

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1694

Date of Decision: 24 January 2020

Complaint

The customer states she has been billed incorrectly for surface water and highway drainage. She requests that the Property be reduced from Band 2 to Band 1.

Defence

The company states that the calculation is made by the wholesaler and the company raised the matter for the wholesaler to review.

The customer has received a goodwill payment of £100.00 from the wholesaler.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its representation of the customer to the wholesaler and its explanation to the customer of the wholesaler's calculation.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £200.00.

The customer must reply by 21 February 2020 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The completed application form was received on 24 January 2019, but it included no measurements.
- The customer was advised of the problem on 28 January 2019 and again in a phone call on 6 February 2019.
- On 12 March 2019 the customer communicated that he was not willing to complete a third application form.
- The customer's second application form was found and the customer was notified on 30 April 2019 that a request had been made to the wholesaler for a review of the business's SWHD charges.
- On 16 May 2019, the wholesaler confirmed that it had reviewed the business's SWHD charges, including undertaking a site visit.
- The wholesaler confirmed that the business's correct billing area was 129m², a reduction from the previous 191m², although both are within Band 2.
- The wholesaler has subsequently confirmed that no site visit was undertaken and the calculation was performed through a desktop study.
- The wholesaler visited the Property on 20 December 2019.
- The customer remains in Band 2, but while her original calculation was 129m², this was based on the customer's share of the roof, communal walkways and another communal areas. It did not take into account a share of any of the car parks for the building.
- The customer's correct calculation is 228m².
- The company is unable to influence the wholesaler's determination of site area banding, but did raise the matter for the wholesaler to review.
- Due to the complexity of the calculation, the wholesaler is willing to meet with the customer to go through the calculation.
- The wholesaler has made a goodwill payment to the customer of £100.00.

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

- Other businesses in the precinct are not receiving bills from the company.
- She does not dispute the size of the site, but the calculation.
- The site area map used for the calculation is inaccurate.
- When the wholesaler visited on 20 December 2019, the only measurements taken were of the car park.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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 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 customers 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, including 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, calculation of SWHD charges is a matter to be decided by the wholesaler, 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 made the calculation correctly, the wholesaler could not be ordered to correct the calculation, 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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 wholesaler the customer's request for a recalculation, but was obligated to make a reasonable effort to present to the wholesaler the customer's best case for such a recalculation.
5. I find, however, that in the present case the company has failed to fulfill this responsibility appropriately and as a result has failed to provide its services to the customer to the standard to be reasonably expected by the average person.
6. While the evidence indicates that an initial delay resulted from the customer's own failure to include necessary information on the application for review of SWHD charges, it also indicates that further delays resulted from the company losing the second version of the form sent by the customer.
7. In addition, when the customer received the first re-calculation in late May 2019, the customer's colleague responded with a detailed critique of that calculation. However, rather than responding to the points the customer's colleague made, the company's response merely repeated the previous communication sent to the customer. The company, that is, made no attempt to explain how the customer's colleague was incorrect, or to attempt to assist the customer's colleague in understanding why the calculation provided was correct. There is also no evidence that the arguments made by the customer's colleague were passed to the wholesaler for review.
8. Since the commencement of this claim, the wholesaler has undertaken a site review of the Property and has produced an updated calculation. However, the communication from the wholesaler that has been provided states that despite a site visit having been requested, that request was never communicated to the wholesaler by the company.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

9. While I am unable to review the correctness of the calculation undertaken by the wholesaler, I find that in the above respects the company failed to provide its services to the standard to be reasonably expected by the average person in its representation of the customer to the wholesaler and in its responsibility to explain to the customer the calculation on which the wholesaler's conclusion was based. I also find that the evidence is clear that these failures on the part of the company caused the customer both inconvenience and distress.
10. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation for these failures would consist of a payment of £200.00.
11. The customer may, of course, remain unhappy with the wholesaler's latest calculation, giving a chargeable area of 228m². However, for the reasons explained above, that cannot be reviewed here and any challenge the customer wishes to bring to this calculation must again be raised to the company, which must then appropriately represent the customer to the wholesaler and explain to the customer the basis of the wholesaler's calculation.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £200.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 21 February 2020 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- 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.
-

Tony Cole

Tony Cole, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.