

August 2020

[REDACTED] vs. Castle Water

**Final decision of a dispute determined under section
17E of the Water Industry Act 1991**

**Complaint against Castle Water regarding the
eligibility of a Premises**

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Summary of our final decision

This is a final determination of a dispute between [REDACTED] and Castle Water about whether premises are eligible to switch their suppliers as part of the new market arrangements. It was referred for a determination under section 17E(1) of the Water Industry Act 1991.

In light of the legal framework of the Water Industry Act 1991, and the evidence we have gathered from the parties to the dispute, we determine that the premises have been incorrectly classified as non-household and should, therefore, no longer remain in the non-household retail market.

We determine that from 1 April 17, the date that [REDACTED] property was transferred to the retail market upon the retail market opening, the premises should be considered as household and, as such, should be deregistered from the non-household market.

1. Introduction

A. The complaint

- 1.1 This determination concerns a dispute referred to the Water Services Regulation Authority (**Ofwat**) for determination under section 17E(1) of the Water Industry Act 1991 (**the Act**). The parties to the dispute are [REDACTED] (**the Customer**), Castle Water and Thames Water.
- 1.2 The dispute is about the decision taken by Castle Water to classify the Customer's premises at [REDACTED] (**the Premises**) as non-household. The Customer disputes this decision and considers the Premises should be classed as household. Thames Water and the Consumer Council for Water ("CCW") both agree with the Customer's considerations.
- 1.3 This determination considers the eligibility of the Premises by considering whether the Premises are 'household premises' as defined by the Act. It will assess the principal use of the Premises, and if found to be primarily used as a home, it will not be eligible to be supplied by Castle Water. If the principal use is not as a home, it will be eligible to be supplied by Castle Water. Our assessment has been done with reference to Ofwat's [Eligibility Guidance](#) and [Eligibility Supplementary Guidance](#).
- 1.4 This determination is based on the information we have gathered since opening this case. Should the status of the Premises change going forward, the eligibility of the Premises could also change.

B. Jurisdiction to determine this complaint

- 1.5 Ofwat has jurisdiction to determine disputes about the eligibility of premises where a licensee or a potential customer of a licensee cannot agree on whether the eligibility requirements are satisfied in respect of a proposed supply arrangement.
- 1.6 When disputes about eligibility are referred to us, we expect the parties to have considered our [Eligibility Guidance](#) and [Eligibility Supplementary Guidance](#) and taken reasonable steps to try and resolve the issue first. In this case, the Customer has exhausted Castle Water's and CCW's complaints procedures and processes, respectively. CCW then referred the case to Ofwat for further review.

- 1.7 We are satisfied that the Parties have exhausted the opportunities to resolve this matter amongst themselves and note that a decision could not be reached, with the parties disagreeing on the eligibility of the Premises.

C. Purpose of this document

- 1.8 This is our final determination of this dispute. It sets out the decision we have made following our consideration of the legal framework for the eligibility of a premise, and the evidence provided to Ofwat by all parties.
- 1.9 As this is our final determination there are no routes of appeal. The only route of challenge to our final decision is via judicial review proceedings in the High Court. Parties should note that claims for judicial review must be made promptly and before 3 months after the decision to be reviewed.

2. Background

A. The Parties

Customer

- 2.1 The Customer is [REDACTED] who owns the Premises. He is the sole worker of a shop located at the front of the Premises.

Companies

- 2.2 Thames Water is the wholesaler and supplied water and sewage services to the Premises prior to the retail market opening.
- 2.3 Castle Water is a retail licensee. The Premises was transferred to Castle Water for water retail and sewerage retail services.

B. The Premises

- 2.4 The Premises is located at [REDACTED] and is owned by the Customer.
- 2.5 The Premises consists of a clothing store at the front, with the Customer being the only worker, and a studio flat at the back, where the Customer resides. There are no water facilities in the clothing store (no toilet or wash facilities) with the Customer using his own household facilities, if needed, when working in the shop.
- 2.6 The Customer has confirmed that whilst business rates are calculated higher than council tax for the Premises, they are entitled to small business relief. What this means in practice is that the Customer pays for council tax but does not pay any business rates.

C. Complaint

- 2.7 On 1 January 2019, the Customer contacted Castle Water to advise that he did not consider the Premises should be in the non-household market. Castle Water subsequently raised this complaint with Thames Water on the Customer's behalf. Thames Water confirmed that it received the complaint from Castle water on 1 February 2019.

- 2.8 On 6 March 2019, Thames Water responded to Castle Water to advise that it considered the Premises to be household as there was no water supply serving the shop and workplace health and safety regulations would not apply if the Customer is the only employee and has access to his own water supply. As such, Thames Water confirmed it would be de-registering the Premises and, on 19 March 2020, Thames Water updated Castle Water with its intentions to do so.
- 2.9 Castle Water subsequently carried out further investigations and, on 26 March 2019, notified Thames Water that it would challenge its decision to deregister the Premises. Its reason for concluding that deregistration was not appropriate was that the shop should have a toilet and wash facilities for staff. As such, Castle Water confirmed that it would be withdrawing the Customer's complaint and the Premises subsequently remained in the non-household market.
- 2.10 Following the decision to not deregister the Premises from the non-household market, the Customer exhausted Castle Water's complaints procedure and, on 4 July 2019, referred the matter to CCW who carried out an investigation into the issue. As part of its investigation, CCW asked Castle Water for further explanation as to why it considered the Premises should remain non-household. Castle Water clarified that it is because business rates are higher than council tax.

D. Request for a determination

- 2.11 On 12 November 2019, CCW referred the issue to Ofwat after not being able to come to an agreement between the parties. We subsequently carried out a preliminary assessment to establish whether to take the matter forward and this included asking both Castle Water and Thames Water to review the issue.
- 2.12 On 4 March 2020, Castle Water responded restating its position that it considered the Premises should remain in the non-household market and setting out that it was not willing to reconsider its position. On 24 February 2020, Thames Water responded to clarify why it felt that deregistering the Premises was appropriate.
- 2.13 On 11 March 2020, having conducted a preliminary assessment, we decided to open a case and informed the parties accordingly.

3. Legal framework

3.1 Section 17E(1) of the Act allows us to determine, in a case referred to us by:

- a water supply licensee or a potential customer of a water supply licensee (**WSL**); or
- a sewerage licensee or a potential customer of a sewerage licensee,

whether a proposed supply of water to, or proposed sewerage services for, the customer would be in accordance with what is authorised by the licensee's licence.

3.2 Section 17E(2) of the Act provides that the matters we may determine include:

- the extent of the Premises to be supplied or served;
- whether the premises to be supplied or served are household premises;
- in the case of supply by a water supply and / or sewerage licence (WSSL licensee) with a restricted retail authorisation, whether the threshold requirement is satisfied in relation to premises to be supplied; and
- any other matter, the determination of which is relevant to those matters.

3.3 Under schedules 2A and 2B of the Act, a licensee with a retail authorisation may not supply or serve household premises. The Act does not define 'premises' for the purpose of assessing eligibility. Premises can include buildings or land. Licensees can only supply customers at individual eligible premises. Each of the Premises supplied must be eligible.

3.4 The issue in this case is, therefore, whether or not the Premises to be supplied or served are household premises. The meaning of 'household premises' is set out in section 17C of the Act. The primary considerations are:

- whether the person has his home in all or any part of the Premises; and
- whether the principal use of the Premises is as a home.

3.5 We consider complaints on a case-by-case basis when asked to make a determination under section 17E of the Act.

4. Response from draft determination

4.1 On 4 June 2020, we issued a draft determination to [REDACTED] Castle Water and Thames Water to which all parties responded.

A. Response from Customer

4.2 [REDACTED] responded to the draft determination on 23 June 2020.

4.3 He stated that the draft determination seemed fine although he would like the deregistration date to be moved back to 2017 due to the fact that is when he originally got in touch with Castle Water and that was the point that the transfer to Castle water took place.

4.4 As a result of this, we sent a further email to both Castle Water on 7 July 2020 to ask them whether they would have any objections to changing deregistration to 2017.

4.5 [REDACTED] also raised his concerns about what will happen with the billing between Castle Water and Thames Water as he doesn't want to be overcharged. He wants to ensure that he knows very clearly what money is owed back from Castle Water and what he owes to Thames water.

B. Response from Castle Water

4.6 Castle Water responded to our draft determination on 5 June 2020.

4.7 Castle Water expressed their view that although they didn't necessarily agree with the analysis, they are prepared to accept the determination and had submitted a C/03 deregistration request to Thames Water asking for the SPIDs in question to be deregistered with effect from 1 January 2019.

4.8 Following [REDACTED] comments regarding the date of deregistration, a further email was sent to Castle Water on 7 July to ask them if they would have any objections to moving the date back to 2017. Castle Water responded on 15 July 2020 to confirm that this makes sense and this is what would happen in normal circumstances. Castle Water confirmed that Thames Water had in fact deregistered the water supply back to April 2017 and will ask them to also do this with the sewerage services.

C. Response from Thames Water

- 4.9 On 9 June, Thames Water responded to the draft determination to confirm that they agree with the draft determination and have no further comments to make.
- 4.10 On 15 June 2020 Thames Water sent a further response to confirm that Castle Water had requested deregistration on the premises from 1 January 2019 and they will action accordingly.
- 4.11 Following our email on 7 July 2020 asking whether there would be any objections to moving the deregistration being pushed back to 2017, Thames Water responded on 13 July to confirm that they agree that deregistration should be applied from this date.
- 4.12 On 4 May 2020, we asked Castle Water to reconsider its position as the Customer receives small business relief and therefore does not pay business rates. On 11 May 2020, Castle Water confirmed that it would not be changing its position as it considered that excluding the small business relief the business rates would be higher than the council tax.
- 4.13 Castle Water also notes that the retail margin on the Premises is below the economic cost of provision of retail services in the non-household market, and Castle Water states that it has no economic interest in incorrectly maintaining the Customer in the non-household market.

D. Our final decision

- 4.14 We consider that the Premises is household and determine under section 17E of the Act that the Premises is not eligible to be supplied by Castle Water. We set out our reasoning for this below.

i. Principal use of the Premises

- 4.15 In determining the principal use of the Premises we have reflected on the information provided to us by the parties and we have also reflected on the Eligibility Guidance and the process set out in our Eligibility Supplementary Guidance.
- 4.16 As set out above, the Premises is liable for both business rates and council tax making it a mixed-use premises. As previously stated, business rates would be higher than council tax. However, the Customer is eligible for small business relief. As such, he does not pay business rates. In addition, there is

no water or sewerage supply to the portion of the Premises where the business is located and of which the Customer is the sole worker.

- 4.17 Castle Water also stated that one of the reasons it considers the Premises to be non-household is that under health and safety regulations, there is a requirement to have facilities (toilet and sink) for staff members. However, we note that currently the Customer is the shop's sole worker and consider that Castle Water's comments are not relevant as they do not recognise the day to day reality of how the Premises has been and is being used, that is, only by the Customer. In any event, health and safety regulations are not determinative when assessing the principal use of a premises, rather we are guided by our Eligibility Guidance and Supplementary Guidance. As set out above, this determination is based on the information we have gathered since opening this case. Should the status of the Premises change going forward, the eligibility of the Premises could also change.
- 4.18 We consider there is sufficient evidence that the principal use of the Premises is as a home. Therefore, the Premises should be deregistered from the non-household market.

ii. Date implementation will take effect

- 4.19 As outlined in the response to draft determination section above, all parties have agreed that deregistration will take place. Castle Water has submitted the request for deregistration to Thames Water. Thames Water have confirmed that they are in the process of doing this. Castle Water confirmed that the water supply deregistration is in the process and is being backdated to 1 April 2017. The sewerage services is also in the process of deregistration but under the original date of 1 January 2019. Castle water have confirmed that they will also request that Thames change this to 1 April 2017.
- 4.20 Section 17E (2) of the Act allows us to determine "any other matter the determination of which is relevant to those matters" (and 'those matters' includes 'whether the Premises to be supplied [or served] are household premises'). We consider that a determination of when deregistration should take place is relevant to a determination of eligibility.
- 4.21 Reflecting on the above representations we consider that the Premises should be regarded as household premises from 1 April 2017.

E. Conclusion

- 4.22 Based on the evidence and representations received, and having considered our Eligibility Guidance, we consider the principal use of the Premises is as a home. Accordingly, we determine that the Premises are not eligible Premises. We also determine deregistration should take place immediately and should be considered as household backdated to 1 April 2017.
- 4.23 We also ask that Castle Water and Thames Water correspond with [REDACTED] to clearly outline the next steps for him in relation to his billing for this period.

Ofwat (The Water Services Regulation Authority)
is a non-ministerial government department.
We regulate the water sector in England and Wales.

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