WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1074

Date of Decision: 18 December 2018

Complaint

The customer is requesting that the wholesaler amend the site area banding from band 5 to band 4 from the date of occupation of its premises (4 June 2012) through to 31 March 2017. A full refund of all overpaid charges during this period is sought. As it stands, the reimbursement of the customer's charges has only been allowed as far back as 1 April 2017 (and not any earlier). The customer's claim is for £7,838.44 plus interest.

Defence

The Wholesaler's policy is to backdate the customer's charges only to 1 April in " … *the financial year when they [first] became aware of any changes or when they were [first] notified* …" ("the Policy"). It is contended, therefore, that the company and the Wholesaler have correctly reduced the site area banding in line with the Policy.

No offer of settlement has been made.

Findings

The company cannot be held accountable for the overall reasonableness of the Policy or for the fact that the wholesaler (1) set the Policy in the first place or (2) might have chosen to apply the Policy in a particularly narrow fashion. However, on the customer's behalf, the company could and should have taken up the customer's key argument with the wholesaler in much more pointed terms than it did. This failure to press the wholesaler more pointedly amounted to a shortcoming in the services that the company was obliged to provide.

Outcome

The company needs to take the following further action:

I direct the company to write to the wholesaler on the customer's behalf, drawing attention specifically to the Customer's Key Argument (as identified) and requesting that the wholesaler reconsiders its decision accordingly.

The customer must reply by 21 January 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Party Details

Customer: [ ]

Customer's representative: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- On 17 July 2017, the customer's representative ("PQR") raised an enquiry with the company about the connection of the customer's unit to the [ ] ("the Wholesaler") sewers.
- On 12 September 2017, the company replied to confirm that the unit was fully connected but also voluntarily told PQR that the site had been re-measured and the incumbent site area band was to be reduced from 5 to 4 with effect from 1 April 2017.
- On 1 December 2017, PQR asked the company to confirm the reason for the incorrect band.
- On 19 January 2018, the company replied to confirm that the wholesaler had miscalculated the communal areas that were added to the customer's site.
- On 19 January 2018, PQR wrote to the company asking for the revised site area (band 4) to be applied retrospectively as the error was not the fault of the customer. PQR queried with the company how the customer could have known that there was a mistake with its charges and why it should not be held responsible for the Wholesaler's failure.
- On 28 February 2018, the company wrote to PQR to confirm that the Wholesaler would not backdate revised site area band charges. This was because the customer had made contact prior to July 2017 and apparently, it was policy to only amend charges to 1 April in the year that the error was identified.
- On 28 February 2018, PQR wrote to the company to outline the customer's discontent with its reply.
- On 8 May 2018, the company issued its final response in the matter. It confirmed that the

customer had been in touch with the Wholesaler on 29 June 2012 to query its site area banding but did not raise the issue of an excessive band. General information was provided on how to review its site area but there was no record of any further contact until PQR's correspondence in July 2017.

- The points and arguments raised in this case throughout have still not been addressed properly by the company or by the Wholesaler.
- It is accepted that customers are asked to review the site area boundary held by the Wholesaler on a regular basis through https://site-area.[ ].com/sitearea/terms.aspx. There is no dispute about that.
- Should an incorrect boundary be shown, it is the responsibility of the customer to inform its retailer of the error. A customer is only entitled to a limited (1 April) retrospective allowance and if the mistake has been prevalent in earlier years then the customer was remiss in not checking earlier.
- The boundary depicted by the Wholesaler was (and to PQR's knowledge always has been) correct for the customer. Again, this is not disputed.
- The issue relates solely to the allocation of communal areas within a multi-unit site. The Wholesaler will increase the chargeable area given to a customer if it shares other areas outside of its boundary with others.
- This is done by calculating the roof space of each occupier as a percentage of the total roof space. That same percentage is then applied to the communal space area ensuring each occupier is allocated its fair share. The communal area calculation is added to the specific boundary area calculation to give an overall chargeable area.
- These calculations are the responsibility of the Wholesaler. They are not shared or reported to the individual occupier. No breakdown of the chargeable is provided or available. Indeed it is impossible for any occupier to make the same calculation as this would require private information (m^2) relating to neighbouring properties in respect of which the occupier has no interest.
- On this basis, if the customer had followed the advice given to it on 29 June 2012 (when it contacted the Wholesaler for advice how to query its site area online) – and had followed that advice to the letter – PQR queries in what way the customer would have been alerted to the possibility that it had an excessive band.
- The customer received an excessive band because the Wholesaler mis-calculated the external communal area. This was confirmed in the company's e-mails dated 19 January and 28 February 2018. Now that this error has been identified, the customer is being penalised as if it were at fault when there was no reasonable way that it could have known when, in fact, that responsibility belonged to the Wholesaler.

- It is contended, therefore, that:
    - the Wholesaler was in error; and
    - the customer is entitled to recompense from the date of its occupation in 2012.
- The customer seeks reimbursement in this respect of £7,838.44 plus interest. This sum reflects the differential between site area band 5 and band 4, calculated over the period between 4 June 2012 and 31 March 2017.

The company's response is that:

- The claim is contested.
- [ ] of the customer first contacted the Wholesaler by telephone on 29 June 2012. He was questioning the amount invoiced to the customer. He thought that it was too high. This was the note of the call:
    - *'Per telephone call from [ ] to say he has received a bill and he thinks it's too high. I explained the charges on the account and I advised the customer to view the site area map on-line to see what area we are charging them for and told the customer how to query it if needed. I said the bill has been paid on 22/06/12.'*
- Following this phone call, the Wholesaler's records do not show that [ ] contacted them again about the charges.
- Communications were received on the 18 December 2012, 9 April 2013 and 19 March 2014. Two of these were relating to payments that had been made to another account and one was to amend the billing address. There was no correspondence that related to [ ]' original query.
- It was not until 17 July 2017 that the company received an application for the surface water and highways drainage charges to be reassessed. This application came through from the customer's representative, PQR.
- Following this application being received, the company raised the relevant request with the Wholesaler. This resulted in the surface water highways drainage band being reduced.
- This was confirmed to [ ] of PQR. He was happy that the banding had been reduced but felt that it should be backdated further.
- The Wholesaler has backdated the customer's surface water and highways drainage charges back to 1 April 2017. This was done in line with the Wholesaler's policy at the time, which was to backdate (only) to the financial year when they became aware of any changes or when they were notified.

- The Wholesaler's policy also states that it is the customer's responsibility to update the Wholesaler when any changes are made so that they can ensure that they are being charged correctly.
- After reviewing the account, it is considered that the company and the Wholesaler have correctly reduced the site area banding in line with the policy prevailing at the time.
- It is appreciated that the customer first queried their charges in 2012 but no formal application was received following the advice given by [the Wholesaler] at the time. It took until 2017 for an application to be received.
- If the customer was unsure on how to interpret the information provided online, they could have contacted the Wholesaler to clarify.
- The Wholesaler would not have been aware that the customer was still unsure about their charges. It took the customer approximately five years to query these charges again.
- As to the customer's argument that it was the Wholesaler who miscalculated the original site area charges (and that this is the reason why the charges should be backdated to 2012), the company replies that:
    - this particular site may have been bigger in the past than it is now. Therefore, at some point in time, the Wholesaler will have been charging the site correctly; and
    - both the Wholesaler's and the company's scheme of charges state that – in order to ensure that customers are charged correctly – the Wholesaler and/or the company should be updated if any changes are made to a site or, in this instance, if the customer felt that their bill was high.
- It is not possible for the Wholesaler or the company to measure each and every customer's site individually without being made aware of any changes that may affect how a customer is charged.
- The customer's original query would have been treated the same way as a customer notifying the customer or the Wholesaler of any changes that may affect the way that they are billed if the query was perused back in 2012.
- This dispute is related to the Wholesaler's policy, which the company is following. If the company or the Wholesaler backdated the charges for this individual customer (following a telephone query without a formal application) then neither the Wholesaler nor the company would be treating all customers fairly.

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.

How was this decision reached?

1. I have carefully reviewed:

    a. all of the materials that accompany the WATRS Application Form in this case; and

    b. all of the documents submitted alongside the company's defence.

2. I should also mention that I have had the benefit of reading the customer's comments in response to the defence ("Comments"). These are contained in an email dated 23 November 2018 and cross-referenced to an earlier email of 15 November 2018.

3. 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. Their relationship is (now) with the retailer only. As a consequence, if a non-household customer has a problem with their water supply or sewerage services, they must approach the retailer. For the purposes of this adjudication, this also means that I cannot make findings against the retailer (i.e. the company) about something that is the Wholesaler's responsibility. I can only assess the retailer's actions

and make findings related to the retailer's responsibility.

4. As I see it, the customer's complaint is focused on the particular policy adopted by the Wholesaler in this case. As the company explains it, the Wholesaler's policy is to backdate the customer's charges to 1 April in " … *the financial year when they [first] became aware of any changes or when they were [first] notified* …" ("the Policy"). The application of the Policy in this instance, therefore, has meant that the revision of the customer's charges has only been allowed as far back as 1 April 2017 (and not any earlier).

5. As regards the rationale behind the Policy, I note the forthright submissions made on the customer's behalf in the Comments, for example:

   "… *We accept that it is incumbent upon an occupier to inform [ ] of any alterations to its premises or land that may alter the site area banding and should that not occur in a timely manner there is a limit to the application of revised charges. The customer is at fault. However, in this case I cannot see, in any conceivable way, how a) [the customer] could have reasonably known of the error and b) [ ] exonerated as not being at fault for making a miscalculation that is not shared with the customer* …" ("the Customer's Key Argument")

6. The Customer's Key Argument seems to me to have real force. On the factual background set out, I am quite satisfied that (as PQR argues) the customer was not at fault or "*remiss with its obligations*" in any relevant respect at all.

7. Essentially, the customer is contending that the Policy has been applied in an inflexible way and in a way that produces an unfair outcome for the customer. Whilst acknowledging all of this, however, I have also taken into account the important point made by the company at the end of its defence:

   "… *Please note that this dispute is related to the Wholesaler's [Policy] that we are following* …"

8. Ultimately, for the reasons that I explain in paragraph 3 above, I do not consider that I can 'strike down' the Policy as inherently unfair. I do not consider that I can find the company liable either for the fact:
   a. that the Wholesaler has set the Policy in the first place; or
   b. that, in this matter, the Wholesaler might have chosen to apply the Policy in a particularly

narrow fashion.

9. However, where there is a credible prospect that the Policy is being applied unfairly or unduly narrowly, the company should (as I see it) be looking to challenge the Wholesaler on the customer's behalf.

10. In this case, I am not satisfied that the company's efforts to press the Wholesaler have been wholly adequate. The company could and should have taken up the Customer's Key Argument with the Wholesaler in much more pointed terms. This, I find, was a failure by the company in the provision of its services. If the Wholesaler can be presented with the specifics of the Customer's Key Argument then there may be some possibility that the Wholesaler will soften its stance in the matter.

11. Again, given the limitations that I mention in paragraph 3 above, I cannot direct the company to 'break' the Policy, in effect, and to reimburse the customer's charges for the period prior to 1 April 2017. I shall make a direction, however, that the company write to the Wholesaler on the customer's behalf, drawing its attention specifically to the Customer's Key Argument (as identified above) and in that light, requesting that the Wholesaler reconsider its decision.

Outcome

The company needs to take the following further action:

I direct the company to write to the wholesaler on the customer's behalf, drawing attention specifically to the Customer's Key Argument (as identified) and requesting that the wholesaler reconsider its decision accordingly.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 21 January 2019 to accept or reject this 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 on 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.

Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator