

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1624

Date of Decision: 5 November 2019

Complaint

The customer states that the company has increased the tariff charged for supplies without notification or explanation and has backdated those charges to 1 April 2017. The customer considers the company should cover the cost of the difference in tariff from April 2017 to the present.

The customer's application for a leakage allowance has been rejected by the wholesaler. The customer considers the company should challenge the wholesaler's decision.

The customer seeks reimbursement of a late payment charge of £290.00 plus £30.00 VAT as accounts are in dispute.

The customer seeks compensation in the total sum of £2,420.00.

Defence

The company states that the tariff originally charged was not in line with the contract with the customer and that this was an error by the company. The company states it became aware of the error in March 2018 and corrected the error. The company has agreed not to charge the difference in tariffs from April 2017 to March 2018 and has credited the customer's account with £249.52. The company has made a payment of £20.00 as a gesture of goodwill for the delays in responding to the customer's complaint. The company will make no further concessions as it considers the tariff is now correct.

The company states it has explained to the customer the policy in regard to leakage allowances and the reason for rejection. The company considers it has fulfilled its obligations to take the matter up with the wholesaler.

Findings

The company became aware that it had made an error in the tariff charged and it was entitled to correct that error. However, the company did not notify the customer of the change, as it is required to do, or offer any explanation of the reason for the change. The customer was only aware a different tariff was being charged when he received amended invoices. When the customer questioned the tariff, the company did not respond. I find in respect of the tariff change, the company has failed to provide its services to the standards expected by a reasonable person.

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Outcome

The company shall take the following action.

The company shall withdraw invoices between 1 April 2017 and 31 May 2019 and reissue those invoices to the customer based on the original tariff charged of 132.91 pence per cubic metre.

The company shall pay the customer compensation in the sum of £250.00. This may be applied as a credit to the customer's outstanding account balance.

The customer must reply by 3 December 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 5 November 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The company had invoiced the customer since April 2017 at a tariff the customer states was originally agreed with the company. In March 2018, the company re-invoiced the customer at a higher tariff. The company applied the higher tariff retrospectively to April 2017. No explanation was offered by the company for the re-billing.
- The customer was not informed until June 2019 that he had been charged on a lower tariff than he should have been charged and that this was an error.
- The customer considers the tariff billed should be the tariff he states was originally agreed and seeks that the company abides by the lower tariff.
- The customer also experienced a leak and applied for a leakage allowance. The leakage allowance was rejected.
- The customer seeks that the company covers the difference in tariffs from April 2017 to the present date and not only up until March 2018.
- The customer considers the company should challenge the wholesaler about its rejection of the leak allowance.
- The customer seeks that the late payment charge of £290.00 should be refunded while the account is still in dispute.
- The customer seeks compensation for the time he has had to deal with this dispute in the amount of £1,920.00.

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- The customer also seeks compensation for distress and inconvenience in the amount of £500.00.
- In his comments to the company's response, the customer states that he had not seen the contract the company states was signed prior to its inclusion within the papers sent by the company to the Consumer Council of Water (CCW). The customer also notes that his signature does not appear on the contract. The customer considers the contract is not valid.

The company's response is that:

- The company has acknowledged that it would be unfair to pass on the differences in tariffs to the customer for past invoices and has agreed to cover the difference in tariffs for the period April 2017 to March 2018. A credit of £249.52 has been applied to the customer's account.
- The company has made a payment of £20.00 to the customer as a gesture of goodwill for the delays in responding to the customer's complaint.
- The company will make no further concessions as the company considers the customer is now being correctly billed in line with the tariffs that should have been charged from April 2017.
- The company has explained to the customer the wholesaler's leak allowance policy and the reasons for the application being rejected.

How is a WATRS decision reached?

In arriving at my decision, I have considered the following key issues:

- a. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
- b. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard which would be reasonably expected and 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 I have not considered it in reaching my decision.

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How was this decision reached?

1. In order to make a decision in this matter 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 (NHH) customers have been moved to a wholesale/retail split service. As a result, an NHH customer now only has a relationship with the retailer. In turn, an adjudicator operating under the Water Redress Scheme may only make findings related to those things for which the retailer, as the party to the case, has responsibility, and not those things for which the wholesaler has responsibility. This includes, however, the effectiveness with which the retailer has operated as an intermediary between the wholesaler and the customer.
2. The customer states that an invoice dated 8 August 2017 included different unit charging rates. The first unit rate was 155.86 pence per cubic metre (ppm) and covered usage from 12 December 2016 until 31 March 2017. The second unit rate was 132.91 ppm and covered usage from 1 April 2017 until 31 May 2017. The customer states that the unit rate of 132.91 ppm was the rate agreed for the contract by the call centre operating on behalf of the company. The customer notes that he had not recorded the date when this was agreed but states that it was prior to the supplier change on 1 April 2017.
3. The customer states he received further invoices on 13 September 2017, 27 December 2017 and 19 March 2018 and on each invoice the unit rate was 132.91 ppm. Copies of those invoices have been provided.
4. On 28 March 2018, four credit notes were issued by the company to the customer. On 31 March 2018, 26 May 2018 and 28 May 2018, three invoices were issued to the customer. These invoices covered periods of previous invoices and included a unit rate 148.06 ppm instead of the rate of 132.91 ppm previously charged on the invoices. The customer states that this was an increase from the rate that had been agreed. There is no evidence that any explanatory letter was sent to the customer. The effect of the credit notes and new invoices was to amend the charges to the customer to a higher tariff for the period from 1 April 2017 to 1 March 2018.

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5. The company submits there was an error on its part in relation to the tariff charged to the customer from April 2017. The company has agreed that it will not charge the difference between the lower tariff applied from April 2017 to March 2018 and the higher tariff the company states should have been applied. The company states it has credited the customer's account in the amount of £249.52. The company also states that it has credited the customer's account in the amount of £20.00 as a goodwill gesture for its failure to respond to the customer's complaint within the timescales required under the Guaranteed Standards Scheme (GSS). The customer considers that the lower tariff should have continued to apply beyond March 2018.
6. The matter to be determined is whether or not the company acted correctly by amending the tariff when it discovered the error and, if so, when this tariff amendment should come into force.
7. The company states that a contract between the company and the customer was signed in January 2017. I note that the company has provided a copy of a document entitled "Contract agreement". This states that it is for the provision of water and/or sewerage services. It also includes the term "Commercial offer – Flexible product". The document is dated 6 January 2017 and is signed on behalf of the company. Under the heading "Our offer", the document states that the company will provide water and sewerage services to the customer. It also states that the company periodically reviews its tariffs and that it will inform the customer of any changes before they take effect. Under the heading "Contract term", the document states that the company will start to supply services to the customer from 1 April 2017, which it notes as being the expected date for the opening of the non-household water retail market. The document also includes various tables of charges, including a table that shows a unit consumption charge for metered supplies of £1.4807 per cubic metre.
8. The customer notes that the copy of the agreement includes a statement that it would come into effect when signed by both parties. The customer also notes that he has not signed the agreement. The customer states that he had not seen the contract agreement before its inclusion in the documents sent to the CCW. The customer states that he had not agreed to the tariff included in the contract agreement and notes that the billing frequency and payment methods are not correct. The customer considers that the contract is not valid.

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9. The customer submits that the tariff of 132.91 ppm that was charged in invoices from 1 April 2017 was the same as the tariff that had been agreed in a telephone call made prior to 1 April 2017. I have not seen evidence of that call or details of any terms agreed during the call.
10. I acknowledge that the copy of the contract agreement provided is signed on behalf of the company and that there is no signature from the customer. I also acknowledge that the billing frequency and payment methods set out in the contract agreement are inconsistent with the process the company has followed. With respect to the billing frequency, I note that on 13 September 2017, the company sent a letter to the customer advising of an amendment to the billing periods.
11. The contract agreement does state that it comes into effect when it has been signed by both parties. Whilst the copy of the contract agreement has not been signed by the customer, a contract does not necessarily have to be signed to be binding. However, in order for a contract to be in valid, an offer made by one party must be accepted by the other party. In this case, the offer made by the company is the document headed "Contract agreement". The document refers to it being a commercial offer and details the services to be provided under the section headed "Our offer". In order for this offer to become a valid contract, it required acceptance by the customer. The customer has stated that he had not agreed to the tariffs in the offer. The customer's position is therefore that the offer was not accepted. The company has not provided evidence to show that its offer, as set out in the document headed "Contract agreement", was accepted by the customer. I therefore find the document headed "Contract agreement" cannot be regarded as the agreed contract between the company and the customer.
12. Despite the above, it is evident that the company has provided services to the customer and the customer has accepted those services by paying invoices received from the company. The company has therefore been fulfilling the obligations described in the offer made in the contract agreement. The customer has also fulfilled his obligations by paying the company for services provided, at least in part. An agreement therefore exists between the company and the customer. What is not clear are the precise terms of the agreement between the parties, in particular, the unit tariff.
13. From 1 April 2017, the company invoiced the customer at a tariff of 132.91 ppm and the customer paid invoices based on that tariff. The company continued to invoice the customer at the same tariff from 1 April 2017 until 19 March 2018. Whilst I acknowledge that the company

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has stated that this was an error, in the absence of any evidence to the contrary, it is reasonable to conclude that the tariff of 132.91 ppm, as invoiced by the company and paid by the customer, became the tariff accepted by the customer for the service. I therefore find that the unit tariff at the commencement of the contract was 132.91 ppm.

14. Although the company states it had made an error, it did not explain this to the customer or advise the customer that the tariff would be changed. The contract agreement does allow the company to review its tariffs periodically. It also requires the company to inform the customer of any changes before they take effect. Since the company considers it was performing in accordance with the contract agreement, it was obliged to notify the customer before changing the tariff, whether the change was due to the company discovering an error or any other reason. From the evidence, no notification of a tariff change was issued to the customer. The customer became aware that the tariff had changed when he received amended invoices.
15. The notes provided by the company state that on 30 July 2018 the customer telephoned the company. The notes show the customer had asked why he had been rebilled for invoices already paid and that the company would look into the matter. The company's notes show a further call was made by the customer on 30 October 2018 and that the issue of rebilling was still outstanding. In its response to questions from the CCW, the company acknowledges that the customer raised the issue of the tariff in his complaint in July 2018. The company notes that this was never answered and apologised for this.
16. I conclude that whilst the company is entitled to make a change to the tariff, whether that change was a result of an error or any other reason, such change could only take effect from a time after the company notified the customer, or that it can be deemed that the company notified the customer, that it was changing the tariff. I have seen no evidence that the company issued any notification to the customer of a change in tariff. I therefore find that the tariff of 132.91 ppm should remain in force until the customer was notified of any change, or could be deemed to have been notified of the change.
17. The customer states that during the period from March 2018 to June 2019 he received no explanation from the company concerning the reasons for amending bills already paid. The customer raised a query in July 2018 concerning the tariff on his invoices. The customer repeated this query in subsequent calls to the company.

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18. The company acknowledges that it had not responded to the customer's queries concerning the tariff. The customer could not reasonably have been aware that a change in tariff was intended by the company or that a change was due to an error. I conclude that the fact the company had actually intended to change the tariff was only likely to have become known to the customer around June 2019. I therefore find that the notification of a change in tariff cannot be deemed to have been provided to the customer until June 2019.
19. I direct that the company shall apply the tariff of 132.91 ppm to the customer's account from 1 April 2017 until 31 May 2019. I direct that the company shall apply the tariff of 148.06 ppm to the customer's account from 1 June 2019 onwards, or until such time as the company correctly notifies the customer of any further change to the tariff. I further direct that the company shall reissue its invoices to the customer from 1 April 2017 to the most recent invoice to reflect the tariffs as directed above. The customer shall be liable to pay the amounts due in accordance with the amended invoices.
20. The company has noted that it has made a payment of £20.00 in respect of the delay in responding to the customer's complaint. I am satisfied that the company has paid the customer in accordance with the GSS in respect of its failure to issue a substantive response to the customer's complaint in the required timescales and I make no further direction in this matter.
21. The customer states that the company has charged a late payment fee of £290.00 plus £30.00 VAT and applied this on 3 August 2019. The customer seeks reimbursement of that fee while accounts were in dispute.
22. I have seen that a late payment fee of £140.00 has been added to the customer's invoice dated 3 August 2019. The invoice shows this is made up of a late payment fee of £70.00 on 9 July 2019 and a late payment fee of £70.00 on 8 August 2019. I have also seen a charge of £150.00 + VAT has been added to the customer's invoice dated 11 September 2019. This charge is shown as "Additional DCA administration fee".
23. I note that the customer has stated that he has not paid the amended invoices received or the subsequent invoices charged at the higher tariff. Whilst the customer has the right to dispute part or all of an invoice, the customer is still required to pay any amount not disputed within the required timescales. The customer is disputing the charges made at the higher tariff of 148.06 ppm. The customer has accepted payments at the lower tariff of 132.91 ppm. I acknowledge

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the customer has disputed the higher tariff. However, the customer has continued to receive a service and therefore should still have made payments calculated in accordance with the tariff he was not disputing.

24. Section A1.4.4. of the company's published Scheme of Charges states that the company may require the customer to pay interest on overdue accounts and those interest rates would be calculated at a rate which will be published on the company's web site. Section A1.4.4. also states that an administration charge may be made for payments not received on time and refers to section B6. The customer has withheld payments that include amounts not disputed. The company is therefore entitled to charge interest on amounts not disputed where payment of those amounts is overdue.
25. Overdue payments are covered by terms published by the company. I am not able to direct that late payment charges are refunded where those charges have been applied in accordance with the company's terms. However, I direct that any amounts the company determines should be added for late payments shall be calculated in accordance with the company's published terms.
26. The customer has received a letter received from a debt collection agency. A copy of that letter dated 23 September 2019 has been provided, together with a copy of a document from the company, dated 2 September 2019, headed "Unpaid water bill – debt collection agency". The customer has requested that for certain matters in relation to the letter to be taken into consideration in this case.
27. The company's processes for recovery of overdue payments are a matter of policy for the company. I have already noted above that payments withheld by the customer include amounts not in dispute and therefore certain payments may be regarded by the company as overdue. In accordance with Rule 3.5 of the Water Redress Scheme (WATRS) Rules, a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. I am therefore unable to make any direction in this regard.
28. I have noted, however, that the letter from the debt collection agency shows a total amount due of £3,439.38, made up of an original balance of £2,733.78, for a supply period ending 21 May 2019, plus a fee of £1,051.20. The invoice to the customer dated 23 May 2019, which relates

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to the same end date, shows a balance due of £3,003.41. I also note that the invoice to the customer dated 11 September 2019 shows a total balance due of £3,439.38. This includes the additional DCA administration fee. There is clearly an inconsistency between the breakdown of amounts on invoices and the breakdown of amounts on the letter from the debt collection agency. This inconsistency does not, however, appear to change the total amount the company states is due from the customer. The final amount due does, however, require adjustment in accordance with other directions in this decision and I direct that the company shall make the required adjustments.

29. The customer has also complained that a leakage allowance application had been rejected by the company. The customer seeks that the company challenges the wholesaler's decision concerning his leakage allowance application.
30. As I have referred to above, under Rule 3.5 of the Water Redress Scheme (WATRS) Rules, a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. In relation to the customer's complaint I am therefore unable to comment on the policy in relation to the granting of leakage allowances. In addition, leakage allowances are determined by the wholesaler. I can therefore only examine whether the company has acted appropriately as an intermediary between the customer and the wholesaler in regard to the customer's application for a leakage allowance.
31. On 5 July 2018, the customer contacted the company concerning high usage and was provided with a form to submit a claim for a leakage allowance.
32. The company states that it received and submitted the customer's claim for a leakage allowance to the wholesaler on or around 13 November 2018. The company reports that on 28 November 2018 the wholesaler had queried certain dates on the leakage allowance application and the company clarified the matter on the same date. The company states that on 23 January 2019 the wholesaler responded that no leakage allowance would be considered as the consumption during the leak was less than the consumption following the repair.
33. The company notes that on 4 March 2019 the matter was raised again with the wholesaler, addressing the points the wholesaler had made. The company advised that the wholesaler responded on 20 March 2019 advising a leakage allowance could not be given as the customer

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had been granted a burst allowance in 2010. The wholesaler noted that according to its policy it would only give one leakage allowance per customer whilst the customer occupied a property.

34. I note that the customer has stated that the leak in 2010 was the result of a third party action causing criminal damage and that the wholesaler, then his water supplier, advised him to treat this as a leak. The customer also states that he was not advised at the time that the policy only allowed for one leakage allowance per customer per property. I have not seen any evidence relating to the leak in 2010.
35. The company has not provided a copy of its policy in relation to leakage allowances. However, I have examined the company's Scheme of Charges for 2018/2019 as published on its web site. Section A6.1 refers to leakage allowances and states that only one leakage allowance per NHH customer per property may be claimed. It also states, "An additional non-return to sewer allowance may be available provided the occupier can prove to the wholesaler's satisfaction that the water from the leak has not returned to the public sewer."
36. I acknowledge that the policy in relation to leakage allowances does state that only one leakage allowance per NHH per property may be claimed and that this was the advice provided to the customer. I conclude that the policy in relation to leakage allowances has been followed. Any additional allowance is at the discretion of the wholesaler.
37. Whilst there appear to have been some delays in respect of the application for the leakage allowance, including questions around dates and increased consumption, such delays would not have affected the final outcome. I am satisfied that the company has taken adequate steps to submit and follow up the customer's claim for a leakage allowance with the wholesaler. I make no direction in regard to this matter.
38. The customer seeks compensation from the company in the amount of £1,920.00 in respect of time dealing with the company and in preparing the referral to WATRS. The customer seeks further compensation in the amount of £500.00 in respect of personal distress and inconvenience.
39. Compensation may be considered if the company has failed to provide its services to the expected standard and if, as a result of those failures, the customer has suffered some loss or detriment.

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40. The company has acknowledged that it failed to address the customer's complaint in regard to the tariff change. The customer raised this matter on various occasions with the company from July 2018. However, the company offered no explanation for the reason the tariff had changed until June 2019.
41. I can see that the customer has had to spend time in seeking a resolution to his queries and complaints. I also acknowledge that the customer is likely to have suffered a degree of personal distress as a result of the company's failure to offer any explanation for changing the tariff. I am satisfied that the customer is entitled to compensation for the stress and inconvenience experienced.
42. The customer submits he has lost 40 hours from his business in dealing with the matter. I have not seen evidence supporting that claim and I find the total amount claimed to be disproportionate to the failures proven. I consider the sum of £250.00 to be a fair and reasonable level of compensation. I therefore direct that the company shall pay the sum of £250.00 to the customer.

Outcome

The company shall take the following action.

The company shall withdraw invoices between 1 April 2017 and 31 May 2019 and reissue those invoices to the customer based on the original tariff charged of 132.91 pence per cubic metre.

The company shall pay the customer compensation in the sum of £250.00. This may be applied as a credit to the customer's outstanding account balance.

What happens next?

- This adjudication is final and cannot be appealed or amended.
- The Customer must reply by 3 December 2019 to accept or reject this decision.
- When the Customer notifies WATRS of acceptance or rejection of the decision, the Company will be notified of this. The case will then be closed.

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- If the Customer does not inform WATRS of his acceptance or rejection of the decision by the date required, this will be taken as a rejection of the decision.
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Signed

A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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