

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1877 – Other – Flooding

Date of Decision: 2 April 2020

Complaint

The customers submit that they experienced flooding at their property in 2014 and believe that the company is responsible for this. The customers believe that the company's water services infrastructure was at fault and they are displeased that the company has not accepted liability. The customers submit that because of the flooding incident, their property has been devalued by £150,000.00 and they hold the company responsible for this. The company has explained that this issue was caused by extreme weather for which it cannot be held responsible. The customers are not satisfied with this outcome and are now seeking a total of £25,000.00 (£12,500.00 each) from the company as compensation. The customers state that if they cannot claim £12,000.00 each, then they would like £12,500.00 between them.

Defence

The company explains that the flooding event experienced by the customers was caused by extreme rainfall that resulted in hydraulic overload. The company explains that it cannot be held accountable for flooding caused by extreme weather events of this nature and it does not accept that there has been any negligence on its part. The company submits that the Water Industry Act 1991 doesn't contain any legislation to state that a sewerage undertaker has a strict liability for damage caused by sewer discharge. Any liability is entirely dependent on upon proof of negligence. The company submits that this is not the case here. The company accepts that there was a recent service oversight in February 2020 regarding an assistance request for drainage issues but it has apologised for this issue and arranged a cheque for £100.00 to be sent to the customers to say sorry for not attending as quickly as it would ordinarily aim to, and for the delay in acknowledging its service standard shortfall. The company states that, in light of all the above, it does not accept any further liability for the customers' claim for redress.

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Findings

Based on the submissions provided, I am not satisfied that the company failed to provide its services to the standard to be reasonably expected by the average person. I am not objectively satisfied that the flooding at the customers' property was caused by any clear-cut negligence on the part of the company. Consequently, in the absence of any unresolved failures on the part of the company, I am unable to uphold the customers' claim for redress.

Outcome

The company does not need to take any further action. This decision cannot be appealed. However, the customers are not obliged to accept this decision and are free to further their complaint through all other avenues as available to them.

The customers must reply by 1 May 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1877

Date of Decision: 2 April 2020

Party Details

Customers: Customer

Company: XWater

Case Outline

The customers' complaint is that:

- They experienced flooding at their property in 2014 and they believe that the company is responsible for this. The customers believe that the company's water services infrastructure was at fault and they are displeased that the company has not accepted liability.
- The customers submit that because of the flooding incident, their property has been devalued by £150,000.00 and they hold the company responsible for this.
- The company has explained that this issue was caused by extreme weather for which it cannot be held responsible. The company has explained that it has not been negligent in its responsibilities.
- The customers referred the issue to CCW (Consumer Council for Water) but it did not reach a conclusion that was to their satisfaction. CCW recommended that this matter should be pursued on a "legal basis".
- The customers are not satisfied with this outcome and are now seeking a total of £25,000.00 (£12,500.00 each) from the company as compensation. The customers state that if they cannot claim £12,000.00 each, then they would like £12,500.00 between them.

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The company's response is that:

- The company explains that the flooding event experienced by the customers was caused by extreme rainfall that resulted in hydraulic overload. The company explains that it cannot be held accountable for flooding caused by extreme weather events of this nature and it does not accept that there has been any negligence on its part.
- The company submits that, in accordance with Section 94 of the Water Industry Act 1991, it is under a duty to maintain its sewers to ensure the area is effectually drained. The company explains that it is not responsible for damage from sewer flooding, or indeed general flooding itself when the cause is outside of its control, unless it's proven it had acted negligently (this means, if sewer flooding is caused by a blockage in the sewer and, the blockage has been caused by inappropriate items having been placed in the sewer, which the company has no ability to control or predict when and where it may happen, it is not liable. Likewise, as in the customers' case, if an exceptionally heavy rainfall event occurs which overloads the capacity of the sewer (hydraulic overload), it cannot be held accountable).
- The company submits that the Water Industry Act 1991 doesn't contain any legislation to state that a sewerage undertaker has a strict liability for damage caused by sewer discharge. Any liability is entirely dependent on upon proof of negligence. The company submits that this is not the case here
- In spite of all the above, the company accepts that whilst carrying out a review of this matter, it has noted that it received a call from the customers requesting assistance for drainage issues they had been experiencing on 24 February 2020. Unfortunately, it didn't attend until the early hours of 28 February 2020, failing its timescale. Whilst the company states that it apologised for the delay in arriving in an email dated 4 March 2020, it notes that it did not send a gesture as a further apology. Accordingly, the company confirms that it has arranged a cheque for £100.00 to be sent to the customers to say sorry for not attending as quickly as it would ordinarily aim to, and for the delay in acknowledging its service standard shortfall.
- The company states that, in light of all the above, it does not accept any further liability for the customers' claim for redress.

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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. The customers' claim is that, in 2014, they experienced a flooding event at their property which resulted in it being devalued (specifically, the customers explain that a purchase offer on their property was reduced as a result of the flooding event). The company's position is that it cannot completely eliminate the possibility of extreme weather causing flooding and it is only liable to the customers if there has been actual evidence of negligence on its part. The company confirms that this is not the case here. The customers referred the issue to CCW (Consumer Council for Water) but it did not reach a conclusion to their satisfaction. CCW has recommended that this matter should be pursued on a "legal basis". The customers are not satisfied with this outcome and are now seeking a total of £25,000.00 (£12,500.00 each) from the company as compensation. The customers state that if they cannot claim £12,000.00 each, then they would like £12,500.00 between them.
2. I remind the parties 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. As the party raising the dispute, the initial onus of proof rests with the customers.

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3. At this juncture, I find that it may be helpful to explain that as an independent adjudicator, I am not a water service infrastructure engineer/expert and nor I am unable to make any independent determinations regarding the proficiency of the company's water services infrastructure. Furthermore, I do not have access to the company's internal records/schematics relating to its infrastructure system and it is beyond the scope of this scheme to commission any new investigations to obtain and examine such information. The parties may wish to refer any specialised concerns of this nature to a more appropriate forum for resolution.
4. I must also highlight that, in accordance with the rules of this scheme (as also detailed in the WATRS application form), the customers' compensation claim must be limited to a total sum of £10,000.00. The customers' current claim exceeds this prescribed limit. Furthermore, I draw attention to the fact that any new evidence/claims raised by a customer at the comments stage must be disregarded by the adjudicator. I will proceed with this adjudication accordingly.
5. It is not disputed that there was a flooding event experienced by the customers in 2014. Whilst I acknowledge the customers' subjective arguments for why they believe the company is responsible for the flooding event in 2014, following a review of the available submissions, I am not objectively satisfied that there is any substantive evidence that definitively proves that the flood had been caused by any clear-cut negligence on the company's part. For the avoidance of doubt, I do not find that the company can be held directly responsible for flooding caused by unpredictable/exceptional extreme weather events (I draw attention to the fact that this finding is in line with OFWAT's guidance on extreme weather). In light of the above, I am unable to conclude that the flooding event experienced by the customers in 2014 was caused by any failure on the part of the company to provide its services to the standard to be reasonably expected by the average person.
6. Turning to a review of the company's overall actions in response to the customers' concerns, I find that the company provided detailed responses, explained its position with reference to the evidence it had gathered following a thorough investigation and provided the customers with a fair and reasonable gesture (and apology) in response to a recent shortfall in its customer service provision. In addition, I note that the company also undertook a clean of the sewer for the customers' benefit (and removed inappropriate items from the system). For the avoidance of doubt, I must highlight that the company is not liable for its customers disposing of inappropriate items and blocking its infrastructure. Accordingly, overall, I am unable to objectively conclude

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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.

7. Therefore, whilst I understand and appreciate the customers' dissatisfaction with the situation, my remit under this scheme is only to determine whether the company has failed to provide its services to the standard to be reasonably expected by the average person. Following careful review of all the submissions provided, 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, I am unable to uphold the customers' claim for redress.
8. This concludes the WATRS stage of the customers' complaint. This decision cannot be appealed. However, I remind the parties that the customers are not obliged to accept this decision and are free to refer their complaint to any other forums for resolution as may be available to them.

Outcome

The company does not need to take any further action.

This decision cannot be appealed. However, I remind the parties that the customers are not obliged to accept this decision and are free to refer their complaint to any other forums for resolution as may be available to them.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 1 May 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), MCIArb.

Adjudicator

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