

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1858 – Billing & Charges – Surface water drainage

Date of Decision: 24 April 2020

Complaint

The customer's complaint concerns the surface water and highways drainage charge for his business. He believes it is being applied inequitably, he has been placed into the higher banding (band 2 rather than band 1), which increases his charges by 250%, and which for a small business is a serious fixed cost overhead difference. The principle issue is how multiple occupied building and site costs are calculated and applied. The charge should be applied to users/beneficiaries of the service or based on levels of use/benefit rather than on occupiers. As a tenant, he has no ownership or control over the site, its use or its drainage facilities or cost mitigation measures. In addition, the drainage at the site is inadequate. Further, in seeking to establish what the original bill was for, how it was calculated and pursuing a complaint he is also unhappy with the customer service provided by the company. The customer requests that WATRS impose a penalty on the company. The customer also requests that the company undertakes a number of actions; and pay compensation in the sum total of £2,500.00 for management time/inconvenience and distress.

Response

The dispute is based on the wholesaler, XWholesaler (XWH), policy regarding surface water and highway drainage charges. XWH has advised that it will not amend the banding. As this is the wholesaler's decision, it is out of the remit of XWater to amend. As the retailer, we have fulfilled our obligations on the customer's behalf to raise this to wholesaler and we have subsequently challenged them in relation to the surface water and highways drainage bandings. We accept there have been some delays in responses and we have already applied a £100.00 gesture of goodwill for this. There was no material impact from the failings and as a result they have not influenced the outcome for the customer, so we believe £100.00 already applied, is fair and reasonable compensation for this.

Findings

The company and XWH are separate entities. My remit is to determine the issues between the customer and the company. It falls outside of my remit to consider any claims against XWH. The evidence shows that XWH, and not the company, is responsible for deciding the chargeable area and banding for the customer's premises. The evidence shows that the company contacted the wholesaler and raised the customer's complaints in this regard on a number of

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occasions. The evidence also shows that the wholesaler has confirmed that no amendments will be made. The wholesaler's explanations of its position have been provided to the customer. It is not within my remit to determine the chargeable areas or determine whether XWH's measurements, bandings and/or banding charges are correct. Any question regarding the fairness of companies' charges, whether a retailer or a wholesaler, are outside the scope of WATRS and fall outside of my remit to consider. There is no evidence to show that the company fulfilled its responsibilities to the customer in relation to the quality of the drainage. The company also failed to provide a reasonable level of customer service to the customer during the period of the complaint.

Outcome

The company needs to take the following further action:

1. The company should put the customer's account on hold until the date on which the customer accepts or reject this decision.
2. The company should pay the customer further compensation in the sum of £250.00. An authorised representative of the company should also provide the customer with a written apology for the level of customer service provided.
3. The company should take to action to ensure that reasonable attempts are made, whether by it or by the wholesaler, to resolve any issues with the drainage at the site within a reasonable time.
4. If the customer wishes, the company should also contact the wholesaler and obtain clarification and an explanation on the customer's behalf about why the calculation for chargeable area changed from 164m² to 144m², if it is able to do so.
5. The company should also send the customer the relevant form to complete to dispute the connectivity of the site.

The customer must reply by xx May 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1858

Date of Decision: 24 April 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- He is unhappy with the level of surface water and highways drainage charge. He believes it is been applied inequitably and this has placed him into the higher banding (band 2 rather than band 1), which increases his charges by 250% which for a small business is a serious fixed cost overhead difference.
- The principle issue here is how multiple occupied building and site costs are calculated and applied. The charge has been applied inequitably because of expediency/self-interest.
- It is expedient for XWater (complicit with the Wholesaler and the Landlord) to apply a simple charge application i.e. to 'occupiers' (who are more easily quantifiable and identifiable) and 'calculated areas' rather than to 'users/beneficiaries' of the service or based on levels of use/benefit.
- In addition, as a tenant, he has no ownership or control over the site, its use or its drainage facilities or cost mitigation measures. For example the large site car park is included in the 'area calculation' for drainage applied to his business. This space is not used by the business (2 staff, one loading vehicle) but is used for free parking by many users (1000 +) who make no direct contribution to its drainage costs but take great benefit (partly subsidised by his business).
- In seeking to establish what the original bill was for, how it was calculated and pursuing a complaint he is also unhappy with the customer service (e.g. no response or long delays to questions/emails); unprofessionalism (no single point of contact; poor record keeping; poor communication and management e.g. billing team not aware a complaint being dealt with by

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customer resolutions team; having to repeat information to different resolution team members each time; no explanation or guidance on their formal complaint procedure; untrained staff; out of date information – 2017/18 banding information on web site); bullying/intimidation (for example continually sending debt letters threatening additional penalties when XWater had agreed to put his account on hold until the complaints process was concluded); imposition of a late payment charge £40.00 (despite agreement that his account was on hold, he has paid bills for 2018/19 and 2019/20 in advance at band level 1 and committed by letter to pay any outstanding amount when a decision is made re the banding level); arrogance/lack of empathy (e.g. the company's responses to him and CCW (Consumer Council for Water) repeating its answers, asking him to complete more paper work/forms etc, passing responsibility to the wholesaler); and the quality of service (the drainage service is inadequate).

- The customer requests that WATRS decide if a penalty is due to be paid by XWater for previously refusing to send details of his surface water drainage arrangements to XWholesaler (XWH), the penalty being the difference in the amount of charges between the two surface water/highway drainage bandings. The customer also requests that the company put the account on hold until the process is concluded; confirm a charge band – level 1 based on area of unit/level of use of site and recalculate charges for band 1; improve billing for this service by showing exactly what the charge is for how its has been calculated; properly acknowledge the time, effort and cost incurred in taking up this issue; demonstrate what measures they have taken to resolve the wider issues raised re customer service – ownership, management, timely communication etc); and improve the drainage. In addition, the customer requests compensation for management time/inconvenience and distress in the sum total of £2,500.00.

The company's response is that:

- The customer first contacted XWater on 2 April 2019 to advise that they moved into the property on 20 July 2018. They advised that the property does not have a water connection and as such wanted to know how they could be billed for waste water.
- It was explained that they are being billed for surface water and highways drainage only and that they are currently on a band 2. As the customer disputes this he wanted confirmation of what figures were being used to calculate this.
- A response was sent on 6 June 2019 explaining the site and the charges and that the information was that their site area is 164m.
- The customer advised that the calculations are incorrect as the property is 75m² as such a site area form was sent to be completed so this could be challenged with the wholesaler.

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- The completed form, along with photos were sent back on 5 July 2019 and this was raised to the wholesaler on 7 August 2019.
- The wholesaler responded and advised that they would not amend the banding based on the information that has been provided they advised that this is a multi-occupied site. Due to this the shared areas are apportioned based on percentage of their own property against the whole site. Due to this the chargeable area is 144m² and therefore a band 2.
- Again, the customer disputed the communal area stating that they do not use the car park and that anyone can have access, as they do not benefit from this use they shouldn't be billed for this area.
- As such XWater again raised this to the wholesaler based on the comments provided by the customer and again they responded advising that they would not amend the banding.
- It was advised that if they want to dispute the actual connectivity to the site then a further form would need to be completed so that this can be raised to the wholesaler, this was sent to the CCW so that this could be passed to the customer to complete.
- At the moment this has not been received back and so has not been submitted to the wholesaler for them to reassess. Once this is received XWater will be more than happy to raise this to the wholesaler on behalf of the customer.
- In conclusion the dispute is based purely on the wholesaler's policy regarding the surface water and highway drainage charges and the bandings that they allocate.
- As this is the wholesaler's decision on what they are charging the customer based on their site area it is out of the remit of XWater to amend. As the retailer we can provide the information to both the wholesaler and the customer. Without further evidence showing that they do not have use or access to the car park the wholesaler's decision will remain unchanged as per their guidelines.
- As the retailer, we have fulfilled our obligations on the customer's behalf to raise this to wholesale and we have subsequently challenged them in relation to the surface water and highways drainage bandings.
- We accept there have been some delays in responses and we have already applied a £100.00 gesture of goodwill for this. There was no material impact from the failings and as a result they have not influenced the outcome for the customer, so we believe £100.00 already applied, is fair and reasonable compensation for this.

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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 must remind the parties that adjudication is an evidence-based process.
2. 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.

Comments on the company's response

3. Please note that under section 5.4.3 of the Scheme Rules, the customer cannot introduce new matters or evidence in their comments on the company's response; the adjudicator must disregard any such material if submitted.

Wholesaler and Retailer

4. In April 2017 the water market in England opened up to retailers and all non-household customers were moved to a retail/wholesale structured service.

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5. The evidence shows that the company is the retailer and XWH is the wholesaler. Retail companies and wholesale companies are separate entities. The customer has a contractual relationship with the retailer only. Under the Water Redress Scheme, a customer can only make a complaint against the company with whom they have a contractual relationship with; that is, the retailer. Therefore, for the purposes of this decision, my remit is to determine the issues between the customer and the company.
6. This adjudication can only consider the duty owed by the company to its customers. The company's duty is to contact the wholesaler and raise any claims or query any decisions on the customer's behalf.
7. It falls outside of my remit to consider any claims or complaints against XWH.

Chargeable area and banding

8. The evidence shows that XWH, and not the company, is responsible for deciding the chargeable area and banding for the customer's premises.
9. The company's duty to the customer is to contact the wholesaler and raise any queries on behalf of the customer.
10. The evidence shows that the company contacted the wholesaler and raised the matter on the customer's behalf. (I will deal with customer service issues below). The evidence also shows that the wholesaler has twice confirmed that the charging for surface water and highways drainage remains in band 2. The wholesaler's explanation of its position has been provided to the customer.
11. It is not within my remit to determine the chargeable areas or determine whether XWH's measurements, bandings and/or banding charges are correct.
12. I also note the customer's submissions that the wholesaler's method of applying its charges to occupiers rather than to users/beneficiaries is inequitable. However, please also note that any question regarding the fairness of companies' charges, whether a retailer or a wholesaler, are outside the scope of WATRS and fall out of my remit to consider. Under WATRS Rule 3.4.1,

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WATRS is not the appropriate forum to determine any complaints regarding the fairness or otherwise of surface water and highways drainage charges.

13. As discussed above, any claim or complaints against XWH cannot be considered under this adjudication.

14. I acknowledge the customer's claim and appreciate that he will be disappointed that issue of the chargeable area and banding cannot be considered under this adjudication. However, I find no failings on the company's part in this regard.

The quality of the drainage service

15. The customer also submits that during the course of the complaint, he has also raised complaints about the poor quality of the surface water and highway drainage service, but that these complaints have been ignored by the company.

16. The customer submitted photographs of the site in evidence with his Application to WATRS.

17. The company does not acknowledge, address or refute the customer's submissions. There is no evidence to show that the company has fulfilled its responsibilities to the customer in this regard. Therefore in the absence of any evidence showing otherwise, I find that the company failed to provide its services to the customer to the standard to be reasonably expected with regard to the customer's complaint about the quality of the drainage service at the site.

Disputing the connectivity of the site

18. The company submits that although the wholesaler has confirmed that it will not amend the banding, if the customer wants to dispute the connectivity of the site then a further form will need to be completed and submitted.

19. The company states that this form was sent to CCW so this could be passed to the customer to complete.

20. The customer states that he does not recall being sent a form by CCW but he will happily complete it.

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21. As above, this adjudication can only deal with matters between the customer and the company. Any issues or complaints about CCW fall completely outside of the remit of WATRS to be considered.

22. The company should send the customer the relevant form to dispute the connectivity of the site.

Customer service

23. The customer has raised numerous complaints about the manner in which the company handled this matter. The company states that it accepts that there have been some delays in responses. I am mindful that the company does not acknowledge, address or refute the customer's submissions about other customer service failings. I am also particularly mindful that the company has submitted a limited amount of the correspondence between the parties in evidence. I find the customer's submissions clear, credible and consistent with the documents. I am therefore inclined, on a balance of probability to accept that the customer's account as an accurate reflection of the dealings between the parties.

24. Therefore in the absence of any evidence showing otherwise, I accept the customer's submissions that the company: failed to clearly address, if at all, queries raised; failed to clearly explain, if at all, information provided including information from the wholesaler; delayed in responding to the customer and/or contacting the wholesaler; provided an unprofessional service; sent threatening debt letters although it had agreed to place his account on hold; and incorrectly imposed a late payment charge even the account had been agreed to be placed on hold. The company failed to provide a reasonable level of customer service to the customer.

Redress

25. The customer requests that WATRS decide if a penalty is due to be paid by XWater for previously refusing to send details of his surface water drainage arrangements to XWH, the penalty being the difference in the amount of charges between the two surface water/highway drainage bandings. However, it falls outside the remit of adjudicators under the WATRS Scheme to impose penalties on water companies.

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26. The customer also requests that the company put the account on hold until the process is concluded. Under section 4.5 of the WATRS Rules referring a dispute to the Scheme does not remove the customer's duty to pay the company any amounts which are due and which are not disputed. Therefore conversely, as the surface water and highway charges are in dispute it is fair and reasonable for the company to meet the customer's request. As such, in my opinion, the company should put the account on hold until the date on which the customer accepts or rejects this decision.
27. In respect of the customer's request that the company confirm a charge band – level 1 based on area of unit/level of use of site and recalculate charges for band 1; as discussed above, XWH, and not the company, is responsible for deciding the chargeable area and banding for the customer's premises. In addition, as discussed above, it falls outside of my remit to consider any claims or complaints against XWH and I cannot challenge the wholesaler's charging policy.
28. In respect of the customer's request that the company improve billing for this service by showing exactly what the charge is for how it has been calculated, the manner in which a company sets out its bills is a business matter for the company alone to determine and falls outside the scope of WATRS to determine. I am therefore unable to make any directions in this regard. However, as discussed above, I have found failings on the company's part for its failure to clearly address, if at all, queries raised and to clearly explain, if at all, information provided. I will take this into account in the findings for compensation below.
29. The customer also requests that the company demonstrate what measures it has taken to resolve the wider issues raised in relation to customer service – ownership, management, timely communication etc. However, again this is a business matter for the company alone to determine and falls outside the scope of WATRS to determine. I have found that the company failed to provide a reasonable level of customer service during the period of the complaint. I will again take this into account in the findings for compensation below. However, this adjudication can only deal with the level of service provided to this customer during the period of this complaint. I am therefore unable to make the directions requested. Should the company fail to provide a reasonable level of customer service again, there are steps for escalation of the complaint.
30. In respect of the customer's request that the company properly acknowledge the time, effort and cost incurred in taking up this issue; and pay compensation in the sum total of £2,500.00 for

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management time/inconvenience and distress, in light of my findings above, that the company failed in its obligations to the customer, and bearing in mind that the issues with the customer and the company has been ongoing for over a year, I am satisfied that the customer is entitled to a measure of compensation for the distress and inconvenience caused. However, I find that the amount claimed is disproportionate to the failings shown. In addition, there is no evidence to show that the company is under an obligation to compensate the customer on an hourly rate basis. I note that the company has already applied £100.00 to the customer's account. Having carefully considered the evidence provided, I am not satisfied that this sum is sufficient, and fair and reasonable for all the failings shown. I accept the customer's submissions about the size and scope of his business, and the customer's submissions that the impact of the company's failings have not, despite the company's assertions, been immaterial to him and his business. I find a further sum of £250.00 to be a fair and reasonable level of compensation and in line with the WATRS Compensation Guidelines. No evidence has been submitted to this adjudication to support a higher level of compensation. I therefore direct that the company pay the customer further compensation in the sum of £250.00. An authorised representative of the company should also provide the customer with a written apology for the level of customer service provided.

31. In respect of the customer's request that the company improve the drainage, the company should take to action to ensure that reasonable attempts, whether by it or by the wholesaler, are made to resolve this issue within a reasonable time.
32. Finally, if the customer wishes, the company should also contact the wholesaler and obtain clarification and an explanation on the customer's behalf about why the calculation for chargeable area changed from 164m² to 144m², if it is able to do so.
33. The company should also send the customer the relevant form to dispute the connectivity of the site.

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Outcome

The company needs to take the following further action(s):

1. The company should put the customer's account on hold until the date on which the customer accepts or reject this decision.
2. The company should pay the customer further compensation in the sum of £250.00. An authorised representative of the company should also provide the customer with a written apology for the level of customer service provided.
3. The company should take to action to ensure that reasonable attempts are made, whether by it or by the wholesaler, to resolve any issues with the drainage at the site within a reasonable time.
4. If the customer wishes, the company should also contact the wholesaler and obtain clarification and an explanation on the customer's behalf about why the calculation for chargeable area changed from 164m² to 144m², if it is able to do so.
5. The company should also send the customer the relevant form to complete to dispute the connectivity of the site.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 working days 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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Adjudicator

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