

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X533

**Date of Decision:** 26/08/2021

#### Party Details

**Customer:**

**Company:**

#### Complaint

The customer has a garden pond which is drained and refilled on a regular basis. Water drained from the pond is discharged to a private drain and not a public sewer.

The complaint is that the company does not make adequate allowance for water consumed but not returned to the sewer system.

An allowance had been made by the company for the period from September 2011 to March 2018 of £400.20. The customer seeks a further allowance from April 2018 to March 2021 of £205.32. The customer also seeks an ongoing allowance from the company.

#### Response

The company acts as billing agent for the sewerage services provider. It applies non-return to sewer allowances in accordance with the charges scheme published by that provider.

The charges scheme allows discretion in agreed cases where it is shown that the volume of water discharged to a sewer is significantly less than the volume of water consumed. The company had applied this discretion to an earlier claim from the customer.

The company has suggested the customer installs a private meter which can be used to assess future allowances.

The company considers it has responded fully to the customer's complaints and offered a solution to assess future allowances.

#### Findings

The non-return to sewer allowance is set out in the charges scheme published by the sewerage services provider and applied by the company. The scheme allows discretion in agreed cases where a significant volume

of water consumed is not returned to the sewer.

The company has exercised discretion in providing an allowance to the customer retrospectively.

There is no evidence that the company has failed to apply the relevant sections of the charges scheme correctly.



The company does not need to take any further action.

The customer must reply by 24/09/2021 to accept or reject this decision.

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## Case Outline

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

- The customer has a garden pond. During the process of draining and refilling the pond, water from the pond is discharged to a private drain serving the customer's property. The customer drains and refills his pond several times a year.
- Water drained from the pond is not returned to the public sewer system. The company is not making adequate allowance for non-return of water to the sewer system.
- The company agreed an allowance for water not returned to the sewer system for the period from September 2011 to March 2018 of £400.20. The customer regards this as a precedent for future allowances.
- The customer seeks a further allowance from the company for the period from 1 April 2018 to 31 March 2021. The customer calculates this to be £205.32 and seeks a refund of this amount.
- The customer seeks an ongoing allowance for water not returned to the sewer.
- The customer has submitted comments on the preliminary decision. These comments have been addressed at the end of this decision.

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

- The company notes that it is not the wastewater undertaker and only collects sewerage charges on behalf of the wastewater undertaker.
- The company says that the statutory position concerning wastewater charges is that they are assessed on a percentage of the measured supply of water entering a property. It says that percentage is applied whether or not that volume is discharged to a public sewer.
- The company says that in accordance with the wastewater undertaker's charges scheme, a discretionary allowance may be made in agreed cases. This may be the case where there is a significant difference between the water supplied to a property and the water discharged to a sewer.
- The company confirms a non-return to sewer allowance was applied to the customer's account on 8 September 2018 for the emptying and refilling of his pond. This allowance was based on calculations provided by the customer and covered the period from 8 September 2011 to 31 March 2018. The allowance resulted in a credit of £400.20 to the customer's account.
- The company says that the customer was happy with the outcome where he received the credit of £400.20. The company also says that the customer was made aware that in order for future allowances to be considered, he should install a private water meter on the supply used to refill his pond.
- The company considers that it has responded fully to the customer's complaint and has offered a solution for the customer to apply for future

non-return to sewer allowances.

### 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.

### How was this decision reached?

1. 1. The customer has a garden pond used to keep fish. He has described the regime he adopts to maintain the pond which includes draining and refilling the pond several times a year. The customer has a private drain for surface water removal which discharges into a local river. The customer's property is also connected to the public sewer system. Water removed from the pond during the refilling process is discharged into the private drain and not the public sewer system. The customer considers that the sewerage charges do not take sufficient account of the volume of water discharged to his private drain during the pond refilling process. The customer has provided calculations demonstrating the volume of water he assesses to be discharged via his private drain during pond refilling.
2. This dispute relates to the allowances made for wastewater volume not returned to the sewer system compared to water volume recorded by the customer's water meter. Allowances are set out in water undertakers' published charges schemes. A key issue therefore is how the allowances are dealt with in the charges scheme and the company's application of the scheme.
3. It is noted that the company acknowledges the customer has a private drain for surface water removal. It has made an allowance for this in the customer's billing.

4. An email from the company to the customer dated 6 September 2018 clarifies the position in relation to wastewater services. It notes that wastewater services are provided by a different undertaker but explains that the company acts as a billing agent for that undertaker.

5. As billing agent, the company is responsible for ensuring the customer's concerns are brought to the attention of the wastewater undertaker. The company is also responsible for addressing complaints raised by the customer.

6. In an email dated 6 September 2018, the company refers to the customer's calculations for water not returned to the sewer. It also advised the customer that he should fit a private meter on the supply serving the outside tap. It said that this would allow the customer to record the volume of water supplied but not returned to the sewer. It could then make comparisons with water consumed and assess any non-return to sewer allowance. The company had, however, accepted the customer's calculations and credited the customer's account with £400.20 for the period from 8 September 2011 to 31 March 2018.

7. The company refers to a letter dated 29 June 2012 from the wastewater services undertaker provided by the customer. The letter relates to sewer responsibility and refers to the customer's property being connected to the sewer system that is the responsibility of the wastewater undertaker. The letter also refers to a private drain. The company says that this letter confirms the customer's property is connected to mains drainage and that the customer is liable for sewerage services in line with the relevant charges scheme.

8. The company sent an email to the customer on 8 August 2018 which includes references to charges schemes and wastewater charges. The company explains that wastewater charges are based on 92.5% of water supplied to a property being returned to the sewer system. The company also notes that the charges scheme allows for the possibility of reducing that percentage. It explains that to be eligible for a reduction, a customer would need to show that significantly less water was returned to the sewer on a regular basis.

9. The company has referred to Sections 142 and 143 of the Water Industry Act 1991 (the "Act"). Section 142 of the Act grants power to water and sewerage undertakers to fix charges for services. It also grants power to undertakers to demand and recover charges from customers using services. Section 143 of the Act requires undertakers to publish charges schemes relating to services provided.

10. I have reviewed the references to the charges scheme made by the company. In accordance with Rule 3.5 of the 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. Commercial terms include published charges schemes. I have therefore only considered whether or not the company has correctly applied its published terms in relation to the customer's situation.

11. The charges scheme says that the wastewater charge is an assessed charge determined by reference to 92.5% of the water recorded by a water meter. The charges scheme also makes provision for a reduction in this percentage. To be eligible for a reduction, a customer must show, to the satisfaction of the company, that the volume of wastewater discharged to a public sewer is consistently significantly less than 92.5% of the volume of water supplied to a property. A company has discretion on how the volume is assessed. The charges scheme also says that any reduction would apply from the last demand for payment preceding receipt of the claim.

12. The company had previously agreed to refund the customer for wastewater not returned to the sewer for the period from September 2011 to March 2018. The company has exercised discretion in both accepting the customer's calculations and backdating the reduction to 2011. From the information provided, this refund appears to be a one-off payment. I can see nothing that suggests the company had agreed to base future allowances on the information used to make that one-off payment. I note, however, that the company has made a further allowance based on a single filling of the pond.

13. The company has advised the customer on various occasions to fit a private meter. I can see that this advice was made before considering the customer's earlier claim as well as the time the claim was agreed. The company has pointed out to the customer that a meter would allow the customer to record and report the water volume used in filling his pond. This would then allow the company to review and determine an appropriate adjustment to the customer's bill.

14. The charges scheme sets out how a further allowance may be assessed. It says that the customer must show that the volume of water discharged to a sewer is significantly and consistently lower than the volume of water recorded through the meter. The company has already exercised discretion in relation to a previous claim. It is apparent from the evidence provided that the company acknowledges water used to refill the customer's pond is not returned to the public sewer.

15. The company has discretion as to whether it is prepared to continue to accept the customer's calculations on volume discharged to a private drain. The company has indicated that it will not do so in future. The company has advised the customer that fitting a private meter would allow it to determine an appropriate adjustment. It would be for the customer to decide whether it is cost-effective for him to fit a

private meter on his outside tap supply.

16. From the evidence provided, I conclude that the company has acted in accordance with the published charges scheme. It has exercised discretion and provided a one-off refund to the customer in respect of water consumed and not returned to the sewer. I find no failure on the part of the company to provide a service to be reasonably expected.

17. The customer's claim for a non-return to sewer allowance for the period from 1 April 2018 to 31 March 2021 in the amount of £205.32 fails.

18. The customer seeks to have an ongoing allowance for water not returned to the sewer. To be eligible for further allowances, the customer will need to continue to show, to the satisfaction of the company, that he discharges significantly less water to the sewer than recorded, on a consistent basis. This is explained in the charges scheme. The company has suggested the customer fit a private meter to properly record the volume of water used for filling his pond. Future allowances are dependent on the customer complying with the company's requirements regarding determination of the non-return volume.

19. The customer has submitted comments on my preliminary decision. Those comments are addressed below.

20. The customer considers that his concerns have not been addressed. He says that the company has provided no narrative that demonstrates any legal right to charge for water discharged to a private drain. He says that his previous claim was a rightful claim and not an allowance. He has questioned the reference to the company exercising discretion in providing a previous allowance, stating that it was a rightful claim. In relation to the company's suggestion concerning a sub-meter installation, he considers this is not necessary or reasonable. He also considers that it may be illegal.

21. The customer has restated much of his original position. As noted in this decision, the complaint concerns the volume of water measured by the customer's water meter that discharges to a private drain. The customer considers his bills do not reflect that and he seeks a refund on the sewerage charges in respect of water consumed and not returned to the sewer. This matter has been fully considered and all evidence reviewed. As stated earlier in this decision, if a piece of evidence is not referred to, that does not mean it has not been considered in arriving at this decision.

22. The customer says that the company has not provided a definitive narrative demonstrating the right to make a charge in respect of water discharged to a private drain. As referred to earlier in this decision, the company referred to

sections 142 and 143 of the Act. The Act sets out the legal framework which water and sewerage companies are required to follow. Section 142 of the Act grants the power to companies to charge for their services. The customer is connected to the mains water supply and to the public sewer. The company is therefore entitled to charge for the supply of water and the disposal of waste. Section 143 of the Act entitles and requires companies to publish schemes of charges. Sections 143A and 143B set out the requirements of charges schemes. The company has explained in its response to the application. The company also refers this issue in its email dated 6 September 2018.

23. The company has explained that wastewater charges are assessed as a percentage of the measured supply of water entering a property, whether that percentage of water is discharged to the public sewer or not. The company refers to the charges scheme published by the wastewater undertaker. Company charges schemes are publicly available. Section 2.2(iv) of the charges scheme states, in respect of measured water supplies:

“The wastewater charge shall be an assessed charge, determined for household premises by reference to 92.5% of the volume of water recorded by the meter... as having been supplied to the premises...”

24. The company is therefore legally entitled to charge for wastewater services at a rate of 92.5% of the measured volume of water supplied to the customer’s property, irrespective of whether that water is returned to the sewer or not.

25. The customer says that his claim was a rightful claim and should not be regarded as an allowance.

26. Section 2.3 of the charges scheme states:

“Where the person chargeable claims and shows to the satisfaction of the Company that the volume of wastewater discharged from household premises to a public sewer is consistently significantly less than 92.5% of the volume of water supplied to the premises, wastewater charges from the date of the last demand for payment preceding receipt of the claim by the Company shall be determined by reference to such percentage, or at the Company’s discretion to such volume, as the Company may specify from time to time.”

27. Section 2.3 provides for a situation where significant volumes of water are not returned to the sewer. It does place responsibility on the customer to demonstrate that the volume of water discharged to a public sewer is consistently and significantly less than 92.5% of the volume of water supplied to the premises. It also states that claims will not be backdated beyond the date of the last demand for payment prior to the claim. The section also allows the company discretion in

assessing the volume used in calculations.

28. The legal basis under which a company may make charges has therefore been explained.

29. The customer does not regard the payment of £400.20 as a one-off payment. He considers that the company has set a precedent in the way it had calculated that allowance. The company's email dated 6 September 2018 explains what the customer should do to record the wastewater discharged to a private drain. The email explains that the company is prepared to accept the customer's calculations over the period of the claim. It has done so without proof from the customer in relation to the volumes claimed. No mention is made of future calculations being accepted. Reference is made to installing a meter. The company also backdated the claim over several years although it was not required to do so. It is reasonable to conclude that on this occasion, the company exercised discretion and agreed to offer the customer a refund. No precedent has been set.

30. The customer refers to the company insisting he installs a private meter. I can find no reference to any insistence to do so. The company has, however, explained that to record future volumes of water not returned to the public sewer he would need to install a meter. As I have already stated, it would be for the customer to decide whether it is cost effective to fit a meter. Fitting a meter is therefore the customer's choice.

31. Having fully reviewed all comments made by the customer, I make no amendments to my decision.

## 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.

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**Ian Raine**  
**Adjudicator**