

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X292

Date of Decision: 16/06/2021

Party Details

Customer:

Company:

Complaint

The customer says that he has been billed incorrectly for surface water and highway drainage charges for over 10 years. The company has only provided a limited refund.

Response

The company says that the customer's billing was corrected once he raised a complaint. The refund was backdated correctly.

No offer of settlement has been made.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to billing of surface water and highway drainage charges.

Outcome

The company needs to take the following further action: It must refund to the customer all excess surface water and highway drainage charges from 29 January 2015 until his billing was corrected, and provide the customer with a 24 month payment plan for those amounts currently owing on his account.

The customer must reply by 14/07/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- He has been billed incorrectly for surface water and highway drainage (SWHD) charges for over 10 years.
- He first raised a complaint about these charges in 2018.
- The company acknowledges that he has been charged incorrectly, but will only backdate the rebate to April 2018.
- The bills he received were unclear as to the justification for the SWHD charges he received, which prevented him challenging them earlier.
- The company's terms and conditions are unclear as to the process to be used when raising a complaint about SWHD charges.
- He requests a refund of all incorrect charges since he moved into the Property and an apology for the length of time his complaint has taken and the poor information provided on SWHD charges.

The customer's comments on the company's response are that:

- He has found the company to be difficult to communicate with.
- He denies that a site visit was conducted on the day given by the company.
- The company has acknowledged that he has been charged incorrectly.

The company's response is that:

The company's response is that:

- The customer first raised his complaint on 13 March 2018.
- Some delays arose from the customer not following the complaint process correctly.
- A site visit was made in 2018 and the customer's banding was changed from 7 to 5.
- In line with the wholesaler's policy the rebate was backdated to 1 April 2018.
- The company apologises that the customer's complaint has taken so long to be resolved, but it does not believe that there have been shortfalls in the service provided to the customer.
- The customer has not made a payment since December 2017.

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. As a regulated water retailer, the company is required to bill its customers in accordance with a published charges scheme and to provide its services in accordance with its licence and any applicable Ofwat guidance. The company's charges scheme must adhere to rules made by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
2. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to decide on the fairness or correctness of a company's charges scheme, as this responsibility has been given by the Water Industry Act 1991 to Ofwat.
3. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may only examine whether the company has properly adhered to its published charges scheme and to its licence and any applicable Ofwat guidance, and whether it has fulfilled its customer service obligations to the customer.
4. In the present case, the company has acknowledged that the customer has been billed incorrectly for SWHD charges. As a result, the only matter in dispute between the parties is the date to which the customer should be refunded excess charges. The customer requests that he be refunded all charges since he moved into the Property, while the company argues that a refund need only be made to 1 April 2018.
5. Section 2.3.5 of the company's charges scheme confirms that "If a non-household customer can provide evidence to the sewerage undertaker's satisfaction that the chargeable area for which they are being charged is too large, they may be entitled to a reduction in their sewerage charge to reflect this. This reduced charge would take effect from the 1 April in the year in which the claim is made."
6. However, I find that this provision must be read in accordance with Section 2.3.2 of the charges scheme, which states that "your premises will be allocated to a site area charging band based on the chargeable area, including the allocation of any common areas as described below" and that "You must provide us with notification of any change that may affect the site area charging band that has been given to

your premises.”

7. That is, Section 2.3.2 of the charges scheme lays out an allocation of responsibility between the parties in which the company bears the responsibility of correctly allocating the Property to a charges band “based on the chargeable area”, while the customer bears the responsibility of notifying the company “of any change” that may affect the banding of the Property, whether favourably to the customer or not.

8. This allocation is important for the present case because the company has not argued that any change occurred to the “chargeable area” of the Property that the customer failed to notify the company about. Rather, the company’s argument is simply that the customer was charged the same rate as the previous occupant of the Property but then did not challenge it. However, it acknowledges that the customer had been placed in the incorrect band given the “chargeable area” of the Property.

9. The company’s charges scheme does not, though, impose on the customer an obligation to monitor the correctness of the company’s SWHD billing. The customer’s only obligation is to notify the company of “changes” Where. there have been no changes, but the company’s initial allocation was simply incorrect, there was no notification that the customer was obligated to give to the company.

10. I find, therefore, that Section 2.3.5 of the company’s charges scheme, which limits the company’s obligation to provide a refund to the customer of incorrect charges must be understood as applicable only in the context of a customer’s failure to provide the notification specified in Section 2.3.2. Any other reading would impose on the customer the burden of correcting the company’s errors despite having limited information on how an SWHD calculation is made and no technical expertise with which to take measurements and make the calculation. The company’s charges scheme cannot be read as imposing such an obligation on the customer without much clearer language than is actually used.

11. Nonetheless, this does not mean that the company is potentially subjected to unlimited claims, as the “Limitation Act 1980” limits commencement of an “action” to recover overcharges to 6 years from the date on which the cause of action in question accrued. In the present case, this means that the customer may only receive a refund backdated to 29 January 2015, 6 years prior to the date on which he commenced his claim at WATRS.

12. In its comments on the Proposed Decision in this case, the company has argued that it should not be held responsible for the decision by the wholesaler not to provide a greater rebate than was offered. However, as explained above, this

decision is not based upon a discretionary act by the wholesaler, but on the terms of the company's own charges scheme, to which it is obligated to adhere. This decision does not, of course, preclude the company from attempting to collect from the wholesaler the full amount it is now obligated to pay the customer, should it have a legal ground for doing so.

13. Therefore, the company must refund to the customer all excess SWHD charges from 29 January 2015 until his billing was corrected.

14. In his comments on the Proposed Decision in this case, the customer requested that he be allowed to make the payments currently due to the company over a two year period. As the customer has been successful in his claim and I accept that he pursued the dispute in good faith I find that this request is reasonable.

15. Therefore, the company must provide the customer with a 24 month payment plan for those amounts currently owing on his account.

16. The customer has also requested an apology. However, I acknowledge that the company has already apologised to the customer in its Defence, and I find that this apology is sufficient.

Outcome

1. The company needs to take the following further actions: It must refund to the customer all excess SWHD charges from 29 January 2015 until his billing was corrected, and provide the customer with a 24 month payment plan for those amounts currently owing on his account.

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.

Tony Cole
Adjudicator