

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0700

Date of Decision: 21 March 2018

Complaint

The customer states that he has been billed for surface water drainage even though the company has had reason to know since 2001/2 that he was entitled to a rebate of this charge. He requests a rebate of £240.00

Defence

The company argues that it was not historically obligated to provide the customer with a rebate until he requested one. The customer has now requested a rebate because the company suggested to him that he might be entitled to receive one, but its policy does not permit backdating of rebate payments for more than 6 years. It has already paid the customer the 6 year rebate to which he is entitled.

Findings

I find that the company's failure to notify the customer that it had reasonable grounds on which to believe that he was entitled to a rebate constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company needs to take the following further action:

It must calculate the rebate to which the customer is entitled, backdated to 1 April 2007, and must pay this rebate to the customer, less the amount already paid.

The customer must reply by 20 April 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0700

Date of Decision: 21 March 2018

Party Details

Customer: _____

Company: _____

Case Outline

The customer's complaint is that:

- He recently learned that he was not on a mains surface water drainage sewer.
- Upon learning this fact, he applied for a rebate from the company.
- The company has agreed to provide him with a rebate backdated 6 years.
- When discussing the situation with a neighbour, he discovered that his neighbour had alerted the company in 2001/2 that the row of houses in which they both lived was not on a mains surface water drainage sewer.
- He notified the company of this fact, but it refused to backdate the rebate further than 6 years, despite the existence of Ofwat guidance stating that rebates should be backdated to the time that a water supplier might reasonably have been expected to know that a customer was not connected to a mains surface water drainage sewer.
- He seeks a further rebate of £240.00.

The company's response is that:

- It contacted the customer in July 2017 to notify him that he might be eligible for a surface water drainage rebate, as one of his neighbours had successfully applied for and been granted a rebate.
- 6 years is the maximum backdating possible for a rebate under its current policy.
- In 2001 Ofwat asked companies to remove surface water drainage charges when a customer had no surface water connections to the sewer.

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- However, at this time the responsibility for claiming a rebate was placed on the customer, due to the difficulties involved in companies identifying which customers were and were not entitled to a rebate.
- In 2007 Ofwat recommended, but did not require, that when an existing customer applied for a surface water drainage rebate, companies should consider other properties in the vicinity and whether they might also be eligible.
- Since 2000 it has printed on all its bills information regarding the possibility of a surface water drainage rebate, and has required that companies who collect charges on its behalf do the same.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 was aware as of 2001/2 that he was paying a surface water drainage charge even though his property did not benefit from surface water drainage to a sewer. He also points to Ofwat guidance 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.

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2. The company does not deny that it was aware as of 2001/2 that one of the customer's neighbours did not benefit from surface water drainage to a sewer. However, it argues that at that time the onus was on customers to claim a rebate, rather than on companies to provide it.
3. The company has sufficiently established that as of 2001/2 the onus was on customers to claim the rebate. Nonetheless, it is clear from the company's own explanation that the rationale for this policy was not that companies could not reasonably be expected to rebate charges for a service that they were not providing, but rather that the difficulty of identifying which customers were and were not entitled to a rebate was too great to justify requiring that companies undertake this task.
4. This distinction is important because in the customer's case the company did not face significant obstacles in identifying whether or not the customer was entitled to a rebate. The company was on clear notice that the customer might be entitled to a rebate because one of the customer's neighbours had successfully claimed a rebate, and it could have easily notified the customer that it had reasonable grounds to believe that he also was entitled to a rebate.
5. Nonetheless, as the company notes, it was not at this time required by Ofwat to provide such notifications to neighbours, and I find that the average person would not have expected the company to provide notifications that were not even regarded as "best practice" within the industry.
6. However, as the company acknowledges, in 2007 Ofwat adopted best practice guidelines recommending that water companies provide notifications to neighbours of householders who have successfully claimed a rebate. The company emphasises that this guidance was not formally binding, but I find that Ofwat's adoption of this recommendation merely constituted a recognition that the average person would reasonably expect the company to contact customers that it had reasonable grounds for believing it was charging for a service they did not receive, to enable them to stop making the payments concerned.
7. As a result, I find that the company's failure to notify the customer in 2007 that it had reasonable grounds on which to believe he was entitled to a rebate constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.

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8. The company also argues that the customer had the ability to request a rebate even without a direct notification, as the company had included a notification in all its bills mentioning the possibility of requesting a rebate. However, I find that this general notification, sent to all of the company's customers and included amongst a number of other general statements, would not be seen by the average person to constitute reasonable notification in a situation in which the company had reasonable grounds to conclude that this customer specifically was entitled to a rebate. Had the company provided direct notification to the customer of his potential eligibility for a rebate, due to his neighbor receiving one, but the customer had chosen not to apply for a rebate, then the company would have met the standard to be reasonably expected by the average person. However, it chose not to take this action.
9. The company also emphasizes the significant period of time for which the customer is claiming a rebate. However, as the customer had not been provided with the information that would reasonably have led him to believe that he was entitled to a rebate until 2017, I find that he has not failed to bring his claim in a timely fashion.
10. Consequently, as the company failed to provide its services to the standard to be reasonably expected by the average person, it must calculate the rebate to which the customer is entitled, backdated to the 1 April 2007, representing the commencement of the financial year, and must pay this rebate to the customer, less the amount already paid.

Outcome

The company needs to take the following further action:

It must calculate the rebate to which the customer is entitled, backdated to 1 April 2007, and must pay this rebate to the customer, less the amount already paid.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 April 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my

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decision. If the company does not do what I have directed within this time limit, you should let WATRS know.

- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
 - If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.
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Tony Cole, FCI Arb

Adjudicator

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