

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX48

Date of Decision: 01/12/2020

Complaint

The customer complains that he is being overcharged by the company because, following an inspection of the site occupied by his farmhouse and kennels (two separate accounts) he has (1) been charged for highways drainage, despite having no surface water drainage into the highway and (2) the area of his site said to be chargeable for calculation of the highways drainage charge has significantly increased. The customer wants to pay neither surface drainage nor highways drainage charges. He complains about the company's customer services.

Response

The company says that the customer did not provide accurate information about the drainage on his site and, although the company tried to assist the customer by advising whether a site survey would result in an increase or decrease in his bills, it was not able to predict that the relevant surface area had been wrongly measured or that the site had, due to a mistake, not been understood to have a foul drainage connection to the sewer. The customer has been found not to be liable for surface water drainage and he has benefitted from this and has been given a refund backdated to 2014. The company denies providing poor customer service.

Findings

The customer has established that the company failed to reach the standard to be reasonably expected. The company failed to warn the customer prior to the wholesaler's site inspection that the existence of foul drainage might lead to liability for highways drainage, even if no surface water drainage connection existed. The company also failed to take up and challenge the wholesaler's findings as to the presence of foul drainage from both the commercial and domestic areas and made no enquiry about the reason for a very significant increase in the measurements that have resulted in banding increases affecting both areas of the customer's land. The customer has shown that he is entitled

to redress, but has not established that he is not liable for the highways drainage charge.

Outcome

The company needs to take the following further action:

- Investigate further with the wholesaler and to challenge where possible:
 - o The evidential basis for the wholesaler's finding that, due to a foul water connection, the customer's two billable areas are both liable for highways drainage charges: and
 - o The basis for the conclusion that the chargeable areas on both sites were significantly larger than the previously measured areas.
- Explain its findings in writing to the customer.
- Apologise to the customer for its failure to advise the customer that he might bear a liability for highways drainage charges due to the existence of a foul water connection.
- Pay compensation of £205.00.

The customer must reply by 31/12/2020 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-4148

Date of Decision: 01/12/2020

Party Details

Company: XWater

Case Outline

The customer's complaint is that:

- The customer complains that he is being overcharged by the company. • The customer owns a property in the area served by the company and has two accounts, 4031809680 (kennels) and 4031809668 (farmhouse). Because he was concerned about the charges for the kennels account, he arranged for the wholesaler, United Utilities, to visit his property to consider these. Following this visit, although it was found that there was no liability for surface drainage charges, the highways drainage charges were increased. • The customer does not believe that he is liable for highways charges as none of the run-off enters public sewers. • The customer has been in contact with the company on several occasions. He does not believe that the company has correctly reviewed his complaint and says that both the charges levied against his account and the banding is incorrect. • The customer does not want to be billed for surface water drainage or highways drainage.

The company's response is that:

- The customer's property is in band 3 (farmhouse) and band 4 (kennels) and he is liable to pay highways drainage charges. This is a yearly fee of £815.22. • Although, before 18 August 2020, the customer had been paying surface water charges and highways drainage charges, this was re-assessed by the wholesaler's surveyor on 18 August 2020. The inspector confirmed the customer's belief that the customer is not connected for surface water drainage. • He found, however, that the land is connected for highways drainage because of a foul water system which had not been recorded previously due to "an administrative error". The inspector also found that the relevant area by which the charge is assessed is larger than previously stated in the wholesaler's records. The measured area is now 769m² instead of 336m². • Because of this, the wholesaler increased the chargeable area from Band 3 to a Band 4 for the kennels

and from Band 1 to a Band 3 for the farmhouse. These amendments took effect from 28 August 2020. The customer's sewerage charges are thus now more than they had been.

- The company refunded the surface water drainage charge for the kennels account of £2,672.28, backdated to 2014. In relation to account 4031809668 for the farmhouse, a credit of £680.88 has been applied.
- The customer's next bill is due in April 2021. The company believes that all charges are correct, and no further amendments will be made.
- As for the customer's complaints about customer service, the company says:
 - o The customer's initial application documents did not include all the information requested. The company requested on multiple occasions for the site map to indicate where he believed the rainwater to be draining.
 - o When the customer showed the sewer system records, this indicated that the property is connected to the public sewer system. This contradicts the customer's view that the site is not connected the sewerage system, so the company requested clarification. The company took care because the customer has to pay for a survey if no change is found. The cost of this is £850.00. In some cases, the documents can reveal immediately that a survey would result in the banding increasing, in which case the company would advise the customer not to proceed with the request.
 - o The site survey proved to be both to the customer's benefit and detriment; on one hand, the surface drainage charges were removed but on the other hand, the highways drainage charges increased. The request for clarification was an act of due diligence with the customer's best interests at heart.
 - o Contrary to the customer's argument that the company is trying to penalise him by increasing the banding because the company had to give him a refund, the company points out that its role is as an intermediary between the customer and the wholesaler. It therefore submits the customer's requests to the wholesaler and communicates the wholesaler's decisions to the customer. It does not have a say in the charges set by the wholesaler or their policies and is legally obliged to pass on to the customer any charges instructed by the wholesaler.
 - o Although the customer disputes the measurements, he has not provided any evidence to dispute the measurements or to show why the wholesaler's charging policy should not apply to him.
 - o All correspondence from the customer - except one email received on 3 July 2020 - has been responded within the 10 working days service level agreement which is the industry standard.
 - o The information and advice given by the company has been correct and in accordance with the wholesaler's processes and policies. The company has also shown consideration and care towards the customer's queries into the drainage charges, offered him the information he was seeking on multiple occasions. Two goodwill payments for late actions have been applied to the customer's accounts. No further compensation or actions are appropriate.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. I have taken into account the parties comments on my Preliminary Decision.
The outcome is, however, unchanged.
2. The company is a water retailer. The wholesaler is not a party to these proceedings. It does not participate in these and cannot be bound by a decision under this Scheme.
3. The legal responsibilities of retailers and wholesalers are different. Broadly, the retailer is responsible for issuing bills for water and for waste-water. The wholesaler is responsible for assessing customers' liability for charges and for supplying the infrastructure that enables water and waste-water services to be delivered.
4. This dispute has arisen because, following a reassessment of water charges by the wholesaler, the customer is not satisfied with the outcome. He therefore challenges the assessment made and the decision to impose highways drainage charges based on an area of land that is larger than the previously used measurements of the chargeable area for surface drainage.
5. I find that, insofar as his complaint relates to the assessment itself, this is principally a challenge to the actions and decisions of the wholesaler. In summary, the customer asks the following questions:
 - a. If the surface water does not run into any sewer how can it run into a highway drain?

b. As he has one 15mm pipe supply for the site and one toilet waste pipe for one toilet, why is he now being charged for a massive surface area?

As explained above, I cannot find that the company has failed to supply the expected level of service where that service is not supplied by the retailer but only by the wholesaler.

6. I can have regard to the company's liaison function (under which it would reasonably be expected to raise the customer's concerns with the wholesaler) and to the company's provision of customer services and information to the customer. In particular in this case, I can look at the way in which the company has managed the customer's expectations.

7. The customer says that his two questions have not been answered; that he has not seen the inspection report and that the company has been unhelpful.

8. In response to the customer, the company, denies that it has failed to provide its services to the correct standard. In respect of the decisions of the wholesaler, the company, in summary, explains that there were four main effects from the site survey of 18 August 2020:

(1) The kennels (account 4031809680) and the farmhouse (account 4031809668) are not connected for surface water. This means that surface water does not enter the public sewer. The wholesaler therefore removed the charges with effect from 31 July 2014, in line with its policy for back-dated amendments.

(2) Both the kennels and the farmhouse remain liable for highways drainage charges because the site as a whole is connected to the public sewerage system via a foul sewerage connection.

(3) The wholesaler had previously made a mistake, in that it had not charged for foul sewerage, whereas this should have been charged. The wholesaler has now started a process of registering the foul sewerage details into the Commercial Market Database (a central information database for the retail water market). This process is not yet complete and the company expects to be told when it is.

(4) The chargeable area for the kennels and the farmhouse was found to have been measured incorrectly and it is bigger than shown in the previous records. The property consequently fell into higher charging bands. There was a change from Band 3 to Band 4 for the kennels and from Band 1 to Band 3 for the farmhouse. The amendments took effect starting 28 August 2020 and had the effect of increasing the basis of the charges.

9. The company also says that the customer was asked to provide clarity as to the connection at the property to the public sewers but did not give this. The company now says that the customer has been told on many occasions that every property, commercial or domestic, is liable for highways drainage charges if the property has

a connection to the public sewerage system. It says that liability for this charge has no relation to whether a property is in close by any highways and does not mean that rainwater from a property must drain into a highway. In connection with this argument, the company points to examples where it has explained that highways drainage charges are a contribution towards maintaining the public sewerage system on communal roads and highways.

10. For the reasons set out below, however, I am not satisfied that the customer was told at any time before the company's receipt of the wholesaler's survey report that a foul water connection would be enough to make the customer liable for the highways drainage charge.

11. The company provides information to customers on its website about how it calculates the charging bands. This says (with emphasis added):

“Pleasenote: Any area that has a surface water connection to a public sewer, even if it is permanently grassed, cultivated or landscaped will still be chargeable and included in the measurement of the chargeable area...

If you have a connection to a public sewer then these charges apply to you.”

12. This description of the company's charges scheme does not completely chime with that of the wholesaler. The company has provided me with a link to the wholesaler's Charges Scheme, including its wastewater charges for 2020/2021. This states:

“Thehighway drainage charge is payable in respect of all premises connected to our public sewer network.

Highway drainage charges (section 4.3.2) will not be reduced under the circumstances set

out in section 3.9. [adjustment to surface water charges]. We will adjust the chargeable area for highway drainage to exclude any permanently grassed, cultivated or landscaped areas where no surface water or groundwater drains directly or indirectly to a public sewer should you notify us of a change.”

13. The company's website information, I find, suggests that if there is no surface water connection to the public sewer, no highway drainage charge is payable. Having regard to the company's timeline in which its letters to the customer are set out, I note that the company's explanations to the customer also suggest that highway drainage charges are only payable where there is surface water that drains into the public sewer. In its letters to the customer, the company did not make clear that drainage other than surface water drainage arrangements needed to be shown on the maps and plans that he put forward. He was not asked about foul water arrangements. I therefore find that, in consequence of the advice given by the company, the customer had no idea that arrangements for the collection of

foul water, that is, the customer's toilet, might be relevant to his liability for the highways drainage charge.

14. The effect of the wholesaler's Scheme, as explained in the website link referred to above, however, is that the highway drainage charge is payable in respect of all premises connected to the public sewer unless the land is permanently grassed, cultivated or landscaped and surface water does not drain into the sewer. Thus, as part of the customer's land is not grassed, cultivated, etc., under the wholesaler's rules, his site would be liable for the charge because he has a toilet. The wholesaler's letter of explanation to the company makes this clear. This says:

"Good Afternoon

...

Our Data Resolution Technician (DRT) visited the site on 18/08/20 to confirm the correct site area boundary and the surface water connectivity. Using the information provided by our DRT, we have updated our site area mapping data.

I have removed the surface water components against both the above SPIDs, with effect from 31/07/14. This date is inline with our retrospective surface water adjustment policy.

Both the financial adjustments have been approved and the relevant transactions have been posted and accepted by the Market Operator today.

With reference to the highway drainage (HD) components, the chargeable area for the Kennels against SPID 3001757965S15 has increased from 336m² to 769m² with effect from 25/08/20. This date is inline with retrospective site area adjustment policy.

The HD chargeable area for the Farm House against SPID 3001757957S18 has also increased from 98m² to 322m² with effect from 25/08/20.

The DRT report confirmed the site is connected to United Utilities wastewater network for foul drainage. Therefore, I have raised proactive case reference WHCOMSERV-11584134 for our Supply Point Team to create a new metered wastewater SPID, which will be linked to with the existing metered water SPID 3002678635W18. The Team will contact you when the process is being processed."

15. I find that the failure to consider the possibility that the customer would be liable for highways drainage charges because of a foul water connection was a failure by the company to manage the customer's expectations and fell short of the standard that an average customer would reasonably expect.

16. There are additionally some areas of concern about the wholesaler's information, which I find that the customer has raised but the company has not taken up with the wholesaler. The customer was sent a copy of the wholesaler's

letter to the company of 25 August 2020 on 1 September 2020. The customer raised questions with the company as to why the re-measurement of the relevant area was so much bigger, and why, when there was no surface water, he was liable for highway drainage charges.

17. In respect of the change in measurement the company replied on 14 September 2020 explaining why the banding had been increased, In response to the company's letter, the customer asked on the same day to see the report of the technician who had visited on 18 August 2020. He understandably made the point that the size of the two properties (farmhouse and kennels) had not changed.

18. I find that it is foreseeable that a vastly different area found by the technician would, foreseeably, have been a cause of concern to the customer, which he expressed. Although the company says that the customer has not submitted evidence to show that the findings of the wholesaler's inspector are wrong, I find that an average customer would reasonably expect that the company would have, as part of its liaison function, relayed the customer's concerns to the wholesaler and obtained more information. At the date of the application on 21 or 23 October 2020, there is no evidence that:

- a. a copy of the technician's report has been requested from the wholesaler;
- b. the wholesaler has been asked for an explanation as to how the relevant areas are now measured and why there has been an increase; or
- c. that an explanation of the discrepancy has been given to the customer.

19. I find that the company has not met the expectations of an average customer in this regard.

20. As for the wholesaler's conclusion that both the farmhouse and the kennels are liable for highways drainage charges, I note that the company has submitted various maps. That supplied to the customer on 22 April 2020 does not show any foul water sewerage or foul water drainage from Lower Hey Farm. The two maps drawn up after the inspection on 18 August 2020 do not show foul water arrangements at all. The wholesaler has said, however, that this was a finding of the technician on the day and the company in its response points out that the customer says that he has a single pipe and a toilet.

21. I find that it is therefore probable that at least one of the areas (either the farmhouse or the kennels) is connected to the public sewer. The company has not explained to the customer, however, and has not made any further enquiries of the wholesaler, as to which of these areas, billed as separate entities, is connected or why the foul water connection is said to affect both areas. I find that in not pursuing the detail of this charge with the wholesaler or explaining to the customer why this

is not relevant, the company has also not met the standards of liaison that would reasonably be expected.

22. The company has responded specifically to the allegations made by the customer as to a lack of customer care. In respect of its response, I find the following:

a. The company says that it delayed in obtaining a survey of the land because the customer's initial application documents did not include all the information requested. This is a reference to lack of information about existing drains, which the company believed to be present. I find, however, that the customer had said that the surface water was absorbed into the land and therefore there were no drainage arrangements to be shown in the information he provided. I accept the customer's explanation as to this: I find that he did indicate that there were no surface water drains on his land and the company did not ask the customer about foul water drainage arrangements, even though it is these which have led to his continuing liability for highways drainage charges. I find that, at this stage, in (1) asking for further information that the customer had made clear that he could not provide and (2) failing to explain to the customer the significance of foul water drainage, the company did not provide its services to the standard that would reasonably be expected.

b. Although the company stresses that, if a survey would actually result in an increase in the banding, the company would advise a customer not to proceed, I find that the company did not fully consider the customer's situation. Because the company did not, I find, give advice to the customer that he would be liable for a highways drainage charge even if no surface water returned to the mains drainage, his decision to proceed with the survey was not fully informed. While the company may not have predicted that the area of chargeable land would be increased, I find that an average customer would have expected the company to have advised the customer that the liability for highways drainage was not dependent on surface water drainage.

c. In respect of the company's explanation that, contrary to the customer's concern that the increase in the highways drainage banding was intended by the company to cover its losses due to removal of surface water drainage charges I find that there is no evidence as to this. The company submits, and I find to be the case, that the company does not have a say in the level of charges that are set by the wholesaler or their policies and it is legally obliged to pass on to the customer any charges instructed by the wholesaler. The company points out that the refund that the customer has received as a result of the surface water charges being removed retrospectively has also come from the wholesaler.

d. As for the alleged delays in responding, I find that the company is correct in its statement that all correspondence from the customer except one email received on 3 July 2020 has been responded within ten working days. I find that there is no

evidence that an average customer would expect any faster level of service. The company has made goodwill payments of £40.00 and I find that the customer has not proved that the company has failed to provide its services to the required standard.

23. I have found above that there are certain ways in which the company has failed to reach the standard to be reasonably expected and I therefore find that the customer has shown that he is entitled to redress. In the light of the evidence submitted, however, I do not find that the customer has submitted evidence that proves that he is not liable for highways drainage.

24. I find, however, that the company should be required to investigate further with the wholesaler and to challenge where possible:

a. The evidential basis for the wholesaler's finding that, due to a foul water connection, the customer's two billable areas are both liable for highways drainage charges: and

b. The basis for the conclusion that the chargeable areas on both sites were significantly larger than the previously measured areas.

The company shall then explain its findings in writing to the customer.

25. I further find that the company should apologise to the customer for its failure to advise the customer that he might bear a liability for highways drainage charges due to the existence of a foul water connection.

26. I have considered in all the circumstances, whether it is fair and reasonable to direct that the company should compensate the customer for the distress and inconvenience that he has experienced because of these events. I find, on balance, that it is. The customer has repeatedly had to request explanations and has received answers that, in the light of the company's previous explanations, he has not been in a position to understand and which he has found frustrating. I find that the company should pay compensation to the customer in a sum that approximates one quarter's charges for highways drainage, namely £205.00.

Outcome

1. The company needs to take the following further actions:

- Investigate further with the wholesaler and to challenge where possible:
 - o The evidential basis for the wholesaler's finding that, due to a foul water connection, the customer's two billable areas are both liable for highways drainage charges: and
 - o The basis for the conclusion that the chargeable areas on both sites were

significantly larger than the previously measured areas.

- Explain its findings in writing to the customer.
- Apologise to the customer for its failure to advise the customer that he might bear a liability for highways drainage charges due to the existence of a foul water connection.
- Pay compensation of £205.00.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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 in 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
Adjudicator