

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1344

Date of Decision: 26 April 2019

Complaint

The customer considers that they were inaccurately billed for water services over a 15-year period. They believe that a third party had tapped into their private supply. The wholesaler granted an allowance ("Allowance") against a high bill received but the customer believes that the Allowance was incorrectly calculated. The customer would like (1) the remaining balance on their account ("the Remaining Amount") to be written off; (2) compensation of £6000.00 for overcharging; (3) £2500.00 for distress and inconvenience caused; and (4) interest on these compensation amounts claimed.

Defence

The Allowance was granted by the Wholesaler based on monitoring of the customer's new meter. The Wholesaler has not been able to confirm that anyone tapped into the customer's supply. As retailer, the company has fulfilled its obligations by raising issues and challenging the Wholesaler's decision on the customer's behalf. The Remaining Amount is due and owing. No further Allowance is available. The company has, however, credited £100.00 to the customer's account (for five acknowledged service failings) and a further £250.00 for stress and inconvenience caused by this matter.

A £1000.00 settlement offer was made but rejected.

Findings

The company failed to provide its services to the standard expected (1) in not adequately challenging and not taking up the customer's concerns with the Wholesaler; and (2) in respect of the five acknowledged service failings.

Outcome

The company needs to take the following further action:

I direct the company to pay the customer £250.00 in compensation and to write to the Wholesaler on the customer's behalf in order (1) to present the detail of the customer's arguments about the calculation of the Allowance and (2) to make the case that the customer should receive an interest award in addition the Allowance.

The customer must reply by 28 May 2019 to accept or reject this decision.

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Party Details

Customer: []

Customer's representative: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer runs a farm business near [] ("the Farm")
- The customer's account was previously with RST Water ("RST"), which is now the wholesaler ("the Wholesaler").
- In 2002, the customer replaced their old asbestos water pipeline with a new 32mm plastic line to supply the Farm. There was a nearby grassed area, which was - at that time - being grazed by horses from a neighbouring farm.
- Approximately 15 years ago, RST developed this grazed area into an overflow car park and portacabins. This was to be used for contractors working on the updating and expansion of the [] Waste Water Treatment Works.
- It was around this period that the customer noticed their water bills beginning to escalate and they saw their water supply starved for periods of time during the working day.
- The customer believes that what happened was that a third party had made a connection into their (i.e. the customer's) private water supply. As the customer's pipe was running under RST's land at the site of the portacabins, the customer thinks it is likely that RST believed this to be one of their own supply pipes.
- The current dispute dates back to 2015 when the customer received a bill for £19,496 ("High Bill"). This High Bill seemingly resulted from:
 - estimated (as opposed to actual) meter readings that RST had used; and

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- high consumption registered on their meter, which was then located a quarter of mile away from the Farm (“the Original Meter”).
- RST’s contractors built a solar substation for their wastewater pumping station over the site of the Original Meter. In 2017, a new meter was at last installed closer to the Farm (“the New Meter”).
- After the New Meter was installed, the Farm’s consumption dropped drastically.
- In August 2018, the Wholesaler recognised their error in using so many estimates for historical bills and granted an allowance of £15,749 (“the Allowance”) towards the outstanding High Bill.
- The customer is still unhappy, however, about the remaining amount of £2,524.39 due (“the Remaining Amount”) and says that they will not pay this.
- The customer feels that the Allowance given by the Wholesaler was based on inaccurate information because it reflected estimated readings taken from the Original Meter and not on (what the customer believes to be accurate) consumption recorded from the New Meter. It is submitted that the consumption recorded on the New Meter reflects the true usage at the Farm.
- The customer has rejected the Wholesaler’s and/or the company’s offer of £1000.00 towards the Remaining Amount and argues that there should not be any outstanding balance at all on the account - not in light of the high payments that were made in the past. (On the basis of recordings from the Original Meter, the customer explains that they were historically making payments of £300.00 to £350.00 per month.)
- The customer is also critical of the length of time that this complaint has been ongoing – over 3½ years now. Neither the company nor the Wholesaler has ever said why the matter has taken so long to sort out.
- The customer feels that it was the inaccurate consumption recorded by the Original Meter that led to them receiving high monthly bills over those many years. The whole issue was generally drawn out and exacerbated by:
 - the Original Meter under the solar substation being inaccessible; and
 - estimates being used instead of the Original Meter being promptly relocated.
- As to the company’s recent reference to a leak, the customer replies that there never was any leak found (and there was never any suggestion previously about the possibility of a leak).
- The customer is unclear why the consumption from the New Meter is not being used to calculate any historical overcharging. They argue that the current readings, from the New Meter, substantiate their claim of a third party connection to their private supply pipe. The customer says the upshot is that they have been inaccurately billed for water services over a 15-year period.

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- In view of all of the above, the customer would like:
 - the Remaining Amount of £2,524.39 to be cleared off completely from their account (as it is the product of incorrect and inaccurate billing by the Wholesaler and/or by the company); and
 - compensation to be paid in the sums of:
 - £6000.00 - in respect of overcharging for water that was in fact used by a third party (not by the Farm) between 2003 and 2017. This £6000.00 amount is calculated on the basis of crediting £100.00 per quarter over a period of 15 years); plus
 - £2500.00 - in respect of the inconvenience and distress that this matter has caused over the past 3½ years (and for the 15 years prior to that).
- Given the Wholesaler's and the company's reluctance to resolve this issue in a reasonable timeframe (and the failure to provide any explanation as to why the dispute has not been resolved more quickly), the customer considers that interest should be paid on these compensation monies claimed.

The company's response is that:

- It contests the customer's claim.
- The customer first contacted RST on 9 March 2015, about a large invoice for £2443.01. A visit took place at the Farm as it was suspected that the cause of the large invoice might have been attributable to a leak. However, when the engineer attended, it was confirmed that there was no leak.
- The customer's Original Meter was located approximately 800 yards from the property in a neighbouring field owned by RST. The land has since been developed and is now a solar substation.
- During the development of the solar substation, the Original Meter was inaccessible and the customer's invoicing was issued based on estimated readings.
- Whilst the customer's claim that someone has tapped into their supply is noted, the Wholesaler has not been able to confirm that that is what happened.
- In September 2017, the company arranged for the re-location of the Original Meter and this was done free of charge by the Wholesaler. The New Meter was installed closer to the Farm and within guidance of the main supply and pipe network.
- The final reading on the Original Meter was estimated because - although this was classed as a meter replacement - the Original Meter was inaccessible to remove.

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- Consumption on the New Meter was monitored and based on 2.3m³, an allowance was granted by the Wholesaler for 9866m³. This was originally calculated to result in a £15749.23 credit but that figure was later considered to be incorrect and a further £980.23 credit was applied.
- The company offered a payment of £1000.00 in full and final settlement but this was refused. A £60.00 goodwill gesture was also offered (but never applied) for the following issues:
 - £20.00 - after new meter was installed, the company incorrectly billed on estimated reads and had to rebill the account;
 - £20.00 - as a credit for the length of time that this matter has taken to resolve;
 - £20.00 - because the account was incorrectly sent to debt collection when it should have been on hold.
- The company has now applied the £60.00 (i.e. 3 x £20.00) credit to the customer's account.
- On reviewing its service, the company has applied the following further credits in addition:
 - £20.00 - for a delay in updating the New Meter;
 - £20.00 - for incorrectly calculating the Allowance granted by the Wholesaler.
- After this total £100.00 has been credited, the customer's account balance is showing as £2524.39 in debit.
- It is acknowledged that the five issues listed above amounted to failings in service ("the Five Service Failings"). There was no material impact, however, from the Five Service Failings and it is submitted that they have not influenced the outcome for the customer. The company believes £100.00 (i.e. 5 x £20.00), therefore, to have been a fair and reasonable amount of compensation for it to pay in these respects.
- As the retailer, the company has fulfilled its obligations on the customer's behalf to raise these issues with the Wholesaler. It has challenged the Wholesaler's decision on the customer's behalf.
- Although it is acknowledged that there was a period when the customer was paying their invoices on receipt, there was another period when no payments were made to the account.
- The allowance that the Wholesaler has granted has already been applied and no further allowance will be applied.
- As to the compensation of £2500.00 for stress and inconvenience, the company is sorry for any stress or inconvenience this matter may have caused and in this instance. The company has applied a credit of £250.00 for stress and inconvenience during this time.
- The company maintains that the Remaining Amount is now due and payable.

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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. The documents (or sections of documents) that I have reviewed in particular include:
 - a. the 'Additional Information and Evidence' document (and all the materials attached), as submitted alongside the customer's WATRS application form; and
 - b. the Evidence items 1, 2, 3 and 4 appended to the company's defence.
2. I have also had the benefit of reading the customer's comments dated 13 April 2019 ("Comments"), which were filed by way of point-by-point replies to the company's defence.
3. This matter obviously has a very long history and on my reading, the majority of the customer's allegations are leveled against RST and relate to the period before 1 April 2017 (i.e. when the customer's account was with RST).
4. 1 April 2017 is important in this context because that was the date when:
 - a. the water market in England opened up to retailers; and
 - b. all 'non-household' customers were moved to a wholesale/retail split service.

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5. As the Farm is a non-household customer, their relationship is (now) with the retailer only. If a non-household customer has a problem with their water supply or sewerage services, they must therefore approach the retailer.
6. For the purposes of this adjudication, the consequence is that I cannot make findings against the retailer (i.e. the company) about something that is the Wholesaler's responsibility. I can only assess the retailer's actions and make findings related to the retailer's responsibility.
7. In this case, as I see it, I must assess the company's actions or failings (as retailer) coming into this dispute - as it did - relatively 'late in the day'. Albeit indirectly, I note that the customer picks up on this point in their Comments:

"... [] took over the account in April 2017 when the dispute was already ongoing. RST had done nothing to rectify the complaint prior to [] taking over the account, despite constant requests. Nor have they since provided answers to the questions repeatedly asked of them. There appears to be no evidence of RST supplying Water Plus with the historic information of our property and case. Neither the historic repeated claims made by us of their third party connection to our line nor our historic repeated requests for a re location of the old meter to its current position. It is not our fault that all the relevant claim information has not been supplied to [] ... By [] own admission, in their response of 05/02/19 to the formal investigation set by CC Water, 'Please be advised the notes on our system go back to 01/04/2012' ..."

8. I consider the submission made by the company in the 'Conclusion' section of its defence to be key on this:

"... As the retailer we have fulfilled our obligations on the customer's behalf to raise this to wholesale and we have subsequently challenged their decision on behalf of Mr and Mrs [] ..."

9. As I understand it, the company's position is in effect that:
 - a. the Wholesaler's approach to the Allowance, for example, was reasonable and justifiable (and that no challenge is warranted);
 - b. on the customer's other questions (for example, on whether someone else had tapped into their private supply and the delay in installing the New Meter), its challenge to the Wholesaler - i.e. taking up the case on the customer's behalf - has been sufficient.

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10. Turning to the calculation of the Allowance first of all, the company says this in its defence:

“... Consumption on [the New Meter] was monitored and based on 2.3m³, an allowance was granted by the Wholesaler for 9866m³ ...”

11. However, on this aspect, I regard the customer’s Comments in reply to be compelling and persuasive:

“... This statement is completely untrue and contradictory of all of the responses received from [] and RST! The allowance of 9866m³ based on 2.3m³ IS NOT based on consumption from the new meter. It is based on 'historic data' ...

Also we still can't understand how a final reading and huge bill can be applied to the old meter account which was built entirely on ESTIMATES. The final read was an estimate. There is no actual final reading on the account therefore our actual usage can never be proven. A credit has been applied to an estimated account balance. Any remaining usage claims are also based on estimates which do not reflect our true proven usage through the new relocated meter ... Ref: The tables supplied by RST and [] shown on CCWater file page 103/110 clearly show that the consumption on the new meter range from 0.88m³ to 1.51m³ (except where they made yet another excessive and inaccurate estimate of 9.86m³), nowhere near the 2.2m³ as is stated ... Ref: Email Sept 2018, CCWater file page 59/110 - 'The allowance was calculated on your daily average consumption of 2.3m³ based on your consumption from your old water meter.... we're unable to recalculate your allowance based on your current consumption from your new meter ... Ref: Email from [] of 5/12/18, CCWater file page 76/100 - 'The allowance given under case for 9866m³ against water volume..... the allowance is based on historic usage through the meter during the period 28/8/13-19/08/14, which is prior to the disputed consumption period. When an allowance is calculated we use historic data to make the comparison' ... “

12. Taking these Comments on board, it seems to me that the company should have been pressing the Wholesaler on this question of the Allowance.

13. As to the customer’s other concerns (e.g. on whether someone else had tapped into their private supply and the delay in installing the New Meter), I note that the company relies on its ‘Evidence 2’ and ‘Evidence 3’ extracts appended to its defence. I have examined both of those extracts. They seem to me to give only bare details and do not, as I see it, present a picture of the retailer

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advocating in an effective and determined way for the concerns that its customer had identified.

14. I am not satisfied, therefore, that the company has 'fulfilled its obligations' to the customer in the way that it submits in this case. There appears to me to be real substance in the various concerns that the customer has raised. Having been presented with those concerns after April 2017, I consider that it was incumbent on the company to challenge the Wholesaler in a more testing manner. In not challenging the Wholesaler and taking up the customer's cause, I find that the company failed to provide its services to the standard that would be expected of a retailer in this situation ("Failure Adequately to Challenge the Wholesaler").
15. Although I note that it already acknowledges as much, I do find that the Five Service Failings referred to in the defence constituted a separate series of failures by the company to provide its services to the standard that one would expect.
16. Against the backdrop of these failures by the company, correspondingly, I now address the remedies that the customer is seeking in their claim:
 - a. first, the customer would like the Remaining Amount of £2,524.39 to be written off completely. As I see this as an issue that flows from the original grant of the Allowance (by the Wholesaler), I do not consider that it would be appropriate for me to direct the company, as retailer, to write off the Remaining Amount. If, however, the company can mount a successful challenge with the Wholesaler on the customer's behalf - regarding the correctness of the Allowance calculation - the ultimate outcome may be that the Remaining Amount falls away. To this end, I shall make a direction that the company should write to the Wholesaler to present the customer's arguments about the Allowance calculation for the Wholesaler's consideration and response;
 - b. second, compensation of £6000.00 is claimed in respect of overcharging for water that was in fact allegedly used by a third party (not by the Farm) between 2003 and 2017. Again, I see this head of claim as one that falls within RST's area of responsibility. I do not consider that I can require the company to pay compensation for overcharging that is alleged against RST (for the period prior to the move over to a wholesale/retail split service on 1 April 2017);
 - c. third, compensation of £2500.00 is claimed in respect of the inconvenience and distress that this matter has caused the customer over the past 3½ years (and for the 15 years prior to that). As above, this head of claim appears for the most part to be focused on

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the impact of RST's decision-making (or inaction) before the company became involved in the dispute. That said, I note that the company has unilaterally credited £250.00 to the customer's account "*for stress and inconvenience during this time*". Given that the company only became involved in this dispute after April 2017, £250.00 seems to me to be a reasonable amount for the company to pay (particularly in light of the separate award of compensation that I make, below, in respect of the company's Failure Adequately to Challenge the Wholesaler);

- d. fourth, the customer considers that interest should be paid on the compensation amounts that it claims. In my assessment, the entitlement to interest is another issue that the company ought to be taking up with the Wholesaler on the customer's behalf. In this case, there does not appear to be any serious dispute that the customer was overcharged during the 15-year period in question. (I accept that the underlying *cause* of that overcharging is disputed, of course.) The consequence was that the customer overpaid RST over many years. Doubtless, the money that the customer overpaid could have been spent on other priorities. Quite independently of the Allowance granted, it seems to me that the customer should receive an interest award from the Wholesaler - to compensate for losing the ability to save or spend the overpayments elsewhere. Accordingly, I shall direct that the company should write to the Wholesaler to make the case that the customer should receive an interest award in addition to the Allowance.

17. As the company sets out in its defence, by way of acknowledgment of the Five Service Failings, the company has already credited £100.00 (i.e. 5 x £20.00) to the customer's account. I appreciate the customer's argument in their Comments that the credit is "*nowhere near a fair and reasonable reflection*" but I consider £100.00 is an appropriate total for the company to have paid. In reaching that conclusion, I have looked at the impact of the Five Service Failings in isolation from the company's other failures and also I take account of:

- a. the fact that the company has separately credited £250.00 to the customer's account "*for stress and inconvenience*" caused; and
- b. the discrete award of compensation that I make, below, in respect of the company's Failure Adequately to Challenge the Wholesaler.

18. With regard to my finding (above) about the company's Failure Adequately to Challenge the Wholesaler, the company should, in my assessment, make a discrete payment of compensation to the customer. I have given careful consideration to what the level of that payment should be.

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On the one hand, I can readily see that the Failure Adequately to Challenge the Wholesaler potentially meant that this dispute has been stretched out for longer than it needed to. I am conscious that the delay in resolving this issue (and the lack of any explanation as to why the dispute has not been resolved more quickly) is a central plank of the customer's complaint. On the other hand, even if the company had taken up a more vigorous and determined challenge on the customer's behalf, there is/was no guarantee - of course - that the Wholesaler would relent or change its position. If any challenge is/was unsuccessful, it would not in my view be fair to 'blame' the company for that outcome. Weighing these factors into the balance, I have concluded that £250.00 would be a fair and reasonable amount of compensation to award for the company's Failure Adequately to Challenge the Wholesaler in this case.

Outcome

The company needs to take the following further action:

I direct the company to pay the customer £250.00 in compensation and to write to the Wholesaler on the customer's behalf in order:

1. to present the detail of the customer's arguments about the calculation of the Allowance granted; and
2. to make the case that the customer should receive an interest award in addition the Allowance.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 May 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.

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- 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.



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

Adjudicator

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