WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0638

Date of Decision: 18 January 2018

Complaint

The customer (a school) argues that it has wrongly been charged for surface water drainage under two accounts covering different areas of its site, whereas it was an error that these were not consolidated in 2008. If they had been, the customer would have had to pay only the same rate for the full site as for the larger area of the site because of the size of the relevant band. The customer says that although this consolidation has now occurred, this should, by reference to the company's published policies, be backdated to 2008. The customer seeks repayment of £25,000.00.

Defence

The company says that it was not asked to consolidate the accounts in 2008. It did not make an error and is entitled to restrict any refund to 1 April 2017 in accordance with its current policy.

Findings

The customer has not shown either that the company made an error in 2008 in applying its charge for surface water drainage or that its current policies require that a refund be given backdated to 2008. The claim that there was an error in 2008 is, in any event, time-barred. The customer has not proved that the company failed to provide its services to the standard reasonably to be expected of it.

Outcome

The company does not need to take any further action.

The customer must reply by 15 February 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 18 January 2018

Party Details

Customer: [redacted]

Company: [redacted]

Case Outline

The customer's complaint is that:

- The customer receives 2 bills from the company to represent the two metered supplies serving all of its buildings on one single site, namely that of the School, a school serving ages 11 to 18. Each billed account formerly had its own surface water and highways drainage charges.
- One meter serves the 'The Junior School' and this was charged in Band 8 (area range 10001-15000m^2) and the other meter supplies the rest of the School, which includes the Senior School, [redacted] (6th Form) and Sporting Club and is charged in Band 10 (area range 25001-50000m^2). The bills for both accounts are addressed to the Finance Directorate at School.
- On 27 April 2017, following application by the agent, the company agreed to have the Band 8 surface water and highways drainage charges removed for the Junior School, resulting in the Band 10 charge levied on the other account representing drainage charges for the whole of the School site as requested.
- The company has, however, only applied the adjustment to remove ongoing Band 8 drainage charges for the Junior School from 1 April 2017 and is refusing to apply the adjustment retrospectively to the date the charges were first incorrectly introduced, that is from September 2008, despite the company accepting that charges were set up wrongly from this time because there was a duplication of charges.
- The customer seeks repayment of £25,000.00.

The company's response is that:

- The customer's agent first contacted the company on 27 April 2017 to advise that in his view, the customer was being charged incorrectly for Surface Water and Highway Drainage as it was covered by two accounts. He requested that the Band 8 charges be removed, and the two accounts would then be covered by one charge at Band 10.
- The company raised a Surface Area review with RST Water. RST Water confirmed on 15 June 2017 that it agreed to merge the two properties with effect from 1 April 2017 and the customer was informed by the company that the Senior School would continue to be charged at band 10 for Surface Water and Highway Drainage, and the band 8 charges would be removed from the Junior School account. The charges were backdated to 1 April 2017 in accordance with RST Water's Charges Scheme. The request to refund back to 2008 was declined and the customer was informed.
- Neither RST Water nor the company accepts that a mistake was made in 2008. They submit that the agent is wrong to infer that a mistake was made from the decision by the wholesaler to merge the accounts.
- The customer has subsequently contested the refusal to backdate. The agent has argued:
    - that RST Water had made an error in 2008; and
    - that RST Water has previously agreed to cancel charges back to the date of occupation where a site is deemed to be not connected for surface water.

  The company, having requested information from RST Water responded that the accounts had previously been set up as the customer had advised and that the Junior School was not deemed to be disconnected and no billing error had been made. RST Water would not have merged chargeable areas for multiple sites unless requested by the customer. Up until April 2017, no request had been received, and the sites are separately assessed by the Valuation Office Agency. Therefore, the separate areas were the correct method of charging. The company has therefore declined the customer's request for backdating beyond 1 April 2017.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. The company has taken advice from RST Water about the period in question. It has not suggested that the customer has brought its claim against the wrong entity and I find that *if* the customer were to be entitled to a refund as claimed, the refund could be directed against the company. That is not, however, my finding, for the reasons set out in the following paragraphs.

2. The issue in this case is as to whether the company should have backdated the changes to the billing arrangements for surface water drainage at the customer's site, which has two water accounts. At the request of the customer, via its agent, these areas have now been treated as merged for the purpose of the surface water drainage charge but the company has not been prepared to backdate this beyond 1 April 2017. This decision is challenged by the customer in that:
    a. It is contended that the wholesaler previously made a billing error in treating the two areas as separate and therefore its usual policy on backdating should not be applied by the company ; and
    b. The wholesaler will backdate and refund monies paid if a customer is found not to be connected for the purposes of surface drainage and the same should be the case where there has been a duplication of charge.

3. I turn to each of these contentions.

Alleged billing error

4. The agent contends that the error originates from when the customer's school became a school for 11-18 year-olds in September 2008. This change tied in with the building of the Junior School in the summer of 2008. When the Junior School was added to the site in 2008, the customer would have expected that RST Water would have incorporated the site area into the existing charge for the Sports Centre and the Senior School as it had done previously when combining the areas of the Sports Centre and the Senior School rather than levying another drainage band charge in addition to the one that which already existed. The Junior School provides education for pupils attending Years 7 and 8. The Senior School is for years 9 to 11 and the Sixth Form is for years 12 and 13). Therefore, the agent argues, although the buildings in which different year groups are taught have different names and have been built at different times, they are all part of the same school/and should not be the subject of duplicate charges. The agent denies that paragraph (84) (relied on by the company (below)) is relevant because the company should never have imposed the separate charge in the first place.

5. The company contends that there has been no duplication of charges. The wholesaler has explained that the surface area for the main site was originally 27,967m² and the revised site area, including the Junior School is now 41,916m². Both of these are within the range of band 10, so, it argues, although it looks as though the charges for the Junior School have simply been removed, this is not the case. The company also refers to RST Water's Charges Scheme, paragraph (84). This states:

   > *(84) When RST Water agrees a change to the chargeable area measurement that results in a change to a charging band, this change will be applied from the later of the 1 April in the charging year in which the claim was made or the date on which the customer became responsible for charges on that site.*

6. The gist of the agent's complaint is therefore that this provision does not relate to a situation where an error has been made in the past. His claim is therefore that paragraph (84) of the Charges Scheme should not be applied to correct an error which was made some 9 years ago and to the subsequent charges that arise from that 'error'. By inference (and this is clearer in his correspondence with the Consumer Council for Water (CCWater)) the agent says that because the Junior and Senior areas were on the same site, it was for RST Water to have realised this at the time and to have set up the same account, even though there is no evidence that the company's predecessor was asked to do this. The agent criticises reasons given by the company as to why the areas were treated differently, namely because

(1) there is a road running through the site which divides the Junior and Senior schools; (2) the Junior and Senior Schools have different registrations with the local valuation office and (3) the accounts were set up at different times. The agent explains that the customer would not have understood that it would have been possible to have asked for the accounts to have been merged and says that the failure to merge the accounts has led to an overcharge of approximately £65,000.00 for which £25,000.00 is now sought as part of the WATRS process. In relation to (1), he says that this was a private road which facilitated use of the whole site and did not divide it. In relation to the contention at (2), the agent says that the sporting club and Senior School also have different registrations at the LVO but share an account: therefore this is not a reason for treating the Junior School separately and (3), the difference in time is irrelevant as the use of the whole site was obvious.

7. While I note the agent's and the customer's concern, however, I am unable to reach a finding that the customer is entitled now to re-open an alleged "error" which, it is contended, was made 9 years ago. I bear in mind section 9 of the Limitation Act 1980, which governs the period of time within which parties are entitled to bring proceedings in court under an Act of Parliament or subordinate legislation. This states:

    (1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.

    This limitation period is therefore the same as that which applies in relation to matters of contract or tort under sections 2 and 5 of the same Act. Whether, therefore, the claim that the agent wishes to bring against the company would, irrespective of whether his claim is treated as one arising under statute or as a matter of contract or tort, therefore be out of time for the purposes of court proceedings because the claim is based on an "error" alleged to have been made by the company's predecessor 9 years ago, and any cause of action which the consumer may have had arose at that time. Although I recognise that an application to WATRS is not an application to a court and that the test under this scheme is whether the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person, I find that an average person would not expect the company to give a refund to a consumer in relation to a claim which would be statute barred. For this reason, I find that the consumer does not succeed in its claim against the company in relation to his contention that the company should compensate for an "error" made in 2008.

8. Moreover, even if this were not the case, I find that RST Water was entitled to assume at the time of the customer's application for connection to its assets, that the customer was content with the arrangements proposed for the water charges. While I note that the agent says that the customer was not experienced or skilled in relation to the provision of water and drainage of surface and highway water, there is no allegation that the company failed in any specific way to provide information about its services to the customer (for example, by not providing leaflets or not responding to telephone calls). Indeed, no information is available at all from the school's perspective about what happened in 2008. There is no evidence that the customer asked at the time that the second account was established for the accounts for the Junior and Senior schools to be consolidated for drainage purposes and RST Water indicates that this did not occur. RST Water was, I find, entitled reasonably to assume that those responsible for the establishment and application of funds in respect of a new school would have looked analytically at the likely spend for services supplied to the school. The company argues that it is not uncommon for business customers to have more than one account and, in this case, there are perceivable reasons why this might have been so, for example to separate the accounting for the Junior school from that of the Senior school, which had not previously been a single unit. The company's arguments as to the presence of a road, the registration of the sites of the LVO and the timing of the applications, while none of these are conclusive, reinforce a perception that the separation of the Junior and Senior schools might have been intentional. I find that it was not the function of the company to second-guess the purposes of the customer's business organisation. Accordingly, I find that even if the customer's application is not out of time, there was no "error" in 2008 and the company has not failed to supply its services to the standard reasonably to be expected in not agreeing to refund charges to allow for arrangements that the customer has not previously asked for.

Refund where premises disconnected

9. The agent further argues that the RST Water Charges Scheme envisages that a refund should be made in this case because there is an analogy with the situation where a property is found not to have been connected to the mains drainage at all, in which case RST Water's Charges Scheme provided for a refund from the date of occupation.

10. The company, on the other hand, contends that RST Water's Charges Scheme addresses specifically the circumstances in which it would be prepared to make a change and the

customer's situation does not fall within this because the customer has been connected to the network for surface drainage since 2008. The Charges Scheme states:

> *(94) Where a non-household customer can demonstrate to RST Water"s satisfaction that the provisions of either points (94)(a) or (94)(b), apply, by providing detailed site plans or such other evidence as RST Water may reasonably require, charges for highway drainage will be payable as detailed in paragraph (95) or (96).*
>
> *(a) Drainage arrangements made in respect of a site are such that no surface water or groundwater drains directly or indirectly to a public sewer from that property or from any common area appertaining to that property,*
>
> *(b) All surface water or groundwater draining from the site is charged as trade effluent.*
>
> *(95) Where paragraph (94) applies, for measured properties the chargeable area of the site, as defined in section 6.5, will be allocated to a band and 30% of this band charge will be applied to cover highway drainage charges, as set out in Appendix A.*
>
> *(96) Where paragraph (94) applies, for unmeasured properties a reduced fixed charge will be applied, as set out in Appendix A.*
>
> *(97) Rebates as described in paragraphs (95) and (96) will be applied from the later of the 1st April 2001, the date on which the customer became responsible for charges or the date on which the site was disconnected from RST Water's systems.*

11. I find that this provision in the Charges Scheme relates to a situation where the customer has not utilised the services of the company at all because surface water from the customer's business does not drain into the public sewer. This is, I find, a very different situation from that in the current case where the customer has had two separate accounts and has paid for surface water drainage in respect of both of these. It follows that I find that there is nothing in the Charges Scheme which alters the conclusion that I have reached above, namely, that the customer has not proved that the company fell short of the standards that would ordinarily be expected of it by an average person.

12. Accordingly, I find that the agent has not shown that the customer is entitled now to redress.

Outcome

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 by 15 February 2018 to accept or reject this 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, Barrister, FCI Arb

Adjudicator