

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0797

Date of Decision: 21 September 2018

Complaint

The customer purchased a commercial property in January 2012. She converted the second floor into flats. The customer contacted the company to request that water meters are fitted and accounts set up for the flats. The company has deemed the water supply to be inadequate and unauthorised, despite it having been present when the customer purchased the property. The amount quoted by the company to carry out works is unreasonable. The customer requests an apology, an explanation for why the supply is inadequate, a more reasonable quote for the works the company says are necessary, and for the company to start charging each flat without meters.

Defence

The company submits that part of this dispute falls outside the scope of the WATRS Scheme as it is subject to a regulatory enforcement case. The company has used 'inadequate' to describe the unauthorised nature of the water supply connections to the premises. The company provided the customer with a cost advice for the work required to connect the flats to the network. The customer is entitled to engage an accredited self-lay provider for this work. The company is unable to charge each flat with assessed charges as they are deemed to be new premises and require a water meter. It is not appropriate to issue fixed rate charges to avoid the connections being made. The 8 new premises developed since 2012 have not been connected to the company's network with its consent.

Findings

The requirement for works to be carried out to connect the flats to the company's network and create accounts is subject to an Enforcement Notice and is therefore outside the scope of the Scheme. The proposed cost of the works falls within the remit of Ofwat, albeit that they will not review the reasonableness of costs until they have been incurred. The company is not able to open water accounts for the flats as the new connections process has not been followed and there is an open Enforcement Notice to have this work completed. The supplies that the company is referring to is those to the new flats, rather than the physical supply to the second floor that may have been present in January 2012.

Outcome

The company does not need to take any further action.

The customer must reply by 19 October 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0797

Date of Decision: 21 September 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer purchased a property in January 2012. The property consists of three floors. The customer developed the second floor into a number of flats. In July 2016, the customer contacted the company to have water meters installed as the flats were to be let. The company has deemed that the water supply is 'inadequate and unauthorised', despite being present when the customer purchased the property. The company quoted £22,065.00 for the works it deemed necessary, rising to £22,390.48. The amount quoted is 'ridiculous'. The customer approached Ofwat, however they will not determine the reasonableness of costs unless these have been paid.
- The customer requests:
 - An explanation for why the water supply is 'inadequate' as the flats have been fully occupied for two years
 - In the event the supply has to be made adequate, the quoted cost to be reduced to a more reasonable level
 - The company to commence charging each flat based on standard water charges
 - An apology for the allegation that the supply to the second floor was made 'relatively recently' and is unauthorised

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The company's response is that:

- The company submits that the term 'inadequate' is used to describe the unauthorised nature of the supply connections. The costs quote provided to the customer states the requirement for two 4-port manifolds and two fire supplies to be installed, and the requirement for barrier pipe to be used. The company has determined that this is necessary for the supply to the premises to be adequate. Supplies will be adequate and authorised where: the company's new connections process has been followed and consent given; the relevant Regulations have been complied with; and, there have been no contravention of any provision of the Water Industry Act 1991. These requirements have not been met and an Enforcement Notice was issued on 16 January 2016. The company submits that this part of the complaint falls outside the scope of WATRS
- The company has provided cost advice and, as this is now out of date, it will provide a fixed-charge quotation, without receiving a formal application and waiving the application fee. The customer is entitled to engage an accredited self-lay provider if she wishes.
- Assessed charges would not apply to the flats under the company's Charges Scheme. Metered charges would apply as the flats are deemed to be new premises. The company can only meter and bill the flats once they have been properly connected, following the new connections process. It is not appropriate to issue fixed rate charges to the flats in order to avoid the correct connections from being made.
- The company clarifies that, regardless of whether there was an existing supply to the second floor in 2012, the eight new premises, in a space previously used as an office, developed since 2012 have not been connected to the company's network with its consent.

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

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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 purchased a commercial property in January 2012 that covered three floors. She developed the second floor into seven flats, with plans for an eighth flat at a later date. These flats have been physically connected to the company's water network, but do not have water meters nor their own water accounts with the company.
2. In determining this dispute, it is first necessary to ascertain the scope of the WATRS Scheme and confirm whether part or all of the dispute falls within or outside that scope.
3. I note that the company issued an Enforcement Notice to the customer on 16 January 2016. This notice relates to the work that the company has deemed necessary in order to connect the flats to its network under individual accounts. I am satisfied that under WATRS Scheme Rule 3.5, the Scheme cannot be used to adjudicate disputes that relate to 'regulatory enforcement cases'. I am satisfied that the subject of the Enforcement Notice, being the requirement that the construction work is carried out, falls outside the scope of the WATRS Scheme.
4. I also note that the customer is disputing the cost quoted by the company for the work to be completed under the Enforcement Notice. The customer has approached Ofwat in respect of these charges and received a response stating that Ofwat "has no role in getting involved if any works need to be done. We do however have a role to determine the reasonableness of costs". Ofwat continued to state that it was unable to determine the reasonableness of the costs until the customer had the work done, at which time it would be "happy to review the reasonableness of the paid costs".
5. The customer has requested adjudication of the cost quoted by the company for the work. I find that this falls within the remit of Ofwat. Whilst Ofwat have refused to review the reasonableness

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of the costs until they have actually been incurred, I am satisfied that it is the body empowered to review these costs. Any attempt by WATRS to determine the reasonableness of a quote would amount to overstepping into an area over which Ofwat has the power to determine an outcome. In accordance with WATRS Scheme Rule 3.5, I therefore find that any question as to the reasonableness of the quote provided by the company falls outside of the scope of this decision.

6. I find that I am able to determine whether the company has explained the reason that the supply has been described as 'inadequate' when it has been serving fully occupied flats for two years; the question of whether the company should charge the flats on an unmetered basis, either permanently or until meters can be fitted; and the customer's request for an apology for the allegation that the supply to the second floor was made 'relatively recently' and was therefore unauthorised.
7. In respect of the supply being described as 'inadequate', I find that this is used largely in a legal sense, rather than making a judgment as to whether the physical supply is capable of providing water to the relevant properties. Notwithstanding this, I note that the company does also require work to improve the physical infrastructure of the water supply to the flats, this being the subject of the Enforcement Notice.
8. A supply will be 'inadequate' where it does not comply with the legal requirements. I also note that the 'supply' in this case is used to describe the supply to each individual dwelling (which would be subject to its own water account after the new connections process was completed), rather than any pipework, pre-existing or newly-added, used to transport water to the second floor of the property.
9. The company has explained the legal requirements in order for the supply to be deemed to be adequate. These are the steps that must be followed in order for an account to be properly and legally set up with the company for a dwelling to receive and be charged for water. The company clarifies that it is necessary that its new connections process is followed and consent received; that the relevant provisions of The Water Supply (Water Fittings) Regulations 1999 are complied with; and that there has been no contravention of the provisions of the Water Industry Act 1991. I find that it is not necessary to review the provisions of the Water Supply Regulations or the Water Industry Act within this adjudication, as this falls within the scope of the Enforcement Notice.

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10. I am satisfied that the company has provided a full explanation as to why the supply has been deemed to be inadequate. It is clear that the customer has not followed the new connections process in respect of the seven or eight new dwellings, and that it is this new development which has been deemed to be unauthorised.
11. In respect of the customer's request that the flats are billed individually on an unmetered basis, I am satisfied that the company is not able to do this. The flats constitute new dwellings and there is a clear process to follow in respect of these new dwellings. The company's Charges Scheme requires new dwellings to be placed on a water meter. I am satisfied that the company is not able to set up the new dwellings on an unmetered basis. It has instead issued the Enforcement Notice to ensure that the new premises process is followed. I find that the company is not able to set up individual accounts and, as the Enforcement Notice has been issued, any attempt to set up such accounts would be contrary to the intention of that Notice, namely to ensure that the premises are fully compliant with the relevant Regulations and policies.
12. Finally, the customer has requested an apology for the company's allegation that the connection to the second floor was made 'relatively recently'. In reviewing the evidence, I am satisfied that the company has been referring to the connections to the flats as new individual dwellings, and not the physical pipework linking the company's water network to the property as a whole. It is these new connections that the company has deemed to be both new and unauthorised. I am satisfied that the flats were developed by the customer. I therefore find no reason for the customer to be entitled to an apology in respect of the company's statements.
13. For the reasons given above, the customer's claim is unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

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

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- The customer must reply by 19 October 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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A handwritten signature in black ink, appearing to be 'AD', followed by a long horizontal line extending to the right.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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