

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1090

Date of Decision: 24 December 2018

#### Complaint

The customer has been charged for surface water drainage since 1984 although his property drains to soakaways. The customer submits that the company is best placed to know which properties are connected to its network. The patio slab draining into the company's network was small and underneath the eaves of the house. The customer requests reimbursement of the surface water drainage charges back to 1984.

#### Defence

The occupier is best placed to know if their property does not benefit from surface water drainage. The company visited the customer's property when he contacted it and found that he was connected for surface water drainage through an open foul water drain to the rear of his property. The customer advised that this had been rectified on 14 June 2018 and the surface water drainage charges were removed from this point. The company denies that the customer is entitled to any further refund.

#### Findings

The company is authorised by legislation to charge customers for water services, rather than under a contract, and by reference to a charges scheme agreed with Ofwat. The company is entitled to charge where it supplies sewerage services, irrespective of the scale of this supply. As the company identified that the customer's property was connected for surface water drainage, albeit in respect of a small part of it, the company was entitled to charge for surface water drainage. The occupier is best placed to assess whether the property was connected for surface water drainage and contact the company to have this confirmed.

#### Outcome

The company does not need to take any further action.

The customer must reply by 24 January 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 24 December 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer has been billed for surface water drainage for 34 years. The customer recently discovered that the surface water from his property drains into a soakaway. The company investigated and advised that it would still charge for surface water drainage because of an open gully identified in one of the customer's patio slabs. The customer remedied this and diverted the flow. The company agreed to apply the surface water drainage abatement. However, the company has refused to reimburse past charges. The customer submits that the possible flow of water from the patio is irrelevant as it would have been from one paving slab beneath the eaves of the house; the law disregards 'trifles'; the company had a duty to point out to consumers that they would be charged the full amount for surface drainage even if only one slab drained; the possible flow of water was stopped once the company made the customer aware of it; and, the contract term is rendered void by consumer protection legislation as it is demonstrably unfair and unreasonable. The company should not have been levying drainage charges without knowing whether they were applicable. The company was in a better position than the householder to know what was connected to its system.
- The customer requests a refund of surface water drainage charges for 34 years, including interest, which the customer calculates to be £2380.00.

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

- The company states that the customer contacted it on 22 January 2018 to advise that he had soakaways. The customer attended on 12 February 2018; a second visit was required and took place on 3 April 2018. The company found that the customer was partially connected for surface water drainage through an open foul drain to the rear of his property. The company explained what remedial work was required. The customer advised on 14 June 2018 that the remedial work had been completed and the company confirmed this. The surface water drainage charges were removed from 14 June 2018. The company is entitled to levy the surface water charges under the Water Industry Act 1991. The records given to the company by local authorities in 1989 were poor and only advised whether there was a connection to the sewer. The company could not find out the private drainage arrangements without inspecting each individual property, which would require each customer's permission. The occupier of the property is best placed to know the individual arrangements at their home which is why the onus was placed on the customer to claim the surface water drainage rebate. The company denies that the customer is entitled to the rebate being backdated prior to the remedial works being completed on 14 June 2018.

### **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.

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.

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### How was this decision reached?

1. The customer claims a rebate of surface water drainage charges back to 1984. The company has declined this on the basis that an open foul drain connected the customer's property for surface water drainage until 14 June 2018. In any event, the charges would only have been backdated to 1 April 2014 in line with the company's policy.
2. I am satisfied from the evidence that the customer's property did partially benefit from surface water drainage as a patio paving slab drained into the company's sewer. The rest of the customer's property drained into soakaways.
3. At this point, it is helpful to set out the scope of the Water Redress Scheme as it relates to the customer's claim. I am able to review the actions taken by the company and its billing in order to ensure that the customer has been properly charged in accordance with the company's charging scheme. However, the charges scheme itself is agreed each year with Ofwat; I have no power to review the charges scheme generally, or to make any finding as to whether any part of it is fair or reasonable, this being a matter for Ofwat when they approve the charges scheme.
4. The customer has referred to the charge being a 'trifle' and that it is a demonstrably unfair contract term in respect to his circumstances. I find that the customer is not charged for water services under a contractual arrangement. The company is able to apply water charges against the occupier of a property due to legislative provisions. As the charging is not based in contract, it is also not possible to argue that the application of the charges amount to an unfair contract term.
5. I note that the Water Industry Act 1991 entitles the company to charge for the sewerage services that it provides, and that it is entitled to fix charges for this. I note that the surface water drainage charge is a fixed charge calculated by reference to a banding system. This is seen on the customer's bill covering 24 July 2017 to 17 January 2018, where the surface water drainage is a "Fixed charge (Band 3 – Detached Property)".
6. I am satisfied that the charge, agreed with Ofwat within the company's charges scheme, is applied based on the type of property, rather than by reference to any more complex calculation, such as the volume of surface water being transported away or the size of the property or area benefitting from surface water drainage.

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7. I acknowledge that the patio slab that was connected for surface water drainage would have only drained a small amount of water. However, the charges scheme and the Water Industry Act 1991 provide that the charge is payable or not based on whether there is any surface water drainage being provided. Accordingly, whilst I accept that the customer's property only benefitted marginally by surface water drainage, I find that the company is entitled to charge for this.
8. The customer has also submitted that the company is best placed to know which properties drain into its network. I am not persuaded by this. The company received plans of the sewerage system from local authorities in 1989 and the plans did not contain details of which properties were connected for surface water drainage. The company covers a large number of properties over a wide area. I accept that it would have to individually assess properties in order to determine if they benefitted from surface water drainage, as it did the customer's property. This would represent a huge and costly logistical challenge.
9. By contrast, an occupier is able to make a rough assessment of whether their property appears to drain into the company's sewers or by other means and can request the company assess this. A property owner may also be put on notice that he may wish to request such an assessment, such as where they obtain a survey before purchasing a property; such a survey may indicate whether the property drains to the company's sewers or otherwise. Finally, an occupier will be aware of any changes they make to the property, such as the installation of water butts to capture water that would otherwise enter the company's drains. For these reasons, the customer is the best placed party to determine whether the property is likely to benefit from surface water drainage.
10. I accept that the occupier may not know for certain whether their property drains into the company's sewers or into soakaways, and that a final determination of this may be complex, as in the customer's case, requiring repeated visits. However, I am satisfied that the occupier is the best placed person to make a general assessment of whether they may be entitled to the surface water drainage rebate. I therefore find that it is reasonable that, unless and until a customer contacts the company, it is entitled to charge on the basis that the property benefits from surface water drainage.

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11. For the reasons given above, I am satisfied that the company has properly charged the customer for surface water drainage. Whilst the portion of the property draining into the company's sewer was very small, the relevant legislation is clear that the company will either be providing the sewerage service, or it will not be; the actual scale of that provision is not a relevant factor for the application of charges. Further, the surface water drainage charge is a fixed sum, agreed with Ofwat through the company's scheme of charges. I am satisfied from the evidence that the company was entitled to charge the customer for surface water drainage until 14 June 2018 as it was providing this service, albeit in respect of only a small part of the customer's property. I therefore find no basis for the rebate to be backdated prior to 14 June 2018. For these reasons, the customer's claim is unable 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 24 January 2019 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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**Alison Dablin**, LLM, MSc, MCI Arb

**Adjudicator**

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