

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1283

Date of Decision: 6 March 2019

Complaint

The customer submits that the company has been charging her for two neighbouring properties' water supplies for decades without her knowledge. She was unaware that these properties shared her supply and were incorporated into her bills. The company knew the properties were on a shared supply but failed to pass the information on to her or seek her agreement to be the bill payer for the shared supply. The company are stating that the matter is a private issue and are refusing to offer her proper redress. Up until the Consumer Council for Water (CCW) became involved the company said that the only alternatives to resolve the matter were for her to arrange for contributions from the neighbours or for the properties to separate the supplies at their own cost. The company did not mention, at any point, the simple solution of each property being separately billed through an Assessed Measured Charge tariff (AMC). This was put in place in 2018 but could have been arranged at least in 2012. The customer requests compensation in the sum total of £6,597.86.

Defence

The company submits that it is only responsible for the public water mains network and consequently alterations carried out to private supply pipes beyond the public water mains are outside of its knowledge. It is also reasonable to assume that upon conveyance of the land and property to the customer, the normal searches would have been undertaken concerning the water supply configuration that advised, or ought to have advised, any purchasers of the joint service. It has on a number of occasions suggested that it would be prepared to discuss the separation of the private service and recover the expenses reasonably incurred in doing so from all parties. However, at the present time there appears to be no appetite from the occupiers of the various properties for this. It has at all times acted within its statutory powers as stated in section 26 of its Charges Scheme by charging the customer on a joint and several liability basis. It was under no obligation to propose the AMC as a resolution or to backdate it. No offer of settlement was made.

Findings

I can appreciate the difficulty of the situation for the customer. However, no evidence has been submitted to this adjudication to show that it was the company's responsibility to inform the customer that her property was on a joint

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supply. The company is legally only responsible for the water main and the communication pipe from the water main to the boundary of a property. Under Section 143 of the Water Industry 1991 Act, the company is entitled to make a Charges Scheme that fixes the terms and charges for any services provided by the undertaker in the course of carrying out its functions. Section 26 of the company's Charges Scheme 2018/2019 supports the company's submission that where a metered connection supplies more than one property, each customer will be held jointly and severally liable for charges. Being jointly and severally liable means that customers on a shared supply are jointly liable to pay charges equally. However, if one or more customers fail to pay their share, the other customer(s) are legally solely responsible to pay the entire amount of the debt. There is no evidence to show that the company required the consent of the customer to be billed for the shared supply. Under section 26 of the Charges Scheme, the company has the discretion to choose how it will charge for a joint supply. Further, in view of the Charges Scheme, there was no obligation on the company to propose the AMC tariff as a resolution or backdate it to 2012. I acknowledge the customer has been paying the charges for all three properties, and I can appreciate the difficulty of the situation for the customer. However, in view of the company's Charges Scheme, I accept the company's submission that in billing the customer solely for the charges it has acted within its statutory powers. I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, my remit is limited to determining whether the company has acted in accordance with its Charges Scheme and the evidence confirms that the company has fulfilled its obligations.

Outcome

The company does not need to take any further action.

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

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ADJUDICATOR'S DECISION

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Date of Decision: 6 March 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The company has been charging her for two neighbouring properties' water supplies for decades without her knowledge. She was unaware that these properties shared her supply and were incorporated into her bills. She found out in 2012 by chance that one property, Green Cottage, shared the supply and she raised a complaint with the company in 2012.
- Then on 4 July 2014, during one of her many phone calls to the company while still trying to have the situation resolved, she was informed that not only was Green Cottage was on the supply and bill, but Red House was too.
- This proves that the company knew that there were other properties on her supply.
- Further proof that the company knew of the sharers is that it wrote to the then owner of Red House on 7 October 14 confirming that Green Cottage and Red House shared her supply, which would not have been possible without it having the information on its records.
- How and when the shared supply historically came about is unknown but the company obviously knew about the sharers before she did and failed to pass the information on to her or seek her agreement to be the bill payers for the shared supply.
- The company are stating that the matter is a private issue and are refusing to offer her proper redress.
- Up until the Consumer Council for Water (CCW) became involved the company said that the only alternatives to resolve the matter were for her to arrange for contributions from the neighbours or to separate the supplies at their own cost.

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- Contributions were impossible to arrange with the owner of Green Cottage. The owner has also refused to pay for a new water connection to her property. The owner of Red House agreed to pay for her share but has since sold White Cottage, and no payments were received.
- The company did not mention, at any point, the very simple solution of each property being separately billed through an Assessed Measured Charge tariff (AMC). This was put in place in 2018 and means that the properties are paying for their own water. This could have been arranged at least in 2012, when she first complained.
- The company sent her bills without telling her that they included charges for other properties and caused her substantial financial loss and years of extreme stress.
- The customer requests compensation in the sum total of £6,597.86.

The company's response is that:

- It is often the case that water supplies in rural areas become repurposed either with or without the consent of the original consumer. This typically occurs when land is sold and property redeveloped. Such activities may be historical with previous land owners. It is only responsible for the public water mains network and consequently alterations carried out to private supply pipes beyond the public water mains are outside of its knowledge.
- It is also reasonable to assume that upon conveyance of the land and property to the customer, the normal searches would have been undertaken concerning the water supply configuration that advised, or ought to have advised, any purchasers of the joint service.
- It accepts that statutory powers exist to enforce renewal and provide independent supplies in line with the Water Industry Act 1991 section 64(2); however, Ofwat determinations have indicated that those powers are applicable in only very limited circumstances.
- It has on a number of occasions suggested that it would be prepared to discuss the separation and renewal of the private service and recover the expenses reasonably incurred in doing so from all parties. Whilst no formal evaluation of these costs has taken place, prior experience suggests that these costs could be in excess of £20,000 and at the present time there appears to be no appetite from the occupiers of the various properties for this. No formal consideration has therefore yet been given to enforcing its statutory powers upon the parties in this way.
- Its charging powers are set out in section 142(4) of the Water Industry Act 1991. It has at all times acted within its statutory powers as stated in section 26 of its Charges Scheme by charging the customer on a joint and several liability basis.
- In June 2018, following an error that caused the customer's property to be incorrectly placed in the non-household retail market, it took the opportunity to review its stance and propose a

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temporary solution to allow all parties to have some resolution. Part of this package was to alleviate 1 year's charges entirely due to the market placement error and to substantially remove a further year's charges by backdating an AMC tariff to April 2016.

- Although this highly unusual offer of assistance does present some risk to it in terms of revenue and leakage, it has been done in an effort to facilitate a resolution. This was in recognition of the fact that the parties on the shared supply were at an impasse and any other method was unlikely to present itself in the foreseeable future. As it was under no obligation to propose this resolution, it submits that the customer could not have reasonably expected that it would provide this outcome or indeed that it that it would be backdated.

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. I must remind the parties that adjudication is an evidence-based process.

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2. 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.

Section 64(2) Water Industry Act 1991

3. I acknowledge the company's submissions about its statutory powers to enforce renewal and provide independent supplies under section 64(2) Water Industry Act 1991. I note that any dispute under this section should be referred to Ofwat. I remind the parties that under WATRS Rule 3.5, the Scheme cannot be used to adjudicate any matters over which Ofwat has powers to determine an outcome. Any submissions in this regard therefore fall outside the remit of WATRS and cannot be considered.

Joint and several liability

4. I can appreciate the difficulty of the situation for the customer. However, no evidence has been submitted to this adjudication to show that it was the company's responsibility to inform the customer that her property was on a joint supply. I accept the company's submissions that it is only responsible for the public water mains network. The company is legally only responsible for the water main and the communication pipe from the water main to the boundary of a property. Property owners or occupiers are responsible for the supply pipe, which runs from the boundary of the property to the property and all the pipework, fixtures and fittings inside a property. A supply pipe which serves more than one property is the shared responsibility of the property owners/occupiers served by the pipe. The company is not responsible for private supply pipe arrangements.
5. Under Section 143 of the Water Industry 1991 Act, the company is entitled to make a Charges Scheme that fixes the terms and charges for any services provided by the undertaker in the course of carrying out its functions.
6. A company's Charges Scheme must be approved by OFWAT. There is no evidence to show that the company's Charges Schemes have not been approved by OFWAT or do not comply with OFWAT's Charging Rules.
7. Section 26 of the company's Charges Scheme 2018/2019 supports the company's submission that where a metered connection supplies more than one property, each customer will be held

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jointly and severally liable for water and sewerage charges. While the company has not submitted similar evidence for the full period I accept that it is more likely than not that the policy has been consistent since 2012.

8. Being jointly and severally liable means that customers on a shared supply are jointly liable to pay charges equally. However, if one or more customers fail to pay their share, the other customer(s) are legally solely responsible to pay the entire amount of the debt.
9. For example, if Customer A and Customer B are jointly and severally liable to pay £100.00 to the company. Together Customer A and Customer B are under an obligation to pay £100.00 to the company, but if Customer A fails to pay their share of the £100.00, then Customer B is, legally, solely liable to pay the entire £100.00 to the company.
10. I acknowledge the customer's submissions that the company did not seek her agreement to be billed for the shared supply. However, there is no evidence to show that the company required the consent of the customer. As discussed above, the customer is jointly and severally liable for the shared supply.
11. Section 26(a) of the company's Charges Scheme states that the company "may [*adjudicator emphasis added*] make an agreement, known as a Common Billing Agreement, with the Owners, Property Management Company or other party to accept liability for the payment". The use of the word 'may' shows that a Common Billing Agreement is at the company's discretion. Further, section 26(b) states "*In all other situations, [] Water reserves the right to apply the most appropriate form of charge to all properties supplied or connected through the single metered water supply connection. This may take the form of apportionment of the measured charge, or any other form of charge set out in this charges scheme and will be chosen by [] Water.*" Therefore, in all other situations, again, the company has the discretion to choose how it will charge for a joint supply.
12. Further, in view of the company's Charges Scheme, I also accept the company's submissions that it was under no obligation to propose the AMC tariff as a resolution or backdate it to 2012.
13. I acknowledge the customer has been paying the charges for all three properties, and I can appreciate the difficulty of the situation for the customer. However, in view of the company's Charges Scheme, I accept the company's submission that in billing the customer solely for the

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charges it has acted within its statutory powers. The customer's neighbours' failure to contribute towards the charges billed is a private matter between the three properties. (Please note that for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims against third parties cannot be considered.)

14. I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, my remit is limited to determining whether the company has acted in accordance with its Charges Scheme and the evidence confirms that the company has fulfilled its obligations. The customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard.

15. Consequently, in view of above, the customer's claim does not 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 3 April 2019 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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