

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1367

Date of Decision: 29 July 2019

Complaint

The customer's water meter serves the customer's properties and a number of others on the shared supply. The customer has been charged on a Maximum Daily Demand tariff, resulting in more expensive bills and charges that the customer states she cannot pass on to those on the shared supply. The customer wishes to be charged on a different tariff and also requests directions in respect of the private supply arrangements.

Defence

The customer has been charged on the Maximum Daily Demand tariff due to the annual use recorded. The company cannot become involved in any private dispute between the customer and those on the shared supply.

Findings

The scope of the WATRS Scheme prohibits me from reviewing any private supply arrangements between the customer and third parties. The customer has been properly classed as a non-household customer based on the guidelines relevant to the company's supply. The use exceeded 10,000m³ per year until 2018/19. The customer's usage has reduced from April 2018 and will likely not have reached the threshold for the Maximum Daily Demand tariff for this latest billing period.

Outcome

The company needs to take the following further action:

Contact the wholesaler with a view to reassessing the tariff on which the customer is supplied, including whether this should be backdated to April 2018 based on use being reduced from this date.

The customer must reply by 26 August 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 29 July 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer's water meter supplies a number of properties, both household and non-household, some of which are not owned by the customer. The customer has been charged on a Maximum Daily Demand tariff since 2011 due to the water use; removing the water used by household properties, the use is below the threshold for this tariff. The customer wishes to be charged on a different tariff to enable her to recover the costs from the third-party property owners also served by the meter.
- The customer asks for the tariff to be amended to Streamline Blue, that she receive a refund of the MDD charge, that the mains supply is brought to the edge of the customer's land, that a clear direction is made as to whether the customer can pass the MDD charge onto the third parties and how much the customer can charge, and a direction for how the customer can deal with those who refuse to pay for water and whether she can stop the supply.

The company's response is that:

- The company is billing in line with the wholesaler's charging policy. The Maximum Daily Demand tariff applies for customers using more than 10,000m³ per year. The company became responsible for the customer's account as of 1 April 2017 when the non-household market was opened. When in operation, the customer used between 14,500m³ and 40,515m³ per year. The company has continued to bill the customer in the same manner as RST Water Services prior to April 2017. The company has provided options on how the shared supply can be managed

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moving forward, including installing private sub-meters and an application for a separate supply. The customer has disregarded these suggestions, continuing her efforts to have the supply cut off for all those on the shared supply. The main meter supplies the customer and the customer receives bills for the supply. It is a private dispute between the customer and those on the shared supply to reach an arrangement on how the bills are split. The company cannot get involved in a private dispute.

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 customer, Green Ltd, is the owner of a hotel and golf course. The customer's water meter serves the properties owned by the customer and a number of other properties. These include a site of 20 lodges on a long lease, four residential properties that appear to be held on a freehold basis by third party owners, and a gun club. A squash court has recently been sold to a developer and is also served by the customer's water supply, although the developer has submitted an application to RST Water for a new connection to be made.

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2. The customer's golf course was subject to vandalism in January 2017. Turf was replaced in May and June 2017, requiring watering in. However, the turf was infected with parasitic nematodes causing the roots to be destroyed and the replacement turf could not be salvaged. This resulted in the golf course being closed during 2017; it has not reopened. The hotel honoured bookings until October 2017, closing entirely with no plans for it to be reopened.
3. The usage recorded on the customer's meter therefore registered ordinary use until January 2017; increased use in relation to the replacement turf until the end of August 2017; and greatly reduced use following the permanent closure of the golf course and hotel from October 2017.
4. The customer has been charged as a non-household customer and a Maximum Daily Demand (MDD) tariff was applied to the account from April 2011. The company took over the supply of the customer's services in April 2017. The customer continues to be charged on the MDD tariff. She disputes this, submitting that the company should have charged her as a household customer; that the usage of the customer, once the use of the domestic properties has been removed, is below the threshold of 10,000 m³; and that the usage following the closure of the hotel and golf course has greatly reduced.
5. The customer also raises questions relating to the water infrastructure, including whether RST Water is obliged to take responsibility for the communication pipe from the water main to the boundary of the customer's property, and whether the customer can have her water supply disconnected.
6. It is helpful, at this stage, to set out the scope of the Water Redress Scheme and those parts of the dispute that I am able to determine.
7. The company is a water retailer, billing the customer for the water services provided by the water wholesaler, RST Water Services. In order to make a decision in this dispute, I must clearly distinguish between actions taken by the wholesaler, and the duty owed by the retailer, the company, to its customers. Since the water market in England opened up to retailers in April 2017, all non-household customers and accounts have been moved to a wholesale/retail split service. As a result, a non-household customer now only has a relationship with the retailer. In turn, the adjudicator operating under the Water Redress Scheme may only make findings related to those things for which the retailer, a party to the case, has responsibility, but not those things for which the wholesaler has responsibility.

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8. Under Water Redress Scheme Rule 3.5, the Scheme also cannot be used to adjudicate disputes that fall into one of more of various categories. The categories include “any matters over which Ofwat has powers to determine an outcome” and “resale and third-party complaints”.
9. The customer has been charged the Maximum Daily Demand (MDD) tariff since 2011 directly by the wholesaler and, since April 2017, by the company. As above, the Water Redress Scheme has jurisdiction over the company as water retailer only; I have no jurisdiction to review the acts of the wholesaler, including any time when the wholesaler supplied the customer directly. This decision therefore relates to charges applied by the company from April 2017 only.
10. I am also only able to determine whether the company has properly billed the customer in accordance with the wholesaler’s scheme of charges. This scheme of charges will have been agreed with Ofwat and I have no jurisdiction over the contents, rules and policies of the charges scheme itself.
11. The customer, Green Ltd, has a connection to the wholesaler’s water main. After the meter, a number of other properties obtain water from the customer’s supply. These include four residential properties, three of which the customer states are held on a freehold basis by third parties. There are 20 lodges held on underleases as part of Green Country Homes, a site held by a third party on a leasehold basis under a 125-year lease. The customer’s water meter also supplies a hotel and golf course, both of which have now closed; a gun club; and, an old squash court that has since been sold to developers.
12. In respect of the squash court, the company advises that the developer has applied for a new connection to the wholesaler’s water main; this will remove the site from the shared supply situation. The squash club buildings had also been closed since October 2013 and therefore did not contribute to the water use during the period of the dispute.
13. I am not able to consider any aspect of the dispute that relates to the private supply agreements that may be in place between the customer and third parties utilising the customer’s water supply. This includes making any determination as to whether the MDD charge is one that can be passed on to end users under a private supply agreement, or whether there is any other basis under which the customer may recover these charges from third parties.

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14. The customer has been charged on a Maximum Daily Demand tariff since 2011 on the basis that the site's annual usage exceeds 10,000m³. The company has refused to amend the tariff or reclassify the account as household.
15. The customer has disputed that the MDD has been properly charged and requests its backdated removal on the basis that it should not have been used for a water supply that serves 23 domestic properties not owned by the customer. The customer requests that the water main is brought to the edge of the Green Ltd land so that she may demand third parties to obtain a supply directly from the company or wholesaler.
16. The customer also requests a clear ruling as to how much she can charge the 20 lodge properties should they be deemed non-household second homes, and a determination on how the customer can deal with third parties that refuse to pay for their water and whether Green Ltd can stop their supply.
17. For the reasons given above, I am not able to make any direction as to the amount that the customer may charge third parties for water; this amounts to a private agreement that is out of scope of the Water Redress Scheme. Any circumstance where a third-party refuses to pay for water under a private supply agreement is also out of scope for the same reasons.
18. I am further unable to make any direction or finding as to whether Green Ltd can stop the supply to third parties; my jurisdiction is limited to determining whether the company is able to stop the supply to the customer. I note that Ofwat guidance states that any mixed-use property, consisting of part non-household and part household properties, should not be cut off for non-payment. It follows that, as there are at least four residential household properties at the site, the company is not able to stop the customer's supply for non-payment.
19. I find that the question of whether the MDD charge has been correctly applied has two parts. The first is whether the customer has been properly charged as a non-household customer based on the array of properties served by the water meter. The second is whether the usage recorded meets the threshold for the MDD charge and whether the usage should be amended in light of the domestic properties on the site.
20. In respect of the classification of the customer as a non-household customer, Ofwat has issued guidance entitled "Eligibility guidance on whether non-household customers in England and

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Wales are eligible to switch their retailer”. The customer has quoted definitions from this guidance in correspondence, albeit that the information was transcribed onto the website of the company and/or wholesaler.

21. I note that the widespread use of water retailers to supply non-household customers came into effect as a result of the Water Act 2014. The company supplies the customer as a licensee under the Water Act 2014. The guidance relates to both the pre-Water Act 2014 (“WSL”) regime and the post-Water Act 2014 (“WSSL”) regime.
22. In respect of the WSSL regime, I note that no threshold requirement is required for a customer to qualify to change water retailer for customers in England. This differs from the pre-Water Act 2014 regime where a threshold was set for customers of no less than 5,000 m³ of water a year. I therefore find that there is no threshold requirement in respect of the company’s supply of water services to the customer.
23. This is relevant to the guidance definition of premises. Where there is no threshold requirement, each property that is assessed separately for Council Tax and business rates should be treated as a separate premises for assessing eligibility. However, “where a company supplies several properties through a single supply point – for example, because they are connected to a private network – these properties should be treated as a single set of premises”. This is the circumstances of the customer’s case, with her water supply also serving numerous other properties.
24. Having determined that the entire site is classed as a single premises for the purpose of classing the customer’s account as household or non-household, it is necessary to review the eligibility requirements. Eligibility is based on the principle use of the properties within the site. It is clear that the premises is mixed-use with some properties being liable for Council Tax and others being liable for business rates. The guidance states that mixed-use properties “will normally be classified by companies as non-household premises, unless there are grounds to consider that their principal use is as a home”.
25. The determination of whether the mixed-use premises is principally a home is a technical one, based on questions of both fact and law. The guidance states that, should there be a dispute about the eligibility of particular premises, having considered the eligibility guidance, Ofwat “would expect the parties to make reasonable efforts to resolve the dispute by other means but

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may, ultimately refer the matter to the Authority for determination”. It also refers to further considerations for determining eligibility in supplementary eligibility guidance.

26. I am mindful that the Scheme Rules provide that I am unable to determine matters over which Ofwat has authority. I find that, in this case, Ofwat is the ultimate arbiter of questions of the extent of the premises and whether the premises is a household premises. However, the guidance is clear that the parties should make reasonable efforts to resolve a dispute about these matters by other means. I find that the question in this case is solely limited to the customer’s supply and the company’s categorisation of this; it does not involve any regulatory question; and, the Water Redress Scheme is a voluntary alternative dispute resolution method that can be used to resolve disputes between the parties.
27. I therefore find that I am able, under the Water Redress Scheme Rules, to review the question of whether the customer should be classed as a household or non-household customer, provided the evidence is sufficiently clear to make a determination on this matter.
28. The Ofwat supplementary eligibility guidance is clear that, where premises are liable for both Council Tax and business rates, it is the principal use that will determine whether the customer is a household or non-household one.
29. I am mindful that the hotel on site was active until 5 October 2017 and formed a significant non-household portion of the site until that date. The golf course and gun club are also clearly non-household in nature, albeit that the golf course is no longer in use.
30. The four residential properties are not dependent on the non-household part of the site and must be deemed household in nature.
31. The remainder of the site consists of the Green Country Homes site, consisting of 20 lodges on a leasehold site, of which the customer retains the freehold. The customer submits that the lodges are household as they pay Council Tax. The company disputes this, stating that they are holiday lodges and not a main dwelling.
32. I have not been provided with any legal documentation that would set out any planning limitations on how the lodges may be used. I note from correspondence, provided by the company in a redacted format but available in full within the CCWater documents, that the

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customer is required, under the terms of the lease, to provide Country Homes site with water. The third-party states “several of the people currently on-site are elderly”.

33. The company has provided me with a link to the Green Country Homes website. This advertises holiday breaks in “five-star holiday lodges”. I also note that, under the link for buying a cabin, it expressly states “please note that permanent residence is not permitted”.
34. My decision must be made on the balance of probabilities, based on the evidence provided by the parties and the requirement that, to be classed as household, a property must be principally used as a home.
35. Without being provided with a copy of the leasehold or underlease arrangements that may impose restrictions on the use of the lodges, I find that the website for Green Country Homes is persuasive that each of the lodges cannot be used as a home and therefore does not meet the definition for a household property. The use of ‘currently on-site’ within email correspondence is also indicative that there may be a turnover of people at the Country Homes site, whether through renting the lodges for holidays, or by being used during only part of the year as second, non-permanent properties.
36. I therefore find that, of the total premises supplied by the company, only four household properties are located on the site. The remainder of the properties, consisting of the now-closed hotel and golf course, gun club, and lodges are all non-household. The principal use of the site is therefore non-household in nature and the customer has been correctly charged as a non-household customer.
37. It is then necessary to determine whether the customer has been properly charged the MDD under the relevant charges scheme. The customer’s water meter readings between 12 October 2011 and 14 September 2018 have been provided within the Consumer Council for Water documents. I find that, whilst the properties within the customer’s premises are sub-metered, it is only the main meter that is relevant for how the customer is charged by the company. The water use for domestic properties is provided under a private supply agreement which I find is not relevant to the assessment of the water supplied by the company to the customer’s premises.
38. In reviewing the meter readings dating to 12 October 2011, I find that the recorded use exceeds 10,000m³ for each billing period (1 April to 31 March) from 2012/13 to 2017/18, inclusive. The

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average daily use also exceeded 100m³ between 14 June and 17 July 2017; this is consistent with the customer's submissions that replacement turf required watering in.

39. The company has provided meter readings dated 13 September 2017 and 4 June 2018. No meter reading is available for April 2018, being the year end. However, based on the average daily use between the two meter readings, I find that the reading in April 2018 would have been around 302894. This is consistent with the customer's statement that, on 31 March 2018, the meter reading was 202871.
40. I find that, based on the customer's meter reading, the total use for the billing period April 2017 to March 2018 was 14653 m³. The use from April 2018 until the latest available meter reading of 14 September 2018 is 2871 m³. I note that this is a significant reduction in water use, linked to the closure of the hotel and golf course.
41. The customer is charged in accordance with the wholesaler's charges scheme. I note that the MDD is applicable for customers where the recorded use exceeds 10,000m³ per year, or 100m³ per day. I am satisfied that the use recorded on the customer's main meter has exceeded 10,000m³ for all years in which full records are available.
42. In respect of the billing year April 2018 to March 2019, it appears that the customer will have utilised significantly less water.
43. I therefore find that the customer has being properly charged on the MDD tariff based on the level of use recorded on the main meter. I find no basis for the customer's bills prior to April 2018 to be recalculated.
44. However, in view of the significant reduction in use recorded on the customer's meter, I direct the company to contact the wholesaler with a view to reassessing the tariff on which the customer is supplied, including whether this should be backdated to April 2018 based on use being reduced from this date. For the avoidance of doubt, the final decision as to the customer's tariff rests with the wholesaler and the company will be bound by the wholesaler's determination.
45. For reasons of clarity, I shall now list the customer's requested remedies and the summary reasons for why an award has or has not been made.

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Amend the tariff to Stream Line Blue; remove the MDD charge; refund the difference between MDD and Streamline Blue from 2011 to date

46. The customer's property has been properly classed as non-household and the usage registered on the main meter is in excess of 10,000m³ per annum for each year in which full records are available. The customer has been correctly charged under the MDD tariff under the wholesaler's charges scheme for all dates prior to April 2018. No refund is due to the customer for water use before April 2018.
47. The use recorded on the water meter has reduced since April 2018, likely reducing the use below the threshold for the MDD tariff. The company is therefore to contact the wholesaler with a view to reassessing the tariff on which the customer is supplied, including whether this should be backdated to April 2018.

Require the company to bring the mains supply to the edge of Green Ltd's land

48. WATRS has jurisdiction over the company only; it has no power to direct the wholesaler to take action. The wholesaler is responsible for the repair and maintenance of the public water network. I am unable to make any finding as to whether the wholesaler is responsible for the connection pipe. Individual customers on a shared supply are able to request new water supplies should they wish to receive services from the company or wholesaler directly.

Direct that any standing charge can be divided between those receiving water as customers of Green Ltd; rule on how much the 20 lodge properties can be charged if deemed to be second homes; determine how Green Ltd can deal with those who refuse to pay their water; determine whether Green Ltd can stop their supply

49. Each of these remedies relate to the private water supply arrangement between the customer and the various third parties utilising her supply. These private supply agreements are outside the scope of the Water Redress Scheme.
50. The company is not able to cut off the customer's water supply as it serves at least one household customer.

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51. The customer may wish to seek independent legal advice in respect of the private supply arrangements and her rights and obligations in respect of these.

Outcome

The company needs to take the following further action(s):

Contact the wholesaler with a view to reassessing the tariff on which the customer is supplied, including whether this should be backdated to April 2018 based on use being reduced from this date.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 26 August 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.



Alison Dablin, LL.M, MSc, MCI Arb

Adjudicator

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