

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: CCWater Reference: WAT/ /1346

Date of Decision: 21 June 2019

Complaint

The customer, a facilities manager, complains that the company's wholesaler has changed its policy as to the means of assessment of the amount of water that does not return to the sewer at his business premises and it now requires the installation of sub-meters. This is unduly onerous for the customer because of the design of the site and it is, in view of the arrangement previously in place, an unnecessary expense. Although, in consequence of the intervention of CCWater, credit has been given by the company for the first bill, this does not solve the problem for the future because the wholesaler has indicated that it will not change its policy. The customer seeks a direction that the rebate should continue on the same basis as it had before the opening of the water market.

Defence

The company is not liable for the wholesaler's policy. This now requires the installation of sub-meters if a non-return to sewer allowance is required by the customer. Without these, no abatement is granted by the wholesaler and the company, as the retailer, must follow the same policy. Moreover, as the customer is now no longer a customer of the company but of another retailer, it has no status to liaise with the wholesaler on behalf of the customer and there would be data protection obstacles.

Findings

The wholesaler and the company are different legal personalities and the policy is that of the wholesaler. There is no evidence that enables me to conclude that the company could or should have dis-applied a policy imposed by the wholesaler. In any event, the company has waived the customer's bill for the entire period of his custom and it has liaised with the wholesaler on his behalf. It cannot reasonably be expected to do so in respect of a person who is no longer its customer. The company has therefore provided its services at least to the standard that would reasonably be expected by an average customer.

Outcome

The company does not need to take any further action.

The customer must reply by 19 July 2019 to accept or reject this decision.

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In February 2018, the customer received an invoice from the company. This was the first indication that he had received of the changes in the water market that had occurred in the previous year.
- The invoice did not apply the abatement for water that did not run into the public sewer that had previously been agreed with RST Water (the wholesaler)¹ and had meant that the customer's bills were approximately £25.00 per month. The new charge was 100% of supplied water, amounting to costs around £1,500.00 per month.
- The customer is now aware that during the transfer from the wholesaler to the company, when the market opened, the water companies sent standard letters to their customers explaining the transfer process. However, correspondence sent to the customer was incorrectly addressed. He was therefore not informed of the wholesaler's expressed policy to change from fixed charges to metered charges and to require all customers to install their own sub-meters on site if they wanted an abatement.

¹ [RST] Water is referred to in this decision as "the wholesaler" even though it is recognised and understood that prior to 1 April 2017 it dealt directly with a customer, between 1 April 2017 and 1 April 2018, the company was its agent and since 1 April 2018, it has no involvement with billing for retail water.

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- The customer wishes the fixed non-return to sewer abatement to be applied to his account as had been the case previously. The customer explains that his organisation's site is very complex and to install the necessary equipment would be very expensive.
- In particular, the customer makes clear that it is a high water using manufacturer of pressed concrete products. All of the water used in this process, together with all surface water on-site, is drained to the local water course, authorised by licence from the Environment Agency. He estimates that it would cost more than £10,000.00 to install meters, given the size and nature of its site and water supply outlets. There would also be ongoing costs for reading, maintaining and calibrating the meters.
- The customer has since switched water retailers. Since the involvement of the Consumer Council for Water (CCWater), the company has written off the outstanding debt of £22,568.19 and confirmed that the account is closed.
- The customer, however, remains dissatisfied that he is not able to have a fixed abatement applied and seeks a direction for this. He says that he has no instrument to take this complaint directly to the wholesaler as they "hide behind" their retailers. However, he says that the company is able to liaise with its "parent company" to apply dispensation for a non-return calculation and to confirm this to all UK retailers to allow the customer to access the free market in the future.

The company's response is that:

- The customer's account (which is a waste water services only) is now closed.
- The customer initially contacted the company via email on 14 March 2018, to request that an invoice be credited back for waste water charges as he had previously paid these in one invoice to [] Water (its clean water retailer, which also billed on behalf of the waste water retailer) and he had been invoiced solely on 2% of the meter charges at 0.94p per m².
- A response was sent to the customer on 11 April 2018, which detailed that since the market had opened, he would be invoiced by the company for the waste water charges.
- A stage one complaint was received on the same day; the following day a call was made to the customer and it was followed up by an email to advise that a thorough investigation would be carried out. This was completed on 16 May 2018, where it was explained that to receive sub-meter deductions and as detailed in a letter issued in February 2016 by the wholesaler, the customer would need to install a sub-meter on site, to record either what does go to the sewers or what does not return to the sewers..

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- Further correspondence from the customer advised the company that he had an agreement in place on which he was previously charged on a headcount formula and that he had contacted [] Water to explain this and they were in the process of making the changes accordingly.
- The customer was insistent that the account be rebilled at this point to reflect the previous charging scheme, even though it had been advised that, for this to happen, a sub-meter would be required at the site.
- A stage two complaint was received on 24 May 2018, which was responded to on 12 June 2018, reiterating that it was now a requirement by the wholesaler for a sub meter to be installed.
- A telephone call with the customer on 28 June 2018 confirmed that a sub-meter would need to be installed, but also that, as the company was no longer the retailer, the customer would need to raise this with his new retailer.
- On 16 January 2019, the balance on the account of £22,568.19 was written off as “unable to collect”. This was part of an internal business decision.
- No compensation will be offered or applied in this instance. This is because the balance has been written off and [] have advised Mr [] from the point of initial contact the wholesaler’s policy in relation to non-return to sewer allowances.

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.

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?

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1. I bear in mind that the wholesaler and the company are distinct legal personalities and the obligations of the wholesaler cannot be treated as though they are the responsibility of the retailer. Moreover, the direction of any redress in this adjudication is dependent upon a conclusion that the company (not the wholesaler) has supplied its services to a standard that falls below that which an average customer would reasonably expect of the company. I cannot reach any findings as to the standards that would reasonably be expected of the wholesaler because the wholesaler is not a party to this adjudication process.
2. The company notes that it is not the wholesaler and has not imposed the policy of requiring sub-meters in order to measure the water returned to the public sewer from a business site. This policy was imposed by the wholesaler prior to changes in the water market in 2017 and the company submits that it, also, is bound by this policy. I find that there is no evidence that would enable me to conclude that the company could or should take any different course of action. The company acknowledges that it can liaise with the wholesaler on behalf of the customer, but it cannot compel the wholesaler to change the policy. The company indicates that it has liaised with the wholesaler to no avail and the wholesaler has not agreed to the changes requested at any stage while the company has held the customer's account.
3. I find that the documentation submitted in this case shows that the customer was, prior to the water market reform on 1 April 2017, a customer of [] Water for clean water and the wholesaler for waste water. [] water billed the customer on behalf of the wholesaler. At that point, the customer benefitted from a non-return to sewer allowance with the wholesaler. This was a fixed allowance with no reliance on sub-meters.
4. The customer has submitted evidence, by means of a drainage plan, that demonstrates how its process water reaches the water course and does not connect to the sewer. The customer has also explained that the wholesaler (at the request of the company) has been to the customer's site, walked the drainage circuits and confirmed in discussions at that point that the return of waste water to the sewer was minimal. The company has not challenged this, and therefore I accept that the customer does not return a large proportion of its water to the sewer and that the current charge for the provision of waste water services does not take this into account.
5. I am not able to reach a conclusion that the company's services have failed to meet the standard that would reasonably be expected of it, however, for the following reasons:

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- a. The charges that have been imposed by the company reflect the wholesaler's policy because the customer does not currently have sub-meters in place.
 - b. The company cannot set or change the wholesaler's policies;
 - c. Although the company can liaise with the wholesaler, it is apparent from the company's submissions and those of the company that liaison has taken place. This is illustrated, for instance, by the evidence of the company that it has undertaken an investigation with the wholesaler and the evidence of the customer that it was the company that prompted the wholesaler's site visit.
 - d. Although the documentation supports the customer's contention that it was unaware of the change in policy on the part of the wholesaler until receipt of the bill for the first year because it had not received notification from the wholesaler, the period covered by the company's bill has now been waived and the customer has therefore not been required to pay the increased level of payment for any period in which the customer had not been given notice of the change. The customer was informed on 26 February 2019 by CCWater that the outstanding balance of £22,568.19 had been written off by the company and the wholesaler. Irrespective of whether the customer should or should not have been aware of the change prior to receipt of the bill, therefore, I find that this is equivalent to, or exceeds, the service level that would reasonably be expected by an average customer.
 - e. An average customer would not reasonably expect the process of representation and liaison with the wholesaler to continue when the aggrieved person is no longer its own customer. Although it might be possible that, through negotiation and consent, the data protection issues flagged up by the company could be avoided, this would be inconvenient and non-commercial and I find that an average customer would not expect this.
6. It therefore follows that as the company's services have not been sub-standard, the customer is not able to succeed in his claim for redress.

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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 19 July 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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Claire Andrews, Barrister, FCI Arb

Adjudicator

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