

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX69

Date of Decision: 30/12/2020

Complaint

The customer complains that the company has charged him for highways drainage in Band 4 in circumstances where he believes that the surface water at his premises drains into a canal. He says that he has received substandard customer service because the company did not reply to all the matters to which his complaint gave rise and also, instead of requesting a survey of his property, has proposed to charge him for this. The customer is struggling to pay charges.

Response

The company says that whether surface drainage charges are payable or not is a matter for the wholesaler. It carried out a survey in 2015 and there is no reason to believe that anything has changed. If the outcome of the survey were not to be a change in the customer's liability, he would be liable for the costs. The company accepts that it did not give a complete response to the customer's complaint but said that it needed to warn him of the cost that the customer might incur. The company has taken appropriate remedial action and is raising charges against the customer in accordance with its Scheme of Charges.

Findings

I find that the customer's liability for highways drainage charges is a matter for the wholesaler to decide after survey and I have no power to reach a decision as to this. Although the company supplied its services below the level that would reasonably be expected when it did not reply fully to the customer's complaint in September 2020, it has remedied the matter. Taking all relevant matters into account, an average customer would not reasonably expect that the company should do more.

Outcome

The company does not need to take any further action.

The customer must reply by 27/01/2021 to accept or reject this decision.

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Date of Decision: 30/12/2020

Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. • He has occupied his property since 2012 and it is a service station. • In that time, he has spent thousands of pounds on highway drainage charges for rainwater. He has submitted a video recording of his car park which is some distance from the road and adjacent to a canal. It shows standing water on the ground and the customer says that the water drains into the canal. The customer says that he does not know how the company and the wholesaler can charge him. • He says that he has been told that he will be charged a fee of £240.00 for a site survey. The company's high bills have affected his mental health to the point of feeling suicidal. • He has also struggled to pay the bills during the Covid 19 pandemic and for some period his business has been closed. • He is grateful for the company's assistance in setting up a payment plan but also says that the company's recorded measurement of his land is more than its actual size.

The company's response is that:

1. • The company empathises with the customer's distress, but says that it is not able to lift the liability to pay his invoices. • As the retailer, the company has a duty to pass on to the customer the charges raised by the wholesaler and the customer must settle these charges. The wholesaler raises charges based on the services provided to all commercial customers in line with their scheme of charges. The company does not have the legal authority to remove or disregard charges raised by the wholesaler. • The company says that it can offer some help to the customer so that he can more easily cope with the bills that he has to pay the company. • As the customer advised that his business was closed during the Covid lockdown, the company can remove the charges that would normally have been due during this period. This is because Ofwat (the water regulator) and MOSL (the commercial market operator) offered an emergency dispensation to all commercial customers forced to close their businesses between 23 March 2020 and 31 July 2020, by

allowing the wholesalers and retailers not to impose charges during this interval. • The company explains that all the adjustments to all the customers' accounts must be done manually, however. Due to very many customers in the same situation, each case is worked in the order that a declaration from a customer is received. The company has not been able to offer an indication of when this work will be complete because of the volume of customers requiring this assistance and the exceptional nature of the work. • On this occasion, the company made an exception and prioritised the customer's case. His account was rebilled on 19 November 2020. All invoices going back to 21 January 2020 have therefore been cancelled and a revised invoice uu-INV06006340 has been issued. This contains no charges for the interval 23 March 2020 to 31 July 2020. • The company can also offer a direct debit payment plan over 12 months. This can cover the existing unpaid balance as well as future invoices. The company recommends a payment plan for £65.00 per month to ensure that, if water consumption remains consistent and in line with previous consumption, no further debt will accumulate. The customer can contact its Customer Service department who will be glad to assist him with this arrangement. • The customer also says that he does not understand why United Utilities and the company can charge him for drainage charges. • The company explains that according to the historic account notes passed on from the wholesaler to the company, the customer had the same dispute with the wholesaler in 2015. The wholesaler arranged for a site survey in July 2015 which revealed that the customer's property is partially connected to the public sewerage system. The same survey confirmed that the wholesaler had previously assumed the property to be smaller – 466 m² – but the survey revealed that the property's chargeable area is 894m². This increased the customer's highways drainage banding from a Band 3 to a Band 4. However, it was revealed that in terms of the actual rainwater discharged into the sewers, only 234 m² out of the total 894 m² are connected to the sewerage system. This means that the remaining 660 m² has rainwater draining naturally into soakaways and into the canal. This resulted in the surface water banding being reduced to a Band 2. • Since July 2015, the customer has been charged a Band 2 for surface water and a Band 4 for highways drainage. The company explains that this is because (1) the surface water charge is related to the area of the property that discharges rainwater into the public sewerage system and

(2) the highways drainage charge is a compulsory contribution towards the maintenance of the sewerage system on public roads and highways and is based on the total hardstanding area of a property (that is, any area on a property that is not permanently cultivated or landscaped is considered hardstanding). This charge has nothing to do with any rainwater from the property going into the public roads or highways. • When the customer disputed the drainage charges with the company, he did not say that any alterations to the property had been made since 2015, so there is no reason for the measurements to have changed. • Because the

customer's claim has been already investigated by the wholesaler and because no evidence was provided to suggest anything has changed regarding the property since 2015, that company does not believe that a new site survey would have a different outcome from the survey in 2015. Even if the customer is correct that the property measures 832m² instead of 894m², this will not lower his banding as the measuring range for a Band 4 is between 650 –1,499 m². This means that the survey would be redundant and the wholesaler would charge the customer for the costs of the survey. • The company does not deny that the customer has a right to request another survey but the company will pass on the survey charges if the wholesaler determines the survey was unnecessary. For this reason, the company advised the customer of the possible charges that he will have to pay and asked him to confirm if he still wishes to proceed with the survey. The customer did not answer the question. • The company acknowledges one service failure in that it did not reply to an email from the customer, for which a goodwill gesture of £20.00 was applied on 9 October 2020 via credit note uu-CRN01056365. • There has been one late payment fee of £40.00 applied to the account on 28 August 2020 which has been removed as a goodwill gesture on 24 October 2020.

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 bear in mind that adjudication is an evidence-based process and that it is for the customer to show that the company has not provided its services to the

expected standard. I have considered the supporting evidence submitted to CEDR, including that provided by CCWater and by the parties to this dispute. I have also considered the comments made by the parties in response to my Preliminary Decision.

2. In respect of the customer's statement in his application form that he can take a complaint to WATRS about his liability for highways drainage, I make the following observations.

- I have considered the two video recordings of the customer's yard, which, as the customer argues, may suggest that at least some of the surface water visible on what appears to be hardstanding may drain into a canal.
- I find that it is not possible, however, to draw a conclusion as to the liability for highways drainage from these video recordings, and the question of drainage involving the company's sewerage system from the customer's premises can only be resolved by survey.
- There has been such a survey by the wholesaler in 2015 and there is currently no persuasive evidence before me that the results of that survey were wrong or that the customer should be in a different band for highways drainage.
- Lastly, I am mindful that liability for highways drainage charges is a matter that must be decided by the wholesaler. Under the rules under which the water market was opened up for retail sale, I find that a decision about liability for charges cannot be made by the company. This has been explained by the company in its evidence and I accept the accuracy of its explanation. I have no power to comment on the wholesaler's decisions. This is because the wholesaler is not a party to this adjudication and a dispute with the wholesaler is not within the scope of this Scheme.

3. It follows that I do not reach a decision in this adjudication as to whether the customer is or is not liable for highways drainage charges in band 4.

4. In relation to the provision of customer services by the company, however, I can reach conclusions.

5. Having reviewed all the evidence submitted, I find that the company did not supply its services to the standard that an average customer would reasonably expect in that it did not respond in a timely way to a number of matters that had been raised by the customer on 11 September 2020 (Stage 1 of the complaint). This left several issues unresolved between early September 2020 and 24 October 2020, when, the customer having contacted the Consumer Council for Water (CCWater), a Stage 2 response was made by the company to the customer. I note that this had the consequence that for a period of about 5 or 6 weeks:

- The customer remained under a mistaken impression that he would be charged £40.00 per week by way of late payment fees, although I also find that there is no

evidence to support that the customer was told this by the company.

- The customer was uncertain whether his account was put on hold and uncertain also as to monies claimed by the company.
- The customer did not know whether his credit rating would be affected.
- The customer remained hopeful that he would be eligible for a rebate and he had asked for an expedited survey, but it was not explained to him why the survey fee was payable. In particular, I note that the customer was not told why the company needed to be sure of the customer's commitment to meet the survey charges with reference to the survey previously carried out by the wholesaler in 2015 which had implications for the probable outcome of any such survey. The customer also was not given a detailed explanation of why he might be liable for highways drainage charges even though a large proportion of the rainfall on his land drains into the canal.

6. However, the documentation submitted to me shows also that the company took certain action to remedy the situation. This has included:

- Removing a late payment charge of £40.00 from the customer's account;
- Crediting his account with a further payment of £20.00 by way of Guaranteed Service Standard payment for failure to comply with the company's published service standards; and
- Giving priority to the customer's application for the charges to be removed from his account for the period of time when his business had to be closed due to the pandemic;
- Offering the customer the terms of a payment plan.

7. I also am mindful that:

- The company would reasonably be expected to charge its customers in accordance with its published Scheme of Charges and an average customer would not reasonably expect the company to depart from these except in circumstances which the Scheme of Charges permits.
- According to the company's explanation of the findings of the wholesaler in 2015 and the meaning of its Charges Scheme, the company had reason to suspect that the customer may continue to be liable for highways drainage charges even following a survey. I find that as part of its liaison function between the customer and the wholesaler, a company would reasonably be expected to warn a customer that he would have to pay for the survey if there was no change in the charges due.
- Notwithstanding that the customer has expressed that he is suffering from mental health issues, there is no evidence that the company was previously aware of this.
- There is no basis on which the company should reasonably be expected to bear the cost of the wholesaler's survey fee and nor is there reason to consider that the wholesaler would be likely to waive this as a survey has most recently been carried out in 2015 and the customer has not said that there have been any later changes.

8. Taking all these matters into account, I find that, although the company had in September 2020 failed to supply its services to the expected standard, it has rectified its failure in a way that, I find, an average customer would find to be proportionate. The redress that has been applied for by the customer was for a direction that the past payments to the company should be “amended”. For the reasons given above, however, I do not make that direction. Although I note that the customer said in his correspondence with CCWater that the company’s calculation of his account (provided as part of the company’s Stage 2 response) may have failed to account for certain payments made, I have not been supplied with detail about this and cannot reach findings.

9. It follows from the above that I find that the company does not need to take any further action.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

Claire Andrews
Adjudicator