

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1087

Date of Decision: 18 December 2018

Complaint

The customer complains that the company has, after closing the customer's account with a nil balance, issued credit notes and an adjusted bill for services supplied between 13 June 2017 and the closure of her account. The customer had by then sold her business as operator of a residential park and was no longer able to reclaim the revised costs from the residents who were the end users of the services supplied. As the customer had spoken directly with the company in May 2018 and had been told that subsequent bills would be raised against the new owner, she contends that the company has acted unfairly. The customer seeks removal of the further charge of £8,351.54.

Defence

The company says that although it had made an error in its bills from 13 June 2017 onwards because it had applied a 100% allowance for waste water charges, its Scheme of Charges permitted it to raise adjusted bills in the event of error and these had only been backdated for one year. These would be raised against the customer for the relevant period. The company says that it is entitled to this payment.

Findings

Although the Scheme of Charges permitted the company to raise adjusted bills in the event of error, it gave the company a discretion. The company made a policy decision to raise invoices against all those customers affected but it failed to take into account, when applying that policy, the particular circumstances of the customer. An average customer would expect the company to take exceptional circumstances into account when applying a blanket policy. As the company's error had caused the customer to act to her detriment in failing to make arrangements for payment from the residents, the company would reasonably be expected to waive the charges against the customer.

Outcome

The company needs to take the following further action: namely, to waive its claim for payment by the customer of £8,351.54 and for any charges that would be consequential upon non-payment of this sum by the customer.

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

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer and her family owned a caravan park called [] until 15 May 2018, when the park was sold as a going concern.
- The customer contacted the company to close the account. It was explained to the customer that, as there was a balance owing on the account, this would need to be cleared prior to closure. As a water reseller, the customer explained to the company that the outstanding bill would be recharged to the customers in the following year by the new owner, so that he would be paying the bill. The customer provided the details of the new owner and in due course he paid the outstanding bill. The customer's account was then closed.
- The customer then received four credit notes, namely one dated 26 July 2018 and three dated 31 July 2018. The credit notes ran from 13 June 2017 to 14 May 2018 but did not cover 14 May to 5 June 2018. She subsequently discovered that the company required payment of backdated bills from June 2017 because the company failed correctly to charge for waste water services in that 100% non-return to sewer allowances had been incorrectly applied to the account. The credit notes credited back the invoices paid for the relevant period onto the account but then the customer was re-billed on 1 August 2018 with waste water added. The customer states that none of the credit notes was accurate. Also one of the credit notes had VAT applied, which was an error. As she had been informed that the account was closed, she believed that this documentation was a billing error.

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- On her return from holiday on 27 August 2018, the customer received a final collection notice dated 14 August 2018 in the sum of £8,351.54.
- The company acknowledges an error, but quotes its Scheme of Charges 2018-2019 regarding billing adjustments. This states:

“While we make every effort to make sure that all bills are correct, in the case of error we reserve the right to make retrospective adjustments”.

The company has offered £20.00 compensation in response to the shortfall in service.

- The customer no longer runs the site in question and so will be unable to recover the money from the residents, who are, in any event, largely over 70 and on fixed low incomes.
- The customer would like the company to remove the backdated arrears in question.

The company’s position is that:

- From 13 June 2017, the company failed to charge the customer and certain other customers for waste-water services because non-return to sewer allowances were incorrectly applied so as to cancel out the charge.
- In May 2018 the company found that it was charging incorrectly and as a result notified all affected customers advising of the error, which it was entitled to do under its Scheme of Charges.
- In correspondence with the customer, the company has also stated that Ofwat guidelines permit the company to ask for up to six years of water and wastewater charges, but as the company realised that it was their mistake they have only backdated the charges for 12 months.
- The company contends that it is entitled to seek repayment.

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.

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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. Having regard to the documentation submitted by both parties, I find that there is little factual dispute between the company and the customer. The company acknowledges that an error has been made but says that it is entitled to raise the charge in question. The customer says that the charge is unfair in her particular case. The issue between the parties is, therefore, I find, limited to the question whether a sewerage company would reasonably be expected, in the circumstances of this particular customer, to insist on repayment of wastewater charges that were not previously billed, notwithstanding that it was the company's own error that had led to incorrect bills being issued.
2. The company refers in particular to its own Scheme of Charges. Clause A1.4.7 of this states that the company may make adjustments in the case of error, but it does not impose a duty on the company to do so, nor does it state that where an error is made, this permissive provision should be treated as the default position. Rather, I find, it enables the company to exercise its discretion as to whether or not to impose adjusted charges.
3. It is clear from the documents submitted that the company has determined that it will impose the adjusted charge on all those customers who were affected by the error and I therefore find that this was a policy decision on the part of the company. CCWater has pointed out that the fact that the backdated adjustment is limited to one year is reasonable and, I find, that if there were no other factors affecting the exercise of the company's discretion, these factors would justify the charge imposed.
4. However, I find that an average customer would also expect that a company entrusted with a discretionary decision would listen carefully to a customer who complained that the application of a blanket policy was unfair in her particular case. I find that there are other factors that are relevant here, about which the company has been informed but (as is clear from the documentation submitted by CCWater and the company's Defence) on which it has placed no

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weight because of the policy decision referred to above. I find that this approach, in circumstances where the company's mistake has led to the situation in question, is not consistent with what an average customer would reasonably expect.

5. In particular in the customer's case, the company has attached no weight to the customer's complaint that the company's mistake has caused or contributed to the customer acting to her detriment. As indicated above, her argument is as follows:
 - a. The customer had been a re-seller of water and sewerage services as part of her business in running a residential park;
 - b. She had sold the business in question. She says that she is no longer in a position to obtain reimbursement of the cost of the charges from the end users of the services supplied by the company because (a) there are no arrangements in place to enable this and (b) she also says that the residents are mainly elderly and on low incomes and are likely to struggle to meet the retrospective charges. There is no reason to believe that the residents will have made financial provision to meet this unexpected charge. If the charge against her were to be imposed, she would therefore be liable to meet the full balance, whereas this would not have been the situation had the mistake not been made;
 - c. The company had by its conduct in closing the customer's account with a nil balance represented to the customer that nothing further was owing. The customer had therefore changed her position in reliance on this, in that she had made no provision or arrangement to ensure that the company's adjusted bill would be discharged by the new owner.
6. I find that the average customer, invited to consider this situation, would reasonably have expected the company to consider whether its policy was fair in the exceptional circumstances stated above. As I find that the correspondence submitted to me shows that the company has not placed weight on these factors, I find that in reaching its decision to maintain the charges, it has not supplied its services to the standard that would reasonably be expected of it.
7. I have considered the claim for redress and in particular whether my direction should be limited to requiring the company to review its decision, taking into account the exceptional nature of the customer's circumstances. However, I find that it is very likely, as is also reflected by the internal notes of CCWater, that the average customer would consider that on carrying out such a review, the company could only fairly reach a conclusion that the backdated charges should not be

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imposed in the customer's case. Accordingly, I conclude that maintenance of its case that the customer should now pay the company the sum of £8,351.54 would not be consistent with the standards that would reasonably be expected of a water and sewerage company. I therefore find that it is fair and reasonable to direct that the company shall waive its claim for repayment by the customer of adjusted bills.

8. Having regard to the credit notes said to have been issued, I find that there were six such notes which applied a credit of £24,708.52, but it does not appear that any payment was made to the customer. The provision of the credit notes amounted to an accounting correction and I find that the sum claimed by the company of £8,351.54 is the amount of the undercharge. I conclude, therefore that company shall be required to waive its claim for this sum. For the avoidance of doubt, this waiver shall also apply to any interest or other charge that would otherwise be consequential upon non-payment of this sum by the customer.

Outcome

The company needs to take the following further action: namely, to waive its claim for payment by the customer of £8,351.54 and for any charges that would be consequential upon non-payment of this sum by the customer.

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.

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Claire Andrews, Barrister, FCI Arb

Adjudicator

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