

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1488

Date of Decision: 20 November 2019

Complaint

The customer states that he is being wrongly charged for surface water drainage at a property for which he is acting as the representative. He states that the company has failed to act adequately in liaising with the wholesaler to secure a waiver of the charges back to February 2015 when the property in question was demolished. He claims that the delay in the actions of the company have caused inconvenience and exacerbated the outcome.

He seeks a direction for the company to cancel the surface water drainage charges back to February 2015 and to pay substantial charges for its delays.

Defence

The company states that it has acted in accordance with its duties and has repeatedly requested the wholesaler to waive the charges referred to by the customer. It accepts that it is responsible for some delays but states that these delays did not affect the outcome of the request and that it has made two payments of £20 and £40 to reflect the inconvenience caused.

It defends that case and does not accept that remedies are due.

Findings

The company has acted in accordance with its legal obligations in that it has liaised between the customer and the wholesaler and has obtained a waiver of charges back to April 2017. It has assisted the customer in a reasonable manner since it has been involved in the case.

Outcome

The company does not need to take any further action.

The customer must reply by 18 December 2019 to accept or reject this decision.

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Party Details

Customer: [] (Project Manager for the complaint in relation to [] ("the Property").

Company: [].

Case Outline

The customer's complaint is that:

- The customer is the project manager from ABC Ltd who has taken over the complaint from Ms Brown. ABC Ltd represents [] which controls the Property.
- The Property was demolished in February 2015 but the company and RST Water ("RST") the wholesaler, continued to raise charges for the surface water drainage ("SWD").
- The customer states that he complained in May 2018 to the company about the charges for SWD.
- He claims that the charges should not have been raised as the Property was self-draining.
- He states that the company referred the matter to RST.
- The customer claims that the Consumer Council for Water ("CCW") then took up a complaint against the company in October 2018.
- The customer states that the CCW had to "chase" the company to obtain the answer from the wholesaler, RST, about the request to waive the charges.
- The customer claims that the company stated it was having difficulty with the wholesaler. He states that there was finally a reply on 18 January 2019.
- The customer states that it received a copy of an email on the 5th February that had been sent to the company from RST stating that the customer had not sent forms in as requested.
- The customer claims that RST states it could not go back further than 1 April 2017.
- The customer states that he sought clarification from the company as to its position.

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- The customer states that the company did not reply until 13 April 2019 when it stated that it would not be challenging RST.
- The customer believes that the SWD charges should be cancelled from the demolition of the Property in February 2015.
- He claims that the company has exacerbated the problem by not dealing adequately with RST.
- The customer would like the company to cancel the SWD charges back to February 2015 and to pay substantial charges for its delays.

The company's response is that:

- It contests the claims of the customer.
- It states that it first received a complaint on 23 March 2017 in relation to this matter.
- It states that it needed information for the appropriate form to request a disconnection from RST.
- The company states that the customer returned the form and information and that it sent it to RST on 21 April 2017.
- The company states that it chased RST for a reply and that on 15 June 2017 RST states that it could not find the query.
- The company state that RST later stated that it had tried to make arrangements to visit the Property on three occasions with the customer but that it was not possible.
- The company states that RST told it that the case had been closed on 6 September 2017 due to the lack of response from the customer.
- The company states that it contacted the customer and that it was told that the lack of communication was due to holidays.
- The company states that it was contacted in December 2017 by the customer to state that the site visit would not go ahead and that RST had agreed to revoke charges.
- The company states that it received a complaint from the customer in May 2018.
- The company states that it again made the request for deregistration from RST.
- The company states that this request was refused by RST on 2 July 2018. The company states that it pursued the matter with RST.
- The company states that there were further delays caused by RST and that a final reply was received on 8 January 2019 stating that the Property was now deregistered as of 31 March 2017.
- The company states that it has abided by all of its obligations to the customer and has raised the issue with RST on nine occasions in all. The company states that it has applied an amount of

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£20 and £40 to the account as goodwill gestures for replying out of time. It states that any delays have not impacted the final outcome of the request for deregistration.

- The customer has not made any offer and states that the amount of £4,478.41 is owed by the customer.
- The company also adds that had the customer completed the disconnection form issued to him on 27 July 2016 by RST the matter would have been resolved much earlier.

In reply the customer states:

- Not all the communications are presented by the company so the full picture is not shown.
- That the company has wrongly billed and that this is the main issue.
- That the company did not further challenge RST.

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. I find it important to remind the parties that adjudication is an evidence based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.

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2. For clarity, although the customer is in fact three different persons at different stages, I shall refer to “the customer” throughout for ease of reading and simplicity.
3. In order to clarify any potential confusion, I must also remind the parties that the company and RST are separate and distinct organisations. Following the rules of the scheme I cannot make any findings on third-party actions in my decision and must limit my considerations to matters between the customer and the company.
4. In April 2017 the water market opened up to retailers. All non-domestic customers were moved to a wholesaler/retailer split at that time. It must be noted that under the new arrangements that started in April 2017 a non-domestic customer only has a relationship with the retailer. The customer cannot bring a claim against the wholesaler directly, but only against the retailer. It should also be noted that the retailer’s duty is to refer any matters to the wholesaler at the customer’s request, within reason. The liability of the retailer is therefore, limited to an administrative role. The retailer cannot be held liable for any faults of the wholesaler.
5. There is a large volume of information and evidence that has been submitted with this application. The main focus of this adjudication is to ascertain from the application whether or not the company is at fault with regard to (a) the charges that have been levied and/or (b) the alleged delay in its services.
6. It is common case that the Property was demolished in February 2015. The customer states that he contacted the company in May 2018. The company states that it first received a complaint on 23 March 2017.
7. The customer states that as the Property was self-draining after February 2015, that the charges for SWD should not have been levied and, therefore, should now be waived. The company states that it has assisted the customer in making this case to the wholesaler, RST, and that RST will only consider waiving charges from April 2017.
8. I note that the customer has submitted information about why he feels that the charges are unjust. Nonetheless, the question I have to decide is whether the company acted properly in relation to the matter. I have carefully considered the chronology of events after 2015. I note that RST states that it sent forms on 17 July 2016 that were to be returned to enable disconnection.

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The customer does not refute this, nor does he challenge in reply the assertion of the company that, had this been done in 2016, the matter may have been resolved earlier.

9. The company states that it has contacted RST on nine occasions to ask it to consider the customer's position. The company has produced supporting evidence at "Evidence 7" and "Evidence 8".
10. The company accepts that it has replied out of time to the complaint and states that it has applied an amount of £20 to the customer's account for this delay.
11. The customer states that he disagrees with the final position of RST and that he is not satisfied that the company will not pursue the matter further with the wholesaler.
12. In considering this part of the claim, whether or not the company should pursue the matter further, I take into account that the company has already made a number of approaches to RST in relation to this request. I note that the company has no power to insist that RST remove the charges. Neither is the company obliged to keep pursuing RST under its legislative duties. In any case, the customer has not made the case that the company has breached any statutory obligations. Taking the evidence that has been presented as a whole, I do not find that the position of the company is unreasonable, and I do not find that it is at fault in not returning to the wholesaler. I realise that the outcome is disappointing to the customer but it is the decision of RST and not the company not to back date the waiver of the charges to 2015. I consider that the company's duty does not extend beyond the work that it has already carried out in respect of this matter.
13. Regarding the allegations of delay, the customer has produced details of the stages of the complaint process that it undertook with the company. This was to show that the company did not act in a timely manner in relation to this case. The company, to some extent, has accepted that there were delays. It states that payments of £20 and £40 have been made to reflect these shortcomings.
14. The company has explained that it was awaiting the response of RST in relation to the request that it had made for the customer. It states that RST had misplaced paperwork and that there was a certain amount of time during which the company was waiting for a reply.

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15. The customer states that he had to chase the company for replies and this is supported by the notes from CCW.
16. I note that the customer has emphasised in his reply that the company has not listed all its communications with the customer. He states that this would show a more frustrating picture than that which has been presented. I accept that the whole process must have been significantly inconvenient for the customer. I also appreciate that the company has presented an overview of the circumstances. However, I do note that the company has accepted some fault and has made some goodwill payments. I accept that this is not in the region of the claim by the customer; however, the key issue is whether or not the actions of the company were disadvantageous to the customer's claim regarding charges.
17. I have to take into account that the evidence shows that there were delays in the actions of both parties over the years. In 2016 the forms sent by RST were, apparently, not returned by the customer. In 2017 the customer's representative, Mr. [], was not available to arrange a site visit and confirmed in December 2017 that one would not be necessary. The evidence suggests that RST has also caused delays that have been passed on to the parties in its processing of the customer's request.
18. I have to assess the material effect that any delays in this case had upon the outcome of the application to RST. I am not persuaded that the evidence shows that there would have been any difference in the outcome had there been swifter action on the part of the company. I do, however, have to also consider that had the customer acted sooner, in 2016, there may have been a significantly different outcome to the matter. I note that the customer's case has been presented by three people between 2015 and the present time. I have to take into account that the company has stated, unchallenged, that in December 2017 it was told by a representative of the customer that the site visit with RST would not go ahead and that RST had agreed to revoke charges.
19. I note that the customer has made representations regarding the relevant charge period on the Property. However, I find that this material would only be relevant were I to find in favour of the customer in relation to the allegations against the company. Such matters would be dealt with as part of the remedy due in that event. I have not made such a finding in this case.

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20. I must stress that this decision is in no way a criticism of the actions of the customer who has clearly spent a lot of time and effort in attempting to resolve this matter. Nonetheless, the company is subject to legislative regulation and can only be held accountable to that standard.

21. On balance, I find that the evidence does not show that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person. It therefore follows that this claim fails.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 18 December 2019 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



J J Higgins (Barrister, ACI Arb)

Adjudicator

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