

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1422

Date of Decision: 5 July 2019

#### Complaint

The customer runs an opticians business in [ ]. His charges seemed very high for Premises with only minimal usage. An investigation revealed that the metered supply was shared with the domestic flat ("the Flat") situated above the Premises and that 'double charging' had been occurring. The company agreed to refund £677.00 ("the £677 Credit") for the 2016-2018 period but would not go back any further. In view of this, the customer considers that the company should (1) be re-paying to him the entire amount that it was charging the Flat on the unmetered charge; (2) install separate sub-meters because the customer does not want to continue to be liable for the Flat's usage; (3) pay compensation totalling £8,600.00 for loss of business, distress, inconvenience and overcharging endured.

#### Defence

As the retailer for the customer's business, the company considers that it has done everything possible, including involving senior management at the wholesaler, to take a look at the customer's complaint and to ensure that the correct steps have been taken. As a gesture of goodwill, this has included seeing the customer receive the £677.00 Credit.

No offer of settlement has been made.

#### Findings

The company made good efforts to take up the customer's situation with the wholesaler and to represent his interests in a determined manner. In that respect, it discharged the responsibility that it owed as retailer in this case. However, the company should have explained more clearly how the £677.00 Credit had been calculated and this amounted to a failure to provide its services to the standard expected.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer £75.00 in compensation.

The customer must reply by 2 August 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1422

Date of Decision: 5 July 2019

## Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- The customer runs an opticians business from [ ] ("Premises"). He took up occupation of the Premises in 2015.
- His charges seemed very high for Premises with only minimal usage and so the customer queried this with the company. Despite being assured that there were two metered supplies, subsequent investigation revealed in fact that the metered supply was shared with the domestic flat ("the Flat") situated above the Premises.
- As part of this investigation, it was also discovered that the Flat had been paying Rateable Value ("RV") charges since at least 2006 and that therefore, 'double charging' had been occurring. In view of this double charging (and the fact he was being charged for the Flat's usage as well his own) the customer lodged a written complaint with the company in July 2018. He sought a refund of the overcharging for the period of his occupancy of the Premises up to that point, i.e. for the period between 2015 and 2018.
- The company agreed to refund £677.00 for the 2016-2018 period but would not go back any further. (This was apparently because their records showed that there was another occupier for 2015-2016.)
- The customer remains unhappy because he does not believe that £677.00 is truly reflective of the overpayments that he has made during the relevant period.
- In the circumstances, the customer feels that the company:

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- should be re-paying to him the entire amount that it was charging the Flat on the unmetered charge. As the company has incorrectly charged for water usage over the last three years - by billing him for someone else's water through a business supply - this could be corrected by not charging the customer for his water use for the next three years. Compared to the large family of five in the Flat, the consumption at the Premises should be minimal as only a few members of staff use the toilet and hand basin in the Premises a couple of times a day; and
- should install separate sub-meters - because the customer does not want to continue to be liable for the Flat's usage. This would also enable the customer's true consumption to be worked out against the consumption of the Flat (and a refund could be made accordingly).
- In addition, the customer claims £8,600.00 in compensation (plus interest), calculated as follows:
  - £2,500.00 for loss of business: the customer explains that he has made over a hundred phone calls to the company, on each occasion spending a lengthy period of time on the phone being passed from one person to another. As an optician, all this time spent on the phone could have been used for eye test appointments. The customer adds that:
    - he would often have to book time out off his fully-booked clinic (which runs six days a week, Monday to Saturday) to contact the company about this matter;
    - the average cost per eye test is £25.00 (20 minutes);
    - the average customer spends £225.00 with his business;
    - if he employed an optician for his time, this would equate to £400.00 per day;
  - £2,500.00 for distress and inconvenience suffered: the customer says that - despite the fact that he had advised the company of his limited usage at the Premises - he was constantly told that he was wrong and that the bills that he was receiving were correct;
  - £3,600.00 for overcharging: the customer mentions that he is presently receiving 'sky high' bills from the company, the one for the most recent three months being £397.74 (for example). The customer points out that this is £125.00 per month. He has the same size store as the Premises in another location, with same number of staff and the bill at that other location is only £20.00 per month.

**The company's response is that:**

- Upon the opening of the non-household market on 1 April 2017 ("Market Opening"), the company became the customer's retailer ("Retailer").

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- Prior to Market Opening, RST Water (“RST ”) was responsible for billing the Premises. Since 1 April 2017 and after Market Opening, RST has been the wholesaler (“the Wholesaler”).
- As Retailer, the company points out that its responsibility is for three elements:
  - customer service;
  - billing the customer;
  - reading the customer’s water meter.
- The customer first highlights the shared supply issue. Due to this being an operational issue - and in order to progress with the matter on the customer’s behalf - the company approached the Wholesaler. It was quickly established that the customer’s business was on a shared supply with the Flat upstairs.
- On the question of the shared supply, the Wholesaler addressed two options:
  - to install a private sub-meter, so that the bills can be divided accurately and fairly; or
  - to apply for a new connection (i.e. a separate supply).
- The Wholesaler has explained, however, that it would be up to the landlord or owner of the Premises to put these arrangements in place.
- As Retailer, it is not the company’s responsibility to install a private sub-meter. The shared supply with the Flat is a private dispute between the customer and the tenants upstairs. The customer and the tenants of the Flat should seek to come to an agreement on how bills will be split. The company has recommended that the customer approach his landlord in order to discuss the two options mentioned above.
- Next, as to the dual billing issue, the Wholesaler confirmed that an error had occurred, which saw RST receive money twice for the same supply:
  - once from the domestic customer living in the Flat paying rateable value (“RV”) charges directly to RST ; and
  - then again from the customer, who was paying the company for the entire measured supply.
- As Retailer, the company submits that it has pressed RST / the Wholesaler over the dual billing and money owed to the customer. Challenges were made to senior management at the Wholesaler.
- On 20 June 2018, [ ] of RST responded to the company as follows:
 

*“... After reviewing the case I can confirm the following ... RST have not left the NHH (non-household) customer in a ‘financial situation’ the SPID (supply point ID) and the meter (premise) prior to the market opening have been billed correctly for the water consumed through the meter ... It appears reasonable on this occasion for [ ] to claim*

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*this back the domestic element (to be calculated using average occupancy usage) for the NHH customer for a period of 12 months (01/04/17 – 31/03-18). Suggest its applied as a volumetric adjustment via the market. This is offered without any acceptance of liability on RST 's behalf ...”*

- Essentially, therefore, the Wholesaler's confirmation and response was that:
  - prior to Market Opening in April 2017, the Premises were being billed correctly for the water consumed through the meter; but
  - it would seem reasonable on this occasion for the company to claim back the domestic element and reimburse the customer accordingly for the first year of Market Opening (i.e. 1 April 2017 to 31 March 2018).
- The Wholesaler was not required to give the customer one year's worth of consumption used by the Flat. This was agreed due to the circumstances, whereby the domestic tenant living in the Flat had since moved out, leaving the customer in a position where it would be near impossible for him to get the money for the consumption used by the Flat since Market Opening. This was the key reason why the Wholesaler agreed to make the amendment that it did.
- Following the Wholesaler's response as above, the company's Business Billing Facilitator ([ ]) calculated the amount due back to the customer, which - to cover the period between 1 April 2017 and 31 March 2018 - worked out at £677.51 ("the £677.00 Credit").
- At this stage, the company accepts that the position should have been more clearly explained to the customer, specifically:
  - as to how exactly the £677.00 Credit was calculated (i.e. that it related only to the period between 1 April 2017 to 31 March 2018); and
  - to clarify that no period prior to Market Opening was reflected in the £677.00 Credit.
- The company apologises for any confusion caused to the customer on this aspect. It is acknowledged that this confusion may have been a factor that prompted the customer to query why the backdating had not gone further. The customer advised that he had been occupying the Premises since June 2015. However, RST 's records confirmed that a different occupier, 'Boots Opticians', occupied the Premises prior to 10 June 2016. The customer maintained that he was responsible for paying invoices raised under the name 'Boots Opticians' prior to June 2016.
- The company says that, on multiple occasions, it asked the customer for evidence to support his claim that he paid the invoices for Boots Opticians. No evidence, however, was ever provided by the customer and consequently, no further challenge was made to the Wholesaler on this.
- As the Retailer for the customer's business, the company considers that it has done everything

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possible, including involving senior management at the Wholesaler, to take a look at the customer's complaint and to ensure that the correct steps have been taken. As a gesture of goodwill, this has included seeing the customer receive the £677.00 Credit. The company also emphasises that the £677.00 Credit:

- covers the period between 1 April 2017 and 31 March 2018 and does not pre-date Market Opening. There were no charging errors prior to 1 April 2017; and
  - resulted from the Wholesaler's confirmation that they (i.e. the Wholesaler) had been in error in dual billing since Market Opening.
- In light of RST 's / the Wholesaler's confirmation that, prior to Market Opening on 1 April 2017, the Premises were being billed correctly - the date from which the customer first took up occupation would make no difference. All historic charges were correct. It was only after Market Opening in April 2017 that the customer started to be charged for the full supply as well as the Flat being charged separately for RV - causing the dual billing.
  - The Wholesaler has confirmed that the RV charges have been removed, therefore erasing the dual charging.
  - The company states that it has conducted a full review of the account and its history and checked the Guaranteed Standard Scheme ("GSS") payments to the customer's account. A total of £60.00 GSS has been paid to the customer for three service failures on the company's part:
    - 24 August 2018: pre-investigation submitted to the company. There was a delay in responding to this due to staff sickness. £20.00 GSS was paid to the customer for the company failing to respond within level of service (10 business days);
    - 9 November 2018: there was a delay in the company reporting back to CCWater due to its awaiting a response from the Wholesaler. £20.00 GSS was paid to the customer for the failure to respond within level of service;
    - 10 January 2019: there was a delay in the company responding back to CCWater. Due to this service failure, a credit for £20.00 has been applied to the customer's account, which is in line with the GSS guidelines set out by OFWAT.
  - Given its position as the customer's Retailer, the company does not consider that it should be liable for any part of the £8,600.00 compensation being claimed. It feels that it has done everything within its ability to help to resolve the matter.
  - The company is sorry to hear of the loss of business (and distress and inconvenience) that the customer has experienced in trying to deal with this ongoing complaint. However, it is submitted that the relevant timeline clearly shows that the company was doing its utmost to assist the

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customer and to get the answers needed for him.

### 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 detail in the customer's WATRS application form; and
  - b. the timeline ("Timeline") and the various appendices to the company's defence ("Appendices").
2. I have also had the benefit of reading the customer's comments ("Comments"), which were filed by way of reply to the company's defence.
3. In the main, it seems to me that the customer's allegations are 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 because that was the date when:
  - a. the water market in England opened up to retailers; and

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- b. all 'non-household' customers were moved to a wholesale/retail split service.
5. As [ ] 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. I must look at the company's actions (or failings, if any) as Retailer, therefore. On this, I accept the submission that the company makes, for instance, that it is not part of its responsibility - as Retailer - to install a private sub meter.
  8. As I see it, in the context of this case, the focus of my assessment needs to be on the extent to which the company has pressed the customer's concerns with the Wholesaler. It seems to me that this is the key area of responsibility that falls to the company - as Retailer - to discharge.
  9. From the Timeline, there are several instances where I note that the company seems to be advocating quite firmly and effectively on the customer's behalf. For example:
    - a. from page 1 of the Timeline, I note that the company's Operations Team member, Mr Brown was actively chasing the Wholesaler in March and April 2018;
    - b. from page 2 of the Timeline, on 4 May 2018, Mr Brown disputed the answers that she had received from the Wholesaler, saying: *"... I am not happy with this response. The household customer has moved out of the premise, the NHH customer will have a very difficult job in getting this money back. So, you have refunded the household basically meaning they have not paid for water at all for their time at the premise and the NHH have still been over charged. [ ] from our complaints team has mentioned that after the meeting on the 1st May with [ ] that the NHH customer would get the money back NOT the household. Please can this be escalated higher. As we cannot accept this ..."*;
    - c. from page 3 of the Timeline, on 1 June 2018, the issue was then picked up by the company's Team Leader, [ ], who tackled the Wholesaler in this way: *"... RST have now stopped charging for unmeasured supply and have refunded domestic account with charges that have been paid ... This is totally unfair to our NHH customer as he has*

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*paid for their water. He cannot get these funds back from domestic customer as they have now moved out of property ...”*

- d. then, on 15 June 2018 (page 3 of the Timeline), I note that [ ] of the company updated the customer. The tone of [ ]’s message seems to me to have been both helpful and supportive of the customer: “... *I’m sorry to hear of the situation you have found yourself in through no fault of your own. Having had explained the history behind what has happened here, I completely agree with [ ] that RST Water should refund you the monies back ... Due to us here at Wave (your retailer) being separate from RTS Water, I have had to follow process by escalating a complaint via the wholesale service portal. I have successfully submitted the case and I am now waiting on their response ...”*
- e. further, on 18 June 2018 (page 4 of the Timeline), [ ] again appears to have persevered on the customer’s behalf, escalating the matter with the Wholesaler, saying: “... *We understand this would usually be classed as a ‘private dispute’ but the customer has been left in an almost impossible situation. Both [ ] ([ ]) and myself have raised this situation via the portal. [ ] closed my latest F5, reiterating what he told [ ] in her case (both cases mentioned above). Spoken to [ ] on the phone this morning, nothing else he can do. So suggested emailing yourselves in order to see if anything else can be done ...”*

10. I quite appreciate the degree of frustration that the customer feels at the situation. This is evident from his Comments:

*“... The water company is being dishonest ... I know for a fact the water supply was being paid dual well before the time they have stated ... How can RTS Water say that’s a gesture of goodwill? I have paid for someone else’s water supply? It is illegal for them to charge two people for the same water use ... They have not even returned the over payments, the money the tenant paid does not belong to them if they have billed me the full amount ...”*

11. Whilst palpable, it seems to me that the customer’s frustration is largely directed at the position adopted by the Wholesaler. I do not consider that the company can be made to stand in the Wholesaler’s shoes in this respect.

12. On my reading of the Timeline and the Appendices, I am satisfied (and find) that the company

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made good efforts to take up the customer's situation with the Wholesaler and to represent his interests in a determined manner. Therefore (with the exception of the relatively minor failing to which I refer below), my conclusion is that - as Retailer - the company diligently carried out the duties that it owed to the customer.

13. The shortcoming that I have been able to identify in this case is one that the company itself acknowledges. This was the company's failure, at the end of June 2018, to explain more clearly that the calculation of the £677.00 Credit only related only to the period between 1 April 2017 and 31 March 2018. I note that the company apologises for the confusion that this lack of clarity ("Lack of Clarity") caused to the customer. I find that this Lack of Clarity did constitute a failure by the company to provide its services to the standard one would reasonably expect.
14. As the company recognises, it seems likely that the Lack of Clarity contributed to the customer challenging the adequacy of the £677.00 Credit and to the matter becoming protracted. Given that this appears to have been an isolated failure, I have concluded that £75.00 would be a fair and reasonable amount of compensation to award for the company's Lack of Clarity.
15. More generally, however, in light of my findings above about the efforts made (as Retailer) to press the customer's concerns with the Wholesaler, I am not persuaded that it would be appropriate to make any further award of compensation or reimbursement of charges against the company in this case.

#### **Outcome**

The company needs to take the following further action:

I direct the company to pay the customer £75.00 in compensation.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 2 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.

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

**Adjudicator**

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