

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX91

Date of Decision: 12/01/2021

Complaint

Since 1 April 2000, the company has charged the customer for surface water drainage, but recent works in the customer's garden revealed that her property is not connected to the company's sewer for surface water drainage. The company provided a refund of the surface water drainage charges the customer paid from 2014 to 2020, but has refused to backdate the refund any further. The company has known that it does not provide a surface water drainage service to the customer since 2001 and, therefore, it should have taken steps to inform her that she could apply for a rebate. In view of this, the customer would like her refund of surface water drainage charges backdated to 1 April 2000.

Response

Since 1 April 2000, the company has applied a standard charge for surface water drainage to the customer's account, with the option for the customer to claim a surface water rebate if appropriate. On 3 July 2020, the customer applied for a surface water rebate and the company accepted the customer's application. In accordance with its Charges Scheme, the company provided the customer with a rebate backdated to 1 April 2014. As the correct rebate has been provided to the customer, the company denies responsibility to backdate the rebate further.

The company has not made an offer of settlement.

Findings

In accordance with the company's Charges Scheme, the company has correctly provided the customer with a rebate of surface water drainage charges from 1 April 2014. The evidence does not persuade me that the company should have informed the customer of her entitlement to a rebate before she made her application in July 2020, and I find that the company included sufficient information about the availability of surface water charge exemptions in its billing leaflets. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer and the customer's claim does not

succeed.



The company does not need to take any further action.

The customer must reply by 09/02/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

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Date of Decision: 12/01/2021

Party Details

Company: X Company

Case Outline

The customer's complaint is that:

1. • Since 1 April 2000, she has been charged for surface water drainage. However, following the recent excavation of her patio, she was told that her property was not connected to the company's sewer for surface water drainage. The company accepted this to be the case and refunded the charges she had paid between 2014 and 2020, but it refused to backdate the refund any further. • The company is relying on its current charging policy, introduced a significant number of years after she was first charged incorrectly, as the reason for limiting the refund to six years, even though it had detailed mapping from December 2001 showing that the properties in her street and the adjoining avenue are not connected to its sewer for surface water drainage. • The company says that refunding customers that have been overcharged causes undue costs to current customers; this is unacceptable as she paid for the company's services in good faith and it is unfair for the company to keep her payments to subsidise other customers. • The decision to blanket-charge all customers for surface water drainage until they apply for a rebate is wrong. The company states that it informs customers that they can apply for a rebate if they are not connected for surface water drainage by advertising this information on the back of bills and in leaflets, but this is not adequate. An exterior visual inspection of her property would not reveal if it is connected for surface water drainage or not and, without paying for a specialist inspection, many customers would never know and, therefore, would never apply for a rebate. If her patio had not been excavated, she would not have discovered that she was not connected for surface water drainage and she would have continued to pay the incorrect charges. • She believes the company has acted negligently and dishonestly by failing to notify her that she is entitled to a refund and she does not accept that the onus should fall to a customer to make a claim. CCW encouraged the company to provide a full rebate from 1 April 2000, but the company refused. • Due to GDPR, the company refused to provide CCW with details of other customers in her locality

who had made similar claims, so she conducted a survey herself and found that a significant number of other residents were unaware that their properties are not connected to the company's sewer for surface water drainage, or that they could obtain a discount. • She wants the company to refund £1,000.00 for the surface water drainage charges she paid between 2000 and 2013.

The company's response is that:

1. • Since April 2000, the regulatory body for the water industry, Ofwat, has required water companies to separately identify the surface water drainage element of sewerage charges. Ofwat has also required water companies to make a reduction in charges where surface water does not enter the sewerage network but is removed in an alternative way, for example, via a soakaway. • Following the change of policy in April 2000, it informed its customers about the changes in a leaflet enclosed with their bills and the X Company 2 wrote a letter to all the local papers in the region informing them of the change. • Ofwat has directed that water companies are only expected to provide a rebate for the charges paid by customers in relation to surface water drainage if the water company knew, or might reasonably have been expected to know, that a property was not connected to the public sewerage system in relation to surface water drainage. • On its website, Ofwat provides information on surface water drainage. It states, "If rainwater does not drain from your property into a public sewer, because you have a soakaway or similar, you may be entitled to a surface water rebate." It continues, "Companies do not know the surface water arrangements of all the individual properties in its area. This means that you usually need to make an application for a rebate." It also states, "some of the amount you have paid previously may be refunded" and further states "the level of rebate can be found in your sewerage companies Charging Scheme". • It is accepted that it should know whether properties built since 1 April 2000 are provided with a surface water drainage service. However, Ofwat accepts that where a property was built before 2000, like the customer's property, the cost of obtaining the information on surface water arrangements would be too expensive. As it did not know which properties had surface water connections and which did not, the only options were an expensive survey of all properties in its sewerage region, or a standard charge, with the option for customers to claim a surface water rebate if appropriate. With Ofwat's approval, it opted to apply a standard charge, with the opportunity for customers to claim a surface water rebate if appropriate. • Under its current Charges Scheme, it is the customer's responsibility to apply for a reduction in charges and where it can be established that the property is not connected to the public sewer 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). However, as separate surface water charging is now well established, it has agreed with Ofwat to extend the period of backdating

rebates for properties built prior to 2000. In the 2020/2021 charging year, where a customer has applied for a rebate and a rebate is due, the rebate will be applied from the start of the charging year (1 April) six years prior to the application being made. • On 3 July 2020, the customer made an enquiry by e-mail regarding a rebate for surface water charges. The customer stated that her surface water drained into a soakaway and surface water from her gravel driveway soaked into the ground. It assessed the application and accepted that the customer is entitled to a surface water rebate and her account was changed to reflect this. • In accordance with the company's Charges Scheme, the customer's rebate was backdated to 1 April 2014, being the start of the charging year six years before the application was made. • In view of the above, the surface water charge was correctly applied to the customer's account and the appropriate rebate was given. • Before the customer applied for a rebate, it made adequate attempts to inform her that she could apply for a rebate by advertising on bills and in leaflets. • In view of the above, responsibility to refund the customer's surface water drainage charges from 1 April 2000 is denied. • In any event, any claim the customer may have in respect of surface water charges arising more than six years prior to the WATRS application is barred under the Limitation Act 1980. • Also, in accordance with the WATRS Rules, in particular Rule 3.5, it is beyond the scope of WATRS to examine or review any issues relating to the fairness/appropriateness of its contract terms and/or commercial practices.

How is a WATRS decision reached?

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

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. The company states that the customer's claim regards the fairness of its policies and cannot be adjudicated upon under this Scheme in accordance with Rule 3.5 of the WATRS Scheme Rules. Having reviewed the customer's claim, I find that, as the customer requests a backdated rebate rather than a determination of fairness, the Scheme Rules do not prohibit me from adjudicating in this dispute.
2. The evidence shows that the company received an application for a surface water rebate from the customer on 3 July 2020. The company accepted that no surface water flows from the customer's property into the main drainage system and granted the customer a rebate from 1 April 2014.
3. The company has provided a copy of its Charges Scheme 2020-2021, and I accept that this entitles the company to apply a standard charge to the customer's account for surface water drainage. Section 6.10 states, "If the Premises are not connected, whether directly or through an intermediate sewer or drain, to a public sewer or public lateral drain for surface water drainage, the Customer may apply for exemption from the surface water element of their charges. The applicant must provide such evidence as may be required to demonstrate that no surface water is discharged from the Premises to a public sewer or public lateral drain." Therefore, I accept that under the company's Charges Scheme a customer has to apply to the company and provide the required evidence before an exemption can be granted.
4. Section 6.11 of the Charges Scheme states, "If accepted, we will notify the Customer and the exemption will apply from the start of the Charging Year six years prior to that when the application was made or the start of the Customer's occupation of the Premises or the date from which they cease to discharge, whichever is the later." Therefore, I accept that, in accordance with its Charges Scheme, the customer's exemption could not be backdated further than 1 April 2014.
5. However, the customer suggests that if the company had made her aware that her property was not connected to its sewer for surface water drainage earlier, then she could have applied for an exemption sooner. The customer has provided evidence to show that the company has had plans that show her property is not connected to the public sewer for surface water drainage since December 2001.
6. The company says that it became aware that the customer's property was not connected to the sewer for surface water drainage when the customer contacted it on 3 July 2020. The company relies on guidance issued by Ofwat which states "water companies are only expected to provide a rebate for the charges paid by customers in relation to surface water drainage if the water company knew, or might reasonably have been expected to know, that a property was not connected

necessary in order to enforce the decision.
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to the public sewerage system in relation to surface water drainage”.

7. Having reviewed the evidence provided by the customer, I accept that the company most likely had mapping showing the customer’s property was not connected to the sewer for surface water drainage from 2001, and I also accept that best practice guidelines require the company to contact customers where it has reason to believe they are entitled to an exemption. However, on balance, I do not find it reasonable to expect the company to survey its extensive mapping system to specifically find properties that may be entitled to an exemption from the surface water drainage charge. It therefore follows that I do not accept that the company knew or ought to have known that the customer was entitled to an exemption before she made contact with the company on 3 July 2020, and I do not find that the company failed to provide its service to the standard reasonably expected by the average customer in this regard.

8. The customer says that the company was obliged to provide general information about surface water rebates to its customers and it failed to do this sufficiently. However, I have reviewed the billing leaflets provided in evidence by the company and find that the information provided gives customers sufficient notice that rebates are available, and I find no failing on the company’s behalf in this regard.

9. In view of the above, whilst I appreciate that my decision will disappoint the customer, I do not find that the company has failed to provide its service to the standard reasonably expect by the average customer by refusing to backdate the customer’s exemption further than 1 April 2014. Therefore, the customer’s claim for a further rebate does not succeed.

10. For completeness I state that, as I have found that the company has provided the correct level of rebate to the customer and no further rebate is due, I shall not consider the company's alternative basis for defence of the claim.

11. The customer has made comments on the preliminary decision but the comments do not change my view on whether the company knew, or reasonably ought to have known, that the customer’s property was not connected for SWHD before she made her application for a rebate to the company. However, for clarity I state that, even if the company had known, the six year rebate already received would be the maximum rebate available under the Limitations Act 1980.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

Kate Wilks
Adjudicator