

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0973

Date of Decision: 11 September 2018

Complaint

The customer states that he has been overcharged for surface water drainage for a number of years, and the company has refused to properly backdate a rebate of those charges.

Defence

The company states that the customer has already received a rebate in accordance with the company's backdating policy and is not entitled to a further rebate. No offer of settlement has been made.

Findings

The customer has not established that he is entitled to a rebate beyond that already paid by the company. However, the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its handling of the customer's questions about the banding of his property.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £250.00. It must again raise the customer's questions with the wholesaler and make reasonable efforts to receive answers from the wholesaler as to why the customer's property was previously placed in Band 3.

The customer must reply by 9 October 2018 to accept or reject this decision.

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Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- He contacted the company in May 2017 stating that he believed he was being overcharged, as he was being charged on the basis of a site area in Band 3, when his property is actually properly placed in Band 1.
- On 29 September 2017, the company confirmed that he would receive a reduction to Band 1, backdated to 1 April 2017.
- He states that the incorrect banding was a result of the company's error, and so there is no justification for limiting the backdating of the rebate.
- He requests a refund of the difference between Band 1 and Band 3 from the date his water account was opened.

The company's response is that:

- It was contacted by the customer on 11 May 2017 about the surface water drainage banding of his property. The customer asked why his property was placed in Band 3, and if the banding could be re-assessed.
- The customer submitted an application for re-assessment of the banding of his property on 19 August 2017 and this was forwarded to the water wholesaler.
- The water wholesaler changed the banding of the customer's property, and this information was provided to the customer.

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- The company's policy on backdating of rebates is that "we'll do it from the date you told us, unless this happened before 1 April (the previous year). If it happened before 1 April, but you didn't tell us until afterwards, we'll only credit your account from 1 April to the date you told us."
- The company states that the customer's rebate has been backdated to 1 April 2017, and thus the company has acted in accordance with its policy.
- The company denies that the customer is entitled to any additional rebate.

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

- The company acknowledges that the customer's property has been incorrectly banded, but has provided no explanation for this error.
- The company's policy of limiting backdating of rebates is contrary to both common sense and fairness.
- He calculates the total amount he has been overcharged as £2,997.06.

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?

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1. The parties are in agreement that the customer's property has been incorrectly banded for a period of time greater than the rebate the company has agreed to pay to the customer. The current dispute concerns solely whether the company is obligated to pay a larger rebate.
2. The company argues that it has paid a rebate in accordance with its policy, and it has established that this is correct. However, the company's own policies cannot in themselves determine the company's legal obligations, and hence this does not finally resolve this matter.
3. The Water Services Regulation Authority ("Ofwat") has provided guidance regarding the backdating of rebates for surface water drainage which states that rebates should be extended back to the point at which the company might reasonably be expected to have known that a customer was being incorrectly charged.
4. In the present case, however, there is no evidence from which it would be possible to conclude that the company was on reasonable notice that the customer's banding was incorrect prior to the time at which the customer raised the issue in May 2017.
5. The customer argues that the company was clearly responsible for the error, however this is not necessarily true. Errors in banding can certainly result from company error, however they can also arise because, for example, a property has been subdivided but the company was not notified of the subdivision, or because private arrangements were terminated that affected the allocation of billing for a property but again the company was not notified. Owners and occupiers of properties are in a better position than water companies to be aware of such changes, and so it is reasonable for water companies to rely on those parties to notify them of any changes that may affect the billing of a property. This is reflected in the guidance provided by Ofwat, which explicitly limits the obligation of water companies to backdate rebates to the time at which they knew or might reasonably have known that they were billing a customer incorrectly.
6. In the present case, as there is no evidence from which it could be concluded that the company was on reasonable notice that the customer's property was banded incorrectly prior to the customer raising the issue in May 2017, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person by backdating his rebate to 1 April 2017.

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7. Nonetheless, while I find that the company has met the applicable standard with respect to its billing of the customer, I also find that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its handling of his enquiry and of his subsequent complaint.
8. The company's records show that at the time the customer raised his initial query in May 2017 he expressly asked for an explanation why his property had been placed in Band 3. The customer has since that time repeatedly requested this explanation.
9. The company, however, has consistently failed to respond to the customer on this point, insisting only that it is acting in accordance with its rebate policy, without at any time attempting to explain to the customer how the incorrect banding occurred and why it has now been changed. Indeed, the company has maintained the same approach in the present case.
10. While the opening of the water market means that the decision on the proper banding of the customer's property is made by the water wholesaler, rather than by the company, the company has failed to demonstrate that it recognised its obligation to answer the customer's reasonable question, and then made reasonable efforts to secure that answer from the water wholesaler.
11. I find that this constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person, and in line with the guidelines provided in the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation for this failure would consist of £250.00. In addition, the company must again raise the customer's questions with the wholesaler and make reasonable efforts to receive answers from the wholesaler as to why the customer's property was previously placed in Band 3. However, I note that only the wholesaler can provide the required answers and that the company is only obliged to demonstrate that it made reasonable efforts to secure the information from the company and then provided to the customer any response from the wholesaler.

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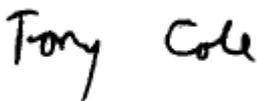
Outcome

The company needs to take the following further action(s):

It must pay the customer compensation of £250.00. It must again raise the customer's questions with the wholesaler and make reasonable efforts to receive answers from the wholesaler as to why the customer's property was previously placed in Band 3.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 October 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 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.



Tony Cole, FCI Arb

Adjudicator

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