

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: CCWater reference: WAT/ /0844

Date of Decision: 27 June 2018

#### Complaint

The customer complains that he has been wrongly billed for a water supply serving a number of other businesses on an industrial estate. He complains also of the delay in resolving this and that he was billed retrospectively for monies already paid by way of direct debit.

#### Defence

The company argues that the customer was correctly billed. As it transpired that his metered supply related to a number of customers, this gave rise to a potential third-party dispute that was for the customer, and not the company, to sort out. Although there was a delay in connecting the customer with an independent supply, the company was not responsible for this.

#### Findings

The company was not required to investigate an existing supply prior to contracting with a new occupier. It failed to monitor the request to the wholesaler to carry out a supply check, which contributed significantly to four months' delay in resolving the issue but was not responsible for the further delay. In relation to that four months and a decision (subsequently changed) to continue to charge after a new supply was connected, the company had failed to supply its services to the standard reasonably to be expected of it.

#### Outcome

The company needs to take the following further action: (1) Pay compensation of £2,000.00 to the customer; and (2) Apologise to the customer for the inconvenience caused by the company.

- **The customer must reply by 25 July 2018 to accept or reject this decision.**
- **If the customer accepts this decision, the company will have to do what I have directed.**
- **If the customer rejects this decision, or does not respond, the company will not have to do what I have directed.**

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# ADJUDICATOR'S DECISION

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Date of Decision: 27 June 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer moved into his current business premises on the Green estate in October 2014.
- The customer's business was incorrectly appointed the owner of a shared supply water meter (meter H13AU05[]) and the company has been responsible for considerable delay in separating the customer's supply from that serving other businesses.
- £9,616.00 has been paid by direct debit to cover the company's invoices: the money would be taken first and back up invoices supplied subsequently to justify the amount taken.
- The customer decided on advice to install a new water meter and to be removed from the old one. This took nine months. The customer was told that credits would be given if the lease confirmed the customer to be a tenant in one building and not the landlord of a number of other businesses served by the water meter.
- RST Water (the wholesaler) and then the company reneged on the agreed plan. The company now contends that this is a matter between the customer and the landlord of the premises, but the customer argues that the meter serves a number of businesses that are not all associated with the landlord. The customer is being asked to make further payments. The company has told the customer that from 20 January 2018 no one is paying for the old meter.
- The customer has asked for the work sheet and job cards from October 2013 to show whether his business has signed the job off and accepted responsibility of the shared meter. To date, despite numerous requests, no documents have been sent.
- The customer seeks a recalculation and credit of approximately £11,000.00. In total the disputed bills total £13,619.00 but from his new meter he has calculated that based on actual usage

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shown now, the annual charge should have been £780.00. He therefore knows that he has £2,340.00 to pay for the past three years but would like the balance of £11,279.00 plus interest, as well as compensation for his time and distress. He has sent 194 emails and has spent many hours on the telephone.

- The customer seeks:
  - Recalculation of the bills;
  - An apology;
  - Full credit;
  - Compensation (including the credit, compensation for inconvenience and distress of £2000.00 and interest of £2,000.00) of £15,200.00.

**The company's response is that:**

- The company was contacted by one Mr Brown (owner of ABC Rentals) on 22 September 2015 to confirm that the customer had moved into the premises on 20 October 2014 and a new account was created with effect from 20 October 2014.
- Mr Brown then telephoned the company on 28 June 2016 to query the consumption on the latest invoice as it showed the property to be using a daily average of 4.63m<sup>3</sup> a day when the customer has only two members of staff in the office. Mr Brown informed the company that he would conduct a self-leak test to check for any issues on the supply.
- No further communications followed until 24 October 2016 when the customer (the commercial finance manager for ABC Rentals) contacted the company. The company again advised the customer to complete a self-leak test if they felt that the consumption for the property was too high.
- The company requested an engineer to attend to confirm what the water meter (H13AU05[]) actually supplies. A visit took place 28 February 2017 and it confirmed that the water meter was on a shared supply with other businesses.
- The customer was advised on a number of occasions that if he wished to have a dedicated water meter and account (in order to be billed separately), he would need to get the private internal pipework altered at the customer's own cost or get a new connection arranged so that the company could fit a new meter to his business with the permission from the landlord. This would mean that the existing water meter (H13AU05[]) would become the responsibility of the landlord or another tenant to pay for future water consumption for the other businesses and arrange payments between themselves.

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- A new connection was created on 19 January 2018. Once the company received confirmation from RST Water Wholesale that a new meter had been installed, it closed down the customer's previous account.
- All charges before 19 January 2018 are still payable by the customer. It would be between the customer, his landlord and other tenants to come to some sort of arrangement to obtain money from the other businesses that are still connected to the existing water meter. This is classed as a third party dispute.
- The company has applied £135.00 in goodwill payments, which are broken down as below:
  - £40.00 for going over the service level agreement timelines;
  - £50.00 for two failed appointments;
  - £45.00 goodwill gesture for poor service.

### 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?

1. I bear in mind that adjudication is an evidence-based process and that it is for the customer to prove by reference to documents submitted in the adjudication that the company failed to supply its services to the standard that would be reasonably be expected of it.

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2. In this case, timelines have been supplied by the company (attached to the defence) and the customer (in the CCWaters documentation). There is a lengthy history with numerous contacts between the parties and the customer has made many submissions in response to the information supplied by the company. I do not comment on each development but have referred below to the matters that I find to be most material.
3. I also bear in mind that the company has from April 2017 been a retail supplier. Prior to this, it was a venture that was separate from the wholesaler and did not have direct responsibility for the provision of the infrastructure of the water supply, which was, and is, the responsibility of the RST Water, now the wholesaler. The customer's complaint raises concerns about both the conduct of the company and also appears to complain about certain actions or inactions on the part of the wholesaler. My findings below relate only to the company. The wholesaler is not a party to this adjudication and complaints regarding the actions of the wholesaler cannot be determined here.

#### Liability for water at the customer's meter

4. It is common ground in this case that at the outset of the customer's occupation of his leased premises, the layout of the pipework was such that a number of businesses on the Green estate were served by the same supply, which was measured at a meter that has been attributed to the customer's premises. There is no reason to conclude that this was at the time known to or understood between the parties to this dispute. The customer asks whether the company did the proper checks or explained that it was a shared supply when assigning the meter to the customer.
5. I turn first to the agreement between the customer and the company. The customer contends that it was never agreed that his business would take responsibility for the water supplies of other businesses. I find, however, that it is more likely than not that the consequence of the agreement reached between the parties did have that consequence. In arriving at this conclusion, I note that the company and the customer have different recollections of how their contractual relationship was first negotiated, the company relying on a telephone call in 2015 and the customer recalling that a representative of the company attended at the site stating that the previous bills had not been paid and threatening disconnection. Neither party has suggested that there was any formal documentation setting out the scope of what was agreed. Moreover, although reference is made in the papers to the potential significance of the customer's lease, no copy of the lease has been submitted and the customer does not now submit that this

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declared his landlord to be responsible for the payment of water bills or the distribution of water on the estate. Indeed, the documents submitted suggest that some of the businesses in question were not tenants of the customer's landlord.

6. On either version of events, it would appear that the customer had made no arrangement on taking up occupation of the premises in October 2014 to transfer the water services into the customer's name. The arrangement was made subsequently after a service had already been supplied to the customer's business for some months. The customer says that no invoice had been received, which, if the customer had not notified the company of its occupation of the premises, is unsurprising. It therefore follows that the agreement was made after the event and with the intention of regularising a situation that had already come into existence. As the new contract concerned an existing supply, I find that the company would not ordinarily be expected on a change of occupancy to carry out checks to ensure that only one business was receiving the water that was metered at the customer's premises. This was, I find, primarily a matter for the occupier to be aware of and the company would have been ill-placed to carry out any such investigation. As the focus in 2015 would therefore have been on discharging a liability that had already arisen, it is unlikely that the precise scope of the existing pipework was discussed between the company and the customer when the agreement was entered into. Nor did it appear that the customer asked at that point to see any paperwork that might have allocated the meter to a particular occupant in 2013. It was assumed by all parties, at this point, that the meter was correctly allocated to the customer's premises and I find that the customer accepted this position. On the basis of the submissions and documentation supplied, therefore, I find that the parties were likely to have agreed that the customer would take over the existing metered water supply at those premises as it was, irrespective of precise connections, associated with the existing pipework and meter at that supply.
7. It therefore follows that, although it now appears that other businesses benefited from the supply and there may have been no third party agreements between the customer and the other affected businesses, as between the company and the customer, the customer had contracted to be responsible for the bills. I find no failings on the part of the company in this respect.

#### Delay in checking the supply

8. The customer soon found out that the bills were higher than expected and contacted the company. The company knew from June 2016 that the customer only employed two members of staff at the premises. It advised the customer to carry out a self-check for a possible leak.

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Whether or not the customer carried out a self-check for leakage was a matter for the customer to resolve and I find that the company was not on notice of any untoward circumstances in connection with this supply at that point.

9. The customer expresses concern, however, that he first raised his fear that he was paying water bills for the whole of the Green estate in express terms on 24 October 2016. The customer's email of that date states that the customer was eager to correct this situation going forward. The company does not appear to have challenged this possibility and it requested internally that the wholesaler should carry out a supply check for the customer's meter. The company was therefore at that time put on notice both that it was possible that third parties were receiving a service from the customer's supply and that it was likely that the customer had no third party agreements in place that supported this situation.
10. It then took some four months before the supply was investigated by an engineer. Although the company referred in correspondence to such a person as "our engineer", it appears from the emails reproduced that the engineer in question was an agent of the wholesaler. The customer made repeated enquiries about progress (on 3 and 17 November 2016, on 13 January and 2 February 2017), it appears that the wholesaler repeatedly rejected the request (for, initially, insufficient details; then on 21 December 2016 due to an enquiry about the premises; on 17 January 2017 the supply check was cancelled because the wholesaler had concluded without a visit that the meter only supplied the customer's building; and on 3 February 2017 the wholesaler contended that an invalid telephone number had been supplied and it was not clear if a leak check had been done). During this time, the company made an apology to the customer on 24 November 2016 and placed the account on hold and made Guarantee Service Scheme payments on 19 December 2016.
11. Bearing in mind (1) the nature of the concern raised by the customer, (2) the clear wish on the part of the customer to bring to an end a situation in which he might be paying for services used by others; (3) the large amount of money charged in the bills and (4) the information in the possession of the company about the uses of water at the customer's premises, I find that the average customer would have expected the company to take prompt action to ascertain (a) in that water was not being wasted due to leakage; (b) whether a leak check had in fact been carried out by the customer; and (c) if it had, to obtain an engineer's visit promptly to ensure that its customer was not being compelled through the company's inaction to pay for services that he was not utilising. I find that the company did not inquire whether the self-checking had been

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carried out, or, if it did ask the customer about this, the customer's answer has not been recorded. It was not, therefore, able to supply the wholesaler with information about this in any event. The company was, moreover, not pro-active in ensuring that an engineer attended promptly. The customer was told on 27 October 2017 that "one of our engineers will be in contact within the next few days", but there was no follow-up to ensure that the wholesaler's engineer was equipped to meet the promise that had been made by the company to the customer. The reasons for rejection of the visit by the wholesaler could have been avoided by careful communication on the part of the company. I find that this was not service of a level that would ordinarily be expected of a water company.

#### The period from 28 February 2017

12. The customer alerted the company on 28 February 2017 to the engineer's report that the supply served not only the customer's business, but also seven other businesses on the same site. (The company states that in fact there are only six apart from his business, but the point is immaterial for the purposes of this decision.) The customer said that he had been told that the engineer would submit his report to the wholesalers to support the claim from the customer for a refund of the usage by the other businesses of £6,462.42. He also said:

*The next bill is due end of March 17 and I do not want to pay the water usage of the other 7 companies going forward. The dealings over the phone and email have been hard work and lengthy so I propose I come to your office in [ ] to discuss the account in full so we can make a plan. The engineer also mentions that the supply may have a possible leak due to the high meter readings but as the meter controls the water for the whole site it would be hard to find and fix the leak.*

The company responded to this by pointing out that the matter historically involved a third party dispute and made some suggestions about how this could be addressed. I find that, as would reasonably be expected, it promptly corrected the incorrect impression that the customer had acquired. It is clear from the customer's response to that call that this had included a discussion regarding the possibility of a new meter. The company confirmed the conversation in writing, stating:

*New Connection: You can apply to have a new connection for your property that will create individual bills for yourself and all other parties involved. Any alterations to the pipework would need to be handled by yourself. Charges for a new connection can vary, depending on the work required.*

*On today's call you have advised me that you would like a site visit arranged to assess your pipework to ensure that your meter can be installed correctly, any private plumber will be*

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*able to assess private pipe work and ensure if the supply was split that we were able to install a meter. This will be a cheaper solution than a new connection if the pipe work can be reconfigured.*

13. I find the above response to have been informative and appropriate even though the company did not provide the telephone number to enable the customer to start that process. The customer then asked on the following day when an engineer could come to create a new installation. On 7 March 2017, the company explained its processes and the system for making a new connection. The company replied:

*In order to arrange an appointment for a new connection please call the number 0345 [ ], this is the number for our new connections team and they will give you all the next steps and processes for having a new connection fitted at the property.*

*In relation to your questions around the liability of the original meter, once a new connection has been fitted we will open a new account for yourself with the new meter details as long as it is confirmed the new supply, serves your property only.*

*Any outstanding charges from the account of 60006[] will remain a third party dispute and the account holder will remain liable to obtain funds from 3rd parties in order to settle the account. The old meter will then go through one of two possible routes shown below:*

*If the original meter is removed we will close the account of 60006[] but any outstanding charges will remain due and payable. New connections will then need to be made for all the companies who were originally connected to the shared supply meter.*

*If the original meter remains at the site, the account of 60006[] will remain open and any outstanding charges up to the date of the new meter installation could be transferred to your new account, however, liability of the meter will be passed on to one of the companies still connected to the shared supply which will be decided by the new connections team.*

14. The customer responded stating that he would arrange for a new meter himself and was not willing to make any further payments for the other six companies thereafter. He also complained that the installation of a new meter had been delayed by a week because he had not previously been given the number to call.

15. The customer further complains that the company subsequently took a very long time to set up the new arrangement, during which time the customer was being required to pay bills for the remaining companies as well as the customer's own business. Following 7 March 2017, various communications between the parties took place.

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16. On 13 March 2017, the company recorded that the customer was experiencing difficulty in having a new meter fitted and was investigating the possibility of installing a sub-meter. The company advised and reported this in writing. Although the customer complained that what he was told in writing about a sub-meter differed from that which he had previously been told in that the customer would remain liable for the original account, I find that Information about sub-meters had been given in the letter dated 7 March 2017, in which the customer was told that the consequence of sub-metering would only mean that the customer's own supply was measured, not that he would no longer be liable for the primary meter. In those circumstances, I am not satisfied that the customer has proved that he was subsequently given advice that installation of a sub-meter would release him from liability for the primary meter.

17. The customer notified the company in June 2017 that the work to separate his services from the other companies was almost complete. On 11 August 2017, the customer enquired as to which account number related to which property and wanted to know if the company had considered any subsidy on the shared supply. As to the subsidy, the company's account records show that the customer was again informed that it was a third party dispute for him to action by contacting the other affected businesses. This suggests that, at least by August 2017, the two accounts had been separated but there is no evidence that the physical separation of the supply was complete.

18. In November 2017, the customer complained that he was still being charged for a supply to all the companies previously identified. The company records:

*NOTES: Customer called in regards to the account. Customer wants to give us an update on the new meter situation. Customer is still being charged by us for all 7 units. It is confirmed on the account that the customer isn't liable for this. I have confirmed this with my manager. After talking to the customer about this issue, it is confirmed that the Landlord should be liable for all water. I have asked the customer to send in complete proof of this to us & we would be able to action a COT on the account dated back to when the account opened - to place it into the landlord's name.*

19. In the light of the information given previously, I interpret this communication as holding out the possibility that in the future there would be a back-payment of any payments made by the customer after the date when his own account opened, but only if this was supported by the responsibilities declared under the lease.

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20. On 19 December 2017, the customer called as he had been asked to send in his lease agreement as he believed his landlord was responsible for the bill and he wanted an update. He was advised that the company had not received the document. This was because the customer had sent it to the wholesaler's e-mail address. He was given the correct address and he said he would re-send it. There was then a delay.
21. On 12 February 2018, the customer sent his tenancy agreement indicating that his view was that his landlord was responsible for the water bill. The company, on reading the lease, came to a different view and concluded that it was unable to offer a rebate. The customer complained in the course of a number of calls between the customer and the company. I have not seen a copy of the lease and am thus unable to come to any different view about its impact from that which had been reached by the company. I find that the company had stated that its agreement to give a rebate or subsidy was dependent on its being satisfied that the landlord was liable for the payments at the meter and it was not satisfied. The contrary has not been proved by the customer even if, as the customer contends, he had the impression from other communications that the outcome would be different.
22. I find, therefore, that in the period between November 2017 and February 2018, the delay complained of by the customer was in part due to the failure by the customer to provide the tenancy agreement promptly. I do not find that the company misled the customer and I find that the customer has not proved, in this respect, that the company failed to supply its services to the standard that would be expected by an average person.
23. On 21 January 2018, the customer was advised again by the wholesaler to terminate his account and have his own meter fitted. The company advised the customer (as had happened previously) that it would not fit a meter and no job had been raised on the account.
24. On 19 February 2018, the customer stated that he could not get his landlord to consent to changes in the pipework and therefore wanted the water supply disconnected. The company refused to do this without evidence of the landlord's consent because it would mean disconnection of the other businesses and the landlord. I find this position to be unpersuasive, however. I am not satisfied that the company has sufficiently explained how it was possible for it to decline to accept the customer's instruction to disconnect the supply because of the effect on third parties while at the same time contending that its only concern was in respect of the

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customer. I find that this was a level of service provision that fell below that which would reasonably be expected, but after some debate and the involvement of the Consumer Council for Water (CCWater), this situation was resolved. A rebate was provided to the customer as a goodwill gesture from 19 January 2018 (the date put forward by the company as that of the new connection). The company continues to claim the outstanding bill of £4003.79 up to 19 January 2018 but, in consequence of the company's change of stance, the customer has shown no continuing loss save for the inconvenience associated with the dispute itself.

25. The question why it took the wholesaler nine months to set up a new connection was also raised by CCWater with the company and the company passed on this inquiry to the wholesaler, which declined to respond as, by that time (27 February 2018), the customer's supply was handled by a different retailer. The CCWater's process has, however, revealed further information about this, including that the wholesaler provided the customer with a £300.00 goodwill payment to assist with the establishment of a private supply. For the reasons given above, however, the company is not liable, even if there were delays by the wholesaler (as to which issue I reach no findings).

26. I conclude that the customer has not proved that, save in respect of the four months' delay in investigating the customer's supply, the company has been responsible for the delay in establishing a new connection. I find that the company made clear at an early stage that the physical separation of the meters was not a matter that it would undertake and that it was for the customer to arrange this. Although the customer struggled to effect this, I find that it was not the responsibility of the company. In relation to the delay, other than that concerning the period from October 2016 to February 2017, the company did not contribute to this.

#### Failure to bill in advance

27. I note that the customer also complains that he was billed only after direct debit payments were taken, and that this occurred at least on some occasions, is supported by the documents in the case. However, the customer has not shown that his business has suffered any loss. In the circumstances of this case, where the parties were engaged in debating a more significant issue, little attention appears to have been paid to this at the time by either party and the customer did not ask the company for an explanation. I do not find that the customer has proved that the company fell short of the standard reasonably to be expected of it.

#### Redress

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28. Overall, I have found that the company has failed to reach the standard to be reasonably expected in respect of the four months delay from October 2016 to February 2017. The customer is therefore entitled to some redress, but not at the level that he has claimed. I note that some goodwill payments and payments made under the guaranteed period were given, but I find that the company's failure to monitor the carrying out of a supply check resulted in four months' continuing liability by the customer. I cannot, on the basis of the information supplied, carry out a precise calculation of the cost to the customer of a period of four months' extended liability, but, taking into account the amount of the bills at the material time, the goodwill payments made, the passage of time as well as the customer's submissions as to actual usage, I find that it is fair and reasonable for the company to give compensation for this period. I find, taking into account the information which I have, which includes that over the 6 month period from 30 September 2016 to 15 March 2017 the billed charge was £3,126.77 (so suggesting that four months billing was approximately £2,085.00) and that the customer's current annual usage totals between £780.00 and £800.00 (so suggesting that four months' billing would be in the region of £265.00) and allowing for the fact that the process if followed appropriately would have taken some time within that four month period, that it would be fair and reasonable to offer the customer a rebate of £1,800.00 including any claim for interest.

29. The customer also claims compensation for inconvenience and distress. I note that the customer is a businessman and the problem set out above arose in the course of the customer's business. I find that it is not appropriate to give compensation for distress, but it is fair and reasonable that the customer be awarded some compensation for inconvenience. The customer's claim concerns communications (including 194 emails) both with the retailer and the wholesaler, including those about establishing the new connection. Those with the wholesaler cannot give rise to compensation. Moreover, many of the emails with the company concern the complaint that the company should not have raised a charge from the outset, which I have not upheld. In respect, however, of those concerning the four month period referred to above, and those concerning the period from 19 January 2018 for which the company intended to charge the customer but has reached a different decision, I find that it is fair and reasonable to award a total sum of £200.00 in compensation for inconvenience. It follows that the full award of compensation is £2000.00. The company may, if it so wishes, pay this compensation by means of a credit against the customer's outstanding bill.

30. I find additionally that the customer is entitled to an apology for the period of uncertainty and inconvenience to which the company has contributed in the ways indicated above.

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### Outcome

The company [needs to take the following further actions:

- Pay compensation of £2,000.00 to the customer; and
- Apologise to the customer for the inconvenience caused by the company.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 July 2018 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 notifies 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 choose 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.



Claire Andrews, Barrister, FCI Arb

**Adjudicator**

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