

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0665

Date of Decision: 2 March 2018

Complaint

In Autumn 2016, ■■■ (‘GQG’) advised that the customer should be paying a lower return to sewer (‘RTS’) charge. Figures to support the customer’s claim in this regard were given to GQG in January 2017. It was not until October 2017, however, that a ‘full and final’ offer came through of an RTS rate of 62%. The calculation of the 62% rate has not been explained and the customer disputes it. The customer requires that GQG’s bills accurately reflect the amount of water being returned to the sewerage system. To this end, the customer would like a second water meter to be installed by GQG free of charge. A *“sincere and substantive”* apology is also requested.

Defence

The complaint is mainly concerned with decision-making by the wholesaler rather than by the company. As the retailer, it is not in the company’s gift to grant the RTS allowance or rebate being sought. The company has every sympathy with the customer’s situation and has pushed and challenged their case with the wholesaler as firmly as possible.

The company has paid compensation to the customer of £100.00.

Findings

The wholesaler’s policy in relation to backdating the RTS allowance was uncompromising. For its part, however, the company did all that reasonably could be expected of it in pressing the customer’s case with the wholesaler. The final result extracted from the wholesaler – i.e. backdating the refund to January 2017 and a compensation payment of £200.00 - was probably the best that could be achieved in all the circumstances.

Outcome

The company does not need to take any further action.

The customer must reply by 30 March 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 2 March 2018

Party Details

Customer: ██████████

Customer's Representative: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- They use a lot of water as part of the industrial processes of their business. As such, this water does not enter the sewerage system.
- A member of ██████'s ("GQG") customer services team visited their premises in Autumn 2016 and advised that they were entitled to a reduction (or rebate) of GQG's sewerage charges.
- In January 2017, they submitted some figures ("Figures") to GQG to support their reduction/rebate claim. The Figures were calculated by reference to the amount of water that went into their products over the four years between 2013 and 2016.
- It took until October 2017, however, for a 'full and final' offer to come through in respect of the lower return to sewer ("RTS") charge that they should be paying. This offer was based on an RTS rate of 62%. They have had no explanation of how this 62% figure was reached and in any event, they dispute its accuracy.
- It is unacceptable that GQG refuses to give them a retrospective rebate based on their Figures. GQG are hiding behind their terms and conditions so that they can overcharge on RTS rates for as long as possible.
- They require and expect the bills they receive to accurately reflect the amount of water that they are returning to the sewerage system. To this end, they would like a second water meter to be installed by GQG free of charge.

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- Whist acknowledging that they have received “*numerous apologies over the appallingly bad customer service*” provided by the company, they would now appreciate an apology that is “*sincere and substantive*”.

The company’s response is that:

- The ‘non-household’ water market was opened up in April 2017. Against that backdrop, there appears to have been some confusion in this case about the differences between [] , as the retailer (“the company”), and [] Wholesale (“the Wholesaler”).
- The company is completely independent and legally separated from the Wholesaler. As such, it has a different board structure and adheres to strict Level Playing Field conditions to ensure fairness in the market.
- Any payments made prior to April 2017 were made to the Wholesaler and not to the company. Any retrospective refund, therefore, needs to come from the Wholesaler. The return to sewer (“RTS”) allowance back to the date requested by the customer was pressed with the Wholesaler. However, although it has every sympathy with the customer’s position, it is not ultimately in the company’s gift (as the retailer) to grant the allowance.
- By way of overview:
 - wholesalers set the type of wholesale charges and tariffs for each non-household customer according to their Wholesale Charges Scheme;
 - they also set the RTS allowance for each non-household premise in their area of supply. For most premises, the allowance is assumed at 95%. This is unless there are circumstances known and available to the wholesaler showing that the volume of water returning to the sewer is significantly different to the volume of incoming water supplied to the premise (as recorded by the incoming water meter);
 - all the relevant wholesale charges charged to retailers (including any RTS allowance) are passed through to the end customer;
 - retailers have no flexibility as to whether or not they pay the wholesale charges;
 - with regard to RTS allowances, every wholesaler has different policies in respect of their standard allowances. Standard RTS allowances range from 90% to 95%.
 - Policies for challenging these rates (and backdating them when new information comes to light) differs across all wholesalers.
 - The policy that the customer is complaining about in this case is one adopted by the Wholesaler, not the company.

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- After receiving the customer's Figures in January 2017, the company submitted the necessary request of the Wholesaler to get the customer's 95% RTS allowance amended. It is conceded that the subsequent process took too long a time and that the company should have gone back to the customer more quickly and kept them better informed. During June 2017, the customer emailed the company a number of times. Unfortunately, due to a system issue, these emails were logged against a closed case and never answered.
- On 2 August 2017, news was received from the Wholesaler that the request to amend the RTS allowance had been completed. This message was conveyed to the customer and on 3 August 2017, the actual offer being proposed by the Wholesaler was confirmed. This was an RTS allowance of 62% backdated to January 2017.
- At this stage, the company paid a £20.00 compensation amount to reflect the length of time taken to get to this point (and for delays on the company's part).
- On 7 August 2017, an apology was given for not explaining the reasons for the lack of response to the customer's June emails.
- In respect of the company's acknowledged failings in this respect, further compensation of £80.00 was offered, bringing the total amount of compensation up to £100.00.
- The customer was still unhappy with this level of compensation and the fact that the RTS allowance had only been backdated to January 2017. The company explained that, unfortunately, this was down to the decision of the Wholesaler.
- The customer's ongoing dissatisfaction in these respects was raised at several account meetings with the Wholesaler and representations were made to the Wholesaler about its restrictive policies.
- On 2 October 2017, the Wholesaler responded with an apology and an offer of £200.00 compensation. The Wholesaler also:
 - confirmed that, in line with its policy, there would be no further backdating of the RTS allowance; and
 - denied that it was engaging in any overcharging; and
 - suggested that the customer install a production sub meter, which could be used to calculate water not returned to the sewer (making any future claims easier).
- It is noted that the customer would like the suggested production sub meter to be installed free of charge. Unfortunately, the company cannot direct the Wholesaler to do this. It is not within the company's remit to order the Wholesaler to carry out work on a customer's pipework.

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- The Wholesaler does indicate in its final response, however, that the installation cost of the meter would be £154.00 plus VAT and suggests its compensation payment of £200.00 would cover this.
- Any payments made by the customer prior to April 2017 sit in the Wholesaler's bank account. Therefore, unless agreement is given by the Wholesaler to backdate any bills, the company cannot access that money to refund to the customer.
- The company has managed to get an agreement from the Wholesaler to backdate to January 2017 and has credited the customer's account to reflect this reduction.
- As the Wholesaler is adamant that its policy is only to backdate when the claim is made, the company is not in a position to change any bill prior to this date.
- The company is happy to make a claim once a year for the customer based on the customer's yearly figures but it is stressed that any decision made is the Wholesaler's and not the company's.
- For its part, the company wishes to assure the customer that:
 - it has strongly challenged the Wholesaler at all levels on the customer's behalf, to try to secure the result that the customer wants; and
 - where it has made failings itself, has rectified them and paid compensation of £100.00; and
 - it is very sorry for the time and inconvenience that this whole episode has caused to customer; and
 - it has a huge amount of sympathy for the customer's case; and
 - wants to assure the customer that the apologies it has given are heartfelt.

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.

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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. I should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove their case on the balance of probability.
2. I should also acknowledge that I have had the benefit of reading the customer's helpful comments, filed on 14 February 2018, in response to the company's defence ("Comments").
3. I note from their Comments the customer's acceptance that, for the most part, the company's defence "*merely restates facts which are not in dispute*". As I see it, the Comments reveal that the customer's complaint boils down to two key aspects. The customer:
 - a. asks it be noted that their claim "*is also against []*", i.e. the Wholesaler; and
 - b. describes the following as the clear message to come through from the defence:

"...If, as stated, [the Wholesaler and the company] are totally independent then [the Wholesaler's] 'restrictive' policy does not prevent [the company] from making a refund on their own behalf. Apparently, they want to refund us but can't, because [the Wholesaler] refuse[s] to give us a refund. What nonsense! Regardless of what they say ... about being on our side, they simply do not want to bear the cost. Shameful; some might even call it theft ..."
4. I have carefully reviewed the submissions made by the company in the "Overview" section of its defence. The company describes some of the important implications of the water market opening up to retailers in April 2017. I am satisfied (and find) that the company has correctly set the scene in this section of its defence. In approaching the question of the company's liability to the customer on this claim, the starting considerations appear to be that:
 - a. following the market changes in April 2017, a non-household customer only has a relationship with the retailer. They have no relationship with the wholesaler; and
 - b. if a non-household customer happens to have an issue with the billing for their sewerage services (as in the present case, for example), it is the retailer that they must approach;

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- c. it will then be for the retailer to chase the wholesaler to try to resolve the matter on the non-household customer's behalf; and
 - d. the non-household customer is unable to bring a claim against the wholesaler directly; instead they must bring it against the retailer;
5. The customer's query is an understandable one: why, if the Wholesaler is refusing to backdate the RTS allowance beyond January 2017, does the company not simply make the payment in its stead?
6. As I see it, however, the points in my paragraph 4 (above) place a *limitation* on the services and support that any retailer company could be expected to provide in this case. I do not consider that it would be fair or reasonable to saddle the company with a liability, which does not - strictly speaking – fall within its area of responsibility. On this basis, I am not persuaded that the company should be required:
 - a. to pay for (or install free of charge) the production sub meter suggested by the Wholesaler; or
 - b. to bear the refund itself (calculated to go back earlier than January 2017) only because the Wholesaler, for its part, refuses to accede to the customer's request in this respect.
7. I have reviewed the chain of events since the customer provided their Figures to the company in January 2017. Evidently, over the months after January 2017, there were some administrative failings by the company. It lost track of the customer's emails. It delayed and did not keep the customer sufficiently updated or informed as to progress. Nonetheless, having given careful consideration to all its submissions and the evidence, I am satisfied and persuaded that:
 - a. the company's recognition of its failings in these respects was both appropriate and genuine; and
 - b. its sympathies and the numerous apologies to the customer were expressed sincerely; and
 - c. £100.00 was an appropriate amount to pay by way of compensation for the admitted failings; and
 - d. its efforts to press the customer's case with the Wholesaler were sufficiently intensive; and
 - e. the final result extracted from the Wholesaler – i.e. an agreement to backdate to January 2017 and payment of £200.00 by way of compensation – was probably the best that was reasonably achievable in all the circumstances. This was particularly the case, I find, in

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view of the Wholesaler's uncompromising policy on retrospective allowances and rebating.

8. As found above, there were some failings in the company's provision of its services to the customer in this matter. These were issues around poor communication, delaying and in not keeping the customer sufficiently updated. However, the company has admitted those failings and compensated the customer adequately by paying £100.00. Beyond this, by pressing the customer's case with the Wholesaler to the extent that it has, the company adequately discharged the responsibilities owed to the customer. The customer's complaint, therefore, together with their request for a second water meter to be installed free of charge, for a "*sincere and substantive*" apology and for something to be done about their bills – is unable to succeed.

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 30 March 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.



Nik Carle, LLB (Hons), Solicitor, DipArb, FCI Arb

Adjudicator

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