

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1814

Date of Decision: 28 February 2020

Complaint

The customer believes that a technician, whilst attending her property, pressed the dual flush button on the toilet while it was blocked ("the Allegation"). This caused a foul flooding incident. The customer is claiming compensation totalling £4085.00, which is essentially for the elements that her home insurers, Esure, will not cover. The £4085.00 figure is comprised of (1) £2500.00 for inconvenience and stress suffered; (2) £880.00 in respect of a damaged painting; (3) £350.00 - her insurance policy excess; (4) £250.00 - reimbursement of the charge for cleaning a carpet at the property and (5) £105.00 - Barclays overdraft charges incurred.

Defence

Having been in touch with its Service Partner, ABC Ltd, the company denies the Allegation.

No offer of settlement has been made.

Findings

As to the Allegation, on the limited evidence available, it cannot reasonably be concluded that the customer's position is more credible than ABC Ltd's - or *vice versa*. The company has applied a goodwill credit of £360.00 in the customer's favour, however. Even without the Allegation being found proved, the £360.00 goodwill credit appears to be more than adequate response by the company to the customer's situation.

Outcome

The company does not need to take any further action.

The customer must reply by 27 March 2020 to accept or reject this decision.

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Date of Decision: 28 February 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She is an 89 year old lady who suffers from polymyalgia rheumatic.
- Her property is at []("the Property").
- She called the company on 11 April 2019 regarding a blocked toilet. A plumber by the name of 'Terry' attended from ABC Ltd. He showed the customer the blockage on camera. He said that he would not clear the blockage as he did not want to damage the toilet. He came in, however, and pressed the dual flush button on the cistern.
- After the ABC Ltd plumber had gone, the customer found that part of the Property was flooded with sewage water.
- In view of the above, the customer is claiming compensation totalling £4085.00, which is essentially for the elements that her home insurers, Esure, will not cover.
- The £4085.00 figure is comprised of:
 - £2500.00 for inconvenience and stress suffered;
 - £880.00 in respect of a (damaged) painting;
 - £350.00 - her insurance policy excess;
 - £250.00 - reimbursement of the charge for cleaning a carpet at the Property;
 - £105.00 - Barclays overdraft charges incurred (£21.00 per month over a period of five months).

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The company's response is that:

- Its records show that the customer first made contact on 19 January 2019 to advise that:
 - there was a problem with the toilet; and
 - she had made an appointment for a private plumbing contractor to attend the Property on Monday, 21 January 2019.
- The reason for the customer's call at that time was that she had noticed water bubbling in her wet room and she had wondered if there might have been a blockage in the company's sewer system.
- The company arranged for their Service Partner, ABC Ltd ("ABC Ltd") to attend at the Property on 20 January 2019 to investigate.
- Following that inspection, a blockage was discovered. This was caused by a build-up of unflushables (also known as RAG) on a private gully, which was not the responsibility of the company. However, as a goodwill gesture, the blockage was cleared by the ABC Ltd technician who attended.
- On 11 April 2019, the company was contacted by the customer advising that she could hear glugging in the toilet, which she believed to be the company's drainage system having become blocked.
- The company explained to the customer that - given the blockage that had been found earlier in the year - it was likely that the glugging was again the result of an issue with a private gully. The customer, however, was adamant that this was not the case and that she wanted a technician to attend again at the Property.
- The company duly arranged for ABC Ltd to send a technician to attend at the Property and investigate.
- It was noted, following the visit on 11 April 2019, that an unchartered manhole had been found at the rear of the Property. Furthermore, after completing a CCTV survey, a blockage was found on the private lateral drain due to the ingress of tree roots. The technician explained to the customer what had been found and that it was a private matter for her to resolve as the Property owner. The technician informed the customer that she would need to arrange for her own contractor to attend and to clear the blockage via her insurance company.
- The job was signed off at 15.34.
- The customer then called the company at 18:56 advising that the technician, who had attended the Property earlier in the day, had tried to flush the toilet while it was still blocked and had caused foul water to overflow from the toilet.

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- The customer was advised that internal flooding due a blockage on her private lateral drain was not the company's responsibility and that she would need to contact her private home insurers.
- The company indicated that no action would be taken in relation to the foul flooding.
- Later that same evening, at 19.48, the customer called the company again to explain that foul water had been overflowing in the toilet room since ABC Ltd's technician had attended.
- As a gesture of goodwill, the company arranged for a clean-up team to attend the Property. The customer stated that she felt vulnerable in the dark and therefore, she requested an attendance after 2pm the following day, i.e. on 12 April 2019.
- The customer called the company on 12 April 2019 at 14.51 to enquire as to when the clean-up team would attend. She was very upset and said that foul water was all over her toilet following the visit from ABC Ltd's technician and that she had needed to use 3 sheets to clear up the overflow of foul water. At this time, the customer also advised that foul water had gone on her hallway carpet and underlay.
- Two representatives from ABC Ltd (being a Customer Response Technician and a Contract Performance Delivery Engineer) attended the Property on 12 April 2019 and met with the customer. There was no spillage found and no evidence of foul water on any surfaces. The water level in the toilet was at a normal level but the carpet around the toilet doorway was damp. The customer asked if the area could be cleaned with disinfectant as well as the surrounding skirting boards being wiped. The wet room floor, skirting boards and tiled wall were cleaned and disinfected.
- The customer was advised that any claims for losses would need to be directed to her own insurance company. The company refers to photographs of the carpet and wet room that were taken during the attendance on 12 April 2019.
- On 13 April 2019, the customer called the company to request the names of the team who had attended the previous day so she could pass these details onto her insurance company (as she would be making a claim.)
- The customer called the company on 15 April 2019 to advise that she wanted to claim her insurance excess of £350.00 from the company due to her belief that the foul water flooding had been caused by the ABC Ltd technician who had attended at the Property on 11 April 2019.
- The company has contacted ABC Ltd. They have denied that their technician attempted to flush the toilet or that they caused any foul flooding to occur at the Property.
- On 23 April 2019, the company applied a credit of £200.00 to the customer's account as a goodwill gesture. Due to an administrative error, only £190.00 was refunded to the customer.

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- Following a call from the Consumer Council for Water (“CCW”), on 5 September 2019, the company acknowledged the failure to refund £10.00 of the £200.00 goodwill credit previously arranged. This was corrected and the company arranged for another credit of £10.00 to be applied in recognition of this failure. The customer was sent a cheque, therefore, for the sum of £20.00.
- The company received a call from CCW on 22 August 2019 requesting that the £200.00 goodwill credit already applied, be increased by £150.00 (to a total of £350.00) as the customer was making a claim through her insurance company and the insurance excess was £350.00.
- The company agreed to this request but confirmed that this would be full and final settlement of the matter.
- On 12 November 2019, the company sent a letter to the customer explaining that the sewer blockage and resulting flooding at her property was a private issue. This letter explained that, as a gesture of goodwill, payments to the value of £360.00 had been made and that these payments were in full and final settlement of the customer’s claim for her losses.
- The company further confirmed that it would not increase its offer of settlement and that the company’s complaints process had been exhausted.
- The company does not agree with the customer’s request for further compensation for distress and inconvenience as the company has already made a payment totalling £360.00.
- As to the redress being sought, the company is unclear why the customer is making a claim for the costs for decorating, for her insurance excess, for the carpet replacement and for bank charges. As explained above, the company has already credited the customer with £360.00 in reimbursement of the insurance excess as requested by (and agreed with) CCW.
- The company’s position is that:
 - any dispute that the customer may have as to any financial losses not covered by her insurance claim must be directed towards the customer’s home insurers or to the appropriate Ombudsman; or
 - alternatively, any claim for losses resulting from the flooding would be considered as a public liability claim and would need to be progressed through legal proceedings in the County Court, where the customer would have to show that the flooding at the Property was caused as a direct result of negligent action taken by the company’s contractors. Such a claim (the company maintains) would be more appropriately directed to the County Court and would therefore be exempt from the WATRS Scheme pursuant to Rule 3.4.1.

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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. I have reviewed in particular:
 - a. the customer's WATRS Application Form and the letters and other documents submitted alongside the Form; and
 - b. the photographs appended to the company's defence ("the Photographs").
2. I have also had the benefit of reading the customer's comments ("Comments") filed in reply to the company's defence.
3. I quite appreciate the degree of upset that the customer feels about the situation in this case. As she sets out fully in her Comments, the customer's key allegation ("Allegation") concerns the actions of 'Terry', the plumber from ABC Ltd who attended at the Property on 11 April 2019:

" ... My whole argument is the professionalism of a plumber pressing a system which has a dual button, you depress it, it is a split button you know? You're supposed to put a bag in the toilet system to save water. Well it was a split button and one of the halves didn't retract, it

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was still down, pressed down, spring over water [effluent] onto my floors at least for half an hour before I found it. I query the professionalism and training of the ABC Ltd employee because who goes depressing and flushing a toilet that he has seen was blocked. I mean this just begs belief ... the chap from ABC Ltd was young, a bit bumbling and indecisive ... and clumsy ...”

4. If indeed the ABC Ltd technician *did* depress the dual button (when the toilet was blocked) then - as I see it - I would be bound to find the company at fault.
5. As it stands, the facts of the matter are not altogether clear.
6. For its part, the company (having been in touch with ABC Ltd about the issue) denies the Allegation. Furthermore, the company points to the Photographs and says that when the two representatives from ABC Ltd attended at the Property on 12 April 2019:

“... There was no spillage found and no evidence of foul water on any surfaces. The water level in the toilet was at a normal level, however the carpet around the toilet doorway was damp ...”

7. The customer claims, therefore, that ‘Terry’ did depress the dual button whilst ABC Ltd insists that he did not.
8. Based on the limited information available, I do not consider I can reasonably conclude that the customer’s position is more credible than ABC Ltd’s - or *vice versa*.
9. However, even without any finding that the Allegation is proved, I regard the company’s response to the customer’s situation to be more than adequate. I note that the company has applied a goodwill credit of £360.00 in the customer’s favour. This covers the amount of the Esure policy excess with £10.00 on top.
10. In all the circumstances, I am not persuaded that the company should be required to take any further action in this case.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27 March 2020 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.



Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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