

- b. Whether the reasons given by the customer are sufficient to justify the company taking the requested action and for the payment of compensation.

Background information

4. In order to succeed in a claim against the company the customer must prove 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 proved, the company will not be liable.
5. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

Customer's Submissions

6. The Representative was appointed by the customer to review costs associated with water usage and "potential reconciliation errors and overcharges associated with sewerage costs" had been discovered. Three specific issues were raised to the company under an email dated 31 March 2015. The company responded on 17 July 2015 and provided resolution to two of the three issues raised. It acknowledged excessive charges being applied for the period 17-28 January 2012 as a consequence of a leak. However, it is the allowance and its calculation made by the company for the aforementioned period which is being disputed by the customer on the following grounds:
 - i. The leak in question was on a fire sprinkler main that was underground and therefore water had drained into the ground. When calculating non-return sewer allowances in these circumstances, the customer states that "it is our experience that [REDACTED] calculate the expected usage, and then 100% of the balance is granted as an allowance, not just 50%";
 - ii. The company, rather than applying the relevant usage rates to calculate the allowance at the time of the leak or the rates applicable one year after the leak, it has calculated the allowance using a domestic rates measure which it applied two to three years after the leak. The rates applied by the company for the periods 21 December 2013 to 24 March 2014 and 21 December 2014

to 20 March 2015 average out at 1677m³ compared to the rate of 335m³ for the period 20 December 2012 to 20 March 2013;

- iii. It is the customer's contention that the following calculation adopted by the company is incorrect: $5570 - 1677 = 3893/2 = 1936\text{m}^3 \times \text{£}0.9742 = \text{£}1886.05$.
- iv. The correct calculation is as follows: $5570 - 335 = 5235\text{m}^3 \times \text{£}0.9742 = \text{£}5099.94$.

7. In addition, the customer raises a dispute in relation to the level of customer service provided by the company, namely its lack of acknowledgement and information regarding its complaints process following correspondence from the customer dated 22 July 2015. In particular the customer states that he requested details of the company's complaints process on 22 July 2015. However, the company responded on 23 July 2015 acknowledging receipt of the email and then issuing a response on 28 July 2015. The customer sought an explanation of the response dated 28 July 2015 and was advised by the company (on 30 July 2015) that it had responded to the complaint of 22 July 2015. The customer states it was disappointing for the company to have deemed the complaint to have been raised on 22 July 2015. Therefore, on 31 July 2015, the customer advised the company that a complaint had not yet been submitted and details of how to proceed were requested. The company responded and advised that it would review the earlier decision under stage 2 of its process. The customer's request was therefore ignored and the matter was escalated to Consumer Council for Water.

Company's Submissions

8. Under section 142 (4) of the Water Industry Act 1991, the company submits that it may give consideration to an allowance against sewerage volume charges. The circumstances under which an allowance can be made are stated under the company's Charges Scheme. The company submits that this case concerns a leak which occurred between the period 17 to 28 January 2012 and which was brought to the company's attention three years later in March 2015. Therefore, under these circumstances, the company states that the customer would not have qualified for a leak allowance. As the company has made the decision to grant an allowance over and above the customer's normal entitlement, it states that it is fair and reasonable for it to exercise its discretion as to any ex gratia payment by the method it deems appropriate. The company does not accept liability.
9. In response to the defence, the customer asserts that the company did have knowledge of the leak prior to it being reported as it was located by a third party, ██████████, which is part of the company's corporate group. It is reiterated that the company has not calculated the allowance using a fair and reasonable methodology and that it has failed to respond to the claim raised in relation to the level of customer service provided.

Adjudicator's findings and reasons

10. I find that:

- a. After careful consideration of the customer's application form, I consider that the issues at the heart of this dispute relate to the following: a leak at the customer's premises during the period 17 to 28 January 2012, the allowance applied by the company and the method adopted to calculate such charges and the level of customer service provided.
- b. I remind the parties that my decision must be made in accordance with the law and any applicable schemes implemented by the company. In view of the information provided by the company and in the absence of any contradictory evidence provided by the customer, I accept that the Water Industry Act 1991 ("WIA) and the company's Charges Scheme apply to this case.
- c. Section 142 (4) of the WIA states the following: *"Except in so far as this Chapter otherwise provides, a relevant undertaker may fix charges under this section by reference to such matters, and may adopt such methods and principles for the calculation and imposition of the charges, as appear to the undertaker to be appropriate"*. In view of this legislation, I find that the company is authorised to adopt *"such methods and principles"* it deems appropriate to calculate charges. However, I note that the section referred to by the company is silent as to a customer's eligibility of a leakage allowance. I also note that this legislation does not refer to a prescribed method of calculation which is mandatory and which must be adopted and applied to the customer's case in relation to the calculation of allowances. Consequently, I am unable to find that the company is legally obliged to use the prescribed method as referred to by the customer.
- d. The company has implemented a Charges Scheme and I note that it refers to section 6.2.3 in its defence which states the following:

"(69) An allowance may be given against the volumetric sewerage charge, for water lost through leakage, provided all or part of the leaked water did not discharge into the public sewer.

(70) Such allowances will be calculated by facts, estimates, engineering aspects and other formulae, as considered relevant by ██████████,

(71) The leakage allowance will be granted for a period commencing with the billing period prior to the billing period in which the leak came to

██████████'s attention, and ending on the date the leak is repaired.”

- e. I note that the Charges Scheme specifies the period from which an allowance will be made by the company. I am mindful that the company submits that the leak which occurred between the period 17 to 28 January 2012 was not brought to its attention until March 2015. I have considered the customer's submission that the company would have known of the issue during the period of the leak as the problem was identified by a third party who is connected to the company. However, in view of the evidence before me, I am unable to accept that the company was provided with notice at the time the leak was identified around January 2012. Therefore, I am unable to find that the company failed to provide its services to the standard to be reasonably expected.
- f. With respect to the sum of allowance provided by the company to the customer, I note that the company submits that it has made the decision to grant an allowance over and above the customer's normal entitlement and that it is fair in the circumstances for it to exercise its discretion as to the sum provided. In view of my observations of the legislation and Charges Scheme, I accept that the company has discretion in the provision of allowances. After careful consideration of the correspondence dated 28 July 2015 from the company to the customer, I accept that the sum of £1886.05 was paid to the customer. The customer contests the method adopted by the company in the calculation of the sum awarded. I note the reasons why the customer deems the sum to be unfair and unreasonable and that it is submitted that the sum of £5099.94 should have been paid using a different rate than that used by the company to calculate the allowance. However, in light of the WIA and Charges Scheme as quoted and referred to above in this decision, as I find no provision which states that a prescribed mandatory method should be adopted in the calculation of a leakage allowance, I am unable to find that the company was legally obliged to calculate the amount provided using the calculation/method referred to by the customer. Consequently, I find that the service provided by the company did not fall below the standard to be reasonably expected. Thus I find no failure by the company in this regard.
- g. Regarding the level of customer service provided, I note that the customer states that the company had commenced its complaints process without providing an opportunity to the customer to state the issues complained of and to address concerns of how the matter was being handled by the company. I note that the customer submits that the company “simply ignored” this request and continued to escalate the issues to the next stage.
- h. In the absence of any contradictory submission by the company and in light of the email dated 22 July 2015 provided by the customer, I accept the customer's version of events.

Therefore, in light of the submissions made by the customer, I am satisfied that the level of customer service provided by the company fell below the standard to be reasonably expected.

- i. In light of all my observations above, I accept that the level of service provided by the company fell below the standard to be reasonably expected.
- j. With respect to the failure that I have found, namely in relation to the manner in which the company handled the complaint, I find that a fair and reasonable sum of compensation which is proportionate to this failure is £50.00.
- k. I have considered that the customer seeks compensation in the sum of £3,213.89. However, I note that this sum relates to the leakage allowance. As I find no failure by the company concerning the allowance and its calculation, I find that the customer's claim for this sum is unable to succeed.
- l. I acknowledge that the customer seeks the following: "I would like a response to my concerns regarding the [REDACTED] complaints process for future reference". In view of the compensation payment that I have directed above, I am satisfied that the customer's complaint in relation to the company not addressing his concerns has been considered. However, it is clear from the evidence that the company provided the customer with insufficient information in relation to its complaints process. I therefore find it fair and reasonable in the circumstances for the company to provide the customer with a hardcopy of its complaints process.

Conclusion

11. My conclusion on the main issues is that:
 - a. The company has failed to provide its services to the standard to be reasonably expected.
 - b. The reasons given by the customer are sufficient to justify part of the remedies sought.
12. Therefore, I decide and direct that the customer's claim succeeds in part and I direct that the company pay £50.00 in compensation and that it take the following action: provide the customer with a hardcopy of its complaints process.



Mandeep Toor LLB (Hons) PGDip (LPC) MCI Arb
Adjudicator