

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1251

Date of Decision: 3 May 2019

Complaint

The customer complains that in 2011 he experienced a leak to his premises from an asset of the supplier, now a wholesaler. He was paid monies by a loss adjuster in 2016 in relation to the damage but he also required the wholesaler to waive all or part of his bills and he required to see a copy of the survey report obtained by the wholesaler or loss adjuster. He refused to pay the bills and the company is seeking to enforce payment, notwithstanding that he is still experiencing seepage. The customer also complains that the company has twice placed the claim in the hands of debt collectors while under investigation by the Consumer Council for Water and he has not received a guaranteed service standard payment. He seeks provision of a copy of the surveyor's report and to cease claiming the outstanding bills or part of these.

Defence

The company says that on the opening of the retail water market it acquired responsibility for billing and it must raise the bills imposed by the wholesaler, which, after investigation, have been found not to have been waived. The customer is therefore liable to pay the amount claimed. It was an error to place the customer's account in the hands of debt collectors and it has reversed all fees charged and made a £20.00 guaranteed service standard payment.

Findings

The company has adequately investigated the matters arising between 2011 and 2016 and found that the settlement did not include waiver of the bills. Moreover, the company cannot compel the wholesaler to disclose the survey report. An average customer would not therefore expect the company to waive the historic bills now. In September 2017, however, the customer complained to the company that there is still a seepage and asked for an inspection. The company has not taken the steps that would reasonably be expected to ensure that action has been taken, which means that the current complaint has remained unresolved and the company has only made one guaranteed service standards payment despite there being two incidents.

Outcome

The company needs to take the following further action: (1) Take all necessary steps to ensure that the wholesaler is informed of and investigates the customer's contention that there is a current leak from the company's assets into his cellar; and (2) pay compensation of £162.50.

The customer must reply by 4 June 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 3 May 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer says that when his account was previously with [], the wholesaler, he had a lengthy complaint regarding flooding and seepage that affected his business. The wholesaler's insurers settled the customer's claim at the time. As part of his claim, the customer had requested that his balance be waived but this has not been done and the account has built up so that there is a large outstanding balance of more than £2,000.00. The customer is unhappy that the outstanding balance has been passed to a debt collection agency.
- The wholesaler says that the matter has been settled by its insurers and therefore they will not reopen the customer's complaint. The wholesaler considers that the customer's balance is outstanding and payable.
- The customer also says that the seepage has continued since his claim was settled and complains that the wholesaler did not release a copy of its surveyor's report to the customer, but instead they argue that this is a privileged document.
- While the Consumer Council for Water (CCWater) was investigating the complaint, the company on two occasions erroneously removed the debt recovery hold on his account and debt recovery charges and interest were added.
- Although these charges of £115.00 were removed after the intervention of CCWater, the company declined to award a gesture of goodwill for the errors and also declined to grant a gesture of goodwill for its customer service failures. The customer would like the company to of his outstanding balance
- The customer seeks:

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- Provision of a copy of the surveyor's report; and
- Discharge of the outstanding balance.

The company's response is that:

- This complaint refers to waste water flooding at the customer's business in 2011 and the disputed outstanding balance of £2,220.15 comprises unpaid invoices dating back to August 2011.
- The claim for damage by flooding was settled by the wholesaler's loss adjuster, [], in May 2016 by an agreement with the customer and payment by cheque of £13,941.00.
- When the non-household market opened in England and Wales in April 2017, the company took over the customer's account from the wholesaler, meaning that the unpaid invoices were assigned and the debt was then owed to the company as the retailer.
- The customer has not paid any invoices that have been produced since the non-household market opened two years ago, therefore the outstanding balance has reached £2,220.15.
- As retailer, the company has ensured that contact has been made with the wholesaler and it has requested that their loss adjustor [] look into the customer's claim. The wholesaler's loss adjuster has confirmed that the claim was agreed and settled with payment of a cheque for the amount quoted above. Accordingly, the company asserts that it has done everything appropriate to assist because the issues in question arose before the opening of the retail water market and have been the subject of a settlement.
- The company has also conducted a full review of the account and history and checked the guaranteed service standard (GSS) payments to the account; to date £20.00 GSS has been applied to the account.

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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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. The customer raises the following matters about which he is concerned:

- The claim by the company for the outstanding bill balance;
- Continuing seepage of sewage into his premises;
- Failure to cease debt recovery action while his claim was under investigation;
- Failure to make goodwill payments.

I deal with each of these in turn.

2. The background to the customer's claim is that in 2011, before the opening of the retail water market, the customer was supplied directly by the water and sewerage undertaker that is now a water wholesaler. For ease of reference, I refer to that undertaker as "the wholesaler". The customer says that his premises became damp; investigating this was subject to delay and took a very long time; he was then informed by the wholesaler that the problem was due to a collapsed drain near his premises; although the surveyor appointed by the wholesaler said that the customer would see the survey report about the drain, the wholesaler refused to permit this; the settlement was handled by the wholesaler's loss adjusters; the settlement was not arrived at for nearly five years; and he felt "bullied" into accepting the settlement offered, which was to pay for repairs to his walls, loss of stock and damage to his fixtures and fittings. The customer further says that throughout this process he was not willing to make payments to the wholesaler and he required the bills to be cancelled as part of this settlement process but the wholesaler has not done so.

3. The customer is worried and distressed that the company is claiming water bills for the period of the dispute with the wholesaler and contends that he is not liable for these.

4. In considering the customer's claim, I am mindful that, following the opening of the non-household market in April 2017, retail water companies have direct contractual relationships with

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customers whereas wholesalers do not. The retail companies are nonetheless liable for billing, including billing for sums that remain unpaid prior to April 2017. As is explained by the company in this case, if the retail companies do not bill the customers, they will be liable to the wholesalers for this failure. I also bear in mind that the retail water companies are not directly liable for a failure by the wholesaler to meet expected standards and nor could any such finding be made in this adjudication because the wholesaler is not a party to the dispute. Nonetheless, I am also mindful that, within their customer service role, retail water companies are obligated to liaise with wholesalers to ensure as far as possible that customer complaints are correctly addressed by retailers. I approach the matters in issue between the parties taking these considerations into account.

Claim for the outstanding balance

5. The company's records show that the customer raised an objection to the claim for an alleged outstanding bill of more than £2,000.00 in September 2017. Subsequent correspondence with CCWater makes clear that £2,195.85 of this bill comprised "take-on" invoices, namely those transferred to the company upon the opening of the non-household retail market and a small proportion related to services provided subsequently by the company. In correspondence with the company in September 2017, the customer referred to the matters stated above and said that the burst drain that had leaked for more than one year before it was mended. On 19 September 2017, the company responded to the customer stating that they would investigate the situation with the wholesaler and in the meantime would place a hold on the customer's account. The company said:

Now we here at [] (RST) are your retailer, meaning we are responsible for billing you. So the outstanding amount due is owed to us here at RST. However, you've explained of your issued caused by PQR which has been ongoing for many years now. I will therefore be raising a complaint case directly to PQR and request they send someone out to look at the state your property has been left in. I will also request they investigate to see what happened with their insurer – [] and the copy of the survey you requested as well as asking the question on whether they'd be happy to cover some of the outstanding amount owed to us due to the issues.

6. On 10 May 2018, the customer raised the matter again. He said that his complaint had been closed without being resolved. The company agreed to re-open the case and would contact him.

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On 11 June 2018, the customer again complained. He said that the company had taken debt recovery action, again, without having addressed his complaint. The company responded, and said that it would put a hold on the account until 9 July 2018 while it investigated this.

7. On the same date, a letter was sent to the customer stating:

I have been passed your email below by our client [PQR] in relation to your comments raised regarding the claim presented by yourself a few years ago. I understand you are wishing to dispute the water bill presented by our client. We will be unable to comment in this regard and I understand their billing team will contact you separately to discuss this. With regards to your points I can confirm that we understand the claim has been settled via our loss adjusters, The [] Group, and that settlement was agreed with you.

I note the damp issues you are experiencing.

From the information we have on file I understand that the basement at your property is not tanked and does not have any recognised damp protection system in place.

This would explain the damp issues you are currently experiencing as any residual water from the incident in question would have either seeped away or dried out by now.

Therefore I'd recommend the installation of tanking or another damp proof system to alleviate this issue for you but as this is not being caused by our client, we will not be offering any compensation for this element and unable to send anyone to assess the damp as well.

Your email also states you wish to have a copy of the surveyors report provided by [] that was taken at your property.

We will be unable to provide you with a copy of this report as it is a privileged document and the property of our client. I can assure you that the report did not indicate any damage other than water damage which will have been included in the settlement offer made to you by The [] Group.

While I appreciate the issues you faced due to the incident we feel you have been paid adequate compensation for the incident and we consider the matter closed.

This letter appears to have been sent by the wholesaler's loss adjuster, although this is not fully clear from the defence.

8. The company then obtained the account notes from the wholesaler. These followed the dispute through, including various entries that show the customer was given a credit in 2011 of £258.31 in relation to the ingress of waste water. The customer stated repeatedly that he was refusing to pay his bill, as well as that he wished to see the survey report that had been commissioned either by the loss adjuster or the wholesaler, which the wholesaler indicated showed the

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problem had not been a collapsed drain but an old connection that had needed to be capped. When the loss adjusters sent a cheque to the customer in 2016, an entry in the wholesaler's notes dated 12 May 2016 stated:

Mr [] is still disputing the balance, while he had received a compensation cheque today, he does not feel it is adequate and will not accept this and consequently will still not pay his [PQR] bill.

A further entry on the same date said:

Spoke to Mr [] who has several concerns over his claim. He has received a cheque for £13,941.00 which is what he has agreed to however he won't bank this until he has confirmation that his belongings in storage will be returned to him and is wanting a copy of the survey done at the property for his records. He is also wanting the arrears on his account written off due to the time taken to handle his claim.

9. On 11 September 2018, the company again approached the wholesaler. The wholesaler said:

We have reviewed the complaint and can confirm that the £13,941.00 was for full and final settlement, there are no further monies to be returned to Mr [] from PQR Wholesale. The date in which Mr [] received the cheque for this amount was 12th May 2016.

There has been no additional issues reported to PQR in relation to sewer problems and no work is outstanding, if Mr [] has a new issue then we suggest it is reported to PQR as soon as possible for further investigation.

10. It is notable also that the customer describes himself as feeling “forced into accepting the compensation”, even when he was still not satisfied about the outstanding bill because of the time frame involved. I find that this interpretation of events is consistent with the wholesaler's assertion that the customer did agree to accept the compensation in settlement, even though he was not in reality happy to do so. This, I find, is consistent with the wholesaler's assertion that payment was made in full and final settlement. It follows, I find, that it is not now open to the customer to reopen this issue against the company.

11. Even if, however, the receipt of payment from the loss adjuster was not in full and final settlement of the customer's claim against the wholesaler, I find that, taking into account the limited role that the company can perform as retailer in relation to a dispute that arose prior to April 2017, and also bearing in mind that the company has an ongoing responsibility for billing, including for unpaid accounts prior to April 2017, the company was required to bill the customer and in taking up his complaints with the wholesaler, the company has discharged its

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responsibilities and is not in a position to take further action. Nor, I find, is the company in a position to compel either the wholesaler or the loss adjuster to disclose the survey report that it received and I do not make that direction. It follows, I find, that the customer has not proved that the company failed to provide its services to the standard that would reasonably be expected of it.

Continuing ingress of waste water

12. The customer has submitted some photographic images that appear to show signs of damp above a tiled floor and tiled skirting. The photographs are not dated and it is not possible to ascertain, without knowing the premises in question, where or when these images were taken. The photographs do not show the source of the damp.
13. However, it is notable that the customer complained to the company on 5 September 2017 that the issue in his property still had not been fixed as, despite his having used the compensation paid for repair work to his cellar, damp in the bottom of the cellar has reappeared and this has affected staff and customers as well as himself. On 10 September 2017, the customer asked the company to send someone to inspect. The customer had therefore complained at that point in 2017 that the wholesaler's assets were causing damp to penetrate his cellar. This was a matter that, I find, needed to be referred to the wholesaler so that the wholesaler could investigate.
14. Although the loss adjuster's letter of 11 June 2017 states that the cause of damp in the property is currently due to an absence of damp proofing or tanking, it is not clear on what the basis the loss adjuster has felt able to reject the idea that there might be a continuing leak. No reference has been made to any recent inspection either by the loss adjuster or by the wholesaler. Moreover, the defence document states:

[PQR] have confirmed that should Mr [] be experiencing any new issues relating to sewerage flooding, contact should be made so they can investigate further. To date Mr [] has not reported any new issues, only referring to an old issue which has already been settled.

This assertion is inconsistent with the customer's complaint to the company that the problem is continuing in 2017 and 2018 that he is still experiencing damp that he believes has come from the company's assets. I find that the fact that the company has accepted this assertion and, indeed, relied on it to defend the customer's claim, indicates that the company has not liaised effectively with the wholesaler to make clear that further investigation is required. I find that an average customer of a water retailer would expect a company to ensure that the wholesaler

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should address a complaint about a continuing leak, or at least gave the customer timely information about how to make a direct complaint to the wholesaler. This does not appear to have occurred and I find that the company has fallen short of the standards that would reasonably be expected of it in this regard.

Debt recovery

15. It is acknowledged by the company that on two occasions, despite having indicated to the customer that it would hold debt collection activities while the complaint process continued, this has not occurred and the company has tried to reclaim the disputed debt by placing this with a debt collection agency. The company has informed CCWater and the customer that this was an error. I find that making an active claim for payment in circumstances where it has said that it would not do so, and without due notice, was a failure by the company to supply its services to the standard that would reasonably be expected.

Goodwill payments

16. The company has explained that in order to rectify this error, it paid the £115.00 fee to have account removed from the control of the debt collection agency and, due to the error mentioned within appendix 2 failures and corrective actions, the company has apologised and applied a £20.00 credit to the customer's account under its guaranteed service standard (GSS) scheme. I find that, this problem having arisen on two occasions, an average customer would reasonably expect the company to have applied a GSS payment on two occasions. In making this payment only once, I find that the company has not supplied its services to the standard that would reasonably be expected.

Redress

Although I find that the customer does not succeed in relation to the historic situation, I have also found that the company has not supplied the expected service standard in relation to his concern that he is still experiencing leaks and has not made two GSS payments. The company also says that the amount outstanding is now £2,220.15 of which £509.74 are bills that have arisen since the opening of the retail market. The precise amount that is attributable to waste water issues is not explained, but, taking into account that the company has, by reason of inaction, permitted the customer's concern about current leakage to continue without investigation for approximately two years since taking control of his account, and bearing in mind also the inconvenience, frustration and distress that this has caused to the customer and his clients, I find that it is fair and reasonable to direct that the company shall compensate the

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customer at a rate of £7.50 per month for nineteen months, namely £142.50. In addition, I find that the company should make a further GSS payment of £20.00.

17. I find that it is fair and reasonable, therefore, to direct:

- a. That the company shall take all necessary steps to ensure that the wholesaler is informed of and investigates the customer's contention that there is a current leak from the company's assets into his cellar; and
- b. The company shall make an compensation payment of £162.50.

Outcome

The company needs to take the following further actions:

- Take all necessary steps to ensure that the wholesaler is informed of and investigates the customer's contention that there is a current leak from the company's assets into his cellar; and
- Pay compensation of £162.50.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 June 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 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.

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Claire Andrews, Barrister, FCI Arb

Adjudicator

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