

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1823

Date of Decision: 11 March 2020

Complaint

The customer states that he is the owner of a property situated at []. In October 2019, a water main rupture outside the property caused damage to the premises. The customer did not live at the property as it was tenanted but he states that he was still responsible for the water service bills. The customer submits that the water main rupture damaged the property and it therefore required drying and repair work. The tenants also had to relocate. The customer indicates that he is displeased because the company has paid his tenants £5000.00 as a discretionary goodwill payment for their distress, inconvenience and relocation costs. The customer submits that, as the owner of the property and bill payer, he should be entitled to the £5000.00 payment because he has suffered shock, inconvenience and distress. The customer indicates that his claim for compensation from the company's insurers is ongoing and he does not know when he will be compensated. Therefore, he indicates that the company should pay him a goodwill gesture of £5000.00. The company did not agree with this view. The customer submits that the company is discriminating against him as a result of his protected characteristics. Therefore, the customer is now claiming for the company to provide an apology, the £5000.00 payment and a further £2500.00 for being dragged to the complaints process (with interest added to the sums claimed).

Defence

The company confirms that, in October 2019, a ruptured water main caused internal flooding to the property owned by the customer. Under section 209 of the Water Industry Act, the company submits that it is strictly liable for this incident and the customer (as the owner of the property) is entitled to claim any losses for damage from the company. Accordingly, the customer has submitted a claim to the company's insurers for his losses and this is being processed. The company confirms that it has also paid for the customer's tenant's alternative accommodation. The company explains that, at the time of the flooding, it was the tenants actually living in the property who were directly impacted by the ruptured water main. Accordingly, as a gesture of goodwill, the company provided a single discretionary payment of £5000.00 as an apology and to cover their immediate needs. The company expressly confirms that this

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was not a regulatory payment but a business decision to provide a discretionary gesture for the impact felt by the individuals living in the property when it flooded. The customer now wishes to be paid the same £5000.00 despite not living at the property. The company indicates that it has made its position clear that the customer's compensation claims have already been submitted to its insurers and it is not obligated to pay the customer the £5000.00 discretionary goodwill payment. The company submits that any additional claims that the customer wishes to raise should be referred to the company's insurers as this is the correct forum for this issue. The company accepts that it did provide some incorrect information in its response to CCWater and this has caused some minor confusion and inconvenience. It has therefore provided an apology for this issue. However, it does not accept that the customer's claims for compensation are proportionate. The company states that, in light of all the above, it does not accept any further liability for the customer's claims for redress.

Findings

Under the circumstances, I am not satisfied that there are any unresolved failures on the part of the company to provide its services to the standard to be reasonably expected by the average person. Accordingly, I am unable to uphold the customer's claims for redress.

Outcome

The company does not need to take any action. This decision cannot be appealed. However, the customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

The customer must reply by 9 April 2020 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 11 March 2020

Party Details

Customers: [].

Company: Thames Water, a water and sewerage company.

Case Outline

The customer's complaint is that:

- He is the owner of a property situated at []. In October 2019, a water main rupture outside the property caused damage to the premises.
- The customer did not live at the property as it was tenanted but he states that he was still responsible for the water service bills.
- The customer submits that the water main rupture damaged the property and it required drying and repair work. The tenants also had to relocate.
- The customer indicates that he is displeased because the company has paid his tenants £5000.00 as a discretionary goodwill payment for their distress, inconvenience and relocation costs.
- The customer submits that the company initially advised him that it would pay him the £5000.00 because it thought he was living at the property. However, the company amended this error and provided the discretionary goodwill payment to the tenants.
- The customer submits that, as the owner of the property and bill payer, he should be entitled to the £5000.00 payment because he has suffered shock, inconvenience and distress.
- The customer indicates that his claim for compensation from the company's insurers is ongoing and he does not know when he will be compensated. Therefore, he indicates that the company should pay him a goodwill gesture of £5000.00. The company did not agree with this view.
- The customer submits that the company is discriminating against him as a result of his protected characteristics.
- The customer referred this issue to CCWater (Consumer Council for Water). However, it was unable to conclude that the company was obliged to pay the customer £5000.00 as claimed.

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- The customer remains displeased with this position and is now claiming for the company to provide an apology, the £5000.00 payment and a further £2500.00 for being dragged to the complaints process (with interest added to the sums claimed).

The company's response is that:

- It confirms that, in October 2019, a ruptured water main caused internal flooding to the property owned by the customer.
- Under section 209 of the Water Industry Act, the company submits that it is strictly liable for this incident and the customer (as the owner of the property) is entitled to claim any losses for damage from the company. Accordingly, the customer has submitted a claim to the company's insurers for his losses and this is being processed. The company confirms that it has also paid for the customer's tenant's alternative accommodation.
- The company explains that, at the time of the flooding, it was the tenants actually living in the property who were directly impacted by the ruptured water main. Accordingly, as a gesture of goodwill, the company provided a single discretionary payment of £5000.00 as an apology and to cover their immediate needs.
- The company expressly confirms that this was not a regulatory payment but a business decision to provide a discretionary gesture for the impact felt by the individuals living in the property when it flooded.
- The customer wishes to be paid the same £5000.00 despite not living at the property. The company indicates that it has made its position clear that the customer's compensation claims have already been submitted to its insurers and it is not obligated to pay the customer the £5000.00 discretionary goodwill payment.
- The company submits that any additional claims the customer wishes to raise should be referred to the company's insurers as this is the correct forum for this issue.
- The company accepts that it provided incorrect information in its response to CCWater and this has caused a degree of confusion and inconvenience. It has therefore provided an apology for this issue. However, it does not accept that the customer's claims for compensation are proportionate.
- The company states that, in light of all the above, it does not accept any further liability for the customer's claims for redress.

How is a WATRS decision reached?

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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. The customer indicates that he is displeased because the company has paid his tenants £5000.00 as a discretionary goodwill payment for their distress, inconvenience and relocation costs (following a flooding incident). The customer submits that, as the owner of the property and bill payer, he should be entitled to the £5000.00 payment because he has suffered shock, inconvenience and distress. The customer indicates that his claim for compensation from the company's insurers is ongoing and he does not know when he will be compensated. Therefore, he indicates that the company should pay him a goodwill gesture of £5000.00. The company did not agree with this view. The customer submits that the company is discriminating against him as a result of his protected characteristics. Therefore, the customer is now claiming for the company to provide an apology, the £5000.00 payment and a further £2500.00 for being dragged to the complaints process (with interest added to the sums claimed).
2. I draw attention to the fact that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. At this stage, I believe that it may be important to highlight that my powers as a WATRS adjudicator are limited (as detailed in the scheme rules). Specifically, I should make it clear that,

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in accordance with WATRS rule 3.5, I am unable to investigate any allegations of criminal activity (such as racial discrimination). Nor am I able to examine/amend a water company's business decisions/commercial practices. Accordingly, the parties may wish to refer such matters to a more appropriate forum for resolution.

4. Following careful examination of all the submissions available to me at the time of adjudication, it is evident that the company made a business decision to provide the tenants of the property with a discretionary goodwill gesture of £5000.00 for the inconvenience directly suffered as a result of being in occupation of the property when it flooded. I do not find that this amounts to a failure on the part of the company to provide its services to the customer to the standard to be reasonably expected by the average person.
5. It is not in dispute that the company has already accepted strict liability for the damage caused to the customer's property as a result of the water main rupture and that the issue is currently being processed between the customer and the company's insurers. I am not satisfied that this amounts to a failure on the part of the company to provide its services to the customer to the standard to be reasonably expected by the average person.
6. I acknowledge that the customer submits he should be entitled to the £5000.00 discretionary goodwill gesture payment from the company. Based on the evidence provided, I note that the company has made its position clear in relation to this issue and provided a detailed explanation for why it is not obliged to comply with the customer's claim. Under the circumstances, I am satisfied that the company's stated position is fair and reasonable. Accordingly, I am unable to objectively conclude that the company's decision not to provide the customer with a discretionary goodwill gesture payment of £5000.00 amounts to a failure on its part to provide its services to the customer to the standard to be reasonably expected by the average person. Accordingly, I am unable to uphold this element of claim. I acknowledge that this finding is also broadly consistent with the final outcome of CCWater's investigation. In any event, I also remind the parties that I am unable to amend/challenge a company's business decisions/commercial practices.
7. I note that the customer has claimed £2500.00 for distress and hurt feelings because of having to use the company's complaints process in relation to this issue (in addition to the original

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stress of the flooding incident). Given the circumstances, I am unable to objectively conclude that the company's action of appropriately investigating the customer's complaint through its complaints process (in line with its policies/commercial practices) amounts to a failure to provide its services to the standard to be reasonably expected by the average person. Accordingly, I am unable to uphold this particular element of claim.

8. Notwithstanding all the above, I note the company accepts that there was an oversight on its part where it provided some incorrect information regarding the customer (stemming from the company's initial misconception that the customer was living at the property/a tenant at the property). However, I note that this misunderstanding has since been clarified and the company has provided an apology for this particular oversight. Given the nature and extent of this particular oversight, I am satisfied that this remedial action was fair, reasonable and proportionate. I do not find that any further remedial action is warranted.
9. In summary, I am not satisfied that there are any unresolved failures on the part of the company to provide its services to the standard to be reasonably expected by the average person. Consequently, in the absence of any unresolved failures on the part of the company, I find that I am unable to uphold the customer's claims for redress.
10. This concludes the WATRS stage of the customer's complaint. I remind the parties that the customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

Outcome

The company does not need to take any further action. This decision cannot be appealed. However, the customer is not obliged to accept this decision and is free to continue pursuing his complaint through all other resolution avenues as available to him.

What happens next?

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



E. Higashi LLB (Hons), PGDip (LPC), MCI Arb.

Adjudicator

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