

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1137

Date of Decision: 02 January 2019

Complaint

The customer applied to the company in January 2018 for a rebate of Surface Water Drainage charges and on 13 March 2018, [] determined that the customer was exempt from paying these charges. The company advised that a rebate from 1 April 2014 had been applied (as a credit to their water account); however, the customer questions this claim and asks for this amount to be refunded directly to their bank account. The customer claims that the rebate should have been applied from 2008 when they moved into the business premises and therefore the customer seeks a further rebate dating back to 2008, plus interest.

Defence

The company asserts that the customer has been provided with a rebate from 1 April 2014 and this is in accordance with the Wholesaler's policy. As there is no evidence of the customer requesting a rebate prior to this date, the company submits that the rebate that has been approved by the Wholesaler and applied, is correct. It agrees, however, to escalate the customer's claim to the Wholesaler again if further evidence is provided by the customer (including evidence of the tenancy).

Findings

The Wholesaler, rather than the company, is responsible for deciding if customers, whose surface water does not discharge into its drain system, are entitled to a rebate of charges and, if so, the applicable period. As the Wholesaler is a third party, this adjudication cannot consider this aspect of the claim. However, there is evidence of unreasonable delays by the company in responding to the customer's claim for a Surface Water Drainage rebate and then in responding to the customer's complaint. This is evidence of the company failing to provide its services to a reasonably expected standard. Accordingly, the company shall pay the customer £100.00 in compensation. The company has not disputed the customer's request for the rebate (from April 2014) already provided as a credit, to be paid directly to the customer (via bank transfer or by cheque). Therefore, the company shall provide the rebate of £225.58 (1 April 2014 up to 7 July 2017) as a direct payment to the customer. Whilst there is no evidence of the company applying Surface Water Drainage charges after it agreed the customer was exempt from paying these

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charges, as the customer has claimed for Surface Water Drainage charges in invoices dated January 2018 and July 2018, the company shall provide the customer with clarification surrounding this claim.

Outcome

The company shall provide the customer their Surface Water Drainage rebate of £225.58 for 1 April 2014 to 7 July 2017 (removing the credits applied to the customer's water account and translating them into a bank payment), pay the customer £100.00 in compensation and if SWD charges were applied (either on 22 January 2018 or after 13 March 2018 when the customer's exemption had been agreed, the company shall refund any such charges to the customer by bank transfer, if they have not already been refunded.

The customer must reply by 30 January 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 02 January 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The dispute relates to Surface Water Drainage charges raised in connection to the business [] which operates from [] ('the Property').
- There have been charges for Surface Water Drainage by the company/[] at the Property since 2008.
- In January 2018, prior to a policy change in April 2018 stating that customers would not be backdated one year, they applied for a Surface Water Drainage rebate.
- On inspection of the Property they were granted one year's refund. The neighbouring business (in identical situations and on the same surface drain) have been dated back 10 years plus interest by means of compensation for time, effort and interest that would have otherwise been gained had that money been in his bank account, yet their application has been rejected to go any further.
- Dealing with the company throughout the dispute period has been a "horrendous" experience. None of the staff have helped with escalating the situation and left it to be dormant, leaving them to have to keep chasing, even after promises of a response.
- Staff do not have direct phone numbers or email addresses therefore they have had no dedicated case worker and have spoken to eight different employees, as well as the CEO, to no avail, fully exhausting its complaints procedure. They have made no progress since first contacting the company.
- The company's invoices are impossible to understand via its online portal. Credit notes, bills and invoices are all together with no official or clear order; this makes it incredibly difficult to understand and to enter this information into their own payment system. They request that this

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system is more organised and put into a clear format as to what they owe (once they have received what they are owed). They would like to keep what they currently owe separate to any refunds they receive. They request that their account is frozen until this issue has been rectified.

- The customer requests that the Surface Water Drainage (to 2008) rebate is paid into their bank account and not as a credit note against future bills from the company. The customer has ticked the box in the WATRS Application indicating they wish to claim interest.

The company's response is that:

- The customer initially contacted it on 11 January 2018 via a webform, informing it that the Property occupied by [], was not connected to the sewer. The customer advised that they had been at the property since 2008 and disputed the charges for Surface Water Drainage.
- A site area reduction form was sent out to be completed and was returned on 6 February 2018, the form was raised to the Wholesaler to reassess the Surface Water Drainage charges. On 5 March 2018 a site visit was carried out and the visit confirmed that the Property is not connected to the sewer and the Surface Water Drainage discharges into [] Brook.
- An amendment was carried out by the Wholesaler to remove the charges, which was then reflected on the account, and the charges were removed from 1 April 2017. However, this was incorrect as the date received from the Wholesaler was 1 April 2014, as detailed in the Wholesaler's policy.
- The customer contested the invoicing on 4 April 2018, explaining that the banding was still being charged and she requested they were further backdated to 2011. This was then raised to the billing team to investigate why the charges had only been backdated to 1 April 2017 and a request was made to backdate these to 2011. A correction to the account was made to backdate the charges to 1 April 2014, in line with the Wholesaler's initial instruction.
- On 4 May 2018, a request was made to the Wholesaler to review the case again and to backdate the charges to 2011, however, the Wholesaler's response reiterated its above stated policy.
- On receipt of a complaint from the customer, it advised the customer to provide evidence of when they moved into the Property along with evidence that the other properties on the trading estate had received backdated charges prior to 2014, so the wholesaler could re-evaluate the case.
- It then received an email from the customer; however, as the account details were not provided, it was not assigned to the customer's account and the company submits that it cannot locate any documents attached. The customer called it again in August 2018 advising they were

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unhappy with the outcome and reiterating that the neighbouring property had received charges backdated to the start of their tenancy in 2011; the customer requested a Surface Water Drainage rebate from the start of their tenancy in 2008.

- The policy was explained again; however, the customer advised that they would take this matter further. A second stage complaint was raised, but the outcome remained the same. The Wholesaler has agreed that if the customer can provide the evidence requested previously and confirm that there have not been any changes at the Property, then, a review of the account will take place.
- The customer alleges that there are other properties on the site that have been amended; however, it is unable to confirm this information to remain compliant with Data Protection Act.
- The company asserts that it is sorry if the customer feels that they have been overcharged for Surface Water Drainage charges from the start of her tenancy from 1 April 2008; however, it is unable to locate any contact from the customer prior to 11 January 2018 disputing the Surface Water Drainage charges. Because of this, the Wholesaler will not backdate the charges any further.
- It reiterates that without the evidence and proof that's already been requested it is unable to challenge the Wholesaler further.

Reply

- In response to the company's assertion that a refund of Surface Water Drainage charges was backdated to April 2014, the customer asserts they have yet to receive proof that this refund has been made to their account and reiterates their request that this sum is paid directly to them and not as a credit.
- The company's inability to locate the documents with the email is an internal error on the company's behalf. The customer includes an email from the neighbouring property in support of the 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.

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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 acknowledge that the customer is a 'non-household' (business) customer, that the company is the retailer and further that [] (RST) is the Wholesaler (and water supplier) for the region in which the Property is located. The division between providers occurred as a result of government changes, which opened up the water market and came into effect on 1 April 2017. I find that the company and RST are therefore two distinct and separate entities. I remind the parties that a WATRS application can only be brought against one party. As the customer has a commercial water account, their case has been defended by the company, the retailer, and therefore, for the purposes of this decision, my remit is to determine the issues between the customer and the company. I am unable to consider any claims or complaints in relation to RST or other third parties.
2. Having reviewed the case papers, I find that the crux of the claim relates a refund of Surface Water Drainage (SWD) charges, dating back to when the customer first moved into the Property (2008). As the decision to provide a refund for SWD lies with the third party Wholesaler, I am unable to decide this element of the claim as it falls outside of the scope of WATRS for the reasons mentioned above. However, as the customer's retailer, the company is responsible for billing, escalating any request for a SWD rebate to the Wholesaler and for addressing complaints raised. Therefore, I will proceed to consider the complaint from this perspective and also decide on the other issues raised by the customer including the manner in which the company managed their claim for a rebate and their complaint raised.
3. Based on the evidence, including the 'Timeline' document submitted by the company, I accept that after the customer requested a SWD rebate in January 2018, a site visit was carried out by

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RST, and it was confirmed that the Property was not connected to the public drainage system and that surface water from the Property drains into [] Brook rather than into its drainage system. Accordingly, the customer was not liable to pay SWD charges and was entitled to a rebate. The customer applied for a rebate and was initially told that they were entitled to a refund dating back to April 2017. When the customer later disputed this timeframe with the company, she was told they were entitled to a rebate dating back to April 2014. The customer is unhappy with this rebate and requests a refund of charges paid either from 2008 (when they first moved into the Property) or at the least, from 2011 (as per the neighbouring business).

4. The company's position is that the rebate of SWD charges backdated to April 2014 is correct and in line with the Wholesaler's policy and, as there is no record of the customer requesting a rebate prior to 2014, no further rebate is due. The company submits, however, that on the customer raising a complaint with it in May 2018 regarding a further SWD rebate, it requested the customer to provide evidence of when they moved into the Property and evidence that their neighbours had received a rebate dating back prior to April 2011, for it to forward to the Wholesaler for re-evaluation. The company asserts that this evidence has not been supplied and without the proof that has already been requested, it is unable to challenge the Wholesaler further.
5. The company has submitted evidence of the Wholesaler's policy, which I find states: *"if your property has no connection at all to the public sewer for rainwater, you will only pay for used water. For unmetered customers we will reduce your sewerage charge as set out in section C2. For metered customers we will cancel the rateable value or site area-based surface water drainage charge. We will normally backdate this to 1 April 2014. However, for properties occupied for the first time on or after 1 April 2014 we will backdate this to the date that you occupied the property"*. As such, I consider that a rebate backdated to April 2014 is in line with the Wholesaler's policy, which I find is confirmed in the Wholesaler's Charges Scheme and approved by OFWAT, the industry regulator.
6. However, I acknowledge the customer's submissions that a) due to a lack of clarity in the company's invoices, they are unable to identify if the rebate to April 2014 has been credited to their account and b) they want the company to provide the rebate via a direct payment into their bank account and not a credit to their water account.

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7. I find that neither party have supplied copies of the customer's invoices and as such I am unable to make any finding on the legibility of the invoices issued to the customer. However, in light of the nature of the charges; a rebate of SWD charges due to the Property's surface water not discharging into the main drainage system, I find the customer's request for the refund to be paid directly into their bank account is reasonable and justified in the circumstances, therefore, I have made a direction to this effect below.
8. I acknowledge the customer has suggested that the Wholesaler's policy changed in April 2018 after they had made their request for a rebate; however, I have not been provided with any evidence of this and I cannot see any evidence that the customer raised this with the company. Therefore, I do not find any service failing on the part of the company here.
9. The customer has raised a complaint about the standard of the company's customer service provided and submits that dealing with the company throughout the dispute period has been a "horrendous" experience; in particular the customer asserts that they always had to chase the company for a response to the complaint otherwise it lay "dormant".
10. I have reviewed the available evidence, and I find that:
 - It took the company more than three weeks to relay to the customer the Wholesaler's response of 13 March 2018 in regards to their SWD rebate (after RST had visited the Property on 13 March 2018) and to confirm that they were entitled to the rebate and the amount due. I find this delay constitutes a service shortfall by the company.
 - When the customer called the company on 6 April 2018 querying the advised rebate amount and requested a rebate of seven years to 2011, the company did not raise the customer's request with the Wholesaler. When the customer called the company again on 23 April 2018 chasing this matter, the evidence indicates that although the company made a note, on 23 April 2018, that the request should be raised with the Wholesaler, there is no evidence of it actually contacting the Wholesaler. The activity in the Timeline shows that the company only made this request to the Wholesaler on 4 May 2018, after the customer had called the company again to chase a response. I find this delay constitutes a services shortfall by the company.

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- In response to the Wholesaler declining the customer's request for a rebate to 2011, on 21 May 2018 the customer contacted the company again to dispute the Wholesaler's decision. The company advised the customer via email to provide evidence of their tenancy and documentation from their neighbour to support their claim to be re-evaluated by the Wholesaler. In light of the customer's email message sent to the company on 13 July 2018, it appears the customer attached evidence from the neighbouring business unit, yet in the Defence the company has said it cannot locate the attached documentation as this email was not assigned to an account as no account details were provided. However, I find that the evidence in the Timeline confirms that the customer subsequently provided their account details on 16 July 2018 in response to the company's request for the same. I find that the company's failure to forward this evidence onto the Wholesaler, at that time, for revaluation as promised, is evidence further of a service shortfall by the company.

11. In light of my above findings, I accept that the service provided by the company when dealing with the customer's claim for a SWD rebate and subsequent complaint raised, fell below the standard to be reasonably expected by the average person.

12. The customer seeks for the company to provide a SWD refund dating back to the start of the tenancy (2008). In their Application, the customer has not stated a figure but I acknowledge that in their email to the company, dated 4 April 2018, the customer provided details of SWD charges in invoices paid from August 2011 to July 2017. I find that the SWD charges total £384.79. As above, the decision to approve a rebate of charges for the timeframe prior to April 2014 concerns an operational issue and therefore remains with the Wholesaler. The company has explained why only a rebate from 1 April 2014 was agreed; although, it reiterates that pending further evidence from the customer, it will escalate the matter again to the Wholesaler for further consideration. In their Reply, the customer has supplied evidence from the neighbouring business unit (dated 25 May 2018), which I find states that they have received a full refund of SWD charges since 2011. Although I cannot see that the customer has supplied evidence of their tenancy or to show the site has not changed since the start of their tenancy; evidence that was previously requested by the company/Wholesaler.

13. The customer requests for the company to pay the SWD rebate it confirmed had been applied as credits to the customer's account, as a direct payment. I note that the first credit was

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confirmed by the company in April 2018 and consisted of backdated SWD charges to 1 April 2017 and the second credit agreed by the company in May 2018, consisted of backdated SWD charges from 1 April 2014 to 1 April 2017. Whilst I can find no evidence of the company confirming the exact amounts it credited to the customer's water account, according to the list of invoice numbers and amounts supplied by the customer in her 4 April 2018 email to the company (that has not been disputed by the company), I find that SWD charges from 1 April 2014 up to 7 July 2017 total £225.58. In the absence of any contrary suggestions or evidence, I accept this amount represents the correct amount paid by the customer in SWD fees for this period. As I am satisfied the customer's request for a direct payment is reasonable and as the company has not disputed this request in its Defence, I direct that the company shall pay this amount to the customer as a direct payment (either bank transfer or cheque). In her Application, the customer appears to also claim a rebate for SWD charges in the amounts of £34.87, £40.65 and £34.87 in respect to invoices dated 7 July 2017, 22 January 2018 and 7 July 2018. It is unclear from the evidence if the company charged the customer SWD charges on 22 January 2018 or July 2018, as indicated by the customer (the SWD charge on the 7 July 2017 invoice is already included in the above calculation of £225.58) as these would have been raised after the customer claimed for a rebate. However, if SWD charges were applied (either on 22 January 2018 or after 13 March 2018 when their exemption had been agreed.), I find it reasonable to direct that the company refund any such charges to the customer by bank transfer.

14. The customer has ticked the box in the WATRS Application indicating they wish to claim interest. I find WATRS Rule 6.7 provides that I can only award interest where the dispute relates to incorrectly levied charges. In the case of SWD rebates, whilst customers are entitled to an exemption of future charges if they show that the surface water from their property does not drain into the public drainage system, I do not accept that these charges were "incorrectly levied" by the water company in the first instance. In the customer's case, I acknowledge that the company/RST agreed the customer qualified for an exemption from paying future surface water charges on 23 March 2018. However, as above, there is insufficient evidence to show the company applied SWD charges after it had agreed not to; therefore I am unable to conclude that the company incorrectly levied charges and the customer's claim for interest cannot succeed on this basis.

15. In light of the service failings set out above, I find that it is fair to direct that the company pay the customer a further sum of £100.00 as compensation for the stress and inconvenience caused by its proven errors when dealing with the customer's claim for a rebate and complaint.

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16. The customer requests that the company put a 'freeze' on their account pending the outcome of this adjudication. This is not a remedy that either I or WATRS can direct; the company are entitled to charge customers for services provided and any 'hold' on disputed payments would be at the company's own discretion. Consequently, I make no direction in this respect.
17. The customer requests that the company's system of billing is more organised and that charges are shown more clearly. As above, I have not been presented with any evidence of the company's billing, and moreover, improving its billing systems relates to a business decision for the company and is not specific to this case. As such, I find this remedy falls outside of the scope of WATRS and therefore this aspect of the claim cannot succeed.

Outcome

The company shall provide the customer their Surface Water Drainage rebate of £225.58 for 1 April 2014 to 7 July 2017 (removing the credits applied to the customer's water account and translating them into a bank payment), pay the customer £100.00 in compensation and if further SWD charges were applied (either on 22 January 2018 or after 13 March 2018 when the customer's exemption had been agreed), the company shall refund any such charges to the customer by bank transfer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 30 January 2019 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.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb

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Adjudicator

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