

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0883

Date of Decision: 29 October 2018

Complaint

The customer states that the company has incorrectly calculated the rebate to which it is entitled. It requests reimbursement of £70,548.96 for a service that was charged for and not used.

Defence

The company states that the customer is not entitled to the rebate claimed, as it did not satisfy the requirements of the company's leakage allowance policy.

A goodwill payment has been made to the customer of £3,597.84

Findings

The customer did not satisfy the requirements of the company's leakage allowance policy and so is not entitled to the reimbursement claimed

Outcome

The company does not need to take any further action.

The customer must reply by 26 November 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 29 October 2018

Party Details

Customer: []

Customer's Representative: []

Company: []

Case Outline

The customer's complaint is that:

- The company has incorrectly calculated the leakage allowance to which the customer is entitled as it did not properly take into account water that ran straight into the ground rather than entering the sewage system.
- The customer believes the leak was present before April 2013, with average consumption reducing from over 10.000 m³ per year to 3,315 m³ per year once the leak was fixed.
- The customer was told that the leakage allowance was amended to cover sewage and would be applied to the account, but it was not.
- The customer was told to submit another appeal and make clear that a waste water allowance was being requested for the entire period of the leak, not just for the period originally applied for.
- While the leak was repaired in June 2016, it was present a lot earlier.
- The company have granted a leakage allowance totalling £3,597.84, covering the period from 1 March 2016 to 25 May 2016, reflecting 50% of the excess clean water and 100% of the excess used water. The latter was granted at 100% as it could not have returned to the sewer.
- The company states that the leakage allowance was only granted as a goodwill gesture as the customer did not repair the leak within 28 days, as required by the company's leakage policy.
- The customer requests reimbursement of £70,548.96 for a service that was charged for and not used, reflecting 77,750 m³ of water that did not return to the sewer from August 2009 until May 2016.

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The company's response is that:

- There have been two leaks at the site.
- One leak began in 2010 and a second occurred from 1 March 2016 until 25 May 2016.
- The leak that began during 2010 was not notified to RST Water until 2013 and it wasn't repaired until 2016.
- During this 3-year period the customer was billed monthly and the customer's average daily usage during the leak was no higher than prior to the leak, so there was nothing to put RST Water on notice of the existence of a leak.
- Upon discovery of the leak RST Water offered to visit the premises, but received no response.
- RST Water assisted in locating the second leak, which occurred in 2016, but it took the customer longer than 28 days to repair the leak once identified, thus placing the leak outside the company's burst allowance policy.
- Nonetheless, a burst allowance was provided to the customer as a gesture of goodwill.
- When the credit for the leak that commenced in 2016 was applied, the customer requested an additional credit for the leak that commenced in 2010.
- Neither leak qualifies for a credit under the company's burst allowance policy, as the customer took longer than 28 days to repair both leaks.
- In addition, as a burst allowance was provided as a gesture of goodwill for the 2016 leak, a second allowance is not possible, as the company's policy only allows a single burst allowance per property.

The customer's comments on the company's response are that:

- No-one should be allowed to charge for a service that is not received.

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.

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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. As a regulated water retailer, the company is required to bill its customers in accordance with a published Charges Scheme. This scheme must adhere to rules adopted by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
2. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to evaluate the fairness or correctness of a company's Charges Scheme, as this responsibility has been statutorily allocated to Ofwat.
3. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may look at whether the company has properly adhered to its published Charges Scheme.
4. As a result, I will only consider whether the company has adhered to its "leakage allowances" policy, as stated in its Charges Scheme, and may not evaluate whether that policy is reasonable or otherwise appropriate.
5. Under the company's leakage allowances policy, "On measured premises, where a leak is found an allowance may be available to adjust the charges payable for the supply of water provided: (i) it is shown that the leak is repaired within 28 days of detection; (ii) there has been no negligence in allowing the leak to occur; and (iii) it was not a leak that the occupier should have known about or repaired earlier."
6. The policy then states that "Only one leakage allowance per non-household customer per property may be claimed."

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7. The policy also, however, identifies a second allowance: “An additional non-return to sewer allowance may be available provided the occupier can prove to the wholesaler’s satisfaction that the water from the leak has not returned to the public sewer.”
8. The “non-return to sewer allowance” is not directly subjected to the three limitations placed on the basic leakage allowance, or restricted to a single claim “per non-household customer”. Nonetheless, the “non-return to sewer allowance” is not described as a second allowance, but as an “additional” allowance. As a result, it is properly understood as only being available if a basic “leakage allowance” has been paid – thereby subjecting it indirectly to the three limitations identified above.
9. While the customer’s submission in the present proceeding is brief, and the supporting evidence provided not substantial, both parties acknowledge that the company’s premises was affected by two leaks.
10. The company argues that one leak commenced in 2010 but was not repaired until 2016, while the second commenced on 1 March 2016 and was repaired on 25 May 2016.
11. The company’s account is, however, inconsistent with the available evidence.
12. Specifically, in an email to CCWater on 23 January 2018, the customer provided a monthly statement of water usage at its premises. This statement, the accuracy of which I accept, shows that water usage at the customer’s premises has been substantially lower since June 2016 than at any point since April 2008. In addition, a period of particularly high water usage occurred from May 2010 until February 2013.
13. On the basis of the evidence available in this proceeding, I find that the best explanation for the existence of these two sustained periods of enhanced water usage is that while a single leak existed from April 2008 until May 2010 (no data being provided for the period prior to April 2008), two leaks existed simultaneously from May 2010 until February 2013, and then a single leak existed from February 2013 until June 2016.
14. There are, then, two possibilities: (1) Leak A occurred from April 2008 until June 2016, while Leak B occurred from May 2010 until February 2013, and (2) Leak A occurred from April 2008 until February 2013, while Leak B occurred from May 2010 until June 2016.

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15. Neither possibility is consistent with the company's argument that one leak "occurred between the 1st March 2016 and the 25th May 2016", while a second occurred from 2010 until 2016.
16. The patterns of water usage reported in the email of 23 January 2018 are, however, more consistent with possibility (1) than with possibility (2). If current usage of approximately 300 m³ is accepted as standard usage without the impact of either leak, as is reasonable, then usage at the customer's premises was at approximately similar levels in both the periods April 2008 to May 2010 and February 2013 to June 2016, while it was substantially higher from May 2010 to February 2013. This is most consistent with a larger leak occurring from May 2010 to February 2013, while a longer-lasting smaller leak occurred from April 2008 to June 2016.
17. Nonetheless, the customer must be found to have been given the information necessary to place it on notice of the existence of both leaks substantially before any remedial action was taken.
18. With respect to the shorter leak, it was not repaired for nearly 3 years after it commenced, despite the customer receiving monthly bills that clearly displayed a substantial increase in water usage.
19. With respect to the longer-lasting leak, the customer notes in its email to CCWater on 23 January 2018 that it became aware in February 2013 that a second leak existed. Nonetheless, not only has the customer provided no evidence that it acted to identify the leak at this time, but it expressly states in this email that action was only taken after RST Water made contact in 2015 to offer to help identify the leak.
20. This is important because under the company's "leakage allowance" policy, a leakage allowance, and hence also a "non-return to sewer allowance" will only be available where "there has been no negligence in allowing the leak to occur".
21. I must, however, find on the basis of the evidence available to me that the customer acted negligently in failing to attempt to identify the longer-lasting leak once it became clear in February 2013 that a second leak existed.

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22. In addition, the company has stated, and the customer has not denied, that once the leak was finally identified in 2016, the customer took longer to repair it than the 28 days allowed by the company's leakage policy.
23. As already noted, the present decision will only address whether the company has adhered to its "leakage allowances" policy, as stated in its Charges Scheme, and may not evaluate whether that policy is reasonable or otherwise appropriate.
24. For the reasons given above, I find that the customer was not entitled to a "leakage allowance" or a "non-return to sewer allowance" under the company's Charges Scheme. As a result, the company's description of the payment it has made to the company as being a "goodwill gesture", rather than a payment to which the customer is formally entitled, is accurate. There is, therefore, no basis for finding that the company is obligated to make further payments to the customer.
25. While the customer argues that no-one should be allowed to charge for a service that is not received, the company cannot reasonably be expected to monitor pipes on all the private premises it serves to ensure those pipes are not leaking. It is, therefore, reasonable for the company to rely upon customers notifying it of the existence of leaks, so long as it provides customers with the information necessary to allow them to identify that a leak is occurring. In the present case I have found that this information was provided to the customer, but the customer failed to act upon that information, even after it had concluded that a second leak did indeed exist.
26. Therefore, for the reasons given above, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person, and the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 26 November 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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Tony Cole

Tony Cole, FCI Arb

Adjudicator

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