

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1171

Date of Decision: 9 January 2019

#### Complaint

The customer requested a reduction in site banding for an area that had been landscaped. A RST engineer visited and agreed that the area should be reduced to band 7. The claim was then rejected. The customer has requested a copy of the report but this has not been provided. The area is 'unmade' land, not compacted soil. The customer requests a reduction in the banding charge to band 7, and a copy of the report from the site visit.

#### Defence

The company passed the customer's claim for a reduction in site banding to the wholesaler. When this was rejected, the customer sent in photographs. The company resubmitted the request and a site visit was conducted. The wholesaler has apologised for any comments made by the engineer, explaining that she may not have been fully aware that they were only charging for Highways Drainage. The company submits that it has challenged the wholesaler on the customer's behalf, fulfilling its obligation. The area in dispute is classed as compacted earth.

#### Findings

Under the Water Redress Scheme, the adjudicator is only able to review the actions taken by the company, not the wholesaler. Issues of compliance with data protection legislation is also outside the scope of the scheme. The reference to 'unmade' land appears to be in form for requesting a reduction in the surface water drainage charge; however, the site is only charged for highways drainage. The wholesaler's charges scheme provides a different standard for an area to be excluded for highways charges. The company had properly escalated the customer's complaint with the company. The wholesaler had not provided the report to the company and it could therefore not provide this to the customer. The company's data subject access request form requires payment of £10.00, and this should therefore be refunded as per the company's defence.

#### Outcome

The company needs to take the following further action:

Refund the customer the sum of £10.00.

The customer must reply by 6 February 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1171

Date of Decision: 9 January 2019

## Party Details

Customer: [ ]

Customer's Representative: [ ]

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- The customer made a claim to the company for a reduction of the banding on the customer's account. A site visit was conducted by a representative of RST and she verbally confirmed that she agreed that the area in question was landscaped and that the banding should be reduced to band 7. The customer was surprised to then receive a rejection of the claim. The customer has requested a copy of the engineer's report but this request has been rejected. The customer made a Data Subject Access Request for this report, but it was not forthcoming. The Consumer Council for Water were also met with the same refusal to provide the report. The customer has been advised that the claim was rejected as the site area was compacted soil. The customer disputes this and submitted a geological report to this effect. The customer received an email on 3 July 2018 saying that the claim was rejected, however the information given in this email was "totally incorrect" and not in line with the company's terms and conditions. The area in question is classed as an unmade area. The Consumer Council for Water has raised this with RST but they will not discuss the point further.
- The customer requests a reduction in the banding change from band 9 to band 7, and a copy of the report that the customer has requested and paid for.

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### **The company's response is that:**

- The company states that the customer submitted a claim for a reduction in the site area banding on 29 January 2018. The company received a rejection of this from the wholesaler on 1 March 2018 and this was relayed to the customer on 9 March 2018. The wholesaler advised that the area marked as landscaped was not cultivated landscaped. A desk top study had revealed that the land was compacted land, used for access around the site, parking and storage. The area would not be classed as landscaped and the chargeable area for Highway Drainage would remain at 18,065m<sup>2</sup>. The customer remained unsatisfied and provided photographic evidence of the area. The company resubmitted the claim and the wholesaler arranged for a site visit. The customer has mentioned that the engineer agreed that the area was landscaped and the banding should be reduced to band 7. The company queried this with the wholesaler and they advised that the engineer attending may not have had full knowledge that only Highways Drainage charges were being raised, and the types of surfaces that would be included in the chargeable site area. The wholesaler has advised that all engineers have now been made aware of the policy and they have apologised for any inconvenience caused by the engineer's comments. The company is unable to find any evidence of any fee payable for the report, however if proof of payment can be provided, it will provide a refund of the fee. The company's responsibility is to challenge the wholesaler on behalf of the customer. The company believes that it has fulfilled its obligation and it has challenged the wholesaler in relation to the disputed area. The wholesaler has confirmed this area to be compacted earth, which is evident from the photographs provided.

### **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.

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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. The customer carried out landscaping work on the site and contacted the company to reduce the banding charge for the customer's property from Band 9 to Band 7.
2. I note that the charging bands are used to calculate both surface water drainage charges and highway drainage charges. From the evidence, including correspondence, provided by the company, I note that the wholesaler was "only raising charges for highway drainage services". I therefore find that the customer has not been charged for surface water drainage, and that the banding reduction requested relates to highway drainage services only.
3. At this point, it is useful to set out the scope of the Water Redress Scheme in respect of the company. The company is a water retailer, billing the customer for the water services provided by the water wholesaler, RST. In order to make a decision in this dispute, I must clearly distinguish between actions taken by the wholesaler, and the duty owed by the retailer, the company, to its customers. Since the water market in England opened up to retailers in April 2017, all non-household customers and accounts have been moved to a wholesale/retail split service. As a result, a non-household customer now only has a relationship with the retailer. In turn, the adjudicator operating under the Water Redress Scheme may only make findings related to those things for which the retailer, a party to the case, has responsibility, but not those things for which the wholesaler has responsibility.
4. Further, the customer has made reference to a Data Subject Access Request (DSAR) made to the company in respect of the engineer's report from the wholesaler's site visit on 9 May 2018. The report has not been provided by the wholesaler to the company. I am not able to look at any part of the customer's DSAR as a company's compliance with data protection legislation is not included within the scope of the Scheme at Water Redress Scheme Rule 3.3. In line with Rule 3.4.1, complaints relating to data protection legislation should be referred to the Information Commissioner's Office as the appropriate body for reviewing this type of dispute.

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5. The customer has requested a copy of the engineer's report as part of the claim to the Water Redress Scheme. In reviewing the evidence, I note that this is held by the wholesaler and that they have declined to provide a copy to the company. I am therefore unable to direct the company to provide the report to the customer. Notwithstanding this, I note that the customer states that they paid £10.00 to the company by postal order in order to make the DSAR, asking for a copy of this report. The customer has provided a copy of the company's completed DSAR form which requests a cheque for £10.00 to deal with the request. The company, in its defence, states that it is "unable to find any evidence that this fee has been requested or made by the customer", but that it will provide a refund if proof of payment can be provided to it. I therefore direct the company to reimburse the customer the £10.00 fee relating to the DSAR as it has agreed to refund this cost.
6. In respect of the site banding, the customer has provided a report indicating the condition of the site, showing that the areas of the site in dispute are "recorded as compressible and uneven settlement".
7. The customer has also referred to the company's documents that refer to "any area of the site that is hardstanding where surface water does not drain to the sewerage system (and drains elsewhere to a watercourse or soak-away etc.)" and "any area of the site that is not hardstanding where surface water does not drain to the sewerage system (grassed, unmade or gravelled areas)". The customer relies on the reference to "unmade" land to support the submission that the site banding should be reduced.
8. I am mindful that these quotes appear to come from the company's form for requesting a surface water drainage charge, and that they may therefore not reflect the situation in respect of highways drainage charges.
9. I am further mindful that the banding for the site is set by the wholesaler and the company must apply the charges based on the banding determination made by the wholesaler. The company is able to dispute the wholesaler's determination and request that this is reviewed, but it has no power to overrule the decision of the wholesaler.
10. Within the correspondence provided in the company's evidence is a link to the wholesaler's sewerage charges scheme for 2018/19. This confirms at section 3.10 that highway drainage charges "will not be reduced under the circumstances set out in 3.9". Section 3.9 of the charges

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scheme relates to the ways in which surface water drainage charges may be reduced, including where a portion of the premises do not drain to a public sewer.

11. Section 3.10 of the charges scheme continues to state that the wholesaler “will adjust the chargeable area for highway drainage to exclude any permanently grassed, cultivated or landscaped areas should you notify us of a change”.
12. The company has provided a response from the wholesaler within its evidence. This contains an explanation for its finding that the disputed area of land does not qualify to be removed from the chargeable area for highways drainage. It explains that it deems that the area does not meet the standard of being landscaped by reference to an ordinary dictionary definition. The site visit and photographs provided by the customer do not show, in the wholesaler’s opinion, that the land has been landscaped, and it therefore remains applicable for highways drainage charges.
13. I note that the customer states that the wholesaler’s representative who conducted the site visit agreed that the banding should be reduced. The wholesaler states that this may have been due to the representative not having had full knowledge that the wholesaler was only raising charges for highways drainage, and she may not have been aware of the types of surfaces included in the chargeable site area. I am mindful that the chargeable area for surface water drainage does potentially differ from the chargeable area for highways drainage, with the charges scheme specifically requiring an area to be “permanently grassed, cultivated or landscaped” to be excluded for highways drainage.
14. For the reasons explained above, I am not able to challenge the wholesaler’s finding or direct that it reviews its decision. I am only able to direct the company to take action, such as to make further requests to the wholesaler on the customer’s behalf if it has not already done so.
15. I note that the company did provide the wholesaler with the customer’s complaint, receiving the full explanation for the wholesaler’s refusal to reduce the site banding. It has also requested the site visit report from the wholesaler, but that it has been unable to obtain a copy of this. I note that the wholesaler was unwilling to provide a copy to the company and the customer, even once the Consumer Council for Water became involved. I am satisfied that the company has acted in the manner expected of a reasonable water retailer by requesting the report for the customer. As above, I am not able to make any direction to the wholesaler to provide this report.

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16. I am satisfied from the evidence that the company has acted in the manner expected of a reasonable water retailer in how it has escalated the customer's complaint to the wholesaler. The wholesaler has refused to complete any further site visit or review of the customer's site banding for highway drainage charges. However, I am satisfied that the company has properly represented the customer's interests in how it has managed the customer's complaint to the wholesaler.

17. For the reasons given above, I find that I am unable to make any direction in relation to the reduction of the site banding. Furthermore, as I am satisfied that the company has properly represented the customer's claim to the wholesaler, I am not persuaded that there is any reason to direct the company to take further steps to contact the wholesaler about this issue. I acknowledge that this decision will be disappointing for the customer, however the wholesaler has provided an explanation detailing that the disputed site area does not meet the strict requirements to be excluded for the purpose of the highways drainage charge. Should the customer take further steps to change the site to meet the stricter requirements, I am satisfied that the company would satisfactorily represent the customer in having these changes reassessed by the wholesaler.

#### **Outcome**

The company needs to take the following action:

Refund the customer the sum of £10.00.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 February 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.

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A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal line that ends in a small flourish.

**Alison Dablin**, LLM, MSc, MCI Arb

**Adjudicator**

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