water to be fed back into the mains and circulate back to the break tank, causing false reads on the meter.
8. I find that the independent engineer report is compelling evidence and, in the absence of any contrary evidence provided by the company showing this to be incorrect or implausible, on balance I accept the validity of the findings set out in the report.
9. I note the wholesaler's inspector who attended on 21 November 2019 confirmed the findings of the independent engineer's report and stated that: as the meter and bypass were internal, the bypass was suspected to be non-compliant with water by-laws; and, as the increased consumption was caused by the bypass being turned on, the wholesaler was not responsible and the customer was liable. On this basis, I note that on 21 November 2019, the wholesaler rejected the company's application dated 6 November 2019, made on behalf of the customer, for an allowance to cover the charges. Despite the company challenging the wholesaler again on 25 November 2021 after the customer disputed the decision, the wholesaler maintained its position rejecting the request for an allowance to cover the excessive charges incurred up to the date the issue was identified and fixed.




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10. I find that by applying to the wholesaler for an allowance on behalf of the customer and then by challenging this again with the wholesaler after the customer contacted it again rejecting the outcome, the company acted reasonably and in accordance with its obligations as retailer.
  11. Nonetheless, it is clear the company did not advise the customer of the wholesaler's response to the request for a leak allowance until approximately nine months after it received a reply from the wholesaler on 11 August 2020. Furthermore, I note that this was only after the customer contacted the company chasing a response on at least four occasions. I find that this prolonged delay on the part of the company in relaying the outcome of the allowance request to the customer is evidence of it not providing its services to the standard to be reasonably expected.
  12. In their WATRS Application, the customer has raised a concern about the service provided by the company following its issue of a water bill for £18,162.33 based on the high read taken on 5 June 2019, in particular its decision to use an estimate read for the next water bill issued dated 19 July 2019. The customer says this delayed their decision to instruct an independent engineer to investigate (initially on 21 August 2019) which led to the discovery of the issue (on 28 August 2019). They only took this action after receiving the next water bill dated 19 August 2019 (for £82,484.01 based on an actual read taken on 6 August 2019). For this reason, the customer holds the company responsible for the charges having escalated to the extent they did due to the issue going undetected for so long.
  13. I find that the customer was initially alerted to the high water consumption on 7 June 2019 when they received the higher than usual water bill from the company. I note that the bill amount for £16,587.83 was based on a read taken on 5 June 2019 and indicates the customer's water usage was at least four times the usage recorded at any prior point since the account was opened in 2015. I am mindful of the customer's submission that the company issued a credit note on 18 June 2019 after they queried the bill, leading them to believe it was a billing error rather than a leak. Whilst I have not been provided with any evidence of the parties' communications at this stage, the customer has provided evidence of the credit note issued by the company (dated 18 June 2021). I find that, whilst the onus was still on the customer to appoint their own plumber or other specialist to investigate the possible cause for the high water usage (such as a leak), on balance, good practice would be for the company to have explicitly recommended to the customer to take this action after it obtained the 5 June 2019 meter read. There is no evidence that the company did so at this stage and therefore, this, in conjunction with its issue of a credit note, indicates the company did not treat the situation with sufficient urgency or care at this stage. I am mindful that, had the company had acted sooner, the



customer would likely have avoided incurring such loss. I find this is evidence of the company not providing its services to the standard to be reasonably expected.

14. It is clear from the evidence in the CCW documentation provided, including the company's response dated 4 April 2022, that the company disregarded the actual read taken on 4 July 2019 for the purposes of generating the customer's July 2019 bill due to the poor image quality of the meter read provided by its meter reader. It said the read was marked as 'invalid/for info only' as it had been unable to validate the read due to the poor photo. The company said it did not alert the customer at this time because it wanted to double check this read; however, as its meter reader returned its request for a further meter as "a skip read (due to no access)", the customer's 31 July 2019 bill was based on an estimate read. On balance, I find that the company not obtaining a second reading to enable it to establish the actual reading, meant it missed an opportunity to alert the customer to the excessive water charges that were being incurred at that time, which it later transpired were indicative of an issue with the mains bypass. I find this is further evidence of the company not providing its services to the standard to be reasonably expected.
15. The company acknowledges that the subsequent meter read taken on 6 August 2019 was also marked as 'invalid/for info' due to another poor quality image provided by its meter reader. However, on this occasion, I find that the company obtained a further read, enabling it to provide an accurate bill for August 2019 in the sum of £82,484.01 (and to confirm that the previous reads were correct).
16. I note that in its Response, the company states that it first advised the customer to contact a plumber due to a potential leak on 17 July 2019 which it says it reiterated on four further occasions, the last being on 19 August 2019. Whilst I have not been provided with records of its contact with the customer on these occasions, as the customer has not disputed the company's submission in this regard, on balance I accept that the company gave this advice to the customer on occasions between 17 July 2019 and 19 August 2019. However, as per my above finding, it was reasonable to expect the company to have provided this advice to the customer sooner, around 5 June 2019 after the first high meter read and I am mindful that customer suffered consequences as a result of the failures in the service outlined above.
17. In summary, this review has not considered the wholesaler's decision not to award an allowance to the customer for the reasons explained above. However, in light of my above findings from my review of the company's service provided in its role as retailer, I accept that:

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- a. The company did not give sufficiently timely advice to the customer for them to contact a plumber.
  - b. By using an estimate read to calculate the next (July 2019) bill, the company contributed to the issue going undetected for longer than it needed to be.
  - c. It did not treat the matter sufficiently seriously whilst the charges were accumulating.
  - d. These failures in the service provided by the company in its role as retailer had serious consequences for the customer.
  - e. It also delayed in advising the customer of the outcome of its application made to the wholesaler for a leak allowance.
18. I acknowledge from the CCW documents, that the company has offered to pay the customer £200.00 in compensation. Bearing in mind my above findings, in particular that the customer incurred financial loss as a direct result of the company's failure to bring the high read to their attention in a timely manner, I consider that this amount is insufficient and disproportionate to the number and seriousness of the failings I have identified. In the circumstances, I find that it is reasonable to direct that the company pay customer 50% towards the charges incurred between 5 June 2019, being the date of the first abnormal reading, and 17 July 2019, being the date on which the company first advised the customer to instruct a plumber to investigate the cause.
19. Based on the meter reads of a similar period during the previous year (8 June 2018 to 6 August 2018), I note that the customer's average daily usage was 20.95 m<sup>3</sup> whereas the average daily usage during the timeframe in question from 5 June 2019 to 17 July 2019 (based on the meter reads between 5 June 2019 and 6 August 2019) was 439.47 m<sup>3</sup>. This shows a difference in average daily usage of 418.52 m<sup>3</sup> during the two periods. Therefore, I direct that the company shall pay the customer compensation which equates to the cost of 8,788.92 m<sup>3</sup> of water consumed. This is half of the difference in the amount of water consumed over 42 days between 5 June 2019 and 17 July 2019 (209.26 m<sup>3</sup> water multiplied by 42 days). This amount will capped at £22,500.00 as per WATRS Scheme Rule 6.4. I acknowledge the parties' comments provided on the Preliminary Decision, however after careful consideration, I find that they do not affect my findings as I am satisfied that they are fair and reasonable in the circumstances.
20. Additionally, I find it fair and reasonable to direct that the company shall pay the customer further compensation of £2,500.00 in recognition of the inconvenience caused by its service failings whilst handling the disputed issue. This amount falls into the high end of Tier 4 of the WATRS Guide to Compensation for Inconvenience and Distress. I am satisfied this amount is reasonable and proportionate to the proven issues. The company may deduct this compensation from the outstanding balance of the charges.

21. Furthermore, I note that it is evident from the parties' submissions that the company has recently requested further evidence from the customer in relation to their pipework layout at the Premises and water pressure records. I note it has advised that on receipt of this evidence, it will raise a further challenge with the wholesaler in respect of granting an allowance. I find that as this is a recent event that has not been through the company's or CCW's complaints processes, I am unable to make a finding on this aspect of the complaint.

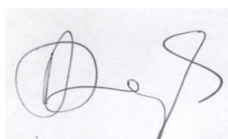
### Outcome

The company needs to take the following further action:

- Pay the customer compensation which equates to the cost of 8,788.92 m<sup>3</sup> of water capped at £22,500.00.
- Pay the customer further compensation of £2,500.00 in respect of its service failings whilst handling the disputed issue. The company can deduct this amount from the customer's outstanding balance.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 24 April 2023 to accept or reject this 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 on which WATRS notified 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 chose 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.



**A. Jennings-Mitchell**, Ba (Hons), DipLaw, PgDip (Legal Practice)

**Adjudicator**