

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0731

Date of Decision: 11 April 2018

Complaint

The customers submit that the company provided poor customer service; it trespassed on their property (without prior notice); harassed them; cut off their water supply without notice or consideration; installed an additional stop-tap, which has resulted in their water being turned off at least once a week ever since; and, breached Data Protection laws in disclosing their complaint to their neighbour. They state the company has caused them stress and upset and loss of time in having to deal with this dispute for over a year. The customers are dissatisfied with the compensation amount offered by the company and seek a total of £10,000.00 in compensation from the company.

Defence

The company denies the customers' allegations regarding poor customer service and that it has caused distress to the customers. It submits that the claim falls outside of the scope of WATRS on the following basis: it has already settled the claim relating to customer service (it has sent a cheque to the customers, in the sum of £1037.99, which is more than adequate compensation); the claim is frivolous and vexatious; and the claim is an abuse of the WATRS process. Further, it asserts that allegations relating to Data Protection fall outside the scope of WATRS.

Findings

The company has not substantiated its submissions that the Application is outside the scope of WATRS due to it having settled the claim or that it is frivolous, vexatious or an abuse of the WATRS process. However, aspects of the claim do fall outside the remit of WATRS including the customers' allegations relating to harassment, trespass and Data Protection and regarding their (civil) dispute with their neighbour. The evidence shows, however, that the company failed to provide its services to the customer to the standard to be reasonably expected when it gained access to the customers' garden without advance notice, the customers' permission or without showing ID. Further, I find it questioned the customers regarding the ownership of their property and advised it would obtain a warrant to enter their garden when it was not appropriate, incorrectly advised the customer as to data held about their account and did not keep a record of calls to the customers when made by its staff from its mobile phones.

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Outcome

The company shall pay the customers further compensation of £300.00.

The customer must reply by 10 May 2018 to accept or reject this decision.

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under the client confidentiality the company owe to them as customers). This has been used in a court of law against them in an attempt to show they are unreasonable.

- The company failed to keep a record of its calls to Mr Brown when made from a mobile phone and it failed to provide file notes under a Subject Access Request ('SAR') when initially requested.
- The customers' submit they have been reasonable and have only tried to assist the company; however, they have been treated "atrociously" by the company; it has failed to supply any genuine and plausible answers to the questions put to them by CCW and has not taken accountability for their poor treatment of them as paying customers.
- They are unhappy with the £250.00 offered by the company (in addition to the cost of white goods damaged as a result of the cut in water supply without notice) for its poor service following their referral of the complaint to CCW.
- The customers request that the company pay them £10,000.00 in compensation:
 - £513.99 for (damaged) washing machine;
 - £374.00 for (damaged) dishwasher and;
 - £9112.01 for poor service/trespass/harassment, cutting off of water supply with no notice or consideration (leaving Mr Brown with no water knowing that he was unwell, on one of the hottest days in 2017), water being turned off at least once a week by neighbour from new stop-tap, breach of Data Protection in disclosing their complaint to neighbour allowing use in court, stress, upset and loss of time in having to deal with this for over a year.

The company's response is that:

- In respect to the claims regarding the dishwasher, washing machine, poor service, stress and upset, it has settled these claims and issued a cheque to the customer on 9 January 2018 (although the customer has not cashed the cheque) and therefore pursuant to Scheme Rule 5.2.1, these issues are outside the scope of the Scheme.
- Further, the claim is frivolous and/or vexatious and it is of the opinion that the customers' application is an abuse of the WATRS process.
- The background to the dispute is that it was first contacted by the customers' neighbour requesting assistance to locate their meter which was buried and not accessible. On visiting the neighbouring property, it confirmed that it would be able to install an internal meter at the neighbour's property as, whilst the supply is a joint supply, the old meter was serving the neighbour's property only. Further, as the external stop-tap was inoperable, it replaced this stop-

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tap on 31 July 2017, re-locating it outside the boundary of both properties: in the public highway. It was entitled to undertake these actions, as the meter and the external stop-tap remain its property.

- The customers' water supply was interrupted for 20 minutes and not 2 hours, as alleged, whilst the works to re-locate the external stop-tap were carried out. It is legally obliged to provide 48 hours notice where an interruption is planned to last 4 hours or more, it is not required to pay compensation to the customers in relation to the interruption to their supply on 31 July 2017. Notwithstanding this, it provided compensation to the customer £20.00 as a goodwill gesture.
- In regard to the allegation of trespass, it denies that it has committed an act of trespass: it has a statutory power to enter land to inspect, examine, test, maintain or repair its meters/stop-taps, therefore it is unnecessary for it to contact the customer each time it enters their land however in light of maintaining customer relations, it does endeavour to make contact with customers. It attempted to contact the customers on several occasions to advise of its actions to no avail, it also notified the customers by letter which was sent by recorded delivery.
- It agreed to assist the customers and/or the customers' neighbour to locate any leak, it is the customers' responsibility to carry out any leak tests on their private pipe work (it is only responsible for the pipe from the mains up to the stop tap including the stop tap). Further, should any leak be detected, it is a customer's responsibility to ensure the leak is repaired. However, it has a legal obligation to ensure that any leak is repaired and so if the customers and/or their neighbour do not take steps to locate/detect and repair the alleged leak within a reasonable time scale, it will have no option but to take the necessary steps to ensure the leak is repaired and the customer will be jointly and severally liable for the costs of the repair. To date, it has been unable to assist in the matter of locating any alleged leak due to the customers being uncooperative; in any event, it is of the opinion that this is in fact a private issue for which the customers and/or their neighbour are responsible.
- In regards to the customers' submission that their water is being turned off at least once a week by their neighbour from the external stop tap, this is outside of its control and is a third party dispute, to which it is not party and is unable to get involved, this is private pipe work and not its responsibility.
- It processed the customers' SAR request and provided requested documents within 40 days in accordance with its obligations. It admits however that initially, it advised there was nothing to be sent however upon further contact from the customers, it was established that they required all contact notes from the date of occupation, namely April 2010 and it duly provided all contact

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notes. It waived the £10.00 fee for a SAR request due to the confusion caused and credited this to the customers' account.

- It denies that it disclosed the customers' complaint to CCW to their neighbour. As it was due to further investigate the issue regarding a leak at the properties, and as it is a joint supply, it advised the customers' neighbour that it was unable to proceed with further investigations due to an on-going investigation that was with CCW. It did not provide any further details or disclose the nature of the complaint or disclose any personal data or sensitive data. In any event, disputes regarding data protection should be referred to a more appropriate forum, namely the Information Commissioner's office (ICO).
- It strenuously denies that it has harassed the customers, as alleged or at all and it submits that the customers have provided no evidence to substantiate their allegations.
- In regards to customer service, it denies customer service failings or that it has caused the customers distress by its actions. Notwithstanding this, it erroneously agreed to pay the customers £250.00 as a goodwill gesture for alleged customer service failures which have not been proven and are not admitted and £374.00 for the dishwasher and £513.99 for the washing machine. It states this has more than adequately compensated the customers. It has also credited the customers' account with sums amounting to £40.00 for in accordance with its Guaranteed Service Standard (GSS) policy.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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?

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1. I remind the parties that adjudication is an evidence-based process and it is for the customers to show that the company has not provided its services to the standard that would reasonably be expected of it. Furthermore, it is up to the customers to clearly set out and prove their claims on a balance of the evidence.
2. In its Defence, the company has raised objections to the Application on various grounds. Having reviewed these, the evidence submitted to me and the Scheme Rules in full, I find the following:
 - I do not accept that the company's previous offer of compensation to the customer in the amount of £1137.99 establishes that these aspects of the claim fall outside the scope, particularly as 1) there is a lack of evidence that the customer accepted the company's offer in full or final settlement and 2) the customer has not cashed the cheque sent by the company.
 - In regards to the company's submission that the Application is frivolous and vexatious, the threshold for such a claim is high and due to a lack of evidence, the company has failed to meet it or demonstrate that the Application is an abuse of the WATRS process.
 - I accept the company's submission that third party disputes fall outside the remit of WATRS in accordance with Scheme Rule 1.1, which prescribes that the scheme can only be used to resolve disputes between participating water companies, water and sewerage companies and water supply and/or sewerage licensees and their customers. It is evident that a dispute exists between the customers and their neighbour concerning a leak to the supply pipe (as alleged by the neighbour), which serves both properties and concerning the neighbour's lack of a legal easement to use the water supply (as alleged by the customers). However, I am unable to consider any aspect of this dispute as it falls outside the remit of WATRS for the reason stated above and because the evidence indicates that this dispute is the subject of existing Court action, which in accordance with Scheme Rule 3.5 is deemed outside the scope of WATRS.
3. Furthermore, I am unable to consider the legalities of trespassing or Data Protection in this adjudication as I find that such allegations fall outside the scope of WATRS. However, I am able to consider the claim from the perspective of whether or not the company provided its customer services to the customer to the standard to be reasonably expected during the dispute period or whether company's actions constitute evidence of it failing to provide its services to a reasonably expected standard. I shall therefore proceed to decide the claim on this basis only.

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4. It is not in dispute that the company supplies water to the customer's property by way of a joint supply with their neighbour and that a meter (which the company subsequently re-located and replaced) served the customers' neighbouring property only. I find that the complaint stems from the company's visits/attempts to access the (original) water meter and stop-tap which are located in the customers' garden, and the company's alleged failure to notify them of these visits, in advance. The customers have explained in supporting documentation that they keep poultry near the location of the meter/stop-tap, which I accept. In light of the evidence presented by both parties including their correspondence exchanged with one and other and the CCW documents, I am satisfied that the company did not attempt to make an appointment with the customers or gain permission prior to accessing their garden on 11 January 2017. Furthermore, despite the customers raising a concern about this in their email to the company on 14 January 2017, the company failed to notify the customers or gain their permission prior to its further visit of 6 February 2017 when the company's representative had a metal detector (to locate the meter). In light of the evidence presented, I accept that there were further visits by the company, on 25 April 2017 and 4 and 18 May 2017, without it providing the customers with prior notice. In light of the photographic evidence supplied, on balance, I also accept that at least on one of these occasions, the company parked its van across the customers' gateway despite the 'No parking' sign.

5. In regards to the company's visit of 31 May 2017, it appears that verbal consent was given by Mr Brown for the company to conduct a flow test but that the customers then refused the company access on this date as they had not receive written confirmation, as agreed. I have not been provided with a copy of the written notice that the company submits it sent, although its job notes do state "written letter being sent". However, it is unclear from the evidence provided if the customers' non-receipt was due to the letter not being sent or due to the customers' post being intercepted (as suggested by the customers in their 2 June 2017 email to the company). It is not disputed that the company notified the customers in writing (letter sent recorded delivery) in respect to planned work it carried out on 31 July 2017. I accept the company's assertion that it has legal powers to enter land in order to carry out work to (and test) its assets including water meters and stop-taps. Yet, I find the company's lack of notification provided to the customers on repeated occasions, despite the customers' requests for the same, shows it failed to act in accordance with its own policy to aim to contact customers when intending to enter their private property to access its assets. Furthermore, on balance, I accept the customers' assertion that the company's representatives failed to show (company) ID on these occasions when this was requested, as the customers have reiterated this claim throughout their contemporaneous

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communications with the company and in their complaint to CCW. Again this demonstrates that the company failed to act in accordance with its own policy to always show ID. In light of my above findings, I am satisfied this is clear evidence of the company failing to provide its services to a reasonably expected standard.

Installation of the stop-tap on 31 July 2017 and interruption to water supply

6. The company installed a further stop-tap outside the boundary of the customers' property on 31 July 2017. It is clear from the supporting evidence that the customers refute the company's decision to install this additional stop-tap as they claim: 1) the original stop-tap is fully operational, contrary to the company's claim that it is inoperable; and 2) the installation has facilitated the existing civil dispute they have with their neighbour, as it has resulted in their neighbour turning off the water supply at least once a week ever since. In regards to reason 1), I find that there is a lack of evidence that the company's installation of a stop-tap outside the boundary of the customers' property represents a breach of any law or obligation. The company has explained the installation was to ensure both properties have access to an external stop-tap in the case of an emergency. Therefore, regardless of whether or not the original stop-tap (in the customers' garden) was/is operational, I am satisfied the company's actions in this regard were reasonable. In regards to reason 2), I am unable to consider the customers' submission as it concerns the actions of a third party which I find are outside of the company's control. Therefore, I make no finding on this aspect of the claim.

7. The customers submit that they were not informed about the interruption in their water supply, which occurred on 31 July 2017, when the company installed (re-located) the stop-tap. They have highlighted the inconvenience this caused Mr Brown, who was unwell, which they assert the company had been made aware of. I accept that the company did not provide the customers with written notice of the intended interruption to their water supply on 31 July 2017. However, in light of The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, I accept the company's assertion that it is only required to give 48 hours written notice where a planned interruption will last 4 hours or more. It is clear that there is a dispute between the parties as to the length of the interruption to the customers' water supply. However, as I am satisfied that neither party are claiming it lasted over 4 hours, the lack of written notice does not constitute the company failing to provide its services to a reasonably expected standard. Furthermore, whilst I accept that Mrs Brown had previously informed the company that Mr Brown was unwell in her email dated 10 February 2017, as she gave no details regarding the

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nature of his illness, I do not find the company's failure to inform the customer, including on the day, amounts to a service failure by the company. I also note that the company, nevertheless, applied a credit of £20.00 for the inconvenience caused and agreed to pay the customers for the cost of their new dishwasher and washing machine which was damaged by the cut in the water supply.

Leak

8. It appears from the evidence that the customers, on the one hand, assert that the company has failed to carry out a pressure test on the line to test for a leak, but on the other hand, submit that their neighbour has stated a leak test has been carried out. In its Defence, the company has detailed its obligations relating to leaks. Based on the evidence, I accept that it is a customer's responsibility to locate/detect and repair suspected leaks on their private pipe work. Although, I also accept that if such leaks are not repaired within a reasonable timeframe, the company is entitled to take steps to ensure the leak is repaired in accordance with its legal obligations. As the customers are on a joint supply, I accept they would be jointly and severally liable for the costs of any repair undertaken, if applicable. The company submits that, to date, it has been unable to assist in the matter of locating any alleged leak due to the customers being uncooperative.

9. Firstly, on balance I accept the company's assertion that a leak test has not been carried out to date. It is clear from the evidence that the customers have not reported a leak themselves and that they dispute the existence of a leak. As discussed above, the customers refused the company access to carry out a leak test on 31 May 2017. However, I accept that at that time they had not received any written notification of the company's visits regarding this or any other works it intended to carry out. Further, in light of the evidence, including the customer's email to the company of 2 June 2017, I accept that the customers subsequently advised the company that they were happy for it to carry out a pressure test in order to establish if there is a leak. In its subsequent email responses the company confirmed its intention to carry out a test to identify if there was water underground and that it required both the customers' and their neighbour's participation. I have not been provided with any evidence that the customers failed to assist the company in any further attempts it made in this regard, as such I do not accept the company's suggestion that the lack of test can be attributed to the customers being uncooperative. Yet, it seems that prior to the customers' complaint made to CCW in August 2017, the company was proactive in its attempts to assist with the carrying out of the leak test, despite the onus being on

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the customers and/or their neighbour to locate and repair any leak on private pipes. Though, it appears the company felt it was inappropriate to continue with its investigations due to the customers' complaint to CCW. Overall however, in light of my above observations, I am satisfied that the company has acted reasonably in this regard and I find no service failing by the company here.

Customer Service

10. The customers assert that the company's representative (Mr Smith) disclosed the existence of their complaint to CCW to their neighbour, despite the company stating that it would not involve itself with the civil dispute between them. I find that in its submissions, the company admits Mr Smith advised the customers' neighbour that it was unable to further investigate the issue regarding a potential leak at the properties (which involved the customers and their neighbour due to the joint supply) due to an on-going investigation that was with CCW. As explained above, I am unable to consider the customer's submission that the company acted in breach Data Protection law in this regard or consider their submission that their neighbour subsequently cited their complaint made to CCW in court proceedings. However, in regards to whether or not the company's disclosure amounts to a failure to provide its services to a reasonably expected standard, on a balance of the evidence, in the circumstance, I am not satisfied that the company's above disclosure, on its own, represents a service failing. The company has stated that it did not provide any further details or disclose the nature of the complaint or any personal or sensitive data to the customers' neighbour. Due to a lack of evidence showing otherwise, on balance, I accept the company's submission in this regard. Therefore, I find that there is insufficient evidence of any service failing by the company.

11. The customers submit that the company's representatives during its visit(s) had questioned their ownership of property based on their neighbour's incorrect advice that they were tenants of the property and also threatened it would obtain warrant to enter their land. In light of the customers' emails to the company dated 14 January 2017 and 2 June 2017, I find that the customers complained to the company at the time that their ownership of the property had been questioned by its representative (Mr Jones) and also that they had been threatened with a warrant, despite not having received any written notice of the company's visits. In its respective responses of 17 January 2017 and 5 June 2017, I find that the company acknowledged the customer's' concerns in this respect. On a balance of the evidence, I accept that the company's representative questioned the customers regarding their ownership of the property and also advised regarding

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the possibility of obtaining a warrant. I am not satisfied that the company has adequately explained the relevance of its questions/comments made to the customers, although based on the wording of the customers' above emails, I am unable to conclude that the company's said representative's manner or tone was "threatening" as suggested. However, on balance I accept that the customers were questioned and spoken to about these issues when this was not appropriate in the circumstance. I am satisfied that this amounts to evidence that the company failed to provide its services to the standard to be reasonably expected.

12. The customers in their Application have implied they felt "harassed" by the company however, due to a lack of detail or evidence provided, I do not find that any service failing by the company has been proven in this regard.
13. The customers assert that the company failed to provide the information following their SAR in the first instance. As explained above, an allegation concerning a failure by the company to comply with Data Protection laws, falls outside the scope of WATRS. However, from a customer service perspective, having reviewed the company's response of 13 June 2017 to the customers in which it stated there was no information to be provided following the customer's submission of its completed SAR form dated 30 May 2017, I am satisfied its response fell short of what could be reasonably be expected. This is because the company subsequently provided the customer with information relating to their personal data following their second request and therefore I find this demonstrates that the information given its first response was inaccurate. However, I note that the company waived the £10.00 fee in acknowledgement of its error.
14. In their submissions the customers have also complained about the company's representatives not always keeping a record of their calls made to them. In its email to the customer of 20 June 2017, the company confirms that calls to Mr Brown made by its representative Mr White, were not recorded and that notes of these calls were not made, as they were from his mobile. As I would expect the company to keep a note of all calls made to its customers, as good practice to ensure accurate record-keeping (including where calls are from the company's mobile phones), I am satisfied the company's failure to keep a note of all calls and conversations between its staff and its customers conducted on mobile phones, is evidence that it failed to provide its services to a reasonably expected standard.

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15. The customers request £10,000.00 in compensation from the company in relation to perceived failures (as set out above). The company has offered and sent the customer a cheque for £1137.99 (comprising £374.00 for the cost of the dishwasher which was damaged due to the cut in water supply and £513.99 for the washing machine which was damaged due to the cut in water supply and £250.00 as a goodwill gesture for alleged customer service failures) and credited £40.00 in accordance with its GSS. However, in light of the number and nature of failings found, as set out above, and the significant distress and inconvenience I accept was caused to the customers, I do not consider that the sum offered is adequate. However, I am not satisfied that the customers have substantiated their claim for £9112.01 in respect to poor service. In the circumstances, I find it fair for the company to pay the customers a further amount of £300.00 in compensation. I am satisfied that this amount, together with the credits applied and cheque already sent, is reasonable and proportionate to the issues encountered by the customers, as a result of the company's failings.

Outcome

The company shall pay the customers further compensation of £300.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 May 2018 to accept or reject this 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.



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Adjudicator

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