

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0864

Date of Decision: 6 November 2018

#### Complaint

The customer complains that the company should have been aware that surface water at her home did not drain into the public sewer and it had given incorrect information in searches in 2002. She claims that when she made a claim for a rebate in 2018, this should have been backdated to 2002 and not merely to 1 April 2014. She claims a rebate of £1,179.00.

#### Defence

The company says that it was unaware of the arrangements relating to surface water drainage at the customer's home; it had taken steps to notify the customer of her right to make a claim for reduction of her bill if her surface water did not drain into the sewer; a rebate has been applied in accordance with its Charges Scheme; the answers to searches were correct as they described the company's state of knowledge and its cluster policy had not triggered an obligation to investigate further. It argues that no further rebate is due.

#### Findings

The adjudicator found that the company has given a rebate in accordance with its Charges Scheme and would not reasonably have been expected to have known that the customer had soakaways at her property. Its answers to searches reflected the state of its records, which was clear from the answers given. The company has therefore supplied its services to the standard that would reasonably be expected of it.

#### Outcome

The company does not need to take any further action.

- **The customer must reply by 4 December 2018 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0864

Date of Decision: 6 November 2018

## Party Details

Customer: [ ]

Company: [ ]

## Case Outline

### **The customer's complaint is that:**

- The customer is seeking a full refund of surface water drainage fees that she has paid without knowing that she had a soakaway.
- The customer explains that in January 2018 she read an article regarding water meters and discovered that the company offers reduced charges if the property has a soakaway. The customer was not sure whether this applied to her or not but the company agreed to carry out a soakaway test. This proved that a soakaway was in place.
- The company has agreed to refund the charge to March 2013 but the customer says that she brought her property in September 2002 and has paid the charge since then. She says that she has also discovered that her neighbours had a refund to 2010.
- The customer seeks a refund to September 2002 in relation to the surface water drainage charge calculated at £1,179.00.

### **The company's response is that:**

- The company says that it has cancelled the surface water drainage charges to 1 April 2014 in line with its policy set out in its Scheme of Charges because it has confirmed that her property is not connected to the public sewer for the removal of surface water drainage. This was discovered on 15 February 2018.
- The company states that it was asked for advice on 24 January 2018 for the first time and an application for rebate was received on 8 February 2018.

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- The company explains says that on privatisation of the water and sewerage market in 1989 it was not aware of the private drainage arrangements affecting individual properties. It argues that an occupier of the property is best placed to know the individual arrangements affecting that address and the onus was therefore placed on the customer to claim a rebate if it is believed that the property was not connected for the surface water charge.
- Details of the company's policy have been shown on bills and via Source magazine, which was included with the bills up to 2010, and also on the company's website.
- The company explains that it has a cluster policy which it has adopted from 2007 onwards and when a claim is successful, the company uses its billing database to check properties under the same postcode. If 20% or more of the properties on a single road are not connected for surface water drainage, the company tries to visit the remaining properties proactively.
- There are sixty-nine properties registered under the postal code shared by the customer. Only three of these had been checked before the customers property was confirmed as not connected and this was less than 5%. For this reason a cluster visit was not carried out in the customer's area.
- The company does not believe that it is legally liable to backdate the rebate.

### 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.

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.

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## How was this decision reached?

1. The customer complains that the company has not been willing to backdate a rebate for surface water drainage at her home to 2002. She states that it was not reasonable for her to read and act on information contained in her bill about the entitlement to a reduction in charges if she was unaware that her property had soakaways installed. The customer refers also to:
  - a. Information contained in conveyancing searches provided by the company in 2002 which suggest that the property was connected to the sewer for surface water drainage purposes. In particular, the searches contain the following question and answer at 1.3:

*Does surface water from the property drains to a public sewer?*

*Yes. The company's records show that the above property is connected to the public surface water sewerage system by virtue of the occupier being required to pay the appropriate sewerage charge to the company.*
  - b. Guidance given by OFWAT that in some cases the company might reasonably be expected to have known that a property was not connected to the sewer for the purposes of surface water drainage.
2. The company explains that since 1984 it has offered a reduced bill for sewerage to customers whose surface water does not drain into the public sewers. It has set out in its Scheme of Charges that, where it is confirmed that all or some of the surface water does not enter the public sewer, the discount applied to the property will be back-dated to 1 April 2014. It explains further that it is not, generally, in a position to know the arrangements for properties built before 1990 because information about surface water drainage was not then made available to the sewerage undertakers. It has, however, explained that where the company is put on notice that more than 20% of properties in a locality are not connected to mains drainage for the purposes of collecting surface water, it carries out investigations under its "cluster policy".
3. I find that, as a starting point, a company would reasonably be expected by an average customer to supply its services in accordance with its Scheme of Charges published in accordance with its obligations under the Water Industry Act 1991. A copy of the relevant part of the Scheme of Charges has been submitted by the company and, having read this extract, I find that the company makes clear that it does not offer a rebate in respect of surface water drainage charges beyond 1 April 2014.

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4. The customer asked for an investigation in 2018 and the company has backdated the rebate in accordance with its Charges Scheme. Although the customer refers to this being March 2013, the documents submitted support the company's contention that the rebate has been backdated to 1 April 2014. Subject to my observations below, therefore, I find that the company would not reasonably be expected by an average customer to apply a different principle in the customer's case.
5. I turn, however, to the specific points raised by the customer in correspondence in her case.

### Searches

6. The first of these concerns searches supplied to the customer via her solicitors were under cover of a letter dated 15 August 2002 to [ ] solicitors. The customer also says that similar answers to searches had been provided in earlier years, presumably to different customers, but I have not seen any documentation supporting that proposition. In 2002, the company stated as follows:

*I have checked the records held within RST water and enclose the findings for your information. If you need to discuss any of the points raised, please contact search of support team...*

7. It is clear, therefore, that the information provided in the ensuing answers related to the state of information held by the company in accordance with its records. It is clear also from the answer to question 1.3 (above) that in order to provide this response, the company's records had been consulted and interpreted. There is no evidence before me to show that the records were incorrectly interpreted and therefore I find that the information given to the customer fairly reflected what the company then understood about the property.
8. I find, therefore, that the property was then believed to be connected for surface water drainage and the company was billing for these as it had not been told by the owner/occupier that there were soakaways in place. If, therefore, the company was not under a duty to investigate the state of drainage for the property (as to which see below), the information given in the searches was not incorrect.

### OFWAT Guidance

9. The customer contends that the company should, having regard to the state of technology and the size of the company, have been in a position to know whether the surface water at her

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property drained into the sewer. She has referred in her correspondence to the guidance given by OFWAT that a company in some circumstances could reasonably be expected to know the correct state of affairs.

10. Notwithstanding the customer's allusion to technology and the size of the company, I note that when the company acquired assets on privatization of the water and sewerage industry, the technology that is now available was not in place. The company has asserted that it did not have information about the drainage arrangements at individual properties and I find that there is no evidence that could lead me to reach a different conclusion. I do not find that an average customer would expect the company to undertake an investigation in respect of each property, even when it was asked to provide answers to searches. I find that this would have been unduly onerous and expensive and it was for the company to decide upon the prioritisation of responsibilities and resources in the delivery of its services.
11. I further find that the cluster policy referred to above is intended to address the concerns of OFWAT that certain circumstances should alert a company to the possibility that a customer might be eligible for lower bills due to the presence of soak-aways. Although the customer refers to the position of a smaller number of neighbours and suggests that the figure of 20% is arbitrary, I note that this policy was agreed in principle as fair by the Consumer Council for Water, representing the interests of customers. I also note that the duty to investigate is triggered by a low percentage of other properties that are not connected.
12. I find overall that the customer has not shown that the company could reasonably have been expected to know that the customer's home was not connected to the sewer for surface water drainage purposes and nor has she shown that the company's cluster policy falls below the standard of service that would reasonably be expected of it.

#### Information on bills

13. I further find that the company has taken reasonable steps to alert a customer to the possibility that the sewerage bill could be reduced if ground water does not flow into the sewer. It can be seen in the bills supplied by the customer that the standard form of the bill contained the following words:

*If you think that surface water or groundwater does not drain off your property into our sewers, then please let us know as your Bill could be lowered. For more information or a claim form please visit us @ [water.co.uk](http://water.co.uk).*

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The company states that this has been the situation since 1984 and there is no evidence to the contrary. I find, therefore, that it is likely that information has been given to the customer on a regular basis since 2002. The company has also referred to information supplied to the customer on its website and in Source magazine, although no copy of the magazine has been put before me.

14. Although I note that the customer says that she would have been unlikely to have paid attention to this information unless she believed that the surface water provisions applied in her case, I find that an average customer would be likely to believe that sufficient information had been given to a customer who might wish to investigate the possibility of a rebate.

### Conclusion

15. It follows from the above that as (I find) the customer's house was built before 1990, was not affected by the cluster policy and there has been no departure from the Charges Scheme, it follows that I find that the customer has not shown that the company fell short of the standard reasonably to be expected of it. In these circumstances, I further find that the customer has not shown that the customer is entitled to redress.

### **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 4 December 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.

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A handwritten signature in black ink, appearing to read 'Claire Andrews', is positioned in the upper left quadrant of the page.

Claire Andrews, Barrister, FCI Arb

**Adjudicator**

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