

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1413

Date of Decision: 25 June 2019

Complaint

The customer states that the school received an increased bill due to a leak at the water meter, but no leakage allowance has been granted. It requests a leakage allowance of £9,139.05.

Defence

The company states that it has represented the customer to the Wholesaler, but the Wholesaler has not granted a leakage allowance. No offer of settlement has been made.

Findings

The company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the information about a leak on Temetra.

Outcome

The company needs to take the following further action: It must return to the Wholesaler, emphasising the findings that have been made in this adjudication and that the adjudicator has found that on the basis of the evidence provided here, granting of a leakage allowance to the customer would likely be appropriate.

The customer must reply by 23 July 2018 to accept or reject this decision.

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Date of Decision: 25 June 2019

Party Details

Customer: []

Customer's Representative: []

Company: []

Case Outline

The customer's complaint is that:

- The school's water bill, received twice a year, is typically approximately £600.00.
- On 25 May 2018, the school received a bill for £9,139.05.
- [RST Water] ("the Wholesaler") has stated that there must have been a leak, but has provided no further evidence of this.
- The Wholesaler is unwilling to make any adjustment to the bill.
- Data from Temetra states that a leak was discovered on 11 March 2016 and repaired on 31 October 2016.
- The customer requests a leak allowance of £9,139.05.

The company's response is that:

- The bill being challenged by the customer was produced on 25 May 2018 following two meter readings taken by the company's engineers.
- The Wholesaler is responsible for the leakage allowance policy and decisions regarding this policy are beyond the control of the company.
- Records indicate that the increased usage occurred between April 2016 and December 2017.
- The Wholesaler was contacted by the customer on 14 December 2016 regarding a potential leak on the boundary box, but no leak was found during a visit on 15 December 2016.

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- It has approached the Wholesaler and challenged it to grant a leak allowance.
- As neither the customer nor the Wholesaler has repaired a leak, and because of the delay between the timing of the alleged leak and the submission of a leak allowance request, the Wholesaler declined to grant a leak allowance.
- Inaccurate information has been put onto Temetra by the Wholesaler.
- The customer has received payments of £140.00 in recognition of customer service failures.

The customer's comments on the company's response are that:

- The company has not previously stated that the information on Temetra was put there by the Wholesaler and it has provided no evidence to back up this statement.
- No reason has been provided to support the company's assertion that the information on Temetra is inaccurate.
- The information on Temetra clearly refers to a leak on the wholesaler's infrastructure, rather than on school property.

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.

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How was this decision reached?

1. The present dispute between the parties is unavoidably entwined in the opening of the water market on 1 April 2017. Prior to this date the Wholesaler itself was responsible for both billing the customer and acting as the water wholesaler. However, as the customer has brought the complaint now, the complaint must be directed to the company, which is now responsible for resolving customer services issues, even if they relate to events prior to the opening of the water market.
2. Moreover, and importantly for the present case, the opening of the water market has affected how the WATRS Scheme can operate with respect to certain disputes. Specifically, granting of a leakage allowance is a matter to be decided by the Wholesaler in accordance with its leakage allowance policy, but the Wholesaler is not a party to a WATRS case. As a result, even if a WATRS adjudicator were to believe that the Wholesaler had not applied its leakage allowance policy correctly, the Wholesaler could not be ordered to grant a leakage allowance, as it is not a party to the case. Instead, the only evaluation that can be made by a WATRS adjudicator is whether the company has acted appropriately as the designated representative of the customer to the Wholesaler.
3. Nonetheless, the company also bears a duty of care to the customer with respect to its interactions with the Wholesaler that arises from the opening of the water market. As the customer has no direct access to the Wholesaler, and must rely on the company as an intermediary, the company's duty of care to the customer means that the company must make reasonable efforts to represent the customer and obtain the customer's desired goal.
4. In other words, in the present context, the company was not merely a messaging service passing on to the water wholesaler the customer's request for a leakage allowance, but was obligated to make a reasonable effort to present to the Wholesaler the customer's best case for such an allowance.
5. I find, however, that in the present case the company has failed to fulfill this responsibility and as a result has failed to provide its services to the customer to the standard to be reasonably expected by the average person. The company has in most respects fulfilled its obligation appropriately, and the record demonstrates that the company made good faith attempts to convey the customer's case for a leakage allowance to the Wholesaler.

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6. However, I find that the company has failed to adequately address the evidentiary importance of the information on Temetra, dismissed by the company in its Defence in this case as merely inaccurate.
7. As argued by the customer, the information on Temetra expressly states that a leak was identified on 11 March 2016, with a repair being undertaken on 31 October 2016. Moreover, this latter entry expressly refers to “path leading to school in memorial lane”, making it unlikely that this was a mistaken entry placed on the wrong account.
8. While the company argues that this information is inaccurate, it has provided no reason to conclude that this is so, other than the fact that it conflicts with the Wholesaler’s assertion that no repair has been undertaken to the meter. To quote the company’s Defence, “[] do not have access to RST Water’ records, [] solely relies on the wholesaler with providing information with regards to the leak on their asset or any repairs. As to date, RST Water advised that they have no record of any notes stating there was a leak within the period in question, which they would have attended to repair.”
9. Such an approach is, however, tantamount to adopting a position according to which the Wholesaler’s statements must be accepted, even if they are inconsistent with other evidence. The customer would clearly be unwilling to adopt such a position, and so as the customer’s representative to the Wholesaler, the company fails in its responsibility to the customer when it does so.
10. I find, based on the evidence in this case, that the most likely explanation for the considerable increase in the customer’s water usage, followed by a return to regular water usage, is that supported by the data on Temetra, namely that a leak occurred in 2016 and was then fixed on 31 October 2016. This is also consistent with the Wholesaler’s statement that when it attended the school’s premises on 15 December 2016, no leak was found; this would be expected if the leak had been repaired on 31 October 2016, as the data on Temetra states.
11. The Wholesaler states that it has no evidence in its records of a repair being undertaken, but this does not preclude that the Wholesaler’s records might be incomplete, and the company has emphasised that the information on Temetra was placed there by the Wholesaler.

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12. The company has also indicated that the Wholesaler has refused a leakage allowance because of the delay in the customer requesting one. However, while the Wholesaler's leakage allowance policy (as produced by the company) requires that a claim be made within 12 weeks of a repair being undertaken, this element of the policy is clearly based on a presumption that the customer will have been made aware of the existence of the leak and of its repair. I find based on the evidence provided in this case that the customer was not made aware of the possible existence of a leak until the increased bill of 25 May 2018 and the evidence is clear that the customer requested a leakage allowance as soon as this information was presented.
13. As the leak was repaired prior to the opening of the water market, at which time the Wholesaler served as both the retailer and the wholesaler for the customer, notifying the customer of the existence of a leak was the responsibility of the Wholesaler. It would be inconsistent with fundamental principles of equity for the Wholesaler to fail to notify the customer of the existence of a leak and then subsequently refuse to grant the customer a leakage allowance on the ground that the customer did not request an allowance relating to the leak about which it had not been told.
14. Nonetheless, as stated at the beginning of this decision, the Wholesaler is not a party to this case and so cannot be ordered to provide the customer with a leakage allowance. However, given the above, the company was obligated to press the customer's case to the Wholesaler with respect to the information on Temetra more firmly than the records indicate it did. As stated above, I find that in this respect the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
15. The best resolution that can be made of the present dispute, therefore, is for the company to return to the Wholesaler, emphasising the findings that have been made in this adjudication and that the adjudicator has found that on the basis of the evidence provided here, granting of a leakage allowance to the customer would likely be appropriate. The Wholesaler would not, of course, be bound by the present decision, so may reject the company's argument, or may have additional evidence that it has not previously presented to the company or the customer. However, given the divided structure that has been created by the opening of the water market, only the company, not the Wholesaler, can be judged by a WATRS adjudicator to have failed provide its services to the customer to the standard to be reasonably expected by the average person, and required to take specified actions as a result.

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16. It should also be emphasised that as the Wholesaler is not a party to the present case, this decision is not intended to have any impact on any legal claim the customer may or may not have against the Wholesaler in any other forum.
17. Consequently, the company must return to the Wholesaler, emphasising the findings that have been made in this adjudication and that the adjudicator has found that on the basis of the evidence provided here, granting of a leakage allowance to the customer would likely be appropriate.

Outcome

The company needs to take the following further action: It must return to the Wholesaler, emphasising the findings that have been made in this adjudication and that the adjudicator has found that on the basis of the evidence provided here, granting of a leakage allowance to the customer would likely be appropriate.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 23 July 2018 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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Tony Cole

Tony Cole, FCI Arb

Adjudicator

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