

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X151

Date of Decision: 14 October 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to extend the backdating of a surface water drainage refund. The customer says that the company has backdated the refund for six years, but he believes it should be longer because he was paying for a service that the company was not providing. The customer claims 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 extend the refund back to the date when he first took up residence at his house, pay refunds to all residents in his street, and advise the entire housing estate of the possibility to receive a surface water refund.

Response

The company states that it has backdated the customer's refund in compliance with its OFWAT approved Charges Scheme. The company says it has investigated the customer's request but finds no reasons to extend the period of backdating beyond the six years currently granted. The company says its policy requires each individual household to apply for an allowance and refund. The company has not made an offer of settlement and declines to provide any of the remedies requested by the customer.

Findings

The claim does not succeed. I find that the evidence establishes that the company has backdated the refund in compliance with its own Charges Scheme. I am also satisfied that the company has explained in reasonable detail its statutory obligations in regard to wastewater assets and its right to charge for managing the assets. I find that the evidence does not support the customer's claim to have the refund backdated beyond the six-year period. I find that the evidence shows that the company has provided its services to a reasonable level and has managed the customer's account to the level to be reasonably expected by the average person.

Outcome

The company does not need to take further action.

The customer must reply by 11 November 2022 to accept or reject this decision.

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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 has resided at his property on REDACTED.
- Throughout the period from 1994 to date, the company has charged and billed him for surface water drainage.
- In May 2022 he understood that his surface water went to a soakaway and did not enter the public sewer. He contacted the company who sent an engineer to the property and subsequently confirmed that the surface went to a soakaway.
- The company has ceased to charge for surface water drainage and provided him with a refund of applicable charges raised backdated for six years.
- He is aware that other residents on his housing estate, particularly those on REDACTED, have longer refund periods, going back to the date they took up occupation of their dwellings. The customer thus believes that the company should extend his refund period back to 1994.
- The company has refused his request.
- Believing the company had not properly addressed his concerns he, on 09 June 2022, escalated his complaint to CCWater who took up the dispute with the company on his behalf.
- The records show that on 29 June 2022 CCWater contacted the company with a Pre-Investigation letter and requested its explanation of events and to check the level of customer service it provided.
- CCWater advised him that the company had responded to its request with a detailed communication dated 22 July 2022 in which it answered the questions raised by CCWater. The company confirmed that it had correctly followed its different policies in respect of wastewater refunds and stated that it would not extend the customer's refund period beyond the six years.
- CCWater concluded that this was the final position of the company, and it could not take any further measures to have the company change its position and was thus closing his case.

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- Continuing to be dissatisfied with the response of the company he has, on 19 August 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to pay full refunds backdated to the date of taking occupation of their houses to all residents of his road.

The company's response is that:

- It provided its response to the claim in its submission submitted on 09 September 2022.
- It confirms that on 03 May 2022 it received a request from the customer for a surface water drainage allowance because his discharge did not enter a public sewer. The company further acknowledges that it attended the property on 24 May 2022 and confirmed that the property discharge went to a soakaway.
- It subsequently removed surface water charges from the customer's bills and provided a refund of these charges going back six years as set down in its approved scheme of charges.
- It acknowledges that it had previously made a connectivity survey of a property in REDACTED and had provided a refund for a six-year period. It confirms that a subsequent case investigation resulted in the refund period being extended to the date the occupier first entered the property.
- It notes that REDACTED and REDACTED are located in different areas of the estate.
- It confirms it has different policies in respect of surface water, and that a property on REDACTED comes under its unadopted sewers policy whereas REDACTED is subject to its surface water allowance policy. This is because it cannot be assumed that all properties are not connected to the public sewer because such assets are present at various locations throughout the housing estate, and as such it is for each householder to request an allowance.
- In summary, it believes it has complied with its charging policies and with all legal and regulatory requirements. The company declines agree to the remedies sought by the customer.

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

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- On 26 September 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 that he believes there is no difference in the drainage infrastructure between the two roads, and that both roads were constructed by the same developer. The customer reiterates his belief that he has been paying for a service that the company did not provide, and thus he should be refunded back to the date he took up residence.

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 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 declined to extend a surface water drainage refund beyond the six years it has currently provided.
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 contacted the company in May 2022 and requested a surface water drainage allowance.

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4. I can further see that following a site inspection at the customer's property, that confirmed that surface water ran to a soakaway, the company ceased to charge him for surface water drainage and refunded such charges backdated for a six-year period.
5. The customer contends that the backdated period should extend back to 1994 when he first took up residence at the property. It seems to me that the customer is basing his contention on the understanding that other properties on his housing estate have had refunds backdated to the date of first occupation.
6. I accept that the company has established its statutory obligation under the Water Industry Act 1991 to provide and maintain wastewater assets and its right to charge for providing services. I am satisfied that the company has certified to OFWAT that its Charges Schemes comply with the applicable OFWAT requirements.
7. I can see that Section 8.3 of the company's Charges Scheme in respect of surface water drainage charges states :-

Reduction in charges :

If your claim is successful, we will reduce your charges for up to six years, depending on the circumstances.

8. I am satisfied that the evidence establishes that the company has applied the backdating of the customer's charges in compliance with the Charges Scheme.
9. The customer has not provided evidence that shows that company has erred in not backdating his refund beyond six years.
10. It seems to me that the basis for the customer's claim for backdating beyond six-years is that neighbouring properties have received refunds for longer than six years. However, I am satisfied that the customer desiring such a backdating extension because some neighbours have longer periods is not a basis for a successful claim.
11. I am satisfied that the company has explained that the property in REDACTED discharged its surface water into an unadopted sewer pipe and thus came under the policy of "sewers unadopted".
12. I can see that the original decision in respect of the REDACTED property was for a six-year backdating but when it became apparent it discharged into an unadopted sewer the backdating was extended.

13. The company has stated that its investigations do not identify that the customer's property discharges into an unadopted sewer and thus there are no factors that would allow it to extend the backdating to 1994. The customer accepts that his surface water flows to a soakaway.
14. In his application to the WATRS Scheme the customer requests that the company be directed to backdate surface water drainage refunds to all residents on his street and inform all residents on the entire housing estate of the availability of possible refunds.
15. As stated, I am satisfied that the company correctly applied its policy when restricting backdating of the customer's claim to six years. I shall not direct that it extends the backdating to 1994.
16. The company states that it has paid refunds going back six-years to other residents on the same street as the customer. The customer has not refuted this in his comments on the company's Response that he submitted on 26 September 2022. Thus, I find that this remedy requested by the customer has been satisfied by the company's previous actions, and I shall not make any further directions in this regard.
17. In respect of advising all property owners on the housing estate, I am satisfied that the company has explained that its Charges Policy requires each individual household to make an application should it believe that it qualifies for a surface water drainage allowance under the approved charges scheme.
18. The company has shown with its submissions that it has combined wastewater assets at various locations throughout the housing estate and as such it cannot make any assumptions as to which houses are connected to its assets.
19. Overall, I do not find the evidence supports the customer's claim. I am satisfied that he has had charges backdated for six years in compliance with the company's approved Charges Scheme and has not submitted any evidence to support his claim that the backdating should be extended.
20. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person, and the evidence does not confirm that the customer experienced a poor level of service.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 30 September 2022.
- The customer has, on 06 October 2022, responded to the Preliminary Decision.
- The customer reiterates that he believes he was paying for services that he did not receive.
- The company has, on 07 October 2022, responded to the Preliminary Decision, and confirms it has nothing further to add.
- The parties have not submitted any new evidence and thus I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- 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 further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 11 November 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.



Peter R Sansom
MSc (Law); FCI Arb; FA Arb;
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.

Independent Adjudicator

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