

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X727

Date of Decision: 16 February 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding the backdating of a refund in respect of surface water drainage. The customer claims that the company accepted a refund request but only backdated it to 2014 and refuses to extend it to 2006, the year he took up residence at the property. The customer states that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to backdate the refund to 2006 and pay compensation in the amount of £750.00.

#### Response

The company states that it has correctly backdated the refund to 2014 in compliance with its Scheme of Charges. The company asserts it only became aware that the property was not connected to its surface water assets when the customer applied for a refund in September 2021. The company has not made any offer of settlement to the customer and declines to provide the customer's two requested remedies.

#### Findings

I find that the company has correctly backdated the refund to April 2014 in compliance with its Scheme of Charges. I am satisfied that the company was not required to advise the customer that he was entitled to a rebate prior to his application. I also find that the company provided sufficient information on its website and bills in respect of surface water refunds. Overall, I find that the evidence shows that the company has not failed to provide its services to a reasonable level nor has failed to manage the customer's account to the level to be reasonably expected by the average person. The customer's claim does not succeed.

#### Outcome

The company does not need to take further action.

The customer must reply by 17 March 2022 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/X727

Date of Decision: 16 February 2022

## Case Outline

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

- He has experienced an ongoing dispute with the company concerning issues with billing on his account. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- He took up residence at his property in 2006.
- Since taking up residence, the company has charged him for surface water drainage.
- The surface water at his property actually runs to a soakaway and not into any company assets.
- After making investigations he identified that OFWAT had issued a guidance on surface water drainage stating that water companies should reasonably be expected to know if a property is connected to its assets, and refund any charges paid by a customer back to the date when the company should have identified that surface water went to a soakaway.
- His house is on a development of approximately one hundred and fifty properties, all of which were constructed in 2004. Thus, he contends that the company should reasonably have been aware that all surface water drained to a soakaway that had been specifically organised for this purpose.
- In September 2021 he approached the company and requested that it cease to charge him for surface water drainage and refund all amounts paid since he took up residence in June 2006.
- On 06 October 2021 the company confirmed that it had amended his account and he would henceforth not be charged for surface water drainage, and confirmed that this change would be backdated to 01 April 2014 in accordance with its charging policy.

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- He is unhappy that the company has not backdated the charge to 2006. Believing the company had not properly addressed his concerns he, on 08 October 2021, escalated his complaint to CCWater who investigated the dispute on his behalf.
- On 05 November 2021, CCWater contacted the company and requested more detailed information from it and to review the customer service provided.
- On 12 November 2021 CCWater informed him that the company had responded with a detailed explanation of its position and confirmed that it was acting in compliance with both OFWAT guidelines and its own surface water drainage procedures as set down in its Scheme of Charges.
- CCWater advised him that it believed the company would not change its position and thus confirmed that it could not take any further steps to alter the position of the company and was closing his complaint.
- The customer says that despite the intervention of CCWater, the dispute is ongoing, the company has not changed its position and CCWater are unable to obtain a resolution between the parties. The customer remains dissatisfied with the response of the company and has, on 08 December 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to backdate the surface water refund to June 2006, and pay him £750.00 in compensation.

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

- It provided its response to the claim in its submission dated 21 January 2022.
- It confirms that it opened an account in the customer's name on 27 June 2006.
- On 17 September 2021 it received contact from the customer querying his charges for surface water drainage, and on 05 October 2021 it had an inspector attend the property to confirm that it was not connected to its drainage assets.
- On 06 October 2021 it confirmed to the customer that his account had been amended to remove charges for surface water and that this change would be backdated to 01 April 2014 in line with its charging policy.
- The records passed to the company from the local authority in 1989 after privatisation of the water industry were not particularly accurate and it was not possible for the company to

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understand the status of each and every property in its area. Thus, the onus is on customers to claim for surface water rebates should they become aware that they are not connected to the company's system.

- The cut-off date of 01 April 2014 is standard and applied to all claims for surface water rebates. It would thus be unfair on other customers should the customer be granted a rebate back to 2006. This policy has been approved by OFWAT.
- It confirms it has paid the customer the amount of £75.00 for poor service and a missed appointment. It has advised him that it does not pay interest on refunded amounts.
- It notes that the customer is claiming £750.00 in compensation for his time spent dealing with the issues, but he has not provided any substantiation of his costs incurred.
- In summary, it confirms that it has not breached its own charging rules and has complied with its obligations to the customer. It declines to extend the rebate beyond April 2014 and to pay compensation.

**The customer's comments on the company's response are that:**

- On 23 January 2022, the customer submitted comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer states the company has merely repeated its original position. The customer also reiterates his previously set down position that the company should reasonably have known the details of the surface water drainage system at his housing development because the property was built in 2004. The customer also questions the company's policy that the onus is on the property owner to ascertain how surface water drainage is collected.

**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.

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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 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 dispute relates to the customer's dissatisfaction that the company has refused to backdate a surface water refund to the date when he first took up occupation at the property.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I can see that the parties agree that the customer took up residence in the property as from June 2006 and the company opened an account in his name from this time.
4. The parties also agree that the customer has been charged for surface water drainage, also from June 2006.
5. I can see from the evidence that the customer applied for a surface water rebate on 17 September 2021 and following an investigation the company agreed to cease charging for surface water and to offer a rebate back to 01 April 2014.
6. The customer believes the charges refund should be back dated to the date he first occupied the property in 2006.
7. The company has included the relevant extract from its Scheme of Charges, and this states:

*(xiii) where the customer makes a claim on the appropriate form and can satisfy us that no surface water or groundwater drains directly or indirectly from the premises or any common area next to those*

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*premises to a public sewer, the surface water drainage charge shall cease to be payable from:*

*(a) In the case of premises occupied for the first time prior to 1 April 2014, 1 April 2014. Surface water drainage charges prior to this date will normally be deemed to be correct and will remain payable irrespective of the fact that this service may not have been provided.*

8. I am satisfied that under the company's charges scheme a customer must apply to the company and provide the required evidence.
9. I am further satisfied that under the charges scheme the customer's refund cannot be backdated beyond 01 April 2014.
10. The customer has contended that the company should have made him aware sooner that his property was not connected to its surface water assets, and he would have been able to make his refund application earlier.
11. The company states that information on surface water drainage is available on its website and is included on every bill it sends to customers. It notes that the customer has received a bill twice a year since he took possession of the property in 2006. Copies of examples of the bills sent to the customer have been provided and I find that the information available gives customers sufficient notice that rebates are available and how to apply. I find no failings on the part of the company in this regard.
12. Similarly, the customer contends that because his development was constructed in 2004 the company should have been aware that surface water drained to a soakaway. The company states that it relies on developers to advise it of the surface water system installed, and I see no evidence to support that in this case the developer so advised the company.
13. I find that it is not reasonable to expect the company to survey every property in its area to find properties that are not connected to its surface water assets. It thus follows that I do not accept that the company knew or ought to have known that the customer was entitled to an exemption from charges prior to him making contact in September 2021.
14. The customer has also made reference to a previous adjudication decision made under the WATRS Adjudication Scheme. I would further point out that each adjudication decision is made on the merits of the individual case and as such I am not obliged to follow the findings of an adjudicator on a different case.

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15. Based on the evidence submitted, I find that the company has provided the correct level of rebate and no additional rebate is due to the customer.
16. The customer has requested to be compensated for his time spent on dealing with the company over the dispute. In my examination of the evidence, I have not found any duty of care failings by the company to manage the customer's account with a reasonable level of skill and care. I am satisfied that it responded quickly to the customer's rebate application and granted the rebate in accordance with its own rules. It explained to the customer from the outset that it could not extend the rebate beyond April 2014, and I take note that it responded fully and speedily to the enquires from CCWater. Thus, I find on a balance of probabilities that no act or omission on the part of the company contributed directly to any loss of time or inputs that may have been experienced by the customer. I shall not direct the company to pay compensation.
17. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person.
18. My decision is that the customer's claim does not succeed.

### **The Preliminary Decision**

- The Preliminary Decision was issued to the parties on 02 February 2022.
- The customer has, on 03 February 2022, acknowledged the Preliminary Decision and stated that he believes although the company has complied with OFWAT regulations it is unreasonable that it professes to have been unaware of the surface water arrangements at his property.
- On 04 February 2022 the company acknowledged receipt of the Preliminary Decision and stated it had no comments thereon.
- Having read the responses of the parties I am satisfied that no amendments are required to the Preliminary Decision

#### **Outcome**

The company does not need to take any further action.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
  - The customer must reply by 17 March 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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Peter R Sansom

MSc (Law); FCI Arb; FA Arb; FRICS;  
Member, London Court of International Arbitration.  
Member, CI Arb Business Arbitration Panel.  
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.  
Member, CEDR Arbitration Panel.  
Member, CEDR Adjudication Panel.

**Adjudicator**

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