

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X214

Date of Decision: 23/04/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The company did not bill the customer for two years and he now has an account balance of £142,000.00 for wastewater charges. To clear the balance, a direct debit payment of £5,000.00 per month has been set up with a final payment of around £75,000.00. The large final payment was imposed by the company because it does not accept payment plans longer than twelve months; however, as the company took two years to start billing, imposing a twelve month limit is unfair. Some late payment fees have been removed from the customer's account, but he wants any remaining fees removed as well, and he seeks a gesture of goodwill for the poor customer service he has received. The customer also wants the company to reduce the account balance to recognise the billing delay, stop any further debt recovery action and agree to a more reasonable payment plan.

Response

The company accepts there were billing delays but these were caused by external factors and not poor service, and it has offered the customer a payment plan on many occasions to prevent a large account balance but the customer refused to set one up until December 2020. The current payment plan needs to be revised as it is not sufficient to pay off the customer's debt within a twelve month period. The company has made a proposal for a new payment plan and asks the WATRS adjudicator to decide the length of the arrangement. X Company 2 Water ("the Wholesaler") has calculated the charges applied to the customer's account; these are correct and payable and cannot be reduced. The company has removed late payment fees from the customer's account and made a goodwill payment. The company denies responsibility to compensate the customer further and will start debt recovery action if

agreed payments or future bills are not paid.

The company has not made an offer of settlement.

Findings

The Wholesaler, not the company, is responsible for assessing the customer's effluent charges, and the company is responsible for applying the charges to the customer's account. As the Wholesaler is not a party in this case, I am unable to direct the Wholesaler to reduce the charges. The company has asked me to decide the length of a new payment plan and, having considered the circumstances of the case, I find that a thirty month payment plan would be appropriate. I accept the company's suggestion that the balance of the arrears should be paid off in equal monthly instalments. I make no direction with regard to future debt recovery action and, as the evidence does not show that the company has failed to deliver its service to the standard reasonably expected by the average customer, I do not find further compensation for customer service failings justified.

Outcome

I direct the company to offer the customer a payment plan over thirty months. The monthly payment amount should be determined by dividing the outstanding balance on the customer's account into thirty equal payments.

The customer must reply by 21/05/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

• He received a bill dated 28 September 2016 from X Company 2 that covered the previous six months of waste water charges. When his account was transferred to the company, no more bills were received until June 2018, and then he started to receive incorrect ones. • In order to resolve the problem he spoke to three of the company's employees, took photos of the meters to demonstrate they were not trade effluent meters (which is what the company assumed them to be), asked the company to visit the site, explained X Company 2's system for billing, explained that the charges had previously been calculated on a percentage of the clean water usage shown on the private meters on site, received countless invoices and credit notes to correct them, and then, when he finally got one of the company's employees to listen to him, he designed a system that allowed the company to charge him correctly. • He refused to pay any invoices until the bills he received were correct but accrued for the expected charges in the brewery's accounts; approximately £87,000. When he was finally billed correctly in February 2020, the bills came to a total of approximately £147,000, which was a surprise, but he set up a standing order and started paying off the arrears. • Despite all his efforts to help the company, he received a demand for full and final payment, despite him making regular monthly payments. • He does not dispute that he owes the company money and that he must pay for the service it provides, however, a twelve month direct debit payment plan of £5,000.00 per month has now been set up with a final payment of around £75,000.00 in the final month. The large final payment is not agreed and has been imposed by the company as it does not accept payment plans longer than twelve months. As the company took two years to start billing after it took over from X Company 2, imposing a twelve month limit is unfair, especially in the current economic climate created by the pandemic. In view of this, he would like an extended payment plan. • He also requests a partial credit to cover the time and effort he has put into this matter and the fact that he has been unable to seek competitive tenders while it carries on. The company added late payment charges to his balance and has removed these as a gesture of goodwill, but this is not adequate in the circumstances. • He is very unhappy with the customer service that he has been given and feels that the company has not taken into account the efforts that he made to help the company bill him correctly. He is further unhappy that the company added late payment fees and threatened debt recovery during his on-going complaint, and threatened to disconnect his water supply even though the

outstanding charges relate to wastewater only. In view of this, he would like a gesture of goodwill for the poor customer service received and he wants the company to stop debt collection action.

The company's response is that:

- It admits that there were problems generating invoices, but the problems were due to external factors outside of its control, not poor service.
- The first difficulty faced in producing an accurate bill was due to the water market deregulation on 1 April 2017; it had a period of only six months to transfer records from the Wholesaler.
- During that six month period, it managed to transfer and set up the vast majority of the billing records, with the exception of the trade effluent accounts. This was because there are tens of thousands of trade effluent accounts and each individual account has its own unique billing arrangement, which complies with the trade effluent discharge consent. No two accounts are the same, which means that it could not automate the process of setting the accounts up; instead, it had to manually pick one account at a time, check the billing instructions given by the Wholesaler, make sure those instructions were complete, get meter reads from the customer, and then issue an invoice.
- It was physically and financially impossible to finalise all the trade effluent accounts by 1 April 2017 and, in the customer's case, it could not set up his account and issue a bill until 7 June 2018.
- It did the best it could do in a very difficult situation, however, it understands and shares the customer's frustration.
- The second challenge it faced was the Wholesaler's instructions regarding the billing data. It raised a total of six cases to the Wholesaler before the Wholesaler agreed that the instructions provided were making the billing process impossible, but, eventually, the account was changed from a fixed allowance to a percentage allowance.
- As the retailer, it has a legal duty to raise the charges to its customers as instructed by the Wholesaler. It can challenge the charges if it believes they might be wrong but, ultimately, the Wholesaler has the final decision.
- Another issue that caused delay was that between May 2018 and July 2019, the customer insisted that the five meters it was using in the billing process were not trade effluent meters. It raised this matter with the Wholesaler on multiple occasions and the Wholesaler has always confirmed that the five meters are private and that the customer has provided reads from them since before the market opened up.
- After some time, it became apparent that the customer was misinterpreting the terminology 'trade effluent meters', and was assuming that a trade effluent meter must be a meter that is fitted to the outlet where the foul water is discharged, measuring the volume of foul water as it was being discharged. However, 'trade effluent meter' is the official terminology used to refer to a private water meter that measures the volume of water used in production and when discharged, the water contains effluents.
- As a result of this, over a year was spent trying to understand why the customer was suddenly disputing having trade effluent meters when he has had those meters since before it took over the billing services, he has provided reads from those meters, and has historically paid his trade effluent charges based on the readings from those

meters. However, it does not feel the misunderstanding was the result of anything it did or said. • It disputes the customer's statement that it had no system to find out the amount he should pay the company for water before he took the time to help a company employee design one. • Before the billing records were migrated to the company, the customer was charged by the Wholesaler. Therefore, the customer could have estimated how much his bills would be and if the customer wanted to make payments to avoid a large outstanding debt while various issues were being queried with the Wholesaler, he could have provided estimated payments. • In any event, it tried to arrange a payment plan with the customer in 2018 and it would have happily agreed to an amount that he felt comfortable with, but the customer refused any payment arrangements. • The customer has expressed dissatisfaction at the customer service provided and with it taking debt recovery action while the dispute was on-going.

• The customer started making some payments in June 2020 and finally agreed to a payment plan for the outstanding debt in December 2020. The customer has since broken his payment agreement as he did not pay his new invoices, despite this being a condition of the agreement. • As above, in October 2019, the customer disputed the fixed allowance instructed by the Wholesaler. This is the only justified dispute raised regarding the customer's billing. When the Wholesaler agreed to a variable allowance based on a percentage, the allowance resulted in an extra £6,426.93 being added to the customer's account, but it wrote off the £6,426.93 in order to comply with OFWAT's back-billing policy. • This indicates that the charges raised before the final corrections in April 2020 were actually lower than what they should have been. Therefore, the customer had no grounds to refuse making payments on the lower invoices and had even less grounds once the invoices were corrected and it was proven his charges did not decrease as a result. • Based on the above, it believes the debt recovery action was justified. In line with policy, late payment fees were applied to the customer's account due to non-payment. However, it has agreed to remove the late payment fees as a goodwill gesture but maintains its position that these fees were correct and justified. • The customer wants a gesture of goodwill for poor customer service. However, it has provided the level of customer service that could be reasonably expected and has been proactive in challenging the Wholesaler on the customer's behalf. • It has already agreed to remove all late payment fees as a goodwill gesture, and has paid the customer £370.00 in compensation for the period of delay in billing between 1 April 2017 and 28 June 2018, even though the delay was due to reasons beyond its control. • The customer wants some of the charges for its service to be removed to reflect the delay in billing. However, the charges raised are in line with the Wholesaler's billing instructions and are correct and payable. • The customer has a very large outstanding balance but did not agree to set up a payment plan until December 2020. It has informed the customer that the monthly payment of £5,000 is not sufficient to cover the arrears. However, it has agreed a payment plan of £5,000 for the first three months, but this will have to be reviewed and a more suitable amount must be agreed upon. • It informed the customer that any new invoices will have to be

paid separately and in full. However, the customer has not respected the terms of this arrangement so far and no payment has been received for the new invoices issued. Since the new monthly invoices are approximately £5,000.00, any payments the customer makes via the payment plan are barely enough to cover the new charges. Therefore, the customer is not actively making any payments to reduce the outstanding debt. • Even though its payment arrangement does not allow for a payment plan longer than twelve months, in order to resolve this issue, it makes the following proposal: it offers the customer a new payment plan which will only include the outstanding balance on the account at the moment the payment plan is agreed, and any new invoices issued after the payment plan is agreed will have to be paid separately and in full, within fourteen days of the invoice date. • As it has been unable to come to an agreement with the customer about the length of the payment plan, it asks the WATRS adjudicator to make a decision on the appropriate length of the payment plan, but it suggests eighteen months. • However, by the time WATRS issue the final decision, and assuming the customer accepts it, the account balance will most likely change, either due to the customer making payments or new invoices being issued. Therefore, it does not believe it is possible to determine at this point in time what the value of each payment should be. It believes the best approach is to agree the length of the payment plan and equally divide the outstanding balance by the number of months in the payment plan. • The customer wants it to stop further debt recovery until a payment plan has been agreed. It has no legal obligation to withhold the debt recovery process, and if a payment plan is agreed but the customer does not respect the terms of the agreement, it will need to proceed with the normal debt recovery action.

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.

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 of trade effluent charges. Therefore, X Company 2, not the company, is responsible for assessing the customer's effluent charges, and the company is responsible for applying them 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 his outstanding balance for trade effluent charges reduced; 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 in this regard. Whilst I fully appreciate that my decision will disappoint the customer, I am unable to make any determination regarding the charges set by the Wholesaler.
4. The customer now owes a large sum of money to the company and, although I accept that the billing delay was out of the control of the company, I also accept that the customer's reluctance to make payments was reasonable until he was issued with an accurate bill.
5. In view of the above, and the fact that both the company and the customer are dissatisfied with the payment plan that started in December 2020, I welcome the company's request for me to determine the length of a new payment plan. The company has suggested an eighteen month period, however, while I appreciate that the company is keen for the account to be settled, I am mindful of the need to set a realistic and reasonable time frame so that the customer is more likely to be able to make the monthly payments.
6. Therefore, I direct the company to offer the customer a payment plan over thirty months. The payments should be determined by dividing the outstanding balance on the customer's account into thirty equal monthly payments.

7. With regard to future debt recovery action, I accept that the company is entitled to use debt recovery procedures in line with its policies if the payments are not made and, therefore, I make no direction to the company on this matter.

8. The customer has requested a further goodwill payment for poor customer service and the time and effort he invested in resolving the billing issues. However, the evidence demonstrates that the company engaged with the Wholesaler many times on the customer's behalf and, on balance, I am unable to conclude that the company has failed to effectively operate as an intermediary between the Wholesaler and the customer, and there is no evidence of further service failings. Also, the evidence shows that the company has already paid the customer £370.00 for the billing delay and has removed all the late payment fees from the customer's account. In view of this, I find that the company has provided its service to the standard to be reasonably expected by the average customer and, although I appreciate that my decision may disappoint the customer, I make no further direction to the company in this regard.

9. I have reviewed the comments made by the customer on the preliminary decision. However, I have already commented above on the relevant points made and, therefore, I will not revisit the issues again. I understand that the customer is frustrated by my decision and feels that it is unfair; I therefore remind him that he is not obliged to accept my decision and, if he chooses to reject it, he can pursue his case elsewhere.

Outcome

1. I direct the company to offer the customer a payment plan over thirty months. The monthly payment amount should be determined by dividing the outstanding balance on the customer's account into thirty equal payments.

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.

- 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.

Kate Wilks
Adjudicator