

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0703

Date of Decision: 29 March 2018

Complaint

The customer states that the company has wrongly charged him for surface water drainage since 2007 and has only back-dated payments to 1 April 2014. He seeks a refund of payments for surface water from February 2007, an apology, compensation of £1,331.81 comprising £1,081.81 by way of a refund and £250.00 in respect of poor customer service; and interest at 8% per annum.

Defence

The company contends that it is not liable to refund payments made before 1 April 2014. The customer applied for a rebate in November 2017 and the company has applied its Scheme of Charges and its policies correctly. It has supplied its services to the standard that would be reasonably expected of it.

Findings

The company acted in accordance with its legal obligations in providing the customer with a rebate back to 1 April 2014 and has acted in accordance with its Scheme of Charges. It has therefore supplied its services to the standard that would reasonably be expected by an average person.

Outcome

The company does not need to take any further action.

The customer must reply by 29 April 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 29 March 2018

Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- During the construction of an extension to his property in October 2017 the customer became aware that the surface water did not drain to the company's sewer, but was discharging to an adjacent field ditch. He notified the company using a rebate claim form but received only a partial reimbursement of the monies paid for the cost of surface water drainage. .
- The property is located in a rural area with several adjacent properties that also do not drain to the main sewerage. The plan in the possession of the company shows no adjacent mains sewers so the company was on notice that surface water on the customer's property did not drain into its assets.
- Alternatively, the customer suggests that the company had no basis upon which speculatively to invoice for a service that it was not providing.
- Several adjacent properties do not drain to the main sewer and as such do not pay the company for this service. Contrary to its assertion, the company has failed to apply its cluster policy to the customer's property.
- The existence of a policy is not a legal justification for refusing to backdate the payment.
- The customer rejects the company's submission that a partial refund is the limit of its obligations in law and seeks:
 - A refund of payments for surface water from February 2007 to the present;
 - An apology;
 - Compensation of £1,331.81 comprising £1,081.81 by way of a refund and £250.00 in respect of poor customer service; and
 - Interest at 8% per annum.

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The company's response is that:

- Before 1984 the company did not make a distinction between properties with soakaways and those without so that all customers were charged for all combined services, including used water, surface water and highway drainage even though the surface water from some of the properties which had been charged were not treated by the company.
- Since April 1984, the company's Scheme of Charges, now published in accordance with section 143 of the Water Industry Act 1991, permits a customer to make an application to be charged at a lower rate which does not include the element of charge for surface water drainage. A customer is required to satisfy the company as to the eligibility of his property for removal of the surface water charge.
- The details of the Scheme in relation to surface water charges have been publicised on the company's bills and in literature included with bills. The customer was on notice since 2007 that he could make an application if appropriate.
- The customer made an application in November 2017 and the company has cancelled the surface water drainage charge from 1 April 2014 in accordance with its Scheme of Charges and has reimbursed the customer accordingly.
- The company investigates proactively only if it becomes aware that more than 20% of a street is not connected for the service. This is known as the cluster policy and it is acceptable to Ofwat. In the customer's case, the occupants of his street paid the surface water drainage charge and the cluster policy was not triggered.
- The company has acted in line with its published policy only to backdate to 1 April 2014. The customer has benefited from a refund to that date and the company has provided its services to the standard that would reasonably be expected of it.

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.

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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?

1. It is common ground that surface water does not drain from the customer's property into the company's assets. The customer made an application for a reduction of his water charges to exclude surface water drainage in November 2017. This has been applied, together with a refund, backdated to 1 April 2014.
2. The dispute between the parties is whether the customer is entitled to further reimbursement because the charge paid by the customer has included an element relating to the removal of surface water since the customer became resident at the property in 2007. The customer argues that he is entitled to a refund because:
 - a. the company has "speculatively" raised a charge for a service that it did not provide;
 - b. The information available to the company would suggest that surface water would not drain into its assets;
 - c. The company has not followed its cluster policy because many neighbouring properties do not pay for surface water drainage; and
 - d. The company is applying a policy and not the law.

The company, on the other hand, states that historically, there was no distinction between charges for surface water drainage and other wastewater charges: these were payable by all customers irrespective of whether the surface water at an individual property drained into the sewerage and therefore the charge raised against the customer was not speculative. The company argues that although this policy has changed since 1984, it is dependent upon an application being made or the company discovering, through proactive investigations triggered by its cluster policy, that surface water does not drain into the company's assets. In this case, the customer's neighbours pay for surface water drainage.

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3. I find that the company is a statutory undertaker and is entitled to impose charges on customers in accordance with the provisions of the Water Industry Act 1991 and as set out in its Scheme of Charges published in accordance with section 143 of that Act. The company has submitted an extract from its Charges Scheme for 2017-2018 which deals with surface water drainage charges. This states at page 12:

My property is not connected for surface water drainage.

Am I entitled to pay lower charges?

Can I have these lower charges backdated to previous years?

If your property has no connection at all to the public sewer for rainwater, you will only pay for used water.

For unmetered customers we will reduce your sewerage charge as set out in section C2.

For metered customers we will cancel the rateable value, property type or site area-based surface water drainage charge.

We will normally backdate this to 1 April 2014. However, for properties occupied for the first time on or after 1 April 2014 we will backdate this to the date that you occupied the property.

This is explained in more detail on page 22 of the Scheme which states:

(vii) 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.

(b) In the case of premises occupied for the first time on or after 1 April 2014, the date that the customer making the application occupied the premises.

Speculative charge

4. As to whether the charge was speculative, I find that the company is entitled to calculate its charges in accordance with its obligations under the Water Industry Act 1991 which it has published in its Scheme of Charges. These make quite clear that the company will only backdate its charges to 1 April 2014 and that a customer must satisfy the company that the surface water does not drain into the company's assets, not the reverse. The company has

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explained that in respect of surface water, it was common practice prior to 2001 for a charge for surface water to form part of the calculation of the waste water bill. Ofwat has now required all companies to reduce charges to those customers who can prove that they did not use the company's services in respect of surface water but there is no evidence before me that Ofwat has stipulated that companies shall refund the customer for all preceding payments. It is inevitably the case that a charge which is to apply for the common good to a large number of people may not reflect the manner in which an individual customer makes use of those services and I find that in making a composite charge in the past, the company has provided its services to the customer to the standard to be reasonably expected.

5. The company further explains that the bills which have been sent to the customer made reference to the reduction of its charges available to him if surface water does not enter the company's assets from his property. The company has supported this contention by submitting a copy of the customer's first bill which explains the customer's entitlement to apply for a reduction on the reverse of the bill under a bold heading "surface water drainage". I find that this was sufficient to draw to the customer's attention that he had a right to apply. The company also says that it provides additional information about this and, as noted above, it is stated in the Scheme of Charges. These contentions have not been denied by the customer. I find that the company has taken reasonable steps to inform the customer of his entitlement and has not fallen short of the standard that would reasonably be expected of a water company.

Information available to the company

6. The customer suggests that the company should have known that the surface water did not enter the sewer because the plan held by the company of the location of the sewers showed that these were at some distance from his property. The company on the other hand, says that at the time it acquired responsibility for the provision of sewerage, plans of the location of pipes were poor and did not usually include private sewers. The company would therefore not have known without an investigation of each individual property whether the surface water ran via a private sewer into the main drain or not. The company argues that it would have been unduly onerous for it to have carried out an investigation in respect of each individual property and would in any event have required each customer's permission. On the other hand, it argues that it was reasonable to expect a customer to produce evidence as to what occurred in respect of his own home.

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7. I find that the fact that the plan held by the company shows that the customer's home was approximately 100 metres away from the marked sewer would not have put the company on notice that there was no liability for surface water drainage at the customer's address. I find that it is common for links to be made from developments of housing by a private sewer which leads into the main sewer and there is no reason to believe that in 1989 the company would or should have known whether this carried surface water or not, nor would it have been reasonable to require the company to have undertaken an investigation of all its properties, which would have been a task of disproportionate magnitude. I find that the customer has not shown that the company failed to have proper regard to the plans and has not shown that the company failed to supply its services to the standard that would reasonably be expected of it.

Cluster policy

8. The company explains that since 1 April 2007, Ofwat has asked water and sewerage companies to investigate proactively possible non connections for surface water drainage if they are aware that more than 20% of a street is not connected for the service. It explains that pro-active visits are made if either the company is advised by a customer that the whole street/estate is not connected, or if an inspector is asked to check connections on receipt of a surface water drainage claim and the company has already confirmed that up to 20% of the street is not connected. The company explained the policy to the customer on 27 December 2017 and checked the other properties which are all billed for surface water drainage, so concluding that a cluster visit would not be necessary. On 14 February 2018 the company was asked by the Consumer Council for Water to check other properties under the same postal code and confirmed that the other addresses are being billed for surface water drainage, so a cluster visit would not have been undertaken in the past.
9. Although the customer submits that some of his neighbours do not pay surface water drainage charges, he has not submitted evidence of this. I find that he has not therefore shown that 20% of his street is not connected for surface water purposes and it follows that he has not shown that the company has failed to follow its own policy.
10. In this respect also I therefore conclude that the company has acted in the way that would reasonably be expected of it and has explained its policy and its compliance to the customer and to the Consumer Council for Water. I find that the customer does not succeed in this aspect of his claim.

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Policy not law

11. As for the customer's contention that the company should depart from its policy because the policy does not reflect the law, I find that, as indicated above, the company is governed by sections 142 to 144 of the Water Industry Act 1991 which are set out in the defence submitted by the company in this adjudication. These sections provide that the company shall have power to decide on its scheme of charges and may require customers to make payments under the scheme which has been set. Ofwat requires companies to publish their Schemes of Charges and the relevant provisions are shown above. I find that compliance with its Scheme of Charges is reasonably to be expected of a water and sewerage company and it follows that I find that the customer has not shown that the company has failed to provide its services to the standard which would be expected by an average customer.

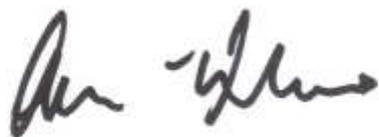
12. Accordingly, I find that the customer's claim for redress is not able to succeed.

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 29 April 2018 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.



Claire Andrews, FCI Arb, Barrister, Adjudicator

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