

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0840

Date of Decision: 10 August 2018

Complaint

The customer's claim is that where the company has reimbursed wrongfully charged surface water drainage charges, the company should pay interest on the sum. The customer is seeking the company provide an apology for incorrectly charging surface water charges from October 2011 and pay interest at 8% from 1 October 2011 to 9 March 2018 on the reimbursed surface water drainage charge.

Defence

The company submits it was for the customer to inform the company of any dispute regarding the surface water drainage charge. As the customer did not contact the company until March 2017, the reimbursement of charges would only apply from April 2014 in accordance with its policy. However, the company reimbursed the customer from October 2011 as a gesture of goodwill only and accordingly it cannot be not liable for any interest on the sum reimbursed. The company has not made any further offers of settlement.

Findings

I am satisfied the company failed to provide its services to the customer to the standard to be reasonably expected with regard to surface water drainage charges and I find that interest is due on the sum reimbursed. I therefore direct the company to pay the sum of £114.06 and provide an apology to the customer for this failure.

Outcome

The company needs to take the following further action:

I direct the company should pay £114.06 and provide an apology to the customer.

- The customer must reply by 10 September 2018 to accept or reject this decision.

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Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The customer's claim is that the company wrongfully charged him in respect of his surface water drainage charges from 2011 and, although it has refunded him, as the charges should have not been levied it should pay interest at 8% on these reimbursed surface water charges.
- The customer further states the company was aware, since 2008, that his property was not connected to the company's surface water assets and accordingly he should have not been charged at all. Therefore, the reimbursed surface water charges should have been made on the basis that the company wrongfully charged the customer, not that the charges were reimbursed on a goodwill basis.
- The customer is seeking for the company to: pay interest on the reimbursed surface water charges from October 2011 to 9 March 2018 and, provide an apology with regards to wrongfully charging surface water charges since October 2011.

The company's response is that:

- The company's position is the surface water charges were reimbursed on a goodwill basis.
- It was for the customer to inform the company of any dispute regarding the surface water drainage charge and, as the customer did not contact the company until March 2017, the reimbursement of charges would only apply from 1 April 2014, in accordance with the wholesaler's policy regarding surface water drains. However, the company reimbursed the customer from October 2011 as a gesture of goodwill only and accordingly it cannot be not liable for any interest on the sum reimbursed.

How is a WATRS decision reached?

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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 dispute centres on whether the customer is entitled to interest where the company has reimbursed surface water charges. The company is required to meet the standards set out in OFWAT's Charges Scheme Rules and the Water Industry Act 1991.
2. From the evidence put forward by the customer and the company, I understand that on 24 March 2017 the customer contacted the company informing them that his property was not connected to the public sewers for surface water drain charge. On or about 29 July 2017, the company sent a request to [] Wholesale for them to arrange a survey to determine whether the customer's property was or was not connected to the public sewers for surface water drain charge. The evidence shows the survey report, dated 2017, states the customer's property was not connected to the public sewers for the surface water drain charge.
3. After various discussions between the parties, including production of a report by the customer dated 2008, showing the property had never connected to the public sewers for surface water drainage, it was agreed the customer would be reimbursed from October 2011. The sum of £713.78 was paid to the customer on 9 March 2018. However, as can be seen from the company's defence document, this reimbursement was stated as on a goodwill basis rather on the basis the company incorrectly applied surface water drain charges from October 2011.

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4. As evidenced by the CCWater documents, within the various correspondence the company was made aware of a report dated 2008 showing the customer's property was not connected to the public sewers for surface water drain charge. The company within its defence states that the company and its wholesaler will only backdate to 1 April 2014 which is line with the wholesaler's policy for surface water drains. However, as the customer pointed out within his reply to the defence, in my view the company should have been aware due to the 2008 report that from the start of the customer's occupancy of the property in October 2011 the property was not connected to the public sewers for surface water drain charge. Accordingly, the charges should have not been levied in the first place and the policy for backdating the charges should not apply. Therefore, I find the reimbursement of the surface water charges should have been on the basis that the charges were incorrectly applied and not on a goodwill basis.
5. As I have found the surface water charges were incorrectly applied I find the company should pay interest on the reimbursed sum of £713.78 from October 2011 to the date of this decision.
6. The purpose of an award of interest is to compensate the customer for loss of the opportunity to use money to which he is entitled and, at the same time, to prevent the company from being unjustly enriched as a consequence of wrongfully withholding money that did not belong to it. Under WATRS Rule 6.7 where in a dispute relating to incorrectly levied charges a customer requests a payment of interest, the adjudicator shall award interest at a rate equivalent to the rate applicable under section 69 of the County Court Act 1984 from the date when payment of the incorrect sum was made until the date of the decision. In this instance payment has already been made on 9 March 2018, so interest should only run until the date payment was made, not until the date of the decision. With regard to the rate of interest the customer has requested a interest rate of 8% whilst the company has not made a representation in this respect. Under the principles set out in section 69 of the County Court Act 1984 it is for the adjudicator to award interest at such a rate and for such a period as he deems fit, in this instance as the current Bank of England base rate is 0.75% a more appropriate and realistic rate would be 3% above base rate, so 3.75%.
7. It is unclear from the evidence which part of the sum of £713.78 applies to each year, so I find the appropriate method to calculate the interest due is to divide £713.78 by 6.438, which is the period between October 2011 and 9 March 2018. Then calculate the sum of the simple interest for each year to date as shown below;

Period	Capital Sum	Interest 3.75%
October 2011 to October 2012	£110.85	£4.16
October 2012 to October 2013	£221.71	£8.31
October 2013 to October 2014	£332.56	£12.47
October 2014 to October 2015	£443.42	£16.63
October 2015 to October 2016	£554.27	£20.79
October 2016 to October 2017	£665.13	£24.94
October 2017 to 07 August 2018	£713.78	£26.77
	Total Interest Due:	£114.06

8. As calculated above, I find the company should pay the customer the sum of £114.06 in respect of interest.
9. The customer has requested an apology from the company. Having carefully considered the various correspondence put forward in evidence, I am satisfied the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person as explained above. Therefore, I find the company is required to provide an apology with regard to the basis of the reimbursement of the surface water charges.
10. In light of the above, I find the customer has proven the company failed to provide its services to the standard to be reasonably expected with regard to the reimbursement of the surface water charges and interest to be applied to such. I therefore direct the company to pay the sum of £114.06 and provide an apology to the customer for this failure.

Outcome

The company needs to take the following further action:

I direct the company should pay £114.06 and provide an apology to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 September 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my

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decision. If the company does not do what I have directed within this time limit, you should let WATRS know.

- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



**Mark Ledger FCI Arb
Adjudicator**