

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/XXX/X323

Date of Final Decision: 5 February 2023

Party Details

Customer: The Customer

Company: The company

Complaint

The customer submits the company has incorrectly charged him for surface water drainage since 2002. He seeks a rebate on these charges backdated to 2002.

Response

The company says it charges for surface water drainage on all properties built prior to 2000 unless or until a customer applies for a rebate and evidences they do not need the service. The customer contacted it in 2012 and it applied a rebate from April 2012. No further rebate is due and the claim is time barred under the Limitation Act 1980.

Findings

The evidence shows the company provided its services to the standard to be reasonably expected.

Outcome

The company does not need to take any action.

The customer must reply by 6 March 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- In 2002 he told the company his surface water did not drain into its sewerage system.
- Despite this, the company billed him for surface water drainage.
- In 2012 he contacted the company to complain and it applied a rebate from April 2012. It said it did not have records of any earlier contact. He complained again and the company agreed to a further 50% rebate from April 2009 to April 2012.
- He escalated to **XXX**; however, the company has refused any further rebate.
- He seeks that the company refund his surface water drainage charges back to 2002.
- In comments on the company's response, the customer says the company has known since 2002 his property was not connected to its sewerage system. Further that he claims for himself and his neighbours.
- In comments on a preliminary decision the customer says:
 - His claim always included all the properties on his road, however **XXX** made the claim on his behalf and this may have confused matters.
 - It is reasonable to conclude he returned the application for a rebate in 2009, although the company denies receipt.
 - The company has knowingly charged for a service it did not provide.
 - The Limitation Act applies from when he first made a claim; that the company has drawn out the process should not mean the time limit is passed.

The company's response is that:

- Ofwat only expects water companies to provide a rebate for surface water drainage ("SWD") charges if the water company knew, or might reasonably have been expected to know, that a property was not connected to the public sewerage system in relation to surface water drainage.

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- It does not have this information for properties built before 2000 and therefore those customers have to apply for a rebate if applicable.
- It only has records from 2007. In 2009 it sent the customer a form to apply for a rebate but it did not receive this back. In 2012 the customer complained he had not received his rebate and it said it did not receive an application. It initially applied a rebate from April 2012. However, as a gesture of goodwill, it later agreed a 50% rebate from April 2009 to April 2012 in addition.
- In October 2022 the customer complained again seeking a rebate to 2002, which it refused.
- His claim is out of time under the Limitation Act 1980.
- It denies the claim.

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.

How was this decision reached?

1. The customer has applied to WATRS in his name alone and has not been authorised to bring a claim on behalf of his neighbours. Therefore, I am considering the customer's claim alone.
2. The Limitation Act 1980 limits the time within which a person may bring an action based on simple contract to six years from the date the cause of action arose. The customer seeks a rebate on SWD charges applied from 2002 to 2012 and he raised this with the company in 2012

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(at latest). It has therefore been more than six years since the customer's cause of action arose and any court claim would be time barred.

3. However, this is not a ground to end the adjudication; the dispute still falls within the scope of the WATRS scheme. I have therefore considered the matter for completeness.
4. Under this scheme I must reach findings on the balance of probabilities. That means I must weigh and consider the information and evidence available to reach a finding as to what is more likely than not to have happened. If I cannot say something is proven on balance, then I cannot say it happened.
5. Ofwat has said the company only needs to refund the SWD charges for properties built prior to 2000 if it knew or should have known the property was not connected to its sewerage system.
6. The customer says he told the company in 2002 that the surface water from his property did not drain into its sewerage system. The company has no record of this and did not act upon any information if received. Further the company continued to bill the customer for SWD yet the customer did not challenge this as incorrect. In considering the limited evidence available I cannot say, even on balance, that the evidence shows the company knew or ought to have known the customer did not need its SWD services in 2002.
7. The parties accept the customer requested an application form to apply for a SWD rebate in 2009. The customer says he returned this; however, the company denies receipt. The company continued to bill the customer for SWD and the customer did not challenge this again until 2012. In considering the limited evidence available I cannot say, even on balance, that the evidence shows the customer applied for a rebate of SWD in 2009 or that the company knew or ought to have known the customer did not need its SWD services in 2009.
8. The customer contacted the company again in 2012. The company accepts it became aware at this point the customer did not need its SWD services and so it applied a rebate to the start of that financial year in line with its scheme of charges. The evidence shows the company provided its services to the standard to be reasonably expected.
9. I have not seen any law or policy that required the company to provide a further rebate to 2009, though I note it did so as a goodwill gesture.

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10. The company has refused the customer a further rebate as it did not and could not have known the customer did not make use of its SWD services until 2012. This is in line with Ofwat's guidance and the company's policy. The evidence does not show the company failed to provide its services to the standard to be reasonably expected. Therefore the customer's claim is unable to succeed.

11. I have considered the customer's comments on my preliminary decision however my findings remain the same. Irrespective of the customer's intention he is not authorised to act as representative for any of his neighbours in bringing a claim to WATRS. In regards to the Limitation Act, the customer's claim to WATRS is made in 2023; more than six years after the cause of action arose. As to my substantive findings, I refer to my reasoning above.

Outcome

The company does not need to take any action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 March 2023 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.



J Mensa-Bonsu LLB (Hons) PgDL (BVC)
Adjudicator

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