

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X395

Date of Decision: 04/10/2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer says that he has been billed by the company for many years for surface water drainage that the company does not provide.

He requests compensation of £3,061.00, representing the full payments made since 1973 less the partial refund already received, plus interest.

Response

The company says that the customer has already been paid a rebate in accordance with its policy. It denies that the customer is entitled to a further payment.

The company has paid the customer a rebate of £448.81.

Findings

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.

The customer must reply by 01/11/2021 to accept or reject this decision.

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Date of Decision: 04/10/2021

Case Outline

The customer's complaint is that:

• The company has been imposing surface water charges for many years even though the Property does not drain to the company's system, but to a soakaway. • The company has had in its possession information on the drainage for the Property. • The company has agreed to make a partial refund, but will not refund the full amounts paid despite the service never being provided. • He requests compensation of £3,061.00, representing the full payments made since 1973 less the partial refund already received, plus interest.

The company's response is that:

• The customer contacted the company on 3 September 2019 to advise that the Property has a soakaway. • The company visited the Property on 2 March 2020 and confirmed that the Property was not connected to the company's sewers for the purpose of surface water drainage. • On 3 March 2020, the company removed surface water drainage charges from the customer's account, backdated to 1 April 2014, in line with the company's policy. • This resulted in a rebate to the customer of £448.81. • The company denies that the additional compensation claimed by the customer is owed, although it acknowledges that there were customer service failings and has applied an additional payment to the customer's account of £75.00.

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. The customer argues that the company has billed him incorrectly for surface water drainage since 1973.
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 consistent with the terms of its charges scheme.
7. In addition, 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.
8. However, while the customer argues that the company had in its possession documentation that would have confirmed that the Property was not benefiting from surface water drainage to the company's sewer, 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 benefiting from the service.

However, even if it is correct that the company had in its possession documentation that would have shown that the Property was not benefiting from surface water drainage to the company's sewers, because Ofwat allows the onus to be placed on the customer to claim a rebate, mere passive possession of such documentation cannot constitute reasonable notice that the customer was not benefiting from the service. In short, the company had to be given a reason to consult that documentation, either due to a request by the company or for another reason. No evidence has been provided that the company had such a reason prior to being contacted by the customer in 2019, or that the company was otherwise 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. 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 on the customer's and prior to this through a magazine sent with the annual bill.

12. In his comments on the Proposed Decision in this case, the customer argues that the preceding analysis fails to pay adequate attention to the law, and that the company is taking money to which it is not entitled. However, as a regulated entity, the company operates under a different legal framework than does a private company. Just as the government would retain the legal right to continue to take tax from the customer even if it never provided him personally with any services, the company has the right to charge customers in accordance with its charges scheme, as monitored by the regulator Ofwat, even if this allows it to charge customers in ways that a private unregulated company would not be permitted to do. Ultimately, as explained above, if the customer believes that the company's charges scheme includes provisions that are not acceptable, that is a matter that must be raised to Ofwat, and a WATRS regulator simply does not have the authority to overrule Ofwat and the approach it has allowed the company to adopt.

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

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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Tony Cole
Adjudicator