

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1397

Date of Decision: 10 May 2019

Complaint

The customer ran a Farm in []. In December 2015, his supply pipe was damaged by Storm Desmond. Due to the floodwaters (and the fact that the pipe ran along the bottom of [] Beck), a number of months passed before the customer could make the repairs. Between February and June 2016, the customer was billed £13361.90. He was expecting to pay only around £650.00 for that period. He would like the company (1) to reduce his bill by £12500.00 and (2) to relocate his water meter to his farmyard (because the meter is often inaccessible where it is currently).

Defence

The company cannot be responsible for issues that arose prior to April 2017, as these sat with RST Water (which is now the wholesaler). The wholesaler's policy says that a leak allowance on the private supply will be granted once only. However, the customer has had three leak allowances in the past. The £12500.00 charges cannot be removed, therefore, from the customer's account. The company submits that it has fulfilled its duties, as the customer's retailer, by liaising with the Wholesaler and raising points on the customer's behalf.

No offer of settlement has been made.

Findings

On the isolated question of whether a leak allowance should have been granted, the wholesaler's stance is broadly reasonable. The company cannot be criticised on that aspect. However, on the customer's behalf, the company should have challenged the wholesaler about the problems caused by the meter being located where it is currently. In not challenging in this respect, the company failed to provide its services to the standard expected.

Outcome

The company needs to take the following further action:

I direct the to pay the customer £175.00 in compensation and to write to the wholesaler on the customer's behalf in order (1) to set out all the difficulties that result from the meter being sited where it is currently and (2) to make the case that the meter should be relocated to the vicinity of Green House.

The customer must reply by 10 June 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 10 May 2019

Party Details

Customer: []

Customer's representative: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer is a farmer and lives at [] in [] ("Green House" or "the Farm"). His account was previously with RST Water("RST"), which is now the wholesaler ("the Wholesaler").
- This case arises out of Storm Desmond, which occurred between 3 December 2015 and 8 December 2015 ("Storm Desmond").
- The Farm was created out of scrubland and moorland during the Second World War. At that time, the property stood some distance away from []. Green House and the farmland were provided with water from a meter located 100 yards north of Blue Bridge ("the Meter"). The Meter is situated on the west bank of a stream in the middle of a jungle of bog and scrub. Access to the Meter is extremely difficult.
- Access from [] (from the south) involves a walk of approximately a mile. Much of this walk is alongside the river, meaning that access is not available in times of high rainfall. The same applies to access from Red Bridge to the North.
- Access from Green House is across fields. However, before reaching [] Beck, it is necessary to cross a stream. After heavy rain (as was the case after Storm Desmond), this stream is impassable. In those circumstances, it is necessary to cross Blue Bridge before wading through the jungle of bog and scrub.
- In the aftermath of Storm Desmond, the customer was immediately in trouble as the Farm was

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without electricity for a week. He had a dairy herd to care for and discovered that he had little or no water pressure. He correctly assumed that he had a water leak but it was impossible for him to reach the Meter from any access point. The Meter was under many feet of water.

- The customer telephoned RST and was advised not to do anything that would endanger his life. The Meter was switched off by RST on a subsequent date unknown to the customer. The Meter was switched back on by RST on an unknown date sometime in May or June 2016.
- Readings from the Meter made it clear to the customer that he needed to repair the supply pipe, which ran from the Meter and along the bottom of [] Beck.
- The customer carried out these repairs as soon as water levels permitted. For the relevant intervening period between 12 February 2016 and 22 June 2016, however, the customer was billed £13361.90.
- The customer's readings for earlier and later years suggested that the bill that he would ordinarily have been anticipating receiving - to cover the period in question - would have been £650.00 only.
- The customer considers it unreasonable that he should be expected to pay for the water above the normal amount that he would pay.
- RST and/or the company has failed to address any of the points made by the customer or to listen to him in three main respects:
 - first, they refer to allowances made in 1996 and 1999. However, the customer's father:
 - bought the Farm in 1970; and
 - owned all the assets of the business until his death in March 2002; and
 - was a sole trader. The customer lived in Green House with his father but he was not a partner, merely an employee. He was not a customer of RST, nor was he a partner, director or shareholder in the Farm business. He was merely an employee of RST's customer, remunerated by way of a 5% share of the profits. Whatever allowances RST may have made to the customer's father in the past are irrelevant to the son, who is a new and different customer.
 - second, RST and/or the company has failed to take account of the unusual way in which the customer was supplied. The situation of the Meter may have been acceptable as a wartime expedient but it was an accident waiting to happen. The customer argues that he is entitled to a meter that he could see, read and act upon. Expecting the customer to travel a mile across farmland, to cross streams and then to walk at least 100 yards through a boggy jungle - only to find the Meter unreadable and inaccessible - is not reasonable. The customer contends that RST has brought this problem on itself. There

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is a large housing development opposite Green House and it is argued that RST could and should have supplied the customer from there, with a Meter being situated in his farmyard.

- Finally, RST and/or the company have refused to consider the exceptional circumstances of Storm Desmond. This was 'an act of God' and as such, the customer has no insurance cover against his loss. The highly unusual nature of the event is evidenced by the fact that the customer's MP, [], was appointed Flood Envoy for Cumbria and Lancashire, in order to oversee relief and rebuilding after the floods. The bridge on the A[], nearby [] Bridge, was closed for many months until water levels receded to a depth suitable for divers to ascertain the damage and assess the need for repairs. The customer could not be expected to wade into the river and repair leaks until it was safe to do so. When the customer accessed the river, he found numerous fractures and holes in the supply pipe on the bed of the river. That damage was caused by rocks and other debris being propelled downstream at great force as a result of Storm Desmond, which was a National Disaster and recognised as such by the Government.
- RST's handling of this account has had a dramatic effect upon the customer's health and his life. He became clinically depressed. After seeing his GP, he decided to give up dairy farming that, hitherto, had been his sole way of life since birth. The customer now keeps a few breeding cattle but his business has been significantly diminished.
- The customer would like the company:
 - to re-position the Meter to Green House; and
 - to reduce his water bill by £12500.00 ("Bill Reduction") to reflect the leaks caused:
 - by the position of the Meter; and
 - by Storm Desmond.

The company's response is that:

- It contests the claim.
- The customer originally contacted RST on 10 December 2015, stating that he believed he had a leak caused by Storm Desmond.
- In January 2016, RST attended the site but the floodwaters were too high. A visit was rescheduled for 15 February 2016. On that occasion, the engineer attending the site confirmed that there was a leak on the external pipe, which is the responsibility of the customer to repair.
- A telephone call with the customer, to advise of the site visit findings, confirmed that the customer knew that the leak was located on his side of the Meter and in the river.

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- The customer has had three leak allowances granted in the past:
 - one in 1996, this was for a private leak on the domestic element; and
 - a second in 1999, this was for a leak that occurred on the meter and part private. As it could not be determined the exact proportion of the leak based on the site, a leak allowance was granted in line with the Wholesaler's policy; and
 - a third allowance was granted in 2009. This was a discretionary allowance as the customer had been invoiced on estimated meter readings, which masked a private leak.
- As detailed in the Wholesaler's policy, a leak allowance on the private supply will be granted once only.
- The company has raised this recent matter to the Wholesaler, on behalf of the customer, to see if the Wholesaler would be prepared to grant an allowance. However, the Wholesaler, after completing a full investigation, advised that no allowance will be granted in this instance.
- On reviewing the account, a rebill has been performed to reflect the consumption for the period of the leak. This was to ensure that consumption during the leak period had been charged on the correct tariff.
- The company accepts that there has been a service failing on its part as a retailer and to reflect this (and by way of an apology), it has applied a goodwill gesture of £20.00 to the customer's account. As part of its review of the customer's account, it identified that it failed to invoice based on accurate reads.
- The balance on the customer's account is £17375.03 in debit and is now due and payable.
- The customer has not made any payments to his consumption or towards the balance on the account.
- The company submits that it has fulfilled its duties as the customer's retailer by liaising with the Wholesaler and raising points on the customer's behalf. The company points out that it cannot be responsible for the issues that arose prior to April 2017, as these sat with RST, prior to the creation of the company.
- As to the customer's request for the Bill Reduction, the company is sorry that the £12500.00 amount will not be removed as the customer has already had leak allowances previously.

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.

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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 that I have reviewed include in particular:
 - a. the materials contained in the two 'Additional Evidence' bundles (especially the photographs and the location map), all submitted alongside the customer's WATRS application form; and
 - b. the Evidence items 1, 2, 3, 4 and 5 appended to the company's defence.
2. I have also had the benefit of reading the customer's short comments dated 30 April 2019, which were filed by way of reply to the company's defence.
3. This matter has a relatively long history and on my reading, the majority of the customer's allegations is mainly 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.
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.

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

"... We have fulfilled our duties as the customer's Retailer by liaising with [the Wholesaler] and raising points on the customer's behalf. We cannot be responsible for the issues that were generated prior to April 2017, as these were sat with RST Water, prior to the creation of [the Company] ..."

9. As I understand it, the company's position is in effect that:
 - a. the Wholesaler's answer to the request for the Bill Reduction was in line with its policy (and therefore, reasonable and justifiable). The essential point is summarised by the company in this way, I note: "... Mr [] has requested that £12500.00 is removed from his account. I'm sorry that the amount requested will not be removed as Mr [] has already had leak allowances previously ..."; and
 - b. on the customer's concerns generally, its challenge to the Wholesaler - i.e. taking up the case on the customer's behalf - has been sufficient.
10. In terms of challenging the Wholesaler, I note that the company relies on its 'Evidence 3' extract appended to its defence. I have examined this extract. The context behind the Wholesaler's response seems to me to be quite narrow. The sole issue is whether or not it is appropriate to grant a leak allowance. On this aspect in isolation, I regard the Wholesaler's stance as broadly reasonable (in that the Wholesaler appears to have reached its decision in a way that can be reconciled with its policy for leak allowances). The 'Evidence 3' extract sets out the principles behind the Wholesaler's position as follows:

"... The customer has had a claim granted in 1996, 1999 and 2009. The claim in 1996 was for private leak, the 1999 burst refers to both a meter and a private leak and the 2009 allowance was given on a discretionary basis as the customer was billed on estimates which masked a private leak. Based on the domestic burst policy no further

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allowance can be given for an external leak ... As the leak was caused by a natural disaster it is the customer's responsibility to ensure they are adequately insured to cover such eventualities ..."

11. Given my assessment that the Wholesaler's explanation is (as far as it goes) broadly reasonable, I do not consider that the company could have been expected to 'do more' by way of challenge to the Wholesaler on this point.
12. However, as I have mentioned, the Wholesaler's answer in the 'Evidence 3' extract is confined to the question of whether a leak allowance should be granted. Notably, the customer has also complained about a separate issue, i.e. the problems caused by the Meter being located where it is currently ("the Meter Location Problem"). The customer's submissions about the Meter Location Problem strike me as compelling and persuasive. He argues, for example, that he is:

"... entitled to a meter that he could see, read and act upon. Expecting [him] to travel a mile across farmland, to cross streams and then to walk at least 100 yards through a boggy jungle - only to find [the Meter] unreadable and inaccessible - is not reasonable ..."
13. There appears to me to be real substance in the concerns that the customer raises about the Meter Location Problem. I cannot see that there is any evidence, however, that the company (on the customer's behalf) has taken up this point specifically with the Wholesaler.
14. I am not satisfied, therefore, that the company has 'fulfilled its duties' to the customer in the manner that it submits in this case. Having been presented with the Meter Location Problem after April 2017, I consider that it was incumbent on the company to challenge the Wholesaler in a way that gave voice to the concerns that the customer was raising. In not challenging the Wholesaler and not taking up the customer's cause in this specific respect, 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. Against the backdrop of my finding above about the Failure Adequately to Challenge the Wholesaler, I now address the remedies that the customer is seeking in his claim:
 - a. first, the customer would like the company to apply a Bill Reduction of £12500.00 to his account. As I see this as an issue that flows from the question of whether a leak allowance should have been granted (by the Wholesaler), I do not consider that it would be appropriate for me to direct the company, as retailer, to apply the Bill Reduction. If, however, the company can mount a successful challenge with the Wholesaler on the

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customer's behalf - regarding the Meter Location Problem - the ultimate outcome may be that some level of Bill Reduction is proposed. To this end, I shall make a direction that the company should write to the Wholesaler to present the customer's arguments about the Meter Location Problem for the Wholesaler's consideration and response;

- b. second, the customer asks that the Meter be relocated to the vicinity of Green House. Again, I see this head of claim as one that falls within the Wholesaler's area of responsibility. I do not consider that I can require the company to re-site the Meter to another location. I shall, however, make a direction that the company should write to the Wholesaler to make the case about repositioning the Meter as the customer suggests.

16. 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. On the one hand, I can quite understand the impact that this matter has had on the customer's health, his business and his life generally. On the other, it is probably fair to say that the main impacts were suffered during RST's time (i.e. before the company came into existence). Also, even if the company had taken up a vigorous and determined challenge on the customer's behalf, there is/was no guarantee - of course - that the Wholesaler would agree to relocate the Meter. If any such 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 £175.00 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 £175.00 in compensation and to write to the Wholesaler on the customer's behalf in order:

1. to set out all the difficulties that result from the Meter being sited where it is currently; and
2. to make the case that the Meter should be relocated to the vicinity of High House.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 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.



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

Adjudicator

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