WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0819

Date of Decision: 6 August 2018

Complaint

The customer discovered a leak on their internal pipework. Repairs were organised and completed by the end of April 2017. Once the customer realised the level of charges they had incurred as a result of the leak, they put in a leakage allowance request. However, the request was rejected because their claim had not been submitted within six weeks of the leak being repaired ("the Six-Week Time Limit"). Neither the company nor the wholesaler had warned them about Six-Week Time Limit. The customer seeks a refund of the lost water and excess sewerage charges that they have incurred. They estimate their loss in this respect to be approximately £4,750.00.

Defence

The company does not consider that it is liable for the refund claimed. It only became aware of the leak and the repairs in August 2017, i.e. after the Six-Week Time Limit had already expired. As a retailer, the company is not responsible for assessing or calculating leakage allowance claims; it simply applies an allowance should the wholesaler grant one. It did, however, challenge the wholesaler's on the customer's behalf. Unfortunately, the wholesaler would not change its decision.

No offer of settlement has been made.

Findings

There was no service failing on the company's part in not informing the customer (prior to August 2017) about the Six-Week Time Limit. By challenging the Wholesaler on its decision on the leakage allowance, the company satisfactorily discharged the duty that it owed to the customer in this respect.

Outcome

The company does not need to take any further action.

The customer must reply by 4 September 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 6 August 2018

Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- During the week of 3 April 2017, the nursery adjacent to the customer's property advised that there was a water leak and that the nursery's soft play area was getting an increasingly large puddle of water on it. The nursery thought that the leak was coming from the customer's supply ("the Leak").
- The Leak was reported to [ ] ("the Wholesaler") and the Wholesaler attended at the property and turned off the supply.
- After a few days – and once the area had dried out – the Wholesaler came back to check the situation. When the supply was turned back on, a large damp patch started to appear within 20 minutes in the same location. The supply was turned off again straight away.
- Repair work started on 12 April 2017. There was a delay of a few days. There were problems accessing materials. Also, this period spanned the Easter Bank holiday. The supply was diverted so that it was now on the customer's own property. The works were dealt with as efficiently as they could be.
- The repair of the Leak was completed (with trenches backfilled and everything being useable again) by 26 April 2017.
- The customer requested and waited for the next water bill to arrive before they started to pursue any claim for a leak allowance. They wanted to get some accurate readings because they had no paperwork at that point.

- Once they realised the sheer volume and expense of the water that had been lost because of the Leak, they found the necessary forms online and put in a claim. The form was sent in on 22 August 2017.
- A short time thereafter, the company made contact to say that the leak allowance application had been rejected. This was because their claim form had not been submitted within the Six-Week Time Limit.
- However, they had no prior knowledge of the Six-Week Time Limit. Neither the company nor the Wholesaler had ever informed them about this rule. They most definitely would have claimed within the six weeks had they known.
- In view of its importance, it is argued that the Wholesaler or the company must have been under a duty to advise the customer about the existence of the Six-Week Time Limit. This is particularly so in circumstances where one of the Wholesaler's engineers came back to check the repair work when it was completed. Therefore, the Wholesaler had been aware that the Leak had occurred. The job number that the customer was given in this respect was 535[ ].
- On the basis that they were never told about the Six-Week Time Limit, they seek a refund of the lost water and excess sewerage charges that they have incurred. They estimate their loss in this respect to be approximately £4,750.00.

The company's response is that:

- It would like, first of all, to clarify its responsibilities as the retailer in this instance. It is responsible for billing, arranging meter reads and handling customer service for water and sewerage consumption. This includes applying to the Wholesaler for leakage allowances and reporting the Wholesaler's decision back to the customer.
- The leakage allowance policy is owned by the Wholesaler and is part of the Wholesaler's Charges Scheme. Through its position as retailer, the company is not responsible for assessing or calculating leakage allowance claims. It simply applies an allowance should the Wholesaler grant one.
- The company will, however, ensure that it challenges the Wholesaler if it believes that the customer is entitled to receive an allowance. Just such a challenge was raised on the customer's behalf in this case.
- The first that the company heard about this matter was a phone call from the customer on 11 August 2017. The customer was calling to ask for an up-to-date bill. The company issued the updated bill on 15 August 2017.
- Prior to that, however, the company's records confirm that bill number 80426[ ] had been

issued to the customer on 7 June 2017 ("the June Bill"). The June Bill was significantly higher than normal. The average daily consumption was shown at a high of 8.71m^3 per day.

- The June Bill should have provided the customer with enough information to realise that their charges had increased significantly. The Leak had only been repaired a couple of months previously.
- A leakage allowance claim form (Form H01) was emailed to the customer on 21 August 2017. The completed form was then returned to the company on 22 August 2017. After trying to reach them by phone, on 30 August 2017, the company emailed the customer to advise that, unfortunately, the Wholesaler had rejected the claim for leak allowance. This was due to the claim having been made after the expiry of the Six-Week Time Limit.
- During November and December 2017, the company had numerous exchanges with the customer. It was exploring with the customer whether they had evidence of further communications that might help the company to press the Wholesaler to reconsider its decision on the leakage allowance.
- The company also challenged the Wholesaler specifically on why no one had informed the customer about the Six-Week Time Limit.
- The Wholesaler, however, would not change its stance.
- For its part, the company has followed the correct process when handling this complaint in relation to the rejected leakage allowance. The first contact from the customer – regarding the Leak – did not come until nearly four months after the repair had been completed. Notwithstanding this, it believes that it has done all it can to support the customer in this case.
- In conclusion, the company does not consider that it should be directed to provide the customer with the allowance or refund, which was declined by the Wholesaler.

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 should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove their case on the balance of probability.

2. I should also mention that I have had the benefit of reading the customer's comments, dated 24 July 2018, in response to the company's defence ("Comments").

3. I accept the explanation that the company gives at the start of its defence about its responsibilities vis-à-vis those of the Wholesaler. It is correct, I find, that:
    a. the leakage allowance policy is 'owned' by the Wholesaler; and
    b. the company has no responsibility for assessing or calculating leakage allowance claims; and
    c. the question of whether an allowance should be granted is entirely one for the Wholesaler.

4. This case is focused on whether the customer should have been told about the Six-Week Time Limit. I am satisfied that the customer was not in fact aware of the Six-Week Time Limit before the end of August 2017.

5. I also accept the company's submission that it did not know that the Leak had occurred until August 2017 (that is to say, only after the Six-Week Time Limit had already expired).

6. I have considered whether the company was under an obligation to publicise the Six-Week Time Limit to its customer-base generally. I have concluded that it probably was not under any such obligation. It seems to me that – in connection with a possible allowance for charges incurred by a leak – customers will normally make contact with the company:
    a. soon after receiving an unexpectedly high bill (which would trigger a search for the leak); or
    b. soon after attending to repairs.

7. In the ordinary run of things, it seems likely to me that most customers would be receiving the company's '*Facts about Leakage Allowance'* sheet long before the Six-Week Time Limit runs out.

8. I regard it as a rather unusual feature of the present case that the occurrence of the Leak did not come to the company's attention until nearly four months after the repair had been completed. There is no evidence to suggest that the customer contacted the company before this point. I am unable to find that the company had an active duty to seek out or 'discover' leaks in this respect. Rather, it seems to me, the company has/had to rely on being informed about leaks by its customers or by other third parties.

9. Whilst quite understanding the frustration that the customer may feel at such a situation, I am not persuaded, therefore, that there was any service failing by the company in not informing the customer (prior to August 2017) about the Six-Week Time Limit.

10. As the company acknowledges, one of its obligations is to challenge the Wholesaler where it is considered that a customer should be receiving an allowance (but the Wholesaler is declining to grant one).

11. On this aspect, I have read the customer's email to the company of 24 November 2017. In that email, the customer is clearly expressing their disappointment at not being told about the Six-Week Time Limit. This was all the more dismaying, the customer implies, because the Wholesaler was aware that the Leak had occurred and indeed "… *an engineer came back to check the [repair] work when it was completed … the job number was 535[ ]* …"

12. The company's reply was emailed to the customer on 7 December 2017. The company appears to have thought that the customer had a good point on this. The reply said:

> "… *This 'new world' post market opening unfortunately had made us as a retailer (Anglian Water Business) powerless when it comes to a wholesaler's … policy on allowances. Thank you for taking the time to provide me with more background information on what exactly happened at the time. Armed with this information, I've just got off the phone to [the Wholesaler] and challenged their decision in declining … an allowance. They are in agreement that the fact a job was raised (job number 535[ ] as quoted in your email) does suggest that [the Wholesaler] would've had a duty to perhaps advise you on what the process is moving forward. (i.e. explain about the leakage allowance claiming process) due to them being aware of there being an issue on site.*

They have advised this will need investigating further, in order for them to make their final decision on the matter … I am therefore going to escalate a case in writing directly to [the Wholesaler] and await their response …"

13. I am satisfied that the company did indeed escalate the matter on 7 December 2017, as it stated it would.

14. I note the response that then came back. The Wholesaler maintained that it "… *wouldn't speak to the end user customer about the leakage allowance policy. This responsibility lies with the retailer … [the Wholesaler does not] have a leakage allowance agreement with the end user customer. The agreement detailed in our wholesaler charges scheme is with the retailer and therefore we would not have the information required to discuss the policy the retailer passes on to their end user customer …*"

15. The Wholesaler's response does not strike me as a very satisfactory one. If a Wholesaler is on site and knows that a customer has experienced a leak (and knows too that the customer has just carried out a repair), it is not much of a stretch for the Wholesaler to appreciate that the customer might be eligible for a leak allowance. The Wholesaler must also be taken to know its own policy. Against this backdrop, it seems to me that it would be incumbent on the Wholesaler to warn or alert the customer to the fact that their right to claim could be lost if they did not submit their form within the Six-Week Time Limit. It cannot safely be left to the retailer to explain this process to the customer because (exactly as happened in this case), the retailer might not necessarily know that the leak had occurred.

16. I am satisfied (and find), however, that the company's efforts to press the point were supportive and sufficient. The company did take up the argument with the Wholesaler on the customer's behalf. I do not consider that the company could reasonably have been expected to continue pushing. The Wholesaler, it seems to me, was not going to change its decision.

17. For the reasons above, I cannot find any failure on the part of the company in the provision of its services in this matter. My conclusions are that:
    a. the company could not reasonably have been expected to inform the customer (prior to August 2017) about the Six-Week Time Limit; and
    b. by challenging the Wholesaler on its decision about the leakage allowance, the company discharged the duty that it owed to the customer in that particular respect.

18. The customer's complaint, therefore, 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.
- The customer must reply by 4 September 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.

Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator