

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1045

Date of Decision: 27 November 2018

Complaint

The customer submits that he applied for a surface water drainage (SWD) rebate in June 2018 after discovering his property has soakaways. He was successful in his application and was initially awarded a refund of six years' charges in the sum of £307.41. After discovering that a neighbour had applied for a rebate a year earlier, an additional year's refund of £40.01 was also awarded. However, he has lived in his property for 14 years and would like a rebate for the whole period. He is a disabled pensioner and he is owed £238.37.

Defence

The company submits that the customer has received a rebate of his full entitlement. When an SWD rebate application is successful, its policy is to cancel SWD charges for the current financial year and go back up to a maximum of six previous financial years. This policy is in accordance with its Charges Scheme and the Limitation Act 1980. Its Charges Scheme has been reviewed and approved by OFWAT, the water industry regulator. It acknowledges that in March 2018, the property could have been checked for a SWD connection at the same time as a neighbouring property was granted an SWD rebate. In view of this, and as a goodwill gesture, it agreed that an additional refund of one year's charges was payable to the customer. No offer of settlement was made.

Findings

Under the company's Charges Scheme any rebate is subject to a maximum of six years plus the current year's charges. There is no evidence to show that the company's Charges Schemes have not been approved by OFWAT or do not comply with OFWAT's Charging Rules. I acknowledge the customer's request for a rebate to cover the 14 years in which he has occupied the property. However, there is no evidence to show that the company is under a duty, legal or otherwise, to provide a rebate to the start of his occupation. The customer applied for a SWD in June 2018. In 2007, OFWAT recommended that companies take a more proactive approach and that when an existing customer applied for a SWD rebate, companies should look at other properties in the vicinity to determine whether they might also be eligible. The company admits that a neighbouring property had received a SWD rebate in March 2018; which falls into the previous financial year 2017/2018. The company acknowledges that it could have checked neighbouring properties then to see

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whether they were also eligible, but failed to do so. The company failed to provide its services to the customer to the standard to be reasonably expected in this regard. However, the company has provided the customer with a rebate for 2017/2018. This is fair and reasonable, and appropriate for the failing shown.

Outcome

The company does not need to take any further action.

The customer must reply by 28 December 2018 to accept or reject this decision.

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- It acknowledges that in March 2018, the property could have been checked for a SWD connection at the same time as a neighbouring property was granted an SWD rebate. In view of this and as a goodwill gesture, it agreed that an additional refund of one year's charges was payable to the customer, even though the Scheme states that the maximum rebate that will be given will be six years plus the current year. It sent a letter to the customer to confirm this on 7 August 2018.

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?

Complaints about the Consumer Council for Water and WATRS

1. I acknowledge the customer's complaints about the Consumer Council for Water (CCW) and WATRS. However, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any complaints about CCW and WATRS cannot be considered in this adjudication.

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SWD Rebate

2. Under Section 143 of the Water Industry 1991 Act, the company is entitled to make a Charges Scheme that fixes the charges for any services provided by the undertaker in the course of carrying out its functions.
3. A company's Charges Scheme must be approved by OFWAT. There is no evidence to show that the company's Charges Schemes have not been approved by OFWAT or do not comply with OFWAT's Charging Rules.
4. I accept the company's submission that under its Charges Scheme any rebate is subject to a maximum of six years plus the current year's charges.
5. I acknowledge the customer's request for a rebate to cover the 14 years in which he has occupied the property. However, there is no evidence to show that the company is under a duty, legal or otherwise, to provide a rebate to the start of his occupation.
6. I note the customer's concerns about the fairness of the company's rebate policy. However, I must remind the parties that the scope of the Scheme is set out under WATRS Rule 3.3. Under WATRS Rule 3.4.1, WATRS is not the appropriate forum to determine any complaints regarding the fairness of the company's rebate policy. I acknowledge the customer's concerns and appreciate that the customer will be disappointed that I am not in a position to consider his complaint. However, my remit is limited to determining whether the company has acted in accordance with its Charges Scheme and the evidence confirms that the company has fulfilled its obligations.

OFWAT's recommendation that companies check neighbouring properties for eligibility

7. From April 2001, OFWAT asked companies to rebate SWD charges where customers were not connected to the sewer. Prior to 2007, the onus was on customers to claim the rebate. However, in 2007, OFWAT recommended that companies take a more proactive approach and that when an existing customer applied for a SWD rebate, companies should look at other properties in the vicinity to determine whether they might also be eligible.

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8. The customer applied for a rebate in June 2018. However, the company itself submits that a neighbouring property had received a SWD rebate in March 2018; which falls into the previous financial year 2017/2018. The company acknowledges that it could have checked neighbouring properties in March 2018 to see whether they were also eligible, but failed to do so. I find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in this regard.
9. However, I note that the company has provided the customer with a rebate backdated a further year to take into account its failure to check for other eligible properties in March 2018. No evidence has been submitted to this adjudication to show that the company was aware or should have been aware that the customer's property did not drain into its surface water sewer prior to March 2018. Having carefully considered the matter, I find that a rebate to cover the charges 2017/2018 is fair and reasonable redress, and appropriate for the failing shown.
10. In view of all of the above, the customer's request for a further rebate is unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 December 2018 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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A handwritten signature in black ink, appearing to read 'E. J. J. J.', enclosed within a thin, hand-drawn oval.

**U Obi LLB (Hons) MCI Arb
Adjudicator**

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