

WATRS

Water Redress Scheme

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DECISION

by **Claire Andrews, Barrister, FCI Arb**

An adjudicator appointed by WATRS

under the Water Redress Scheme

Decision date: 10 May 2016

Adjudication Reference: WAT/ /0245

Between [REDACTED]¹ and [REDACTED]²

- The claim is made by the customer [REDACTED], against a water and sewerage company, [REDACTED]
 - The claim dated 7 April 2016 is for the company to refund the customer in the sum of £2,867.00 billed incorrectly for surface water drainage charges.
 - The position of the company is explained in its defence dated 28 April 2016 which has been disputed by the customer in his reply dated 1 May 2016.
 - The customer's claim is that the company has incorrectly charged him for surface water drainage and has given an insufficient rebate.
 - The company's position is that it is not liable for this claim.
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Decision

1. The claim does not succeed.

Main issues

2. I consider that the main issues in this adjudication are:
 - a. Whether the company has failed to provide its services to the standard to be reasonably expected.
 - b. Whether the reasons given by the customer are sufficient to justify the remedies sought.

Background information

¹ Customer's address for correspondence: [REDACTED]

² Company's address for correspondence [REDACTED]

3. In order to succeed in a claim against the company the customer must prove 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 proved, the company will not be liable.
4. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

5. The customer submits that on 23 November 2015, he was informed that as his surface water does not run into the public sewerage system, he was not liable for surface water drainage charges. He was given a refund of £111.23 for the period since 1 April 2014 and a reduction from his bill going forward. The company has explained on 30 December 2015 that since 1984, it has offered its customer the opportunity to claim a discount from the sewerage charge for untreated surface water and that as he has not done so, he is not eligible for further backdated discount. He considers the company's response to be unacceptable and he seeks a refund of charges back to 1985.

In his comments in reply to the company's defence, the customer explains the calculation of his claim for £2,867.00 and repeats a reference to Water Redress Scheme – Case Studies – Case 6.

6. The company asserts that the amount attributable to surface water which is in dispute is £1,179.89. It explains that it investigated the customer's complaint in November 2015 and discovered that the surface water at his home did not drain into the company's sewerage system. The customer was therefore entitled to claim a discount from his bill. The separation of surface water from other drainage charges had been introduced in 1984 as a change to the company's billing practices and it was one of the first water companies to introduce this change. This had been explained on the back of each bill and, until 2010, also in "Source magazine" which was supplied with the bill. The customer did not apply for this discount. When the company received the customer's claim on 8 October 2015, the company investigated and backdated its discount until 1 April 2014 in accordance with its published policy. When the Consumer Council for Water had taken up the customer's complaint, it had inquired, in accordance with Ofwat guidance whether the company should have been aware that in the customer's area, the surface water did not drain into the sewerage.. In accordance with the company's policies, the company pro-actively investigates when successful complaints are received from 20% of the homes. In the customer's case, only 3.9% of the homes had made a

complaint and so there had been no proactive investigation. There were no records of private drainage arrangements when the company acquired its business on privatization in 1989 and the company had neither the legal resources nor the legal powers necessary to investigate each individual address. The company was not therefore reasonably aware that the surface water did not run into mains drainage at the customer's address. The company confirms that it is required to bill in accordance with its Scheme of Charges as required by Ofwat.

Adjudicator's findings and reasons

7. I find that:

- a. It is common ground that the company discovered in November 2015 that the surface water at the customer's address did not drain into the public sewer. He was therefore entitled to a rebate. The issue is whether he is entitled to a rebate until 1 April 2014, as the company argues, or whether he is entitled to a rebate since 1985, as he argues.
- b. Under section 142 of the Water Industry Act 1991, the company has the power to fix, demand and recover charges in accordance with its Charges Scheme from any persons to whom services are provided. Under section 143 of the Act the Scheme should meet the principles and guidelines set by Ofwat.
- c. The customer has not suggested that the Scheme of Charges is not in compliance with sections 142 and 143 of the Water Industry Act 1991 and I therefore find that it has been made lawfully. Rather the customer complains that the company has billed him incorrectly because the charges relate to a service with which he was not supplied. He therefore argues that the company's decision to limit his rebate for surface water to the period from 1 April 2014 is incorrect.
- d. The Scheme of Charges applicable since April 2015 for both metered and unmetered supplies has been provided in evidence by the company. As the customer's claim was made in October 2015, this Scheme of Charges applies. The Scheme fixes the charges for the services or facilities provided in connection with, among other matters, the provision of sewerage. Under it, the company's charges relate to the drainage of surface water into the company's sewerage system unless the customer can show that the surface water at his premises does not drain into the sewerage. In relation to surface water for domestic customers the explanatory information states:

Surface water drainage

This covers the cost of draining rainwater from your property. If no rainwater from your property drains to the public sewer then you will not have to pay this charge.

.....

If you can show that your property does not have any surface water draining to the public sewer, you will not have to pay surface water drainage charges. If you pay someone else for part of your surface water drainage (for example British Waterways), you may be entitled to claim a reduction from us. Get in touch with us to find out more – or get an application form – using the contact details on page 18.

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We will normally backdate this to 1 April 2014.

- e. This is reflected in clause B1.4 of the scheme of charges which states:
- (vi) Surface water drainage charges form part of sewerage charges and remain payable unless the customer can demonstrate to our satisfaction that there is no direct or indirect surface water drainage to a public sewer from the premises or from any common area next to that premises. Where the customer can demonstrate this to our satisfaction, the surface water drainage charge will cease to be payable from:*
- (a) In the cases of premises occupied for the first time prior to 1 April 2014, 1 April 2014 surface water drainage charges for the period prior to this date will be deemed to be correct and will remain payable irrespective of the fact that this service may not have been provided.*
- f. B.3.1 of the scheme of charges for metered supplies states:
- (xv) Where the customer makes a claim on the appropriate form and can satisfy us that no surface water or groundwater drains directly or indirectly from the premises or any common area next to those premises to a public sewer, the surface water drainage charge shall cease to be payable from:*
- a. In the case of premises occupied for the first time prior to 1 April 2014, 1 April 2014. Surface water drainage charges prior to this date will normally be deemed to be correct and will remain payable irrespective of the fact that this service may not have been provided;*
- g. It therefore follows both that (1) the burden of establishing that the customer was entitled to the exemption for surface water was placed on the customer and (2) that if he did establish the exemption from charges, the rebate could only be backdated to April 2014.
- h. As the Scheme of Charges has been lawfully made and has been applied, I find that the company has not failed to provide its services to the standard one would reasonably expect.

- i. The company in particular has made reference to the Consumer Council for Water's questions to the company as to its compliance with Ofwat's Guidance in relation to situations where the company should reasonably have known that it was not providing surface water draining to the customer's property. No copy of that Guidance has been submitted to the adjudicator. The company has, however, explained why it was unaware of the private drainage arrangements for the customer and has, in particular, made reference to its "cluster policy" under which it would not investigate proactively unless 20% of the relevant households showed that the surface water did not drain into the sewerage system. The customer has not put forward any reasons why the application of that policy was inappropriate nor challenged the company's assertion that only 3.9% of the customer's street had established a claim. There is nothing to suggest, therefore, that the company was under a duty to investigate the surface water drainage at customer's property at any point before his claim in October 2015.

- j. It therefore follows that in this respect the customer has not shown that the company failed to provide its services to the standard one would reasonably expect.

- k. It therefore also follows that the customer is not entitled to a backdated rebate beyond 1 April 2014 and he is not entitled to redress.

- l. I should add that although the customer seeks to rely upon a case study published by WATRS, no case sets a precedent and I can only consider the facts and evidence before me. In this case, I find that the customer has not established an entitlement to a refund to any date earlier than 1 April 2014.

Conclusion

- 8. My conclusion on the main issues is that:
 - a. The company has not failed to provide its services to the standard to be reasonably expected.
 - b. The reasons given by the customer are not sufficient to justify the claim.

- 9. Therefore, I conclude that the claim does not succeed.

A handwritten signature in black ink, appearing to read "Claire Andrews". The signature is written in a cursive style with a large initial 'C' and 'A'.

Claire Andrews
Adjudicator