

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0968

Date of Decision: 5 September 2018

Complaint

The customer's claim is that the company has wrongfully charged surface water drainage charges and the company should pay interest on the money incorrectly taken. The customer is seeking the company reimburse the surface water charges from April 2001, pay interest on the reimbursed surface water drainage charge and provide an apology for incorrectly charging surface water charges.

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 January 2018, the reimbursement of charges would only apply from April 2013 in accordance with its policy and the Limitation Act 1980. The company has, therefore, reimbursed the customer from this date and states it is not liable to reimburse any charges prior to this date. The company has not made any further offers of settlement.

Findings

I am satisfied the company has failed to provide its services to the standard to be reasonably expected with regard to interest on the reimbursed surface water charges. I therefore direct the company to pay interest from 1 April 2013 to 18 January 2018 at 3.75%.

Outcome

The company needs to take the following further action:

The company shall pay interest at from 1 April 2013 to 18 January 2018 at 3.75% on the sum reimbursed.

- The customer must reply by 3 October 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 the company should have been aware, since at least 2000, that his property was not connected to the company's surface water assets and accordingly he should have not been charged at all with regard to surface water drainage.
- The customer further states as the charges should have not been levied the company should pay interest on any reimbursed surface water charges.
- The customer is seeking for the company to: reimburse surface water charges from 1 April 2001, pay interest on any reimbursed surface water charges, stop charging for surface water charges going forward and, provide an apology with regards to wrongfully charging surface water charges.

The company's response is that:

- The company's position is the surface water charges have been reimbursed to 1 April 2013.
- 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 18 January 2018, the reimbursement of charges would only apply from 1 April 2013, in accordance with the company's policy regarding surface water drains and the Limitation Act 1980. Accordingly, no further sums are due.
- The company denies an apology is necessary as the company has not failed to operate its business appropriately in respect of the surface water drainage charge.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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 be reimbursement of his surface water charges since April 2001 and interest on any reimbursement. 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 18 January 2018 the customer contacted the company informing them his property was not connected to the public sewers for surface water drain charge. The company states within its defence that up until this point in time it was not aware the customer's property was not connected to the company's assets with regard to surface water drainage. On further investigation by the company it was established that no surface water connection to the company's assets existed.
3. Since 2000 the company has been required to identify the surface water charge element of a customer's bill. The customer's property was built in 1981 and the company's position is it is not unreasonable for the company to have known the property, which was built before 2000, was not connected to its assets for the purpose of surface water drainage. Within the customer's application and his reply to the company's defence, the customer disputes this as his property was not adjacent to the company's surface water sewer and the company should have known

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this since 2000 due to the company's sewer mapping system. The company states within its defence it would have to undertake an extensive survey to identify which properties were not connected to the company's surface water assets and this would be expensive and impractical for all the properties built before 2000. Whilst I have sympathy for the customer's position, I find it unrealistic to expect the company to be aware of each and every surface water connection within its sewer system for all properties built before 2000. Ofwat approved the company's charging scheme including their policy on the application of surface water rebates. In light of the above, I find the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person with regard to knowledge of the customer's lack of surface water connection.

4. The company has accepted that the customer is entitled to a refund for its surface water charge. However, it states the company will only backdate the surface water charge to 1 April 2013, which is in accordance with the company's charges scheme. I find that the company's policy is in accordance with its regulatory obligations and that until a customer notifies the company that their property is not connected to the public sewer or it otherwise becomes aware it is not expected to apply a rebate. As the customer's property was built before 2000 the company policy is that once it is established that it is not connected to the public sewer for surface water drainage, a reduction in charges will apply from four years prior to the year which an application for a reduction is made. I note that the customer suggests that an advertisement in the national press or a letter should be sent to each of the company customers to highlight this policy. However, I am satisfied by the evidence submitted by the company that it does provide details of its surface water discount scheme, along with other discounts and services provided by the company, to its customers with its annual bill. I therefore find that the company has discharged its regulatory requirement to make its customers aware of the right to seek a surface water discount.
5. The customer made his application on 18 January 2018, therefore according to the company's policy the company should reimburse from 1 April 2013. The company's defence documents show the company has revised its invoices from 1 April 2013 and applied a credit to the customer's account on the 18 January 2018. The defence documents and CCWater documents also show the customer will not be charged for surface water charges in the future.
6. With regard to the customer's comments that he should be entitled to a refund for the surface water charges between 1 April 2001 and 1 April 2013, the company states that, in addition to its policy, any claim will be barred pursuant to the Limitation Act 1980. The Limitation Act 1980

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requires a claimant to make his claim within a six-year period of the action arising. In this instance the WATRS application was made on the 12 July 2018 and, accordingly, the customer cannot claim for the period before 12 July 2012. Therefore, I find the customer cannot request redress for a period before 12 July 2012. Further, and in any event, as I have found the company had no prior knowledge of the customer's lack of surface water connection, I find that any reimbursement should be in line with the company's policy. Similarly, I am satisfied that, by following this policy, the company have not failed to provide its services to the standard to be reasonably expected, as such, the reimbursement should be from 1 April 2013.

7. The customer has requested an apology from the company for overcharging. As above, I am satisfied that the company has not failed to provide its services to the standard to be reasonably expected in this regard. Therefore, I find the company is not required to provide an apology with regard to overcharging.
8. The customer has requested interest on the reimbursement. I am of the view that interest is due as the customer has likely suffered detriment for not having that money from 1 April 2013 to 18 January 2018, the date the sum was reimbursed. Similarly, the company have technically benefitted from having the customer's additional money during this period too.
9. 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, so interest should only run until the date payment was made on the 18 January 2018, not until the date of the decision. With regard to the rate of interest neither the customer or the company have 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% so an appropriate and realistic rate would be 3% above base rate, so 3.75%. I therefore, direct the company to pay interest at 3.75% on the sum reimbursed from 1 April 2013 to 18 January 2018.

10. In light of the above, I find the customer has proven that the company failed to provide its services to the standard to be reasonably expected with regard to interest on the reimbursed surface water charges. I therefore direct the company to pay interest at 3.75% on the sum reimbursed from 1 April 2013 to 18 January 2018.

Outcome

1. The company needs to take the following further action:

The company shall pay interest at 3.75% on the sum reimbursed from 1 April 2013 to 18 January 2018.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 3 October 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 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**