

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1160

Date of Decision: 18 February 2019

#### Complaint

The customer submits that he has a soakaway at his property and applied for a Surface Water Drainage (SWD) rebate in 2018. He was successful in his application and the company awarded him a rebate that was initially backdated for two years to 2016. On further complaint, the company agreed to provide a rebate for an additional four years. However, he is seeking a rebate backdated to 2001 as the company would have reasonably known that surface water run-off from his property was not draining into the network at the time. The customer requests that the company provide a rebate backdated to 2001 in the sum of £1,500.00.

#### Defence

The company submits that the customer's property was confirmed as not connected to the public sewer for the removal of SWD on 10 August 2018. The customer had been billed on its used water and SWD charges, and the SWD charges were first amended back to its policy of 1 April 2014. However, as a result of its investigations, it discovered that the customer should have been billed on [ ] (RST) used water and SWD tariff as it bills on RST's behalf. This error occurred when the customer had a meter fitted in 1997 and it updated the records to the measured charges. This issue was rectified and the charges were not amended as RST charges were higher than its charges. This means that the customer benefited. Under RST's policy, rebates are backdated six years. RST has confirmed to it that the backdating of the SWD charges of six years is its policy and has refused to backdate any further. It adopted a 'cluster policy' from 2007 onwards and when a claim is successful, it will use the billing database to check the properties under the same postcode. The customer's application was the only one received after 2007. No offer of settlement was made.

#### Findings

The company has submitted in evidence a letter dated 28 August 2018 that confirms its submission that SWD charges were first amended back to 2014, as per its own policy. The company acknowledges that it had been billing the customer incorrectly on its tariff, and that the customer should have been billed on RST's used water and SWD tariff. However, I accept the company's submissions that this error benefitted the customer. Under RST's Charges Scheme any rebate is subject to a maximum of six years. There is no evidence to show that RST's Charges Scheme have not been approved by OFWAT or do not comply with OFWAT's Charging Rules. In 2007, OFWAT recommended

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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. There is no evidence to show that when the guideline came into being in 2007, companies were required to go back retrospectively into their files to see who had applied for a rebate prior to 2007. I acknowledge the customer's request for a further rebate backdated to 2001 and appreciate that the customer will be disappointed that I am not in a position to direct the redress requested. However, there is no evidence to show that the company is under a legal duty to backdate his rebate to 2001.

**Outcome**

The company does not need to take any further action.

The customer must reply by 18 March 2019 to accept or reject this decision.

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- The customer's property was confirmed as not connected to the public sewer for the removal of SWD on 10 August 2018.
- The customer had been billed on its used water and drainage charges, and the SWD charges were first amended back to its policy of 1 April 2014. However, as a result of its investigations, it discovered that the customer should have been billed on [ ]'s (RST) used water and SWD tariff as it bills on RST's behalf.
- This error occurred when the customer had a meter fitted on 6 March 1997 and it updated the records to the measured charges.
- This issue was rectified and the charges were not amended as RST charges were higher than its charges. This means that the customer has benefited based on STW tariffs from March 1997 to July 2018 (21years).
- RST has a different SWD policy, rebates are backdated six years.
- It adopted a 'cluster policy' from 2007 onwards and when a claim is successful, it will use the billing database to check the properties under the same postcode. It cannot assume if one property on the street is not connected for the service, that all the neighbouring properties would be the same. As a general rule, if 20% or more of the properties on the same road are not connected for SWD, then it will try and proactively visit the remaining properties under the same postcode. When it is confirmed that there is no main drainage, it automatically applies the appropriate rebate.
- It checked its records on Green Way and there are 21 properties under the postcode. One property was found not connected in August 1999, another one in November 1999. Then a further two properties, one in February 2000 and one in March 2002. And now the customer's property in 2018.
- RST has confirmed to it that the backdating of the SWD charges of six years is its policy and has refused to backdate any further.
- It has listened to the telephone conversation of the customer's initial complaint to request the SWD claim form was listened to and the agent did not mention any timescales about backdating SWD charges.

### How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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. I must remind the parties that adjudication is an evidence-based process.
2. 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.

### **SWD Rebate**

3. The evidence submitted to this adjudication shows that customer first contacted the company about the SWD charges on 23 July 2018. I acknowledge the customer's submissions. However, no evidence has been submitted to this adjudication that indicates that the company informed the customer that any refund could be backdated to 2001.
4. The customer completed the company's SWD rebate application form on 29 July 2018.
5. The company has submitted in evidence a letter dated 28 August 2018 that confirms its submission that SWD charges were first amended back to 2014, as per its own policy.

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6. However, the company states that it bills the customer on RST's behalf. The company acknowledges that it had in fact been billing the customer incorrectly on its tariff, and that the customer should have been billed on RST's used water and SWD tariff. The company states that this error had been ongoing from March 1997 to July 2018. I find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard.
7. However, I note the company's submissions that RST's charges are higher than its charges. The company has submitted in evidence calculations from its system that supports its submissions. I accept the company's submissions that this error benefitted the customer. As no loss or detriment has been shown, I find that no remedy is due in this respect.
8. The company has submitted in evidence an excerpt of RST's 2018/2019 Charges Scheme, which confirms that under RST's policy any SWD rebate is subject to a maximum of six years.
9. 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.
10. A company's Charges Scheme must be approved by OFWAT. There is no evidence to show that RST's Charges Schemes have not been approved by OFWAT or do not comply with OFWAT's Charging Rules.
11. In addition, 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. I acknowledge the customer's submission that the company would have reasonably known that surface water run-off from his property was not draining into the network at the time. However, there is no evidence to show that when the guideline came into being in 2007, companies were required to go back retrospectively into their files to see who had applied for a rebate prior to 2007. The company states that that one property in the vicinity was found not to be connected to the network in August 1999, another in November 1999, then a further two properties, in February 2000 and in March 2002 respectively. The company submits that the customer's application was

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the only one received after 2007. No evidence has been submitted to the WATRS showing otherwise.

12. I acknowledge the customer's request for a further rebate backdated to 2001 and appreciate that the customer will be disappointed that I am not in a position to direct the redress requested. However, there is no evidence to show that the company is under a legal duty to backdate his rebate to 2001. Consequently, the customer's claim 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 18 March 2019 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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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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