WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0842

Date of Decision: 30 October 2018

Complaint

The customer, a representative of a family farming partnership, complains that the company has been responsible for removing his previous tariff for waste water and with insufficient notice. The company has required the installation of a sub-meter to measure the amount of returned water and has refused to back-date the non-return to sewer allowance to the date of removal of the tariff. The customer claims a refund of the over-charge and interest.

Defence

The change of tariff was a change the wholesaler was entitled to make to bring the customer into line with its Charges Scheme. The company did not receive notification that a sub-meter had been installed until 2018 and the customer has been entitled to an allowance from 10 April 2018.

Findings

The company has assessed the customer's complaint only by reference to the applicability of the Charges Scheme and has failed to take into account that the customer was on his previous tariff as a result of non-compliance with the Charges Scheme by the wholesaler and the notice given of the change was unsatisfactory. The company does not say that its ability to give the refund requested is affected by the changes to the retail market in 2017. I find that an average customer would expect the company to have taken the above factors into account and to have compensated the customer for the over-charge.

Outcome

The company needs to take the following further action:

- Repay to the customer the sum of £2990.78; and
- Pay the customer simple interest at 8% per annum in respect of 89.09% of each payment received by the company from the customer in respect of each bill sent to the customer after (but not including) 18 January 2016 for waste water, from the date when payment was received to the date of this decision.

The customer must reply by 27 November 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 30 October 2018

Party Details

Customer: [ ], (Orchard Park). In this decision references to "the customer" also refer to actions taken and documents completed by other individuals on behalf of the farming partnership.

Company: [ ].

Case Outline

The customer's complaint is that:

- The customer complains that he has been charged for full sewerage when there had previously been a non-return to sewer allowance in place at his farm.
- In his application he says that he noticed in October 2017 that the allowance had been removed and filled out a new non-return to sewer allowance application form that was sent to the company on 25 October 2017. No response was received.
- The customer has now been asked to have a sub-meter fitted to be able to reapply for the allowance and the company has said that the allowance will not be backdated to 18 January 2016 (the date of its removal in 2016).
- The customer wishes the non-return to sewer allowance backdated to 18 January 2016 when the allowance was first removed.
- The company has stated that the sub-meter is a requirement for the allowance and that a letter was sent to the customer on 10 February 2016 to explain that the allowance would be coming to an end and that a sub-meter would be needed in order to reapply.
- The company has asserted in correspondence that the account had previously wrongly been set up on a low assessed charge and the customer had incorrectly been accepted onto the tariff without a sub-meter.
- The company is not willing to backdate the overcharge as it cannot be measured and the options were made clear at the time that the account was changed.

- On 6 July 2018 a new bill has been generated but the readings have not acknowledged the presence of the new sub-meter. The customer requests:
    - the non-return to sewer allowance to be accepted and backdated to June 2016 when the discount was removed; and
    - interest.

The company's response is that:

- In 2015 to 2016, the wholesaler carried out a review of its accounts that were not in accordance with its Charges Scheme. That applied to the customer's account.
- The wholesaler sent the customer a letter on 10 February 2016 to explain that the previous charges had been based on a fixed volume charge. It advised that in future bills sent to customers, the charges would be assessed from the water meter reading. It invited customers to make contact if they had any questions.
- The company says that no contact was received from the customer until 18 April 2017, when the company was advised that not all of the waste water at the customer's address was returned to the sewer.
- A non-return to sewer form was sent out on 18 April 2017 and a request for a further form was made by the customer on 6 September 2017.
- On 28 February 2018, the company received a complaint relating to the non-return to sewer allowance. The company liaised with the wholesaler.
- The wholesaler confirmed that the account had previously been invoiced on a low assessed charge. It made reference to the letter in 2016 and advised that if the customer wanted to apply for a non-return to sewer allowance, he would be required to install a sub-meter.
- This explanation was provided in writing but notification that a sub-meter had been installed was not received until 18 May 2018. The customer had therefore been invoiced correctly.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. On the basis of the papers submitted by both parties and by the Consumer Council for Water (CCWater) I find that the factual background to this dispute is as follows:
    - The customer represents a family farming partnership that is now a customer of the company for water and, to a lesser extent, sewerage charges. It was previously a direct customer of the wholesaler.
    - The customer has submitted evidence that it is a mixed dairy and arable farm with 450 cows and heifers. Only one farm cottage is connected to the main sewer: all other dwellings in the farm complex are connected to a septic tank and the water is used for the purposes of the farm. The customer submits therefore that only a small proportion of the water supplied is returned to the sewer.
    - The charges imposed by the wholesaler are provided for by statute rather than as a matter of contract. The Water Industry Act 1991 states that the company may impose charges and that, in order to notify its customers of charges, it may publish its Charges Scheme from time to time.
    - The company states that the wholesaler's policy is that the charge for waste water should be referable to water supplied unless a customer applies for a non-return to sewer allowance and that this reflects the Charges Scheme. The company states that some accounts, however, had been agreed on a different basis and that of the customer was not consistent with the wholesaler's policy. The customer says that the previous arrangement had been in place for a considerable time.
    - The customer was sent a letter dated 10 February 2016 in which the wholesaler indicated that all future invoices would be raised against the volume of water supplied. I note the following features of this letter:
        i. It suggested that the customer's bills had been, along with other accounts, "reviewed". This was a standard-form letter and I find that it is likely to have been

sent to a number of customers. However, save for the fact that the customer's bills did not equate to the charge for waste water to clean water, there appears to have been no "review" of the customer's bill because no consideration was given to the customer's unique circumstances; indeed, in a letter to the Consumer Council for Water (CCWater), the company has confirmed that the wholesaler had no information available to it about why the previous charge had been imposed but suggested that the wholesaler's agent had applied an incorrect process;

ii. The letter was retrospective in its effect. Although the customer was notified that the next bill would be calculated on a different basis, the period to which the change applied was already underway;

iii. It is apparent from the company's correspondence with the Consumer Council for Water (CCWater) that this was the only notification given;

iv. It is assumed in the letter that the change of billing method would be universally fairer because the customer would be charged for "exactly what you use". Plainly, in the customer's case, this was misleading, because in terms of the provision of waste services, the charge was far in excess of the use made of the services by the customer. In his comments in reply, the customer states:

> *According to the CC Water website, an average three-person family (as we have in the one cottage that returns to the sewer) uses 136 m^3 of water a year. Over the last two and a half years, we have been charged for 3365.22 m^3, nearly 10 times the amount an average family would use.*

v. No reference at all was made to the possibility that the customer might be eligible for a discounted bill if the water used was not returned to the sewer and the customer was not invited to apply for this or referred to any relevant literature or publications by the wholesaler;

vi. No indication was given that the customer could contact the company if he was unhappy with the proposed change. Although the wholesaler did give contact details, this was for use if a customer had any questions about the change.

vii. No reference was made to the need for a sub-meter in order for accurate measurements to be made.

- Overall, I find that the impact of this letter was likely to have been misleading. For the reasons set out above, it was insufficiently transparent and explanatory and did not take account of the fact that not all customers would have had the same water use. As the

letter introduced the change as a “fait accompli” moreover, there was no indication that there was anything that a customer could do to avoid the impact of its policy. I find that on reviewing this letter, there is reason to conclude that its overall effect did not give an adequate explanation to the customer as to the circumstances of the change or what could be done about it.

- The customer at this stage does not appear to have realised that the letter meant that his water bill would increase because he would lose the benefit of the assessment that may have been undertaken at some point in the past. He did not immediately contact the wholesaler or the company. He suggests that this letter was insufficient to indicate that he should fit a water meter, take monthly readings, submit the readings and fill in a non-return to sewer allowance and, in the light of my findings above, I find that this position was understandable.
- Although the customer’s application form does make reference to correspondence before October 2017, the company acknowledges that contact was made with the company in April 2017, so I find that it is likely that conversations with either the wholesaler or the company did occur before October 2017. The customer says that on 5 July 2016, he, having received a higher bill than usual, contacted the wholesaler and told it that a mistake had been made. The customer says that the wholesaler agreed with this and told the customer that he would be sent a claim form and the matter would be amended in the next bill. The customer says that the wholesaler has not acknowledged this conversation. I find, bearing in mind the events of this case, that it is likely that such conversation occurred.
- The customer says that the same thing happened when the customer received a bill on 17 February 2017 and again when a further bill arrived on 16 August 2017. By this time, the company had taken over responsibility for billing for waste water and it acknowledges that contact had been made by April 2017.
- The customer says that when he received a further bill on 17 October 2017 the customer wrote a letter to the company dated 25 October 2017 and a follow-up letter in November 2017. He complains that the company then did not reply to this letter. In January 2018, the customer wrote a further letter and asked for a non-return to sewer form. The customer has submitted (via CCWater) a letter that indicates that he filled in the claim form for the company on 30 January 2018 and I therefore find that it is likely that this was sent to the company. The customer also sent a further copy of the letter of 25 October 2017.

- On 20 February 2018 the customer sent a further letter indicating that he had not received a response and also stating that he had filled in a form requesting an allowance because the bulk of the water was not returned to the sewer.
- The company replied on 3 April 2018 saying that it had taken up the matter with the wholesaler and the wholesaler had responded that this was its fixed policy and no backdating would take place. The customer says that he was told for the first time that he needed to install a sub meter measuring the amount of water used.
- This was installed on 10 April 2018. The customer says that the company was notified by telephone on 15 May 2018 and the non-return to sewer claim was sent to the company again on 22 May 2018.
- In a bill dated 8 July 2018, the customer still appeared to be charged in full for the wastewater service but the papers show that the discount has now been applied from 10 April 2018. There appears to be a dispute between the company and the customer about the percentage of the discount (the company says that 11.01% returned to the sewer over the measured period whereas the customer says that 5.8% returns to the sewer). I am not, however, asked to reach a finding as to this dispute and I do not do so.

2. Before the opening of the retail market in 2017, the wholesaler supplied sewerage services directly to the customer. I bear in mind that this claim concerns the customer's complaint against the company, which is now a retailer of sewerage services. As some of the events that are relevant to this claim preceded 1 April 2017, the wholesaler supplied sewerage services directly and I bear in mind that, as a general proposition, the company cannot be treated as directly liable for the previous acts of the wholesaler. I also am mindful, however, that the history of a customer's account is not irrelevant to the decisions that a retailer may now be called upon to make.

3. Against this background, I find that the company was put on notice that the customer had been disadvantaged by the conduct of the wholesaler in two different ways:
    - First, when the customer or one of his colleagues discussed the use of waste water on his land, he was placed on a low assessed charge. The wholesaler (when asked about these events) now appears to say that, at the time that it happened (whenever that might have been), the agent had not followed the correct process. Specifically, the company states in its communication of 3 May 2018 to the customer:

[Water] have advised that their policy has always been that if customers have more than normal losses for used water they would need to measure the amount in order to claim for a non-return to sewer allowance. The fixed charge that you are put on was an old tariff that was used proactively to reflect assessed charges. [Water] can only assume that you were originally put on this fixed tariff in the first place due to the agent that applied at the time feeling it was necessary without following the correct process for non-return to sewer allowance.

It would therefore appear to follow that correct application of the wholesaler's policy should from the outset have led to the measurement of water not returned to the sewer and the application of a non-return to sewer allowance. Had this occurred, no change to the customer's bills would have been necessary and the need for a sub-meter would have been discussed many years before February 2016. The company has therefore been made aware that the wholesaler had acted contrary to its own policy in the customer's case; and

- Secondly, in February 2016, the letter sent to the customer was insufficiently explanatory in the ways described in my findings as to the facts above.

In consequence of these two matters, I find that the customer has suffered a detriment in respect of his liability for sewerage charges.

4. The company gives as its reason for not accepting the customer's request for a backdated allowance that it is satisfied that the wholesaler has, in making a change in February 2016, followed its correct policies. I find that the company is entitled to expect the wholesaler to have followed its policies and to have applied these to the customer. The fact that the company upholds the wholesaler's policies cannot, in itself, be a failure on the part of the company to meet the standards that would reasonably be expected of it.

5. However, I also find that the company has not considered that the customer's difficulties may have been caused initially by the wholesaler's decision to apply a low assessed charge which the wholesaler now contends was contrary to its policy and has not considered that the inadequacies of the letter of 10 February 2016 did not alert the customer to what steps he needed to take in order to arrive at an outcome that was fair and in accordance with the wholesaler's policies. I find that an average customer would expect that the company would look into the detail of the customer's complaint as it affected the customer specifically, including investigating the possibility that the wholesaler had not conducted itself transparently in the

customer's case. I find, therefore that the failure to consider the two ways in which the wholesaler had caused the customer detriment fell short of the standard that an average customer would reasonably expect of the company. I find, in contrast, that an average customer apprised of the facts of this case would consider that the customer's detriment should have been taken into account and the application for the discount should have been backdated to the point when the earlier tariff was withdrawn.

6. I find, therefore that the customer has proved that he is entitled to redress. The company does not suggest (save that it cannot make an accurate measurement retrospectively) that it would have been unable to give a backdated allowance in consequence of any aspect of the opening of the retail market. I find, therefore, that in the absence of specific measurement, the company would be in a position to make an estimate of the difference between the charge for waste water that should have been paid by the customer and that which was in fact paid. I find that it would be fair and reasonable to direct such repayment. I have considered whether the papers provide sufficient detail to enable me to make that estimate. I have concluded that I can do so.

7. In October 2017, Mr Smith, on behalf of the customer, indicated that the total for waste water charges to October 2017 was £2,275.15. The company has not challenged this calculation. Two further bills are included in the papers that indicate that in the period to 1 April 2016, additional waste water charges of £510.40 and 425.26 were incurred. I find that in the subsequent period of 10 days, it is fair and reasonable to calculate waste water usage at £150.00. It follows that the total waste water charge can be assessed at £3,360.81. I assume then that 11.01% was returned to the sewer. While I note the dispute between the parties about the precise percentage of used water returned to sewer, I find that it is fair and reasonable for the purposes of this calculation to adopt the calculation of the company, not least because, unlike the customer, the company has no opportunity to reject the decision if dissatisfied with the outcome. 11.01% is £370.03, which means that £2990.78 is the total "overcharge" – that is to say, the sum that I find should be returned to the customer.

8. The customer has made a claim for interest. Rule 6.4 of the WATRS Scheme rules states:

   Subject to the limits set out in Rule 6.4 where in a dispute relating to incorrectly levied charges a customer requests a payment of interest, the adjudicator shall award interest at a rate equivalent to the rate applicable under section 69 of the County Court Act 1984 from the date when payment of the incorrect sum was made until the date of the decision.

9. However, although I have details of the amounts changed by the company on the basis of which I have been able to make the estimate set out above, I do not have details of the payment dates. In particular, I notice that the CCWater documents include a notice of intention to take action relating to the company's bill of 1 January 2018. Accordingly, I do not carry out this calculation but I direct that the company shall pay the customer simple interest at 8% per annum in respect of 89.09% of each payment for waste water received from the customer from the date when payment was received to the date of this decision.

Outcome

The company needs to take the following further action:

- Repay to the customer the sum of £2990.78; and
- Pay the customer simple interest at 8% per annum in respect of 89.09% of each payment received by the company from the customer in respect of each bill sent to the customer after (but not including) 18 January 2016 for waste water, from the date when payment was received to the date of this decision.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27 November 2018 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.
- 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.

Claire Andrews, FCI Arb, Barrister

Adjudicator