

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X274

Date of Decision: 11 March 2021

Complaint

Surface water drainage charges applied to the customer's account have been based on the rateable value of his property. The company changed its policy for surface water drainage charges in 1990. The customer had a meter installed in 1989. The customer considers that he is entitled to a rebate of charges over a period of 30 years under the company's changed policy.

The company has refunded surface water drainage charges dating back to 2013 but is not prepared to issue a further refund beyond that date. The customer believes the company should issue a refund for the additional period.

The customer is also unhappy with the service he has received from the company as he considers it has not addressed his questions.

The customer seeks a refund in the total sum of £1993.64 which is the amount he calculates he has been overcharged. He also seeks interest of £398.72 on this amount. The customer also seeks compensation in the sum of £250.00.

Defence

The company introduced a change in policy for surface water drainage charges in 1990. This changed the charging method from one based on rateable value of property to one based on the property type. When introduced, this policy applied only to new meter installations.

In 1995, the charging scheme was extended to allow customers with meters installed before 1990 to opt in to the new charging methods.

In 2012, the company proactively sought to include customers in the scheme. The customer's account was missed at that time.

The company has provided the customer with a rebate up to 1 April 2013. It does not consider the customer is entitled to any further rebate.

Findings

The company has refunded the customer's surface water drainage charges to 1 April 2013 in the amount of £645.71. This covers the time since the company proactively reviewed customer accounts to the present day. The company has offered the further sum of £250.00 as a gesture of goodwill. The company has also indicated it is prepared to make a payment in respect of interest on the sum of £645.71.

The company has followed its policy in relation to its surface water drainage charges. It has recognised its service problems in respect of its failure to

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include the customer's account during its 2012 review.

The company failed to meet the standards expected in relation to its review of customer accounts. However, the customer has not shown the company failed to comply with its charging policies prior to 2013 or any entitlement to a refund of charges prior to 2013.

Outcome

The company needs to take the following further action:

Calculate interest due on the sum of £645.71 and make that payment to the customer.

Pay the customer the sum of £250.00 in respect of service failures from 1 April 2013.

The customer must reply by 8 April 2021 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Party Details

Customer:

Company:

Case Outline

The customer's complaint is that:

- The company has applied surface water charges to the customer's account based on the rateable value of his property. The customer had a water meter installed in 1989 and considers his charges should have been adjusted. The customer considers he has been overcharged for surface water drainage for 30 years.
- The company has issued a rebate for surface water drainage charges dating back to 2013. The customer seeks a further rebate beyond the rebate received so far and considers this should cover a 30 year period. The customer estimates the total amount overcharged to be £1,993.64.
- The customer is unhappy with the customer service received as he considers the questions he has asked the company have not been addressed adequately.
- The customer seeks repayment of the total amount of £1,993.64 which he estimates he has been overcharged. The customer also seeks payment of interest on the amounts overcharged in the sum of £398.72.

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- The customer seeks compensation in the sum of £250.00 in addition to the amounts claimed for overcharging.

The company's response is that:

- The company says that the customer had a water meter fitted in 1989. The company states that at that time, surface water drainage was charged at a set unmeasured charge and that the customer's account was updated correctly.
- In 1990, a policy change was made for new meter applications and a banded measured charge was introduced for surface water drainage for domestic properties. From 1 April 1995, customers who had meters installed prior to 1990 were given the option to opt in to the same charging scheme. The company issued leaflets to customers advising them of the option.
- In 2012, the company proactively reviewed accounts of customers who had not opted in to the scheme to identify those who would benefit from it. The customer's account was missed during that exercise.
- After review of the customer's complaint, the company admitted that in 2012 the customer's account had been missed. The company fully rectified this by backdating his charges to 1 April 2013. The company says that it issued a refund to the customer of £645.71. The company says it will not backdate any refund beyond 1 April 2013.
- The company acknowledges the customer's claim for interest and has noted it is willing to contact the customer to confirm his calculations.
- The company recognises its failure to update the customer's account in 2012. The company agrees to the customer's request and offers a payment of £250.00 as a gesture of goodwill.

How is a WATRS decision reached?

In arriving at my decision, I have considered two key issues:

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1. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and 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 I have not considered it in reaching my decision.

How was this decision reached?

1. The company says that in 1990, a policy change was introduced for new meter applications. Under the change, a banded measured charge for surface water drainage was applied to properties. This included three bands:
 - a. Flat/Terrace.
 - b. Semi-detached.
 - c. Detached.

The company says that the charges were automatically applied to any new applicants or new build properties.

2. The company says that in April 1995 an option was introduced for customers with properties metered prior to 1990. This allowed those customers to opt in to the scheme to have surface water drainage charges based on property type. The company states that customers were advised of this option via a leaflet that accompanied bills sent to customers from 1995 until around 2000. The company also says that such changes were only carried out on requests from customers.

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3. The company says that the customer had a meter fitted in 1989. The company says that at that time, surface water drainage was a set unmeasured charge and that the customer's account was updated correctly.
4. The company has no records to show leaflets were sent to customers but says a staff member dealing with the matter has confirmed they were issued.
5. The company says that, during 2012, it proactively reviewed customer accounts to identify customers who were still paying for surface water drainage based on a rateable value. The company says that where it was confirmed that a customer would benefit from changing to a property based banding, accounts were updated from 1 April 2013.
6. The company acknowledges that the customer's account was missed during the review in 2012. It says that it has rectified this by backdating the customer's charges to 1 April 2013 and issued a refund to the customer in the sum of £645.71.
7. The customer says that he had received confirmation that surface water charges relating to property type were introduced in 1990. He says that he was advised that, for direct customers, the change applied to all customer, not only those in new build properties. His position is that a residential customer should not have both a metered and an unmetered account at the same time. The customer set this out in an email to the company dated 19 November 2020.
8. The customer says that although he has bills dating back to 1982, he has no record of any leaflet sent in 1995. The customer confirms that in the second half of 1989 he asked to have a water meter installed. He considers that, in arranging a meter installation, he was intimating to the company that all future charges should be based on metered accounts and not rateable value. The customer therefore considers that there was no need to opt in to any new systems in 1995.
9. It is evident from the information provided that during 1990, the company changed the method of charging for surface water drainage. This changed the charging method from one using the rateable value of a property to one related to the type of property. This change was applied to all new meter applications and to new build properties. It did not apply to existing metered customers until the company introduced an option for those customer to opt in to the scheme. This was introduced in 1995. The option required customers to request the change to the

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charging method and was not automatic. In 2012, the company proactively sought to make the change to those customers who had not opted in to the scheme where it was considered they would benefit from the scheme. The customer was missed during that exercise in 2012.

10. It is important to distinguish between surface water drainage charges and other charges that are determined on a measured or metered basis. Where a meter is fitted, charges for water and foul water drainage are calculated from the consumption of water as measured through the meter. Surface water drainage is not related to water consumption and not measured. Surface water drainage is dependent on the surface area being drained. Where surface water discharges into sewerage companies' systems, companies will charge for its treatment. Customers may be able to avoid surface water drainage charges by having a system for removing surface water that does not discharge into the public sewer. On site soakaways are often installed for this purpose.
11. It is also important to note that, in accordance with Rule 3.5 of the Water Redress Scheme (WATRS) Rules, a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. This includes policies relating to charging for services. I am therefore unable to make any determination in relation to the fairness or otherwise of the company's policy in relation to charges for surface water drainage. I can, however, consider whether or not the company has correctly applied its policies.
12. The customer had a meter installed in 1989. This predated the change in charging policy for surface water drainage. The policy introduced in 1990 only applied to new meter installations. The customer, under that policy, was not eligible for a change in his surface water charges at that time. Whilst the customer considered all his charges should be based on measured consumptions, as explained above, surface water drainage is not related to measured consumption.
13. I find that the company correctly applied its policy in not changing the customer's surface water charges in 1990. I find the company has no obligation to backdate any refund to 1990.
14. In 1995, the company allowed customers who had meters installed prior to the policy change to opt in to the scheme. The company has explained that the option to opt in allowed customers to benefit from reduced charges. The company also explained that not all customers would

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benefit. The decision to opt in was a matter for each customer to decide. The customer says that he has no record of receiving a leaflet setting out the options. The company says that leaflets were sent out with bills over a number of years. No copies of bills have been provided with the evidence and no copy of any leaflet has been provided. There is nothing within the evidence provided that shows whether or not leaflets were sent to or received by the customer. However, the company has stated that a staff member working for the company at the time has confirmed leaflets were issued. The company has also confirmed a large number of enquiries were received from customers following the change. It is reasonable to conclude that the company had a campaign to advise customers of the change. I am satisfied that the company took reasonable steps to notify customers of the option to opt in to the charges scheme.

15. I find that it would have been for the customer to decide whether or not he wished to opt in to the scheme following the change in 1995. As the customer has not shown that he made any request to opt in to the scheme, I find no obligation on the company to backdate any refund to 1995.
16. With regard to the review the company undertook in 2012, the company has admitted that it made an error. The company accepts that it failed to contact the customer in connection with the change in surface water drainage charging policy. The company has corrected this and has refunded the customer the sum of £645.71. No bills have been provided that I can use to confirm whether or not this is the correct amount based on actual charges. However, the customer has not contested the amount. I conclude that the company has correctly assessed the refund due to the customer for the period from 2013 to 2020. I therefore make no direction for the company to make further payments to the customer in respect of adjustments in surface water drainage charges for that period.
17. The customer claims interest on the amounts he has claimed the company overcharged in relation to surface water drainage. The customer claims the sum of £398.72 as interest on overcharging. The customer has provided a spreadsheet summarising the amounts claimed. However, it is not possible to determine from the spreadsheet how the amounts have been calculated. The customer has, however, advised he has assessed the interest at 20%. The amount claimed by the customer is £1993.64 and 20% of that amount equates to £398.72.

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18. The company has advised that the interest request has been issued to its finance team to confirm the calculations. It states that this will be applied to the customer's account by way of apology for the account being missed in 2012.
19. I direct that the company shall make an interest payment to the customer. The interest shall be calculated on the sum of £645.71. In accordance with Rule 6.7 of the WATRS Rules, interest shall be calculated in accordance with section 69 of the County Court Act 1984. The rate of interest I direct to be applied shall be 8% above the Bank of England Base Rate current at the time of this decision. The company shall calculate the amount of interest to be paid. Simple interest shall be applied to the refund amount assessed by the company for each year from 1 April 2013 up to the date of this decision. Interest shall be applied to the cumulative refund amount for each year from 1 April 2013.
20. The customer claims the sum of £250.00 compensation which the customer considers to be a fair amount. The company has acknowledged its service failures. It has offered, as a gesture of goodwill, to apply the amount of £30.00 for each of the years it failed to update the customer's account. The company assesses this to be a total of £240.00. The company has confirmed its agreement to meet the customer's request and pay the customer the sum of £250.00.
21. I find the company has failed to meet the standards to be reasonably expected. I direct the company to pay the customer the sum of £250.00 in respect of its failings to update the customer's account. This is the amount agreed by the company.
22. I have also considered the company's performance in relation to the Guaranteed Standards Scheme (GSS). The GSS sets out the minimum standards of service customers are entitled to expect from water or sewerage undertakers. Under the GSS, a company is required to respond to written complaints from customers within ten working days. Where a company fails to provide a substantive reply to a customer's written complaint within the required period, the company must make an automatic payment to the customer.
23. I note that the company had provided written responses to the customer's written complaints within the time periods prescribed. I also note that the company replied within the period of ten working days. I find no other instances where the company has failed to meet the required standards set out in the GSS. I therefore make no direction for any payment under the GSS.

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24. In summary, the company shall pay the customer the following amounts:

- a. Interest on the sum of £645.71, to be calculated by the company as directed above.
- b. The sum of £250.00 in respect of its service failures in not notifying the customer.

Outcome

The company needs to take the following further action:

Calculate interest due on the sum of £645.71 and make that payment to the customer.

Pay the customer the sum of £250.00 in respect of service failures from 1 April 2013.

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 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.

Signed

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A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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