

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX02

Date of Decision: 18/01/2021

Complaint

The customer was overcharged for surface water and highway drainage ("SWHD") from 2007 due to a mistake made by X Company 2, the customer's wholesaler, when it applied the wrong banding to the customer's premises for SWHD charging. The mistake resulted in the customer paying ten times what he should have paid for SWHD. The company and X Company 2 accept the mistake occurred and have reimbursed the over-payments from 26 November 2013, but refuse to backdate the refund any further. The customer wants a refund of £6,709.89 for SWHD overcharges, a reimbursement of £2,638.11 for finance charges for the period from April 2008 to November 2013, and a reimbursement of £1,245.28 for finance charges for the period from November 2013 to June 2020. The customer also claims £51.97 for errors in the way the previous refund was calculated and wants compensation for the time spent, costs incurred and stress suffered in preparing and presenting his claim.

Response

X Company 2 is the wholesaler for the customer's water and sewerage supply and is responsible for authorising SWHD adjustments. The company charges SWHD in line with information provided by the wholesaler. The wholesaler's policy is to backdate amendments six months from the date an application is received. The company has repeatedly challenged the wholesaler regarding this matter and has secured an out-of-policy decision to amend the charges and refund the overcharged amount from 26 November 2013. However, the wholesaler has refused to backdate the amendment prior to 26 November 2013.

The company has not made an offer of settlement.

Findings

The wholesaler, not the company, is responsible for assessing the customer's eligibility for a SWHD adjustment, and the company is responsible for applying any authorised adjustment to the customer's

account. As the wholesaler is not a party in this case, I am unable to make a finding regarding the wholesaler's decision not to backdate the reduced charges to April 2008, or any other finding regarding the actions of the wholesaler. Therefore, the customer's claim for a refund of overpaid charges, a reimbursement of finance charges, a correction of errors made in calculating the initial refund, and compensation for time, costs and stress cannot succeed.



The company does not need to take any further action.

The customer must reply by 15/02/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XXXX

Date of Decision: 18/01/2021

Party Details

Company: X Company

Case Outline

The customer's complaint is that:

1. • The customer is the director of the X Property, a small family business trading as a Thai restaurant at X Location. • The dispute relates to overcharges made by X Company 2 between 2007 and 2013 for SWHD. • In 2007, X Company 2 changed the way it charges for SWHD, and this is explained by the company and X Company 2 in an e-mail dated 21 January 2020. SWHD charges were originally based on the rateable value of the property or a sewerage standing charge based on the size of the water meter. However, from 1 April 2008, the chargeable site area of a property became the basis for charging SWHD for non-household premises with a measured supply point. Before the new way of charging began, X Company 2 sent letters to all properties to which the chargeable site area applied advising them of their chargeable site area and band, and providing details of how to check the site had been mapped correctly. The email also explained that X Company 2 were reliant on occupiers of properties to make contact if they disagreed with the mapping of the site. • On 13 August 2007, X Company 2 sent a letter with an Ordnance Survey Map, providing instructions on the procedure for giving notice of errors in the mapping of the site area. The map provided for X Location was accurate and identified eight domestic apartments on the site. • The letter directed customers to the company's website to receive additional information. The additional information contained details about how X Company 2 intended to calculate chargeable areas of single occupation and multiple occupation sites. The website instructions said that occupiers of multiple occupation sites should expect "apportionment" of the site area and the corresponding SWHD charges. • None of the details supplied by X Company 2 in the letter or on its website seemed incorrect; therefore, at that time there was no reason for him to contact X Company 2. • This case has arisen because X Company 2 made a mistake and failed to recognise X Location as a site of multiple occupation, and wrongfully assumed X Property was a single occupant

and, therefore, charged for SWHD under Band 4. This mistake resulted in X Company 2 charging ten times the amount it should have charged for SWHD. • The mistake was discovered when the billing procedure was changed in 2019 and the company combined water, waste water and SWHD charges into one bill. The first bill in the new format was received on 11 November 2019 and it allowed him to compare SWHD and waste water costs. On 12 November 2019, following a telephone call to the company about the high costs charged for SWHD compared to waste water, he made a complaint. • The company forwarded the complaint to X Company 2 and a site survey was arranged for 3 December 2019. On 23 December 2019, the company sent an email saying that the investigation found errors in the SWHD banding going back to 2007 when X Company 2 introduced the revised system for SWHD charging. • The company amended the SWHD charges, but only applied the amendment from 26 May 2019, in line with the wholesaler's policy. • The company and X Company 2 made several attempts to correctly band the site for SWHD. Previously X Company 2 had charged for 843 m², but eventually confirmed that the correct band was Band 1, with a chargeable area 81 m². • Although responsibility for the mistake was not disputed, the company and X Company 2 refused to adjust the banding prior to 26 May 2019.

The company advised him to contact the Consumer Council for Water ("CCW"), and he did so on 1 May 2020. • On 20 May 2020, CCW confirmed that the wholesaler had agreed to amend the charges from Band 4 to Band 1 from 26 November 2013. As a result, he received a credit of £2,978.16 and a cash refund £8,115.00. • He asked for a further refund of SWHD overcharging from April 2008 to 25 November 2013, but this was refused. X Company 2 stated that it was not responsible to backdate the charges further than 2013 due to the Limitation Act 1980. However, s32 of the Limitation Act 1980 outlines a postponement of the limitation period in cases of fraud, concealment or mistake, and states that where the action is for relief from the consequences of these, the period of limitation shall not begin to run until the claimant discovers the fraud, concealment or mistake, or could have done so with reasonable diligence. In light of this, the claim for a refund of the incorrect charges is not time-barred. • Also, the 2008-2010 X Company 2 Water Charges Schemes expressly state at section 2.9 that, "In circumstances where it is identified that a consumer has been charged incorrectly because of an error caused by the Company, it reserves the right to make retrospective adjustment, and will always do so where the adjustment is in the consumer's favour." In view of this, X Company 2 has a legal obligation to refund the 2008-2013 SWHD overcharges. The claim is also supported by the principles of unjust enrichment. • Based on the above, he is legally entitled to a refund of all SWHD overcharges from 2008 to 2013, plus interest. • He wants a refund of £6,709.89 for SWHD overcharges, a reimbursement of £2,638.11 for the finance charges for the period from April 2008 to November 2013, and a reimbursement of £1,245.28 for finance charges for the period from November 2013 to June 2020. •

There were errors in the way the previous refund was calculated, as it did not account for the direct debit payment reduction and applied an unexplained adjustment; therefore, he also claims £51.97 for the correction of these errors. • He also seeks compensation for the time spent, costs incurred, and distress suffered in preparing and presenting the case to the company, X Company 2, CCW and WATRS.

The company's response is that:

1. • On 12 November 2019, the customer queried the charges for SWHD and an application was provided so it could ask the wholesaler to carry out a review. • An email was received from the customer on 12 November 2020, containing detailed site maps and a confirmation that the site was made up of a restaurant, a wine bar and eight domestic apartments. • On 23 November 2019, it received confirmation from the wholesaler that the customer's chargeable area had reduced from 843m² to 288m². This amendment was backdated from 26 May 2019, in line with the wholesaler's policy to only backdate six months from the date the application was made. The banding reduced from a Band 4 (650m² – 1499m²) to a Band 2 (125m² – 299m²). • On 27 November 2019, the customer sent an email saying that he was unhappy with the decision to only back date the charges six months and he explained that the overcharging had occurred since the start of his lease in 2003. • On 31 December 2019, the customer sent a further email expressing his dissatisfaction with the wholesaler's decision. • On 7 January 2020, the company raised a compliant to the wholesaler to challenge the decision. • On 13 January 2020, it received a response from the wholesaler explaining that there had been an error in the previous decision and that the correct chargeable site area is 81m², which falls into charging Band 1. • The wholesaler confirmed that it had amended the chargeable site area from 228m² to 81m² with effect from 26 May 2019, the date of the original amendment. • On 20 January 2020, it sent an email to the customer about the wholesaler's response. • On 21 January 2020, it received an email from the customer, expressing his dissatisfaction with the wholesaler's decision. • On 21 January 2020, it sent another response advising the customer that it had raised a further challenge with the wholesaler. • On 14 February 2020, no response had been received from the wholesaler, so it sent a chaser for an update. • On 16 March 2020, no response had been received from the wholesaler so an update was provided to the customer explaining the delay. • On 19 March 2020, the wholesaler provided a response setting out its scheme of charges. • On 6 May 2020, following notice that the customer had referred the case to CCWater, it raised a further challenge to the wholesaler. • On 12 May 2020, following its challenge to the wholesaler, it received a response stating that the wholesaler had backdated the Band 1 charging to 26 November 2013. • It charges SWHD in line with the market information provided by the wholesaler. As such, the wholesaler's policy is to backdate amendments for six months from the date that an application

is received. It repeatedly challenged the wholesaler regarding this matter and secured an out-of-policy decision to backdate the charges to 26 November 2013. However, the wholesaler has refused to backdate the amendment prior to 26 November 2013.

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. Having reviewed the evidence provided by both parties, I find that the company is the customer's retail provider and is responsible for billing, accounting and customer services. X Company 2 is the customer's wholesaler and, as such, is responsible for the maintenance and repair of the water and sewerage assets and, amongst other things, the calculation and authorisation of SWHD charges and rebates. Therefore, X Company 2, not the company, is responsible for assessing the customer's eligibility for a SWHD charge adjustment, and the company is responsible for applying any authorised adjustment to the customer's account.
2. In order to make a decision in this matter I must clearly distinguish between actions taken by the wholesaler and the duty owed by the retailer (the company) to its customers. Since the water market in England opened up to retailers in April 2017, all non-household customers have been moved to a wholesale/retail split service. As a result, a non-household customer now only has a relationship with the retailer. In turn, an adjudicator operating under the Water Redress Scheme may only make findings related to those things for which the retailer, as the party to

the case, has responsibility, and not those things for which the wholesaler has responsibility. This includes, however, the effectiveness with which the retailer has operated as an intermediary between the wholesaler and the customer.

3. The customer wants the wholesaler to authorise the company to apply the reduced SWHD charges to X Property's account from April 2008. Therefore, the wholesaler's decision not to backdate the reduction to April 2008 is central to this dispute. However, as explained above, because the wholesaler is not a party in this case, I am unable to adjudicate on the conduct, or liability, of the wholesaler. This means that I am unable to make any determination regarding the wholesaler's refusal to backdate the charges to April 2008. Therefore, while I appreciate that my decision will disappoint and frustrate the customer, the customer's claim for a refund of overpaid charges, a reimbursement of finance charges, a correction of errors made in calculating the initial refund, and compensation for the time, costs and stress involved in bringing his claim cannot succeed.

4. For completeness, I add that the evidence demonstrates that the company engaged with the wholesaler regarding this matter and accurately presented the customer's position to the wholesaler. In view of this, I am unable to conclude that the company has failed to effectively operate as an intermediary between the wholesaler and the customer, or that the company has failed to provide its service to the standard reasonably expected by the average customer.

5. The customer has submitted comments on the Preliminary Decision. However, the matters raised do not change my decision and so the comments will not be specifically addressed here.

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.

Kate Wilks
Adjudicator