

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1059

Date of Decision: 30 November 2018

Complaint

The customer states it received an extremely large bill and the company has not been sufficiently responsive to the customer's requests for assistance with the bill. The customer requests that a leakage allowance be applied to reduce the outstanding balance owed.

Defence

The company states that the customer has been billed correctly and that it requested a leakage allowance from the water wholesaler, but it was denied. It states that it has provided the customer with appropriate customer service, including providing it with compensation of £100.00 for acknowledged customer service failings.

Findings

The company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the timeliness of its notification to the customer that water usage was extremely high, and with respect to its representation of the customer to the water wholesaler regarding the customer's request for a leakage allowance.

Outcome

The company needs to take the following further action: It must pay the customer total compensation of £569.62. In addition, the customer is to be allowed to draft a message to the water wholesaler making its best case for a goodwill grant of a leakage allowance on the basis of the customer's status as a provider of education to children. The company must pass this message on to the company unaltered, and must convey to the customer the complete text of the water wholesaler's response.

The customer must reply by 3 January 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

The company's response is that:

- The company read the customer's meter on 1 March 2018 and the bill was produced on 15 March 2018. The company would expect the customer to have received that bill within 5 working days.
- From 1 March 2018 to 8 March 2018 the reading was awaiting validation as it was higher than normal.
- On 15 March 2018, the company called, emailed and wrote to customer to highlight the increase in consumption and give advice on next steps.
- While the company is only obligated to read the customer's meter twice a year, it is doing so every month.
- The February 2018 meter reading was estimated, as the company could not access the meter. However, this is the first estimated reading for the customer since 1 December 2015.
- That the February 2018 meter reading was estimated was detailed on the customer's bill and the customer was invited to provide a reading to produce a revised bill.
- The customer's March 2018 bill was for £4,377.62. The April 2018 bill was for £1,937.79. The £6,315.14 balance shown on the April 2018 bill is the total of the March 2018 and April 2018 bills.
- The company acknowledges that it failed to provide the customer with a referral for leak detection, but emphasises that it is not obligated to offer leak detection services itself, and that any provider to which it referred the customer would also have charged the customer.
- There is no basis for questioning the accuracy of the meter, as readings confirm that once the leaks at the customer's property were repaired, water usage returned to normal.
- The meter was only replaced due to condensation on the glass that impaired visibility, not due to any identified error.
- The company requested a leak allowance from the water wholesaler, but no allowance was given.
- The customer has been provided with compensation of £100.00 for customer service failings relating to requiring the customer to complete a form unnecessarily and not recommending a contractor to help with leak detection.
- The customer has been offered the option of repaying the amount owed over a 2-year period.
- The company believes that it has provided its services to the customer to the standard to be reasonably expected by the average person.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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

- The situation has caused significant distress and anxiety.
- The bill represents a hardship for the school and will require diverting resources from educating children.

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 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. It is acknowledged by both parties that the customer's water usage as reflected in the March and April 2018 bills reflects the existence of a leak. The customer acknowledges that leaks existed on its property, but argues that the size of those leaks cannot explain the substantial increase in water usage recorded. The water wholesaler has similarly expressed surprise that such high levels of water usage were not easily noticeable by the customer.
2. Nonetheless, it remains the case that no likely cause for the increased usage has been identified other than the leaks acknowledged by the customer. No additional leaks have been identified, and as argued by the company the customer's water usage returned to regular levels once the leaks in the customer's pipework were fixed.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

3. The customer has suggested that there might have been a malfunction in the original water meter, which was replaced but not tested. However, the water usage records produced by the company show clearly that water usage had already returned to normal levels before the water meter was replaced on 16 April 2018.
4. In many disputes, the evidence as to precisely what happened will be to some degree unclear, and the law addresses this uncertainty through what has come to be known as the “balance of probabilities” test. Under this test, the decision-maker must look at the evidence provided by the parties, and decide what is most likely to have happened based on that evidence. Importantly, this decision is only based on the evidence provided by the parties, and so is made with full knowledge that the evidence provided may in some way be misleading, or that there may be additional evidence that would justify a different conclusion. However, as a decision must be made, it must be made based on the evidence actually provided, not on the decision-maker’s unsupported speculations regarding what may or may not have happened.
5. In the present case, while questions certainly remain, the available evidence is significantly more consistent with a finding that the enhanced water usage recorded at the customer’s property resulted from the leaks in the customer’s pipework than it is with any other explanation.
6. Consequently, I find that the customer has been properly billed for water that was supplied to its premises, and so remains liable for the full amount of the March and April 2018 bills.
7. The customer also requests that a leak allowance be applied to reduce the size of the bill.
8. While there are clear ways in which the customer’s situation would seem to be highly appropriate for application of a leakage allowance, this decision is one that is ultimately made by the water wholesaler in accordance with its policies, rather than by the company. As the water wholesaler is a regulated entity, these policies must adhere to rules adopted by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
9. 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 policies, as this responsibility has been statutorily allocated to Ofwat.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

10. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may only examine whether the company and the water wholesaler have properly adhered to an approved policy, and may not evaluate whether that policy is reasonable or otherwise appropriate.
11. On the basis of the documentation provided, I find that in reaching its decision not to grant the customer a leakage allowance, the water wholesaler was acting in accordance with its stated leakage allowance policy.
12. The company's obligation was to represent the customer to the water wholesaler, and then communicate the latter's decision to the customer, and the record is clear that the company did ultimately fulfill this role.
13. Nonetheless, the company also bears a duty of care to the customer with respect to its interactions with the water wholesaler that arises from the opening of the water market. As the customer has no direct access to the water wholesaler, and must rely on the company as an intermediary, the company's duty of care to the customer means that the company must make reasonable efforts to represent the customer and obtain the customer's desired goal.
14. In other words, in the present context, the company was not merely a messaging service passing on to the water wholesaler the customer's request for a leakage allowance, but was obligated to make a reasonable effort to present to the water wholesaler the customer's best case for such an allowance.
15. In this respect, however, I find that the company failed to provide its services to the company to the standard to be reasonably expected by the average person. The company not only failed to present the customer's request for a leakage allowance to the water wholesaler until it was pressed to do so by the Consumer Council for Water, but when it did ultimately contact the water wholesaler it failed to make a reasonable effort of representing the customer. Instead, it repeatedly emphasised to the water wholesaler that it did not believe the customer was entitled to a leakage allowance and that it was making the request simply because it had been pushed to do so by the Consumer Council for Water. Indeed, in the emails recording the company's exchange with the water wholesaler on this issue, the water wholesaler makes a stronger effort to consider the customer's case than does the company, noting that "The leak consumption is

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

very high and surprised there was no internal flooding” – a suggestion on which the company failed to follow up.

16. In addition, the company failed to accurately reflect the customer’s request, which emphasised the customer’s status as a provider of education to children. While this would not formally obligate the water wholesaler to provide a leakage allowance to the customer, it is a factor the water wholesaler may have taken into account in deciding whether to grant a leakage allowance as a matter of goodwill.
17. I find, therefore, that the company breached its duty of care to the customer through inadequate representation of the customer in its interactions with the water wholesaler regarding the customer’s request for a leakage allowance.
18. Nonetheless, while the company breached its duty of care to the customer in this respect, I find that even with appropriate representation the customer was not formally entitled to be granted a leakage allowance by the company. As a result, the compensation to be awarded to the customer for the company’s breach is appropriately reduced.
19. Consequently, the company must pay the customer compensation of £100.00 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.
20. In addition, given the company’s prior failure to accurately and fully represent the customer in its petition to the water wholesaler, I order that the customer be allowed to draft a message to the water wholesaler making its best case for a goodwill grant of a leakage allowance on the basis of the customer’s status as a provider of education to children. The company must pass this message on to the company unaltered, and must convey to the customer the complete text of the water wholesaler’s response.
21. The customer has also emphasised that it was not immediately notified by the company of the enhanced water usage, and that this resulted in a larger bill being incurred.
22. The company has argued that it reads the customer’s water meter more often than it is required to do, and that if it only adhered to its obligations the customer would not have been notified of the leak for an even longer period. This is true, but is not relevant to the question of whether the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

customer was notified sufficiently quickly once the company had information indicating the existence of a water leak.

23. The company read the customer's water meter on 1 March 2018 and has reasonably explained that it then undertook a validation process that lasted until 8 March 2018.
24. However, the company has not sufficiently justified the additional delay that then occurred from 8 March 2018 until 15 March 2018, the date on which it notified the customer of the likely presence of a substantial leak. I find that this additional 7 day delay, which occurred after the company had received "validation" of a substantial increase in water usage at the customer's property, constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.
25. The records produced by the company indicate that in this period the customer was consuming between 38.86 and 24.32 cubic meters of water per day, or an average of 31.59, billed at 224.83p. By contrast, in the four months prior to this period the customer was consuming an average of 1.75 cubic meters of water per day. As a result, I find for the purposes of this calculation that the customer was consuming an extra 29.84 cubic meters of water per day, billed at 224.83p, or £469.62 for a 7 day period.
26. Consequently, the company must pay the customer compensation of £469.62 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.
27. For the reasons given above, the company must pay the customer total compensation of £569.62. In addition, the customer is to be allowed to draft a message to the water wholesaler making its best case for a goodwill grant of a leakage allowance on the basis of the customer's status as a provider of education to children. The company must pass this message on to the company unaltered, and must convey to the customer the complete text of the water wholesaler's response.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

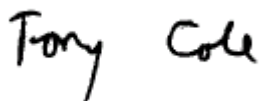
Outcome

The company needs to take the following further action:

It must pay the customer total compensation of £569.62. In addition, the customer is to be allowed to draft a message to the water wholesaler making its best case for a goodwill grant of a leakage allowance on the basis of the customer's status as a provider of education to children. The company must pass this message on to the company unaltered, and must convey to the customer the complete text of the water wholesaler's response.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 3 January 2019 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 days 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.



Tony Cole, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.