

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X705

Date of Final Decision: 21 January 2022

#### Party Details

Customer:

Company:

#### Complaint

The company started to charge the customer for sewerage in 1993. In 2011, the company confirmed that surface water from the customer's property discharged into the company's sewer. However, in February 2021, the company discovered that the property was not connected to the company's main sewer after all. The company has refunded all the sewerage charges paid since 1993, however, the customer would like the company to connect him to its network free of charge or at a reduced rate, on the basis that the company should have identified that he was not connected in 1993 or 2011, when the price of connection was cheaper. The customer would also like compensation and, if his property is not connected to the company's network, he would like the company to commit to repairing his private sewage pipe should it fail in the future.

#### Response

The company first became aware that the customer's property was not connected to the public sewer in January 2021. However, in 2011, the company attended the customer's property to assess whether it was connected to the network for Surface Water Drainage ("SWD") and mistakenly found that it was. Therefore, as a gesture of goodwill, the company refunded £8,740.90 to the customer, the total amount paid in sewerage charges since the customer's account was opened, including interest. The company will not waive the connection fee entirely, but it is happy to provide a connection to the customer at the 2011/12 rate of £165.00, but responsibility to pay the legal fees and the cost of preparatory works will remain with the customer.

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### Findings

The evidence does not show that the company has failed to provide its service to the standard reasonably expected by the average customer. Therefore, I cannot direct the company to provide the customer with a free of charge connection, or a connection at a reduced rate. Further, I cannot direct the company to take responsibility for the customer's private sewer pipe or pay compensation to the customer for future losses. In view of this, the customer's claim does not succeed.

### Outcome

The company does not need to take any further action.

# ADJUDICATOR'S FINAL DECISION

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## Case Outline

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

- He bought and moved into his property in October 1983 and has paid all water bills since that date by direct debit. His water account was not first opened in 1993, as stated by the company.
- In 1993, the company made a mistake by assuming he was connected to its main sewer and started to charge him for services it was not providing. He was not in a position to challenge or compare prices or services provided, and relied wholeheartedly on the provision of an honest, factual, efficient and reliable service.
- In 2011, he asked the company to find out whether surface water from his property was entering its main sewer, but the simple dye test the company used was not adequate and the outcome of the test was wrong. The company was under an obligation to determine if the dye flowed into its main sewer, but it completely failed in the exercise and should be made accountable for its incompetence in what should have been a straightforward and simple task. The company says it misunderstood the situation, but the situation could not have been clearer and the company was simply asked to determine whether surface water from his property discharges into the main sewer or not.
- The company refunded him £8,740.09 for all the charges he paid from 1993. plus interest, but this cannot be considered a "gesture of goodwill", as suggested by the company, as the company has only repaid what was rightfully his.
- A gesture of goodwill would be to provide a satisfactory offer leading to a connection. Therefore, he would like the company to connect his property to its network free of charge or at a reduced rate, in line with the 1993 price or the 2011 price, on the basis that the company should have identified that he was not connected either in 1993 or 2011, when the price for a connection was cheaper.
- The company states that connecting a customer's property to the network is the customer's responsibility, but through no fault of his own and as a direct consequence of the company's mistakes, the cost of connection is now far greater than it should have been. Therefore, he feels that he is entitled to be connected either free of charge as a gesture of goodwill, or at a cost

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appropriate to the time the mistakes should have been discovered, either in 1993 or in 2011, although he wants the company to apply the 2005 price in line with the Limitation Act 1980.

- Also, the company has not addressed the adequacy of his drain and whether it would accept responsibility in the future should a problem occur. The company says that “connection is a matter of choice and not a necessity”, but this is contrary to the view of one of its engineers, who was called out to investigate the original blockage in January 2021, and stated that the drain was blocked and not draining to its original destination. The company states that, “as such we see no reason to provide the further remedies the customer is seeking”. This implies that it would provide the connection if it was a necessity, so will it agree to provide the connection in the future should it become a necessity?
- He believes that whether or not the connection is a “necessity” is irrelevant anyway. If the drain is partially blocked and not draining to its original destination there is an environmental implication, and there is a chance that the blockage will become worse and adversely affect his house and property.
- He and his wife live in fear that at some point in the future they could be faced with a blocked drain resulting in an overflow of effluent into their property. This is a distressing situation leading to an adverse effect on their mental health.
- Further, on two separate occasions he has successfully obtained planning permission to build a house within the boundaries of his property. However, without a connection to the main sewer, he suspects that this would now be refused. Therefore, he claims consequential damages to offset the additional cost he will be faced with through not seeking a connection in 1993 or 2011.
- The company states that it cannot visit every individual so they rely on customers to voice any concerns. However, he voiced concerns about his bill and the company visited and investigated. Therefore his claim for compensation is justified.

**The company’s response is that:**

- It was set up in 1990 when the water industry was privatised. It inherited the supply network arrangements from local councils and the previous water authorities, and a considerable proportion of its records are reliant on the information provided at the time of the transfer. This means that there are occasions when the information it holds may not be accurate.
- Due to the number of customers in the area it serves, it is both impractical and inefficient to visit each of them individually to check that the inherited records are correct. Instead, it relies on its customers to get in touch if there are any concerns with their bills, so that it can investigate and address any issues. It started charging the customer for sewerage services in 1993, but the

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customer did not query whether his property was connected to its network for sewerage services.

- It first became aware that the property was not connected to the public sewer in January 2021, following a request from the customer to assist with clearing a blockage. On finding that the property was not connected, it corrected the customer's account and refunded £1,560.40 for sewerage charges paid since 1 April 2014, in line with the Limitation Act 1980.
- Section 9 of The Limitation Act 1980 states, "An action to recover any sum recoverable by virtue of an enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued." Therefore, refunding to 1 April 2014 was legally correct.
- The customer was unhappy because in 2011 it visited the customer's property to investigate whether the property was connected to its network for SWD, and he believed it should have identified that his property was not connected to the main sewer at this time.
- However, when it attended the customer's property in 2011, it only carried out dye tests to establish whether the surface water from the property drained into its network because the customer only queried the SWD charges. The dye test indicated that the customer's property was connected to the network and, as such, there was no reason to carry out any further investigations at that time.
- However, further investigations have identified that the outcome of the dye test in 2011 had been misunderstood. In view of this, and after much discussion with the customer, it agreed to refund the sewerage charges further, to when the account was first opened in 1993. This was done as a gesture of goodwill and resulted in a total refund of £6,896.57, plus interest of £1,844.33.
- In view of the Limitation Act 1980, and the fact that the customer first raised his concerns in 2011, albeit for SWD charges, it believes that the actions taken to resolve this issue are more than fair and reasonable.
- The customer has requested a connection to the network free of charge, or at a reduced rate. Any necessary work on a private property to enable a connection to the network is a customer's responsibility to undertake at their own cost. For connections by either a lateral drain or a new sewer, a customer will need to enter into an adoption agreement as per the Water Industry Act 1991. Also, any sewers and lateral drains must comply with the Design Guide 'Sewers for Adoption 7th Edition' standards, as well as the Welsh Ministers Standards for Gravity Foul Sewers and Lateral Drains.
- It charges a connection fee of £172.00, based on the Charges Scheme of 2021/22, with legal fees starting from £426.00. The fees cover the cost to approve and oversee the work carried out, and the cost of ensuring the work meets legal standards.

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- In this case, as it has no record of receiving a connection application from the customer, it contacted the customer directly to fully understand the remedies he is seeking. The customer confirmed that he wants it to carry out and pay for all the necessary work at the property to enable the connection.
- The customer's private sewerage arrangements are functioning as they should be, so any decision to connect to the network is a matter of choice and not necessity. As such, it sees no reason to provide the further remedies the customer is seeking. However, if it receives an application to connect to its network in the future, it will be happy to provide the connection fee at the reduced rate of £165.00, which was the cost of connection in 2011, instead of the current cost of £172.00. However, the legal fees will remain the same and the responsibility for undertaking the construction work to enable connection will remain with the customer.
- It believes that it has been very generous in meeting the customer's requests to resolve matters to date and while it recognises how frustrating this issue may have been for the customer, further responsibility is denied.

### 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.

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.

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## How was this decision reached?

1. The customer wants the company to provide a connection to its network free of charge or at a substantially reduced rate, because he believes that the company should have investigated whether or not his property was connected to the network in 1993 or 2011, and had he been told he was not connected at either of those times, he would have applied for a connection sooner and the charge would have been less than it is now.
2. However, in the event that the company is not directed to connect his property to the main sewer, the customer wants the company to commit to repairing his private sewerage pipework should it fail in the future, and pay compensation for losses he may suffer in the future should an application for planning permission to build on his land be rejected because his property is not connected to the company's main sewer.
3. The company says that it was not responsible for checking whether the customer's property was connected to its network in 1993, and when the customer queried whether his property was connected to the network for SWD in 2011, it did not investigate whether there was a sewerage connection as it was not asked to do so. However, when it discovered that the property was not connected in 2021, it refunded all sewerage charges paid by the customer since 1993, plus interest, as a gesture of goodwill, and this is more than the Limitation Act 1980 requires.
4. The company states that it is not responsible for the customer's private pipework or for providing a new connection, but offers to reduce the connection charge to the 2011 rate on the understanding that the customer will remain responsible for the legal fees and the cost of the preparatory work. This offer involves a reduction of just £7.00 and, therefore, falls short of the remedy the customer wants.
5. As the adjudicator in this dispute, I can only direct the company to provide the customer with a free of charge connection, or a connection at a reduced rate, and take responsibility for the customer's private pipework in the future, if the evidence demonstrates that the company has failed to provide its service to the standard reasonably expected by the average customer by failing to do so. Further, I can only direct the company to pay compensation to the customer if the evidence shows that the company's failings have caused the customer to suffer a loss.

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6. I accept that the company inherited information about its customers' properties from its predecessors, and it is reasonable for the company to rely on its customers to make contact if a mistake has been made. This is because I accept that it would be impractical for the company to contact each of its 1.3 million customers to check that the information it has on record is correct.
7. The evidence shows that some form of misunderstanding occurred in 2011 when the customer asked the company to check whether his property was connected for SWD, although the evidence does not allow me to understand exactly what went wrong. In any event, as a mistake was made, albeit in regard to SWD and not sewerage, the company refunded the customer all the sewerage charges he had paid since 1993, plus interest.
8. Having considered the evidence and the relevant statute, I accept that the refund the company provided to the customer was in excess of his legal entitlement. Therefore, I find that the company has provided its service beyond the standard reasonably expected by the average customer in this regard.
9. I also accept that the company is not obliged to connect the customer's property to its main sewer free of charge or at a reduced rate. This is because there is no evidence to show that the company was asked to check whether the customer's property was connected to its main sewer before it started charging the customer for sewerage services in 1993, or that the customer requested the company to check if his property was connected for sewerage in 2011 with a view to arranging a connection if it was not.
10. In view of the above, although I understand that the customer will be disappointed by my decision, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer by refusing to connect the customer's property to the main sewer free of charge, or at a reduced rate including legal fees and preparatory work. Therefore, I make no direction to the company regarding this matter.
11. However, should the customer wish to accept the company's offer to connect his property for the price charged in 2011, plus legal fees, I advise the customer to contact the company directly.
12. With regard to the customer's request for the company to take responsibility for his private sewage pipe in the future, under the provisions of the Water Industry Act 1991, the company is

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not responsible for its customers' private pipework, therefore, should the pipework require replacement or repair in the future, the company will not be liable to pay for it.

13. Finally, as I find no failing on the company's behalf, I am unable to direct the company to pay the customer compensation. However, for clarity, I state that even if I had found that the company had failed to meet the expected standards of service in some way, the customer would not be entitled to compensation for a loss he may or may not suffer in the future, as only consequential losses that are proven to have been suffered are recoverable.

14. Following the preliminary decision, the customer made comments reiterating his view that the company should have established that his property was not connected to the main sewer in 1993 and/or 2011 and because it did not, he will suffer financially by paying more than he would have in 1993 or 2011 for a connection, or by being refused planning permission in the future. I have already fully considered these issues in my adjudication and found that the company was not obliged to check whether the property was connected for sewerage services in 1993, and was only asked to establish whether surface water from the customer's property discharged into the company's assets in 2011, not foul water. Therefore, whilst I understand that the customer is disappointed by my decision, it remains unchanged.

#### **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.
- The customer must reply by 4 February 2022 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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*K S Wilks*

Katharine Wilks

**Adjudicator**

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