

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1256

Date of Decision: 01 February 2019

Complaint

The customer states that he has been improperly refused an increased non-return to sewer allowance by the company. He requests that company provide him with a backdated refund of £1,674.72 along with an ongoing allowance.

Defence

The company states that the customer has been billed correctly, as he is not entitled to an increased non-return to sewer allowance.

No offer of settlement has been made.

Findings

The customer has not established that he is entitled to the increased non-return to sewer allowance that he has claimed.

Outcome

The company does not need to take any further action.

The customer must reply by 01 March 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1256

Date of Decision: 01 February 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- He has owned and operated a restaurant in [] for 4 years.
- His restaurant uses a great deal of water in the making of drinks that are sold through the drive-through and as take-away.
- He has calculated the volume of water that is included in these drinks, and argues that this water does not return to the sewer at his premises, and so he should receive an allowance from the company.
- He requests that the company provide him with a backdated refund of £1,674.72 for water used in drinks taken away from the restaurant (£279.12 per year for the past 6 years) along with an ongoing allowance.

The company's response is that:

- Water and sewerage charges for the property are billed on a measured basis.
- The measured sewerage charge is calculated on an assumption that 95% of the water recorded by a water meter is returned to the company's sewer network.
- Where a business can demonstrate that its operations result in less than 95% of the water recorded by a water meter returning to the company's sewer network, the company will consider increasing the non-return to sewer allowance.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- This will typically be the case where water is used in production or is lost due to evaporation within the process.
- A restaurant such as the customer's is not entitled to an increased non-return to sewer allowance because the majority of waste water will enter the company's sewerage network at some point.
- The company argues that the charges it has imposed on the customer are correct, as the customer's business is producing beverages that return to the company's sewerage network at some point.

The customer's comments on the company's response are that:

- He has demonstrated that less than 95% of the water recorded by his meter returns to the company's sewer.
- He believes he is being treated in a discriminatory manner compared with other businesses.
- He argues that due to his proximity to the English border, the company cannot reasonably presume that everything consumed after purchase at his restaurant will return to its sewers, as opposed to those of another water company.

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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How was this decision reached?

1. The customer argues that the company has incorrectly calculated the sewerage charges he is obligated to pay, as it has not properly taken into account that some of the water used in his restaurant does not return to the company's sewers at his premises. Using records from his business he has calculated that he is properly entitled to a reduction of £279.12, backdated for 6 years, resulting in a total claim of £1,674.72.
2. It should initially be noted that while the customer is backdating his claim for 6 years, he states that he has only owned and operated the restaurant for 4 years. The customer does not explain on what basis he would be entitled to a reimbursement of incorrect charges for 2 years in which he did not own and operate the restaurant.
3. As a result, on the basis of the evidence available to me, I find that even if the customer's claim were accepted in full, he would nonetheless only be entitled to reimbursement of charges for 4 years, totaling £1,116.48 on the customer's calculation.
4. It must also be emphasised that as a regulated entity, the company is required to bill its customers in accordance with a published Charges Scheme. This scheme must adhere to rules adopted by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
5. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to evaluate the fairness or correctness of a company's Charges Scheme, as this responsibility has been statutorily allocated to Ofwat.
6. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may only examine whether the company has properly adhered to its published Charges Scheme.
7. As a result, the present decision may only address whether the company has adhered to its non-return to sewer allowance policy, as stated in its Charges Scheme, and may not evaluate whether that policy is reasonable or otherwise appropriate.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

8. In its Charges Scheme, the company states that “For most customers we assume that almost all water returns to the sewer except, for example, that used for cooking or watering the garden. Therefore the sewerage element of the measured bill is calculated at around 95% of the volume of water consumed.” However, the Charges Scheme also states that “If you believe that less than 95% of your water returns to the sewer and you can prove this by measurement, you can claim a reduction in your sewerage charges.”
9. The customer has provided a substantial amount of information on the amount of water that goes into drinks that are taken away from his premises to be consumed elsewhere.
10. Nonetheless, the language of the company’s Charges Scheme requires that customers demonstrate that water supplied to a customer does not return “to the sewer”, rather than that it does not do so at the customer’s premises.
11. While the customer may argue that it is implied that the water return to the sewer at his premises, and some statements by the company would support this interpretation, I find that the most reasonable interpretation of the language in the Charges Scheme is that it only requires that water return “to the sewer”, even if this happens elsewhere than at the customer’s premises. This is because the Charges Scheme expressly states that sewerage charges are “based on the water used and measured by the meter”. If a non-return to sewer allowance were granted to a customer based on the fact that water supplied to the customer’s premises returned to the sewer other than at the customer’s premises, then the customer would not pay the sewerage charge for this water (as it did not return to the sewer at his premises), but no-one else would be liable for that charge either (as there is no-one else for whom the water in question was measured by their water meter).
12. For this reason, I find that the only reasonable interpretation of the language in the company’s Charges Scheme is that which is also consistent with the literal language used in the Scheme, which makes a customer liable for sewerage charges for water that is supplied to their premises and returns to the sewer in any location, even if not at the customer’s premises.
13. The customer may disagree with the policy of basing sewerage charges on how much water is measured by a customer’s meter, but this is an express part of the company’s Charges Scheme, and so for the reasons explained above cannot be evaluated by a WATRS adjudicator.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

14. The customer also argues that as his premises is near the English border, the company cannot be sure how much of the water in drinks produced at his restaurant does indeed return to the company's sewers, rather than to the sewers of another company.
15. The customer is clearly correct on this point. However, the company's Charges Scheme does not refer to water returning to the company's sewers, but to "the sewer". This notably contrasts with the reference to "our sewer" in another statement in the same section: "We have the right to meter all nonhouseholds, including any private supplies which discharge to our sewer."
16. I find that understanding "the sewer" to mean any sewer, rather than just that of the company, is the most sensible interpretation of the language in the company's Charges Scheme given the regulated context in which the company operates. That is, such an interpretation reflects an allocation between water companies, as part of the larger regulated project of supplying sewerage services, in which each company will handle some sewerage generated from water supplied by other companies.
17. As a result, I find that the company's Charges Scheme is properly interpreted as making the customer liable for sewerage charges for water supplied to his premises that returns to any sewer, whether owned by the company or by another regulated water company.
18. The customer also argues that the company has applied its non-return to sewer allowance policy in a discriminatory manner, granting reductions to some business, such as breweries, while not allowing them to businesses such as his own.
19. If correct, this would constitute a failure by the company to adhere to its Charges Scheme, as the company's Charges Scheme does not allow the company to grant non-return to sewer allowances on any ground other than that a customer has demonstrated that water that passed through its meter did not return to the sewer.
20. The company has explained that businesses are granted an allowance where "water is used in production and/or is lost due to evaporation within the process", and water that has evaporated clearly does not constitute water that enters the company's sewers.
21. The situation is more ambiguous with respect to water "used in production" as that expression potentially includes a large range of production processes. If, for example, the company were to

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

grant an allowance to a brewery for the water that was subsequently included in its drinks, it is unclear that this would constitute granting an allowance for water that did not return to the sewer, as the water in a brewery's drinks would indeed return to the sewer after being consumed by the end-consumer.

22. Nonetheless, this is ultimately a question that cannot be adjudicated at WATRS.

23. In making his argument, the customer refers to Section 2(3) of the Water Industry Act 1991, which states the water companies must not show "undue preference" or "discrimination in the fixing by such companies of water and drainage charges". However, responsibility for enforcement of this obligation under the Act is expressly allocated to "the Secretary of State or, as the case may be, the Authority", the latter being a reference to Ofwat. As a result, under Rule 3.5 of the Water Redress Scheme Rules, any such claim must be brought to the Secretary of State or Ofwat, and may not be brought to WATRS.

24. For the reasons given above, to the extent that the customer's claim is eligible for adjudication under the WATRS Scheme, I find that the company has charged the customer correctly in accordance with the terms of its Charges Scheme, and has thereby provided its services to the customer to the standard to be reasonably expected by the average person.

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 01 March 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.
-

Tony Cole

Tony Cole, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.