

**CASE PARTLY SUSTAINED
RECOMMENDATION MADE**

CS/579

**COMPLAINT AGAINST AQUAGIB LTD FOR DELAY IN CONNECTING
THE COMPLAINANT'S WATER SUPPLY TO AN INDEPENDENT METER
AND FOR CHARGING THE COMPLAINANT FOR WATER NOT
CONSUMED BY HIM**

The Complainant's version

The Complainant was the tenant of a business premises (the premises) that was located in the basement floor of a property which comprised a ground floor commercial unit and the Complainant's basement premises.

When the Complainant signed the lease over the premises in April 2001, one water meter (the meter) serviced both it and the neighbouring commercial unit, which meter was registered in the name of the tenant of the neighbouring commercial unit (the neighbour).

On 9 July 2001 the Complainant applied to the then Lyonnaise des Eaux (Gibraltar) Ltd, (AquaGib) for the independent supply of potable water to the premises but allegedly he was informed by AquaGib that this could not be done until the neighbouring tenant had closed his account. In the meantime he would have to share the meter with his neighbour.

On 21 March 2002 the neighbouring unit was repossessed by the landlord and according to the Complainant he was informed by AquaGib in October 2002 that the meter could now be transferred to his name.

The first bill in respect of consumption received by the Complainant was for the month of October 2002, and it was for the sum of £144. The Complainant explained that since he was only open for business on weekends he felt that £144 was too high. He allegedly complained to AquaGib and apparently he was informed that the meter would be tested. He did not receive another invoice until December 2003 (fourteen months later) when he received one for £6631.

Some time in January 2004 the meter was transferred by AquaGib from its location within the neighbouring unit to the exterior of the building.

The Complainant disputed that he was liable to pay the sum £6631 invoiced to him saying that his nightclub was only open on Saturdays and Sundays and he could not have consumed such a large quantity of water.

In a meeting with the Complainant held on 21 June 2004 the Ombudsman suggested that he keep a daily record of meter readings to see whether they tallied with water consumption in the nightclub. Taking the Ombudsman's advice the Complainant claimed to have found out that the meter was registering consumption of water even when he had closed the stop cock and no water was actually being consumed. On closer

inspection he realised that water was leaking from the dial of the meter. He informed AquaGib who verified his findings and changed the meter. The Complainant confirmed to the Ombudsman that since the new meter was installed his monthly water bills had gone down substantially.

AquaGib's version

AquaGib's version of events differed from the Complainant's. AquaGib agreed that the Complainant had applied for connection to the water supply in July 2001 but they denied they told him that he would have to share the meter with his neighbour. AquaGib explained that at the time, the meter that serviced the premises was still registered to a customer i.e. the neighbour, and until that customer requested a disconnection, the Complainant was not entitled to use that meter for his purposes. AquaGib added that the Complainant was informed of the works he needed to do to be provided with a separate water supply to his premises but he chose not to take up this option.

AquaGib further explained that when mail addressed to the neighbour was returned to them showing that the customer could not be traced, the water supply to the neighbouring unit was disconnected and the meter read on the 30th October 2001. The Complainant was happy to take on responsibility for the supply to the whole property from that day onwards (as opposed to October 2002 as claimed by the Complainant) so the meter reading on 1 November 2001 provided the base against which to measure consumption to be billed to the Complainant's account. In order to provide service the transition was done smoothly with the necessary deposit for the account invoiced separately. On 10 October 2002 the first bill which was based on an estimated reading was sent, i.e. the bill for £144.

In December 2003 the first meter reading since 1 November 2001 was taken. The reading was abnormally high so, as is usually done in such cases, a repeat reading was taken to exclude the possibility of human error. When it was established that it reading was taken correctly, the meter was tested (on 23 December 2003) to identify whether there were any leaks in the internal pipe work. This entailed establishing that the meter's dial was not registering consumption when none of the water taps or appliances were being used (AquaGib stressed that this was not a check for meter accuracy and that meters always tended to under-read slightly in favour of the client). It was confirmed that there was no leak in the system and it was then that the Complainant was sent his bill for the sum of £6631 (*Ombudsman's note: his second bill in twenty-four months*).

On 23 June 2004 at 2.30 pm in response to the Complainant's request the meter was tested for accuracy by AquaGib and it was established that it was inaccurate by 12% in the Complainant's favour. AquaGib explained that what this meant was that the Complainant was consuming 12% more water than was actually being registered by the meter. Later on that day the Complainant reported to AquaGib's 24 hour service that the meter was leaking through the reading dials. AquaGib explained that the leak could have arisen as a result of re-installation work after that day's test or subsequent tampering by a third party. The meter was immediately replaced. AquaGib affirmed that the water lost through this leak was minimal and did not figure as part of the water registered by the meter as having been used prior to that date.

Who should bear the cost of the £6631 (130 cubic meters) worth of water registered by the meter as having been consumed by the Complainant? The Complainant argued that he did not and could not have consumed such a vast amount of water. He only opened on weekends and as such his water consumption was minimal. He could also confirm that the internal pipes had not leaked at any time during his tenancy of the premises so according to him it was evident that the meter must have been faulty. The Complainant also pointed out that the ladies toilets were situated at basement level immediately below the meter and he recalled that a damp patch suddenly disappeared from the ceiling of the ladies toilets when the meter was transferred to the exterior of the building in January 2004.

AquaGib countered that that once water passes through the meter it becomes the consumer's responsibility unless the consumer can prove that the meter is faulty in AquaGib's favour which the Complainant had failed to do, as pointed out above. AquaGib further explained that it was virtually unknown for a meter to register more water than was actually consumed and as a rule meters erred in the consumer's favour. Showing the Ombudsman the innards of a water meter AquaGib explained that water going into the meter from the main supply line revolves a piston which in turn activates an internal gearing mechanism which turns the dials. AquaGib stressed that only the passage of water can revolve the dials which register the consumption of water. The Complainant's failure to establish that the meter was inaccurate in AquaGib's favour meant he remained responsible for the water.

After careful consideration the Ombudsman agreed that the Complainant had probably not consumed the water and he sympathised with the Complainant and his frustration at seeing himself responsible for such a vast amount of water however the burden of proof was on him to establish that the meter was faulty, which burden he had failed to discharge.

The Ombudsman then referred to a statement made by AquaGib during the course of his enquiries whereby its responsibility for reading a meter was purely to enable it to present an account for payment and that it was the up to the customer to check that his consumption was reasonable. Clause 15 of the conditions of supply which is attached to AquaGib's 'application form for the supply of potable water and consumer service agreement' specifies that:

*“All charges accrue day by day as the water is consumed but accounts will be as a general rule, rendered monthly.
Payment is at all times due on demand.”*

The Ombudsman noted that based on AquaGib's own consumer service agreement and contrary to what AquaGib said, they did have a contractual duty to present accounts for payment on a regular basis and even though the contract specified that accounts would be rendered monthly “as a general rule”, one meter reading and two bills in as many years was clearly unreasonable and a breach of their contract with the consumer. Had bills been sent regularly, the Complainant would have realised that the high meter readings did not correspond to his usage of water and would have taken action to identify the cause of this discrepancy. As it was he ran up a bill for water consumption which he now found himself unable to pay.

The Ombudsman stressed that although AquaGib did have a contractual duty to bill the consumer on a regular basis he could not accept the Complainant's explanation that since he only opened on weekends and used a minimal amount of water he had not given his failure to receive monthly bills any thought. Common sense dictated that if one did not receive a utility bill for a very long time one should make the appropriate enquiries from the supplier because otherwise the charges would accrue to impossible levels as happened in this case. The Complainant should have approached AquaGib to enquire about the absence of water bills and the predicament which the Complainant found himself in was the direct result of his laissez faire attitude.

Referring to the fact that only two bills were sent to the Complainant between November 2001 and December 2003 AquaGib explained that they had gone every month to read the meter which was located within the neighbouring unit but access could not be obtained.

The Ombudsman rejected this explanation saying that AquaGib had the right to gain access to water meters that were situated within private property and that their failure to do so had led to the consumer running up a water bill which he now found himself unable to pay (although as pointed out above, the Complainant was also not free of blame.) In any event, at the very least, AquaGib should have contacted the Complainant expressing their concern at the lack of access to the meter.

The Ombudsman sustained the complaint in part, pointing out that AquaGib's own conditions of service gave them the duty to render charges, a duty in which the company had failed. The Ombudsman added that the Complainant was not exempt from responsibility and he could be said to be guilty of contributory negligence. As regards the allegation that the Complainant was being charged for water that he had not consumed the Ombudsman declared that the burden of proof was on the Complainant to establish that the meter was faulty, which burden he had failed to discharge.

The Ombudsman was informed that AquaGib had offered the Complainant easy repayment terms he lauded this offer but went on to recommend that in compensation for its breach of the conditions of service and on a goodwill basis AquaGib should waive a proportion of the sum owed by the Complainant.

Expressing the hope that AquaGib would accept his recommendation the Ombudsman closed his report.