

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X713

Date of Final Decision: 13 January 2022

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer complains that the company has not been willing to provide the relevant discount of fees for connection to the water supply under its Scheme, despite the customer demonstrating that the arrangements for water use for properties connected within a development comply with the scheme requirements. The customer says that this is unfair and asks by way of remedy for an apology and for the Water Environment Discount Scheme to be applied and backdated to the customer business' initial request date.

Response

The company says that its published information about the Scheme states that customers must apply before contracts are in place. An application was made for permissions to connect the relevant development which stated that the houses would not meet the requirements of the scheme. No calculations were provided to suggest that the customer's connections might be compliant until after the connections had been made. As all the published information made clear the obligation to apply in advance and these rules would have been applied to other customers, it would not be fair to treat this customer differently.

Findings

I find that the company has supplied its services to the standard that would reasonably be expected. A company would reasonably expect that the company would act in accordance with its public statements. The company has shown that these emphasised the need for applicants for a discount to apply before the connections were made and that the discount would not be granted afterwards. The evidence does not support that the company should have decided to depart from this policy and its decision not to do so was within a reasonable range of responses. It follows that the customer does not succeed in his claim for a remedy.

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Outcome

The company does not need to take further action.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X713

Date of Preliminary Decision: 13 January 2022

Case Outline

The customer's complaint is that:

- The customer complains that his business completed a property development that was in line with the Water Environment Discount Scheme as the development was fitted with appliances compatible with lower usage than 110 litres usage per day.
- An application was sent to the company which in error omitted to answer section 7 question 6. Correct information and evidence was duly sent to the company.
- No further action was taken, and the company is now refusing to apply the discount or backdate it.
- The customer is unhappy because he says that the customer business responded with missing information and supporting evidence straight away and is now out of pocket for over £8,000.00.
- The customer says also that the company's response to his application to WATRS does not provide a valid reason why the company cannot apply the discount. The

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discount may seem retrospective to the company, but these homes have been specified and installed as per the water discount scheme and as per the required documentation provided to the company.

- The customer asks for an apology and for the Water Environment Discount Scheme to be applied and backdated to the initial request date.

The company's response is that:

- This application was originally received by the company in July 2019. The form asked for the omitted information "the Part G information" at the application stage and the customer had filled in this with a "no".
- The charging arrangement booklet states:

Here at The Company, the nature of what we do as a company means that we have an important role to play in protecting and sustaining water as a natural resource for future generations. We want to encourage better water efficiency in the home to help our customers to save water and safeguard their homes from flooding. Our Scheme could save you, as a home builder, money on both clean water and sewerage charges if you build new homes to our qualifying conditions. Take a look at our discount scheme for more information on the savings that could be made. The discount to the sewerage charge only applies if the sewer connection is in the The Company region. Please note that it's really important to tell us that you'd like to apply for the discount scheme and provide your evidence upfront before you accept your quotation or agreement. We cannot add this discount at a later stage in the process.

- In 2021, correspondence took place between the company and the customer, and the customer indicated that it thought that all relevant evidence had been provided. The company informed the customer that on the application form the customer had selected 'No' to the option of housing being built to Part G of the Building Regulations and therefore the customer business had indicated that it was not eligible for the discount. The company also explained that it was not able retrospectively to apply the discount to plots already quoted and connected but would be able to apply the discount to future plots on site which would be plots 21-24.
- The customer has challenged this and has also stated that correct information was sent by post "at the end of July" and was re-sent via email on 8 March 2021.

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- In June 2021, the customer conceded that the customer business had made a mistake, but the customer said that it had soon been realised and the water calculations issued to show compliance with the 110 l/s per day.
- The company says that it needs to apply its policy consistently to all customers as documented in its published information, including its leaflet, letters and on its website. It is clearly stated that the discount is not applicable retrospectively. The discount is applied at the quotation stage and the policy explains that evidence must be provided at the correct stage as these discounts cannot be applied retrospectively. It denies liability for this claim.

How is a WATRS decision reached?

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

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. 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.

I have additionally considered the customer's comments on my Preliminary Decision.

How was this decision reached?

1. The customer makes a complaint about the company's billing, its development and/or new services provision and its water supply services and asks for an apology and backdating of a discount to a date when the customer says that the customer business first applied for the company's discount.

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2. I remind the parties that in order to qualify for redress under the WATRS Scheme, the evidence submitted by the parties must show that the company has failed to supply its services to the expected standard. If the company has supplied its services to the expected standard, it is not open to an adjudicator to reach a different conclusion from the company merely because the adjudicator might have taken a different decision in the circumstances. The question that I have to determine, therefore, is not whether I would have reached the same conclusion as the company (as to which I express no opinion), but whether the company's decision-making fell outside a reasonable range of decisions such that the company failed to offer its services correctly. I now turn to that issue.
3. I find that the starting point by which an average customer would reasonably set their expectations is by reference to public statements or public information in which a company has set out what it promises to do. I find that it would reasonably be expected that the company will act in accordance with such statements or information.
4. In this case, the company has submitted evidence as to the ways in which it says it has made public its criteria for eligibility for the discount.
 - a. The company has submitted a copy of its brochure "Our Scheme: discounts for building sustainable homes". This states:

To conserve water, anyone building a new home within England must meet with Part G of the Building Regulations 2010.

Any new home must be built to no more than 125 litres of water per person per day (pppd). It is possible to build to as little as 80 litres.

If you can show us that you've built to 110 litres (pppd) or less we'll give you a discount of £382 and deduct this from your clean water infrastructure charge.

Water usage is easy to calculate using our water calculator. Just tell the calculator that you want to build to 110 litres and when selecting fixtures and fittings (e.g. types of taps, bath and toilet) it will give you a list of products to choose from to help you to meet this amount.

At the bottom of the first page in white lettering on a blue background and emphasized in bold as set out below, the brochure states:

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*It's really important you tell us that you'd like to apply for the discount scheme and submit your evidence before you accept your quotation or agreement. We **can't** add this discount at a later stage in the process.*

b. The website gave similar information and referred to the need to fill in an application form.

c. The Charging Arrangement booklet also stresses that:

"it is important to tell us that you'd like to apply for the discount scheme and provide your evidence upfront before you accept your quotation or agreement. We cannot add this discount at a later stage in the process."

5. I am satisfied, therefore, that the company made clear its policy that applications for the discount must be made in advance of the connection to the company's water supply.

6. In the customer's case, although the customer refers to the application having been made in 2019 and supporting evidence "duly" provided, the evidence shows, I find, the following timeline:

a. The form that might have included an application for the discount was the self-lay application. This was a requisition by (REDACTED) application and the application was advanced in the name of the structural consultant and "REDACTED.", who were shown as the business responsible for making the connection with the main. This was sent to the company in July 2019. The form filled in respect of the Part G information the answer "no", which I find would have communicated to the company that the applicant, although self-laying the connection, did not intend to meet the criteria for the Scheme. This impression was reinforced because the form went on to state that if the answer to that question had been "yes" the calculations for the water use should be submitted. There is no evidence that shows that calculation information was supplied to the company at that time.

b. It is unclear whether any conversations between the customer business and the company occurred in February 2021, but on 4 March 2021, a member of the company's Finance Team contacted the customer to request payment. The company explained that

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no evidence had been provided to the company in support of the discount and that these had not been applied.

- c. On 8 March 2021, the customer business provided a spreadsheet to the company's Finance Team stating a belief that this information had been previously supplied and showing that the customer's development met requirements for the discounts. The company's Finance Team forwarded this to the company's self-lay team to ask if they could assist with it.
- d. On 28 March 2021 the self-lay team confirmed that the customer business had selected 'No' to answer the question whether housing was to be built to the standard to meet Part G of the Building Regulations. The self-lay team said also that the company had not received anything further to suggest that the discount could apply.
- e. The company therefore communicated to the customer business that it declined to apply the discount to those plots that were already connected but stated that it would apply the discount for plots 21 to 24 which were not at that point connected.
- f. On 7 April 2021, an individual from the customer business responded saying that the company should apply discounts as the customer had provided evidence. The self-lay team explained that evidence needed to be provided before acceptance of the quote as set out in the company's policy. The customer business then explained its view that evidence of compliance had previously been provided. The company asked for further details of when this was supplied.
- g. As no response was received, the Finance Team chased up this information on 14 April 2021.
- h. On 20 April 2021, the customer business responded to say that the information had been sent via post previously and indicated that it did not wish to pay the full charges. The self-lay teams said that the company had not received this information and therefore the discount could not be applied. The customer business said that a complaint would be made to Ofwat if the company did not reconsider the situation.

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- i. On 28 April 2021, the company's self-lay team Manager emailed the customer business as the member of staff dealing with this was on annual leave. He asked how the discount evidence was sent, when the originals were sent and asked for confirmation that he had understood the issue.
 - j. On 7 May 2021, the customer business said the originals had been posted prior to connection but could not provide a date. The customer said that these had been re-sent via email on 8 March 2021. The company again asked for the posting date of the first supply of the information and any proof of this, for example, recorded delivery references.
 - k. On 13 May 2021 the customer business said that the information had been provided at the "end of July" and asked again for the discounts to be applied.
 - l. On 7 June 2021, the customer emailed the company's CEO stating:

"In short, it looks like we messed up our initial application on this scheme originally (email trail below), but soon realised and issued the water calcs to show compliance with the 110l/s/day..."
 - m. The company treated this as a Stage 1 complaint and on 11 June 2021, reiterated that it was unable to apply the discounts retrospectively in order to remain fair and consistent with its process. The company said that calculation data had neither been supplied initially nor at the time of the individual plot connection applications.
 - n. On 14 June 2021, the customer asked for this to be escalated to Stage 2.
 - o. On 24 June 2021, the company's Developer Services Regulation, Customer and Compliance Manager) responded to the Stage 2 complaint.
7. Although the customer says that after the application it supplied the company with the calculation which indicated that future building would fall within the Discount Scheme and at one point in the correspondence refers to the information having been provided "swiftly" after the omission in the application form was pointed out, the only calculation in the documentation that has been supplied to me and which uses the company's calculation data, bears a date of 25

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February 2021. Notwithstanding that this preceded the first invoice from the company to the customer on 6 March 2021, it was significantly after the date of the first application in 2019.

8. As the customer has not been able to put forward the date when it is said that this information was provided, nor a copy of any supporting letter or email or other reference to it, I am unable to find that the customer's position is supported by the evidence. I therefore find that it is more probable than not that the customer did not require the company to consider its eligibility until February 2021, by which time the connections had already been made and, by reference to the company's published position, it was too late to apply the discount.
9. The customer argues that no reason has been given for the company's refusal to apply the discount. I note that the company has not given an explanation for the practical need for the requirement of advance application in its correspondence with the customer in any of the documentation that it has created. Moreover, the company has explained in correspondence that it will treat this situation as feedback for the purpose of reviewing its processes in the future. I therefore understand the customer's frustration in that the benefit that the company obtains from advance application has not been made clear and I find that this has caused the customer to doubt the validity of the policy. Nonetheless, whether the company's process can be justified on a substantive basis or not, I find that the need to treat customers equally and in accordance with published information is a reason for refusing to make a concession in favour of the customer. I find that the company is entitled to take the view that its processes should be applied to all its customers and that it would be unfair to permit the customer to circumvent the process when other customers may not have been able to do this. I do not find this approach to be irrational; rather I find that it is a concession that is within a reasonable range of decisions that the company could have reached.
10. Moreover, although I note that the customer has commented on my Preliminary Decision that he does not feel that the policy referred to is a fair one, as it is solely based on a box being ticked on an application form ignoring what is being installed onsite to achieve the intended environmental reduction, this is not a matter that falls within the scope of the Scheme. I have found that the company has applied its policy in this case but rule 3.5 of the WATRS Scheme rules states that a complaint about the fairness of the company's commercial practices falls outside the scope of the WATRS Scheme. This, I find, prevents me from considering the fairness of the company's stated policy.

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11. Would welcome further thought in this aspect.

12. Taking all the above considerations into account, I therefore find that the company has not failed to provide its services to the expected standard. It follows that I find that the customer is not able to succeed in his claim for redress.

Outcome

The company does not need to take further action.

What happens next?

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

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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