

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1364

Date of Decision: 13th September 2019

Complaint

RST Water ("RST ") and the company were billing the customer's business for wastewater since 2012 - despite the business not having a wastewater connection. Although RST and the company have since waived the wastewater charges in question, the customer remains unhappy at not being provided with interest on the payments that were taken from him. He contends that the company is obliged to pay interest by reference to RST 's Terms and Conditions ("the T&Cs Relied On").

Defence

The company asked RST (which is now the wholesaler) to investigate the customer's position in respect of the T&Cs Relied On. RST responded to explain that the T&Cs Relied On are in fact used only between RST and its contractors or agents. They do not apply - and are not used - as between RST and its customers. The wholesaler's policy, therefore, does not permit an allowance for interest in circumstances such as these. The company is unable to intervene or amend the wholesaler's policy and considers that it has followed all the correct processes in this case.

No offer of settlement has been made.

Findings

The T&Cs Relied On (1) are intended to apply between commercial parties, specifically between RST and a 'Supplier' of 'Goods' and (2) do not place an obligation on RST to pay interest to the customer on the facts of this case. Ultimately, where a wholesaler's policy is clear, there is only so much that a retailer can do on a customer's behalf. Here, the company sent the T&Cs Relied On through to the wholesaler and called for an investigation and a response. This was probably sufficient pressing of the issue on the part of the company to discharge the responsibilities that it owed to the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 11th October 2019 to accept or reject this decision.

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- The customer indicated that he was unhappy at this position. He wanted the charges refunding back to when he originally took occupancy of the property, i.e. 1 June 2006.
- The company replied that it would not be able to back date the wastewater charges earlier than 2012 as prior to that date, the customer had not been charged for wastewater.
- The customer asked to see copies of historic invoices to prove that he was not billed for wastewater prior to 2012. These were sent to him by email.
- The customer then said that he wanted to recover interest on the charges for which he had been incorrectly billed over a period of several years.
- The wholesaler:
 - responded and advised that it did not pay interest on wastewater charges that had been removed; and
 - requested that the customer send in the policy that he had looked at, which he considered showed that interest charges would be refunded.
- The company received an email from the customer, with a pdf document attached, referring to section 6.7 of RST 's Standard Terms and Conditions (“the T&Cs Relied On”). Section 6.7 of the T&Cs Relied On reads as follows:

“... 6.7 Each Party shall be entitled to receive interest on any payment not paid when properly due pursuant to the terms of these Conditions, calculated from day to day at a rate per annum equal to 2% above the base rate of NatWest Bank plc and payable from the day after the date on which payment was due up to and including the date of payment (whether before or after judgment) ...”
- The company asked the wholesaler to investigate the point that the customer was making.
- The wholesaler responded to explain that the T&Cs Relied On:
 - are in fact those that are used between RST and its contractors or agents (i.e. when it needs to engage contractors to carry out work); and
 - do not apply - and are not used - as between RST and its customers.
- The wholesaler’s policy, therefore, is to not give an allowance for interest.
- For its part, within its remit as a retailer, the company submits that:
 - it has taken all such actions in this case that it reasonably can and has followed the correct processes;
 - this is a wholesaler policy issue. The company is unable to intervene or amend the wholesaler’s policy;
 - it has challenged and worked with the wholesaler at all relevant points in the customer’s journey.

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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.

How was this decision reached?

1. The documents (or sections of documents) that I have reviewed carefully include:
 - a. the customer's Application Form;
 - b. the T&Cs Relied On; and
 - c. the 'fig.1' to 'fig.8' extracts appended to the company's defence.
2. Additionally, I have had the benefit of reading the customer's comments of 28 August 2019 ("Comments") filed in reply to the company's defence.
3. I should say, also, that I have noted the points made in the customer's email of 21 August 2019, timed at 16:29. By one of those points, the customer seeks to claim in respect of a credit on his account and he asks that I "*find the reason for the change in the amount of credit*". This issue over the amount of credit does not seem to have been included originally in the customer's Application Form. Unfortunately, it appears only to have been introduced about a day or so before the company produced its defence. Therefore, I infer that the company has not had a

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reasonable opportunity to consider and respond to this 'new' matter that the customer is alluding to. For this reason, for the purposes of this adjudication and in the interests of fairness, I have decided that I should disregard this issue over the amount of the credit.

4. The focus of the dispute is quite narrow and is specifically on:
 - a. whether the customer is entitled to be paid interest in respect of the wastewater charges that were incorrectly applied (but later removed); and/or
 - b. whether there are any policies or contractual provisions in force, which require or indicate that the customer should be paid interest in the particular circumstances of this case.
5. The company's position is that RST's (i.e. the wholesaler's) policy is that interest is not paid in these circumstances. The customer argues that the T&Cs Relied On suggest otherwise.
6. RST's reply - via the company - is that the T&Cs Relied On do not apply because, in fact, those provisions are only:

"... used between themselves and their contractors/agencies that they use to carry out any works ..."

7. This position is disputed by the customer in his Comments:

"... If [the T&Cs Relied On] are for contractors/agencies only, I haven't been given any alternative T&C from RST Water this must be the only T&C's...."

8. I have examined the whole of the T&Cs Relied On in detail. I note that the title of the agreement is '*Purchase Order Goods Contract*'. On my reading of this document, it is clear to me that it is a set of contractual terms and conditions intended to apply between commercial parties, specifically between RST and a 'Supplier' of 'Goods'. In no part of T&Cs Relied On (that I can see) is there:

- a. any reference to 'customers'; or
- b. any reference generally to the provision by RST of water supply or wastewater/sewerage services to 'customers'.

9. I am not persuaded, therefore, that the T&Cs Relied On do place an obligation on RST to pay interest to the customer on the facts of this case. Accordingly, I accept the company's

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submission that the wholesaler's policy in place is indeed that interest will not be paid ("the Wholesaler's Policy").

10. The next question that arises is what (on the customer's behalf) the company can be expected to do, in the face of the application of the Wholesaler's Policy.
11. Since the water market in England opened up to retailers in April 2017, all 'non-household' customers have been moved to a wholesale/retail split service. Their relationship is (now) with the retailer only. As a consequence, if a non-household customer has a problem with their water supply or sewerage services, they must approach the retailer. For the purposes of this adjudication, this also means that I cannot make findings against the retailer (i.e. the company) about something that is the wholesaler's responsibility. I can only assess the retailer's actions and make findings related to the retailer's responsibility.
12. In this adjudication, I must assess the company's actions (as retailer) against the backdrop of the Wholesaler's Policy. I have considered, for example, whether the company did enough to take up the challenge of the wholesaler on the customer's behalf. Certainly, I can see that the company sent the T&Cs Relied On through to the wholesaler and called for an investigation and a response. I consider that this was probably sufficient pressing of the issue on the part of the company. I take the company's point that, ultimately, where a wholesaler's policy is clear, there is only so much that a retailer can do. Realistically speaking, as the company says in its defence, the retailer cannot act to "*intervene*" or "*amend*" the policy in question.
13. For all the reasons set out above, I am satisfied that the company has provided its services to the customer in this matter to the standard that one would reasonably expect. Consequently, the customer's claim to an entitlement to be paid interest does not succeed.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - the customer must reply by 11th October 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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Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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