

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1412

Date of Decision: 11 June 2019

#### Complaint

The customer states that he has been incorrectly billed for surface water drainage since 1984, but has only been granted a rebate backdated to 2013. He requests a further rebate of £500.00.

#### Defence

The company argues that it was not historically obligated to provide the customer with a rebate until he requested one. The customer has now requested a rebate but its policy does not permit backdating of rebate payments for more than 5 years. It has already paid the customer the full rebate to which he is entitled, and slightly more due to an error. No offer of settlement has been made.

#### Findings

The company has established that it has provided its services to the customer to the standard to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

The customer must reply by 5 July 2019 to accept or reject this decision.

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- As the customer's property was built prior to 2000, the company did not have information on its surface water arrangements.
- Under the company's charges scheme, it is the customer's responsibility to apply for a reduction in charges, and where it can be established that a customer's property is not connected to the public sewer (directly or indirectly) for surface water drainage, a reduction in charges will apply from the start of the charging year in which the application was made (the charging year being 1 April to 31 March).
- The customer contacted the company about his surface water drainage charges on 28 January 2019.
- Although, in accordance with the company's charges scheme, the rebate would only be backdated to 1 April 2013, being the start of the charging year five years prior to the application being made, the rebate was in fact backdated to 28 January 2013 (being 6 years from the date of application).
- The company denies that it has billed the customer incorrectly, and argues that it has actually paid the customer a larger rebate than he was entitled to receive under its charges scheme.

**The customer's comments on the company's response are that:**

- It is not reasonable to expect a customer to know where and how his surface water drainage is being dealt with.
- This results in implicit trust being placed in the company to bill correctly.

**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.

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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 customer argues that the company has billed him incorrectly for surface water drainage since 1984.
2. However, it is important to distinguish between whether the customer has been paying for a service he has not received, and whether the company violated any legal obligation to the customer by charging him for that service. Only in the latter case is the customer entitled to the additional amount that he claims.
3. As a regulated water retailer, the company is required to bill its customers in accordance with a published charges scheme. This scheme must adhere to rules adopted by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
4. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to evaluate the fairness or correctness of a company's charges scheme, as this responsibility has been statutorily allocated to Ofwat.
5. Instead, with respect to the type of claim brought by the customer, a WATRS adjudicator may only examine whether the company has properly adhered to its published charges scheme.
6. The company has established that it has already paid the customer a rebate greater than it was required to do so by its charges scheme.
7. In addition, as argued by the company, Ofwat guidance states that companies should provide a rebate of surface water drainage charges backdated to the point at which they might reasonably be expected to have known that a customer was not benefiting from surface water drainage to a sewer.

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8. However, Ofwat has allowed the onus to be placed on customers to claim a rebate, rather than requiring companies to undertake independent investigations of each of their customers to ensure that they are being billed correctly.
9. The company was, therefore, permitted to bill the customer for surface water drainage, even if he did not benefit from this service, so long as it was not reasonably on notice that the customer was not benefitting from the service. The customer has produced no evidence from which it could reasonably be concluded that the company was on notice.
10. Consequently, while I do not dispute that the customer has been charged by the company for many years for a service he has not received, the law does not allow the customer to claim a larger rebate than the one already provided by the company.
11. If the company had not notified the customer of his right to request a rebate, this might constitute a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person, as the customer would not have known of his ability to claim a rebate.
12. However, the company has satisfactorily established that the customer was notified of his ability to request a rebate on a regular basis, in the form of an express statement to this effect in the company's billing leaflet.
13. For the reasons given above, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person.

#### **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.

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- The customer must reply by 9 July 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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Tony Cole

**Tony Cole, FCI Arb**

**Adjudicator**

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