WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1019

Date of Decision: 27 December 2018

Complaint

The customer, who runs a centre for adults with special needs, complains that she has been asked to pay for a leak that occurred in a neighbouring property to which she had no access. She says that the company has refused to give a rebate even though the amount of the relevant bill exceeded £2000.00. She seeks adjustment of the bill applicable to the period of the leak.

Defence

The company says that it has taken up the customer's complaint with the wholesaler. The customer is liable because she has a shared supply and the liability of the property owners is joint, but the account is in the name of the customer. The arrangements as between the property owners are outside the wholesaler's remit. The wholesaler's policy is not to give leak allowances for water but only for sewerage charges if the water does not return to the sewer. The wholesaler looked at Google and found that an alleyway in which the customer says that water ran was hard-standing and therefore concluded that the water ran into the public drain. The company has done all that was required and has supplied its services to the requisite standard.

Findings

The adjudicator finds that the company has failed to supply its services to the requisite standard, in that its stage 1 decision did not correctly identify the factual situation and did not make clear to the customer that her liability was jointly with her neighbour. Moreover, the company did not, as part of its liaison function, challenge the wholesaler's method of assessment of the extent of the return to sewer. These matters have contributed to loss and inconvenience suffered by the customer and the customer has shown that she is entitled to redress.

Outcome

The company needs to take the following further action, apply a rebate of £400.00 to the customer's bill.

The customer must reply by 25 January 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1019

Date of Decision: 27 December 2018

Party Details

Customer: [ ]

Company: [ ]

Case Outline

The customer's complaint is that:

- The customer, who runs an adult day centre for people with special needs, has been charged approximately £2,000.00 in relation to water wasted due to a leak in an adjacent property to which she has no access. She has applied for a leak allowance. The company has refused to make an allowance.
- She has argued that this is unfair and, in response, the company has inspected repeatedly but has offered no resolution. She says that this has continued for three years and that the corporate owner of the adjacent property acknowledges that the leak occurred on their premises but requires a bill to be made out by the company to that organisation.
- The customer seeks an adjustment to the bill to remove the charges relating to the period of the leak.

The company's response is that:

- The company's position is that it is not liable for this claim.
- The company indicates that the wholesaler was first contacted by the customer on 18 July 2015, after receiving an invoice for £1,401.55. The wholesaler says that the possibility that the company was on a shared supply was first raised on 26 July 2015.
- The company says that the meter for the Green Square is in a derelict building situated next door to the property. This supply is for both the Green Square and the derelict building, therefore is classed as a shared supply.

- The leak in question occurred in the derelict building attached to the side of the customer's property. A plumber made repairs on 4 August 2016. The customer has stated that the leak was on an old lead pipe inside the building and the leaked water ran into the alleyway.
- The company says that on the two occasions when an application was made for a leak allowance in 2016 and 2017, the wholesaler stated that, as its policy states that it will not review the water charges for non-household customers for private leaks but might consider an allowance against the sewerage charges if the leak was on an underground pipe and the leaked water did not return to the sewer, that possibility was investigated. The wholesaler says, however, that the alleyway is hardstanding so that any water leaking out of the building would not have soaked to the ground but gone into one of the numerous drains or the guttering down pipes, or run into the roadway. Because of this, when the company requested a response from the wholesaler, the wholesaler would not review the charges because their decision was in accordance with their policy.
- The current balance on this account stands at £3,297.05 and the company says that this is due and payable. Current direct debit payments are too low to repay the outstanding balance on the account and therefore the balance owed is increasing.

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 note that the issue in this case arose before the opening of the retail water market in April 2017, such that the customer was initially supplied water by RST Water, which is now the wholesaler and the company is the supplier. The customer has raised a complaint against the company. I find that, as the company is a distinct legal entity, it is not directly liable for a failing (if there has been one) on the part of the wholesaler. The company may be liable, however, where (among other considerations):
    a. the company has accepted responsibility for any liability on the part of the wholesaler;
    b. the company has failed adequately to carry out its liaison function between the customer and the wholesaler; or
    c. the issue, albeit concerning events before 1 April 2017, has been handled subsequently by the company and the standards applied by the company in the conduct of its own activity fall below the reasonable expectations of an average customer.

    The company has in its submissions, drawn a distinction between itself and the wholesaler and has at no stage accepted any responsibility for any shortcoming in the wholesaler's dealings with the customer. I find that it has not accepted any responsibility for the actions of the wholesaler. I can only therefore consider below the extent to which an average customer would think that the company had sufficiently taken up customers concerns with the wholesaler or had dealt after April 2017 with an issue for which the wholesaler was responsible in a way that would not reasonably be expected.

2. The documentation submitted to me indicates that the water supply in respect of which this dispute has arisen served premises comprising a main building and an annexe via a single water meter of a much older type. The customer is the Managing Director of a project called the Green Square, which is a day centre for people with special needs. This project is operated from the main building at the premises (Acorn House). The company says that the Operations Director of the project told the wholesaler that the premises and annexe once housed a printing press business and that Acorn House was purchased in 2016, having previously been rented. The annexe was not purchased and there is no evidence that this has ever been occupied by the customer.

3. The leak that caused the dispute was not in Acorn House but in the adjacent annexe. This annexe is described in the documentation as "derelict" and is boarded up. The customer says that it is owned by the pub across the road and that she has no access to it. The pub landlord

and owner have suggested that at the relevant time, the annexe had been let to tenants. There is no evidence to challenge this state of affairs and I find that the customer has shown that she is not the owner of and has no access to the neighbouring annexe and that these are owned by the owners of the pub and may previously have been let, whether for storage or otherwise.

4. The documents submitted to the adjudicator indicate that the customer received extremely high bills over a period up to and including August 2016 due to a leak. The company says that the wholesaler's records indicate that the leak commenced in February 2016. Although the company has made a submission that the first contact to the wholesaler about the leak was made by the customer in July 2015, I find that this is improbable, as the leak had not started at that point. The company has not submitted records in relation to any period in 2015: the timeline supplied by the company commences in 2016. I therefore find that it is probable that the date of 2015 referred to in the defence is an error. I find that there is no evidence that the customer was aware of the leak or of the configuration of the water supply until she, or the Operations Director of the Green Square, contacted the wholesaler in 2016.

5. A technician then attended the property to carry out a supply check and found the leak in the annexe. The customer says that the meter was also located in the annexe. The company has not challenged this and, as there is no evidence to the contrary, I find that this is where the meter is to be found.

6. Following a repair to the leak on 3 August 2016, carried out with the consent of the owner of the annexe, the customer claimed a rebate from the wholesaler. By 6 September 2016, the bill totalled £1,381.55. On 23 March 2017, the customer told the wholesaler that the pub owner was willing to meet the payment of the bill but needed the bill to be transferred into its name. The wholesaler stated that this was a third party matter and the wholesaler could not get involved. The landlord of the pub then contacted the company to state that he was the owner of the annexe, however, he is recorded by the company as having said that the previous tenants were liable for the invoice and he could not chase the debt. The company owning the pub then contacted the company in December 2017, providing details of the previous tenants and confirming that the meter was located in the annexe and a long way from the customer's premises.

7. In March 2018, the company, as part of its stage 1 response to the customer's complaint, stated:

In cases where a supply pipe serves a single property, whether pipework is laid: under the highway; the property owner's land or land owned by someone else, responsibility for the pipe lays with the property owner. In this case the Green Square, as sole recipient is responsible for all pipework after the meter. Please see the below link to OFWAT's website which confirms the responsibility of pipework and leaks – https://www.ofwat.gov.uk/nonhouseholds/supply-and-standards/responsibility-supply-pipes/ This is a third-party dispute between yourself and the neighbouring premises. [ ] nor the Wholesaler will be able to get involved with this, and it is something that would need to be resolved amicably between yourselves.

8. The stage 2 response sent on 30 April 2018 does not say in terms whether the company considered that there was a supply to a single property or two properties, but instead deals with whether the customer can have a separate meter. It is notable that in its defence, the company states:

   On the 23rd March 2017, following an investigation on the account, we confirmed to Mrs [ ], that the property was on a shared supply, and that it was the responsibility of both properties to maintain or repair the private pipework after the meter.

9. There is an inconsistency, therefore, in the approach of the company as set out in the Stage 1 response and that set out in its defence. In the stage 1 reply, the company refers to the Green Square as "the sole recipient" of water, but the defence accepts that the supply of water has been to a bulk meter and the customer was one of two recipients of water. As a part of the customer's complaint concerns not only the leak allowance, but the fact that she is being held liable for a leak located on another property, this was a significant issue. That this was important is confirmed by the extract from the OFWAT guidance to which the company referred the customer. Although the guidance states that a supply pipe serving a single property is the responsibility of the property owner, a shared supply pipe serving more than one property, whether this is laid under land owned by any of the property owners served by the pipe or under land owned by someone else, is the joint responsibility of all property owners served by pipe.

10. This distinction could be material in this case, where the customer says that she has co-operation from the pub owners. I find that if the company had been willing to engage with the pub owners or to the tenants and issue a bill instead of treating it as a "third-party issue", it is at least possible that payment would have been made in full or in part by the pub owners, whether the pub owners were able to obtain reimbursement from their tenants or not. Had this happened

in April 2017, when the company took over responsibility for the supply of water, the bill owed in relation to the leak could have been significantly lower than it is now. It is notable that only in its defence has the company acknowledged that:

This property is on a shared supply with the derelict building, so the owner of the derelict building will share responsibility for the pipework with the [ ].

11. I have considered carefully, however, whether an average customer would reasonably have expected that the company would have issued a bill against the pub owner. On balance, I have concluded that it would not have been expected to have done so. I reach this conclusion for the following reasons:
    a. There is no indication that the pub owner has ever had a separate account for the water used at the property, so giving the impression that the customer was discharging the joint liability pursuant to underlying arrangements;
    b. There is no indication that, prior to the leak, the customer or any landlord or conveyancer, notified the water company that the site included two properties rather than merely one. This is not something that in the circumstances of this case the company could reasonably be expected to have known;
    c. The OFWAT guidance makes reference, not to "joint and several" liability to the company but to "joint" liability. While this may mean that the owners of both properties are liable to meet the bill, it would be for the bill-payers to arrange between themselves the shares in which payment should be made. The company would not, I find, therefore be in a position to raise an invoice for the full extent of the arrears of payment against the other owner.

12. I am mindful that, as is explained to the customer by the Consumer Council for Water, the practice of the industry is to set up an account with a person designated to deal with the shared meter. That person is then responsible for apportioning the bill in accordance with a third party agreement with the other users of the supply.

13. I find, nonetheless, that in dealing with the customer's complaint, an average customer would reasonably expect a water company correctly to identify whether there was a single supply to a sole recipient or a shared supply in its stage 1 response and to explain the consequences of this in a clear and transparent way. Having regard to the stage 1 and stage 2 letters, I find that this has not occurred and it is likely to have prolonged this dispute because the customer would not have felt able to place trust on the answer supplied. Nor, in the light of the manner in which the

issue between the customer and the neighbouring pub was described, would the customer have put on notice that she might have a right to request payment from the pub owner because the pub owner had a joint liability to the company. If the customer is correct that the owner of the pub is willing to acknowledge liability and pay the bill, the company's approach has been unduly harmful to the interests of the customer. It follows from the above that that I find that in explaining the effect of the meter and the land ownership to the customer and in its reasoning in relation to this issue, the company has fallen short of the standards that would reasonably be expected of it.

14. As for the leak allowance, the company says that the wholesaler's policy is not to give an allowance for water charges, but may consider an allowance against sewerage charges if the water wasted does not return to the sewer. I find that an average customer would expect the company to apply its policies in these circumstances and therefore the customer cannot succeed in a claim for any rebate of the water charges. As for the possibility of an allowance against sewerage charges, the company has explained that the approach taken by the wholesaler to this issue is that it alighted upon the customer's husband's explanation that the water was seen running down the nearby alleyway, checked the composition of the alleyway using Google and therefore concluded that all the water would have returned to the sewers in some way. The company has accepted and adopted that approach. In doing so, I find that the company has been willing to accept an approach to this issue which was unreasonably inexact. The fact that water was seen running in the alleyway may not fairly reflect the volume of water leaked. The pipe is described in the papers (correctly or otherwise) as having been in an underground location: which suggests that some of the leaked water would therefore reasonably have been expected to gone into the ground and not solely into the alleyway. There is no information available to me as to the precise location of the leak and no information that the wholesaler or the company undertook any survey of the property other than by the use of remote, publicly available, satellite photography in order to arrive at its conclusion that no allowance could be given. I find that the company would have been expected to have invited the wholesaler to provide a response that engaged more attention to detail before reaching the decision that the sewerage charge could not be rebated at least in part. I therefore find that the company did not supply its services to the standard that would reasonably be expected of it.

Redress

15. It follows from my findings above that, although the customer seeks a direction that the company should waive its charges relating to the leak, I am unable to give that direction. Nor can I give a

direction that the company shall also raise a bill against the owner of the pub. Whether or not the customer may have a right to raise a claim against the pub owner is not a matter in relation to which any finding can be made under the WATRS scheme because this issue is outside my jurisdiction. I have found, however, that the company has fallen short of the standards that would reasonably have been expected of it by incorrectly describing the customer's situation in the stage 1 letter and in failing sufficiently to scrutinise the wholesaler's reasons for failing to give a sewerage charge rebate.

16. I find that this has caused the customer uncertainty as to her situation and has also caused inconvenience and loss of a reasonable opportunity to benefit from a rebate of the sewerage charge. It would not be fair and reasonable to require an investigation of the likely leak now because of the passage of time.

17. The company's actions have not, however, been responsible for the significant increase in the customer's bill which was due to insufficiency of the direct debit payments. I find, nonetheless, that it would be fair and reasonable to assess a level of compensation that reflects both the loss of opportunity to receive a rebate of sewerage charges and the inconvenience caused by the stage 1 letter. I find, in all the circumstances of this case, that a fair and reasonable sum by way of rebate is £400.00.

Outcome

The company needs to take the following further action, apply a rebate of £400.00 to the customer's bill.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 January 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