

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1728

Date of Decision: 9 January 2020

Complaint

The customer has a dispute with the company regarding its rejection of her claim for compensation for damage caused by flooding. The customer states that her garden and property were damaged on two occasions by floodwater and she believes inadequate maintenance by the company of its assets was responsible. The customer is dissatisfied that the company denies responsibility and declines to pay compensation for repair and renovation of her garden and conservatory. Consequently, she requests the company pay £8,000.00 in compensation.

Defence

The company states that the floods were caused by the blocking of a sewer pipe with rubble placed by a third-party. The company asserts that it is not liable for consequential damage under these circumstances, and its liability is restricted to compliance with the Ofwat Guaranteed Standard Scheme [GSS]. The company has not made any offer of settlement to the customer, and believes it has acted in a fair and reasonable manner. Thus, it declines to pay the compensation claimed by the customer.

Findings

The customer has not presented sufficient evidence to support her claim that the company is responsible for the damage to her garden and dwelling. In this case, it is incumbent on the customer to show that the company was negligent in maintaining its assets, but I am not satisfied on balance that she has achieved a reasonable level of proof. I am satisfied the company has complied with the GSS requirements and made the appropriate payments. Thus, I am not persuaded that any act or omission by the company caused the damage. Consequently, I find the company has not failed to provide its services to the extent to be reasonably expected by the average person.

Outcome

The company needs to take no further action

The customer must reply by 6 February 2020 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The customer states that the flooding was severe enough to require the assistance of the local fire service to attend the site and pump the flood water away. The customer believes the flooding was such that it affected a wide area and approximately fourteen properties other than her own were subject to flooding.
- The customer claims that she contacted her own insurance company and was also advised by the company to contact its insurers. The customer asserts that her garden needed restoration, including cleaning, levelling, replanting of the lawn, and repair and/or replacement of her garden fence. The customer further notes that her conservatory was flooded and damaged certain of the contents therein, and she was required to have industrial grade fans and a dehumidifier working for a long period to dry out the building before valeting could be undertaken.
- The customer acknowledges that following the second flood on 20 July 2019 she again complained to the company and received a further 50% payment of her annual sewerage fee, thus making a total reimbursement of £218.16. However, she believes this to be inadequate to cover the costs of the rehabilitation works she must undertake because of the flooding. The customer states that she has approached the company regarding the payment of compensation but it has declined to increase the payments to her and cites that it has complied with all its statutory obligations and simply advised her to contact its insurers.
- The customer, dissatisfied with her interactions with the company, escalated her dispute in July 2019 to CCWater who took up her case with the company on her behalf. The customer notes that CCWater suggested to the company that it investigate to deduce if it took all necessary measures after the first flooding incident to prevent the second incident occurring, and that if it found failures in its own procedures would it consider compensation for repairs to garden and conservatory. The customer states the company disagreed and reiterated its initial opinion that there was no evidence to support internal damage due to the second flood incident. The customer further records that, despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint and CCWater are unable to facilitate a resolution between the parties.
- The customer remains dissatisfied with the response of the company and consequently, on 18 November 2019, has referred the matter to the WATRS Scheme whereby she seeks to have the company pay her compensation in the sum of £8,000.00.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

The company's response is that:

- The company submitted its Defence paper to the claim on 12 December 2019.
- The company confirms that on 25 June 2019 it received notification from a third party that surface water flooding had occurred in the neighbourhood of the customer. The company further asserts that the customer herself notified it of the flooding event later, on 05 July 2019.
- The company notes that it issued to the customer the sum of £109.08 being 50% of her annual sewerage charge as payment in respect of an external surface water flooding incident.
- The company asserts that on 20 July 2019 it was contacted again by the customer to report a second flood incident, and although no evidence was supplied to confirm any internal damage the company recorded the incident as such and the customer received a second 50% repayment of her annual sewerage charge.
- The company states that it has no evidence to confirm that the customer suffered internal water damage at the time of the second incident on 20 July 2019 and thus she has been adequately compensated by receiving one payment for external flood damage and one for internal flood damage. The company asserts that this payment pattern is in compliance with the company's policy for flood damage.
- The company records that following the first flood on 25 June 2019 it made investigations into the causes, including undertaking a CCTV survey of the sewer pipes. The company advises that the survey could not take place before it received a road closure permit and as such the works commenced on 02 August 2019.
- The company states that the CCTV survey identified a large blockage of bricks and rubble in the sewer pipe which required subsequent excavation works to remove. The company asserts that it cannot be held liable for debris placed in the sewer system by third parties, and that it had dealt with the two flooding incidents in accordance with service levels set by Ofwat.
- The company further asserts that it worked and co-operated fully with the local Borough Council responsible for surface water drainage in the area, and that its liaison staff kept the customer fully informed of progress at all times.
- In summary, the company believes the customer is not entitled to any compensation as it has not breached any of its statutory duties nor been negligent in the provision of its services. The company contends that the quantum of the individual heads of loss as entered on the WATRS application form differ from those recorded by CCWater on 04 November 2019, and that the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

customer has supplied no evidence to substantiate any elements of her claim. Additionally, the company understands that the customer has applied to her insurance company and thus is not entitled to claim additionally against the company. Consequently, the company denies paying compensation as requested by the customer.

The customer's comments on the company's response are that:

- The customer, on 16 December 2019, has submitted comments on the company's Defence document. She rejects the company assertion that the second flood did not cause internal damage to her conservatory, and stresses that she has received no payment from her insurance company. The customer also states that the two flood incidents resulted from a burst storm drain and should not be confused with regular surface water flooding that occurred in a different road to the customer's property.

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 the evidence provided. Please note that 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How was this decision reached?

1. The dispute relates to the customer's dissatisfaction over the company's actions when dealing with her compensation request for damage suffered during two separate floodings at her property.
2. I note that this adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it. The burden of proof rests with the customer to show that the company failed to provide its services in a reasonable manner and not for the company to prove that it did.
3. Based on my review of all the available information, I am satisfied that the main issue of this WATRS Application is whether the company has acted reasonably and with sufficient skill in dealing with the customer's claim for compensation.
4. I am satisfied that the parties agree that the customer was subject to flooding of her property on two separate occasions, 26 June 2019 and 20 July 2019.
5. Following the first incident of flood on 26 June 2019, the customer contacted the company to report that water from a storm drain at the rear of her property was spilling water onto her garden. The company avers that its Guaranteed Standards Scheme [GSS] is aligned with the Ofwat scheme and as such it classified the flooding as external and made the customer a payment of £109.08, being 50% of her annual sewerage charge in compliance with the GSS stipulations in respect of flooding. I believe the company's action to be reasonable.
6. Following the second flood on 20 July 2019 the customer again contacted the company, and on this occasion it classified the flood as being internal, and a second payment of £109.08 was made, meaning the customer had received a 100% repayment of her annual sewerage charge. Again, I am satisfied that the company acted reasonably and in compliance with its own GSS procedures.
7. The customer believes that the company should go beyond the provisions of GSS and pay her additional compensation, in this case £8,000.00. The company relies on the Water Industry Act 1991, which, *inter alia*, makes it a criminal offence to deposit any material in a public sewer that may damage the pipe or prevent the free flow of its contents. In this case, investigation by the company identified that the flow of the sewer pipe was impaired by bricks and debris, and I find that the company's position that it cannot be held responsible for the placing of this debris to be correct and reasonable.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

8. If the company is not responsible for the debris placed in the sewer, then it follows that equally it cannot be held liable for the effects and consequences of the blockage. Again, this position is in compliance with the Ofwat guidelines, and I satisfied that the company has acted correctly and reasonably.
9. The customer has asserted that the company is responsible for the flooding due to lack of adequate maintenance of its assets. However, as the customer has not submitted any substantiation of her assertion I am not persuaded on balance that insufficient maintenance was the cause of the two flood events.
10. Similarly, the customer, through CCWater, has questioned whether the company acted with reasonable haste and skill to identify and repair the cause and location of the first flood event and has raised the possibility that failure to timeously do so was the cause of the second flood event. The company has stated that after the first flood event it instigated investigations and planned to undertake a CCTV survey, but commencement was subject to receiving a road closure permit from the relevant authority. It is disappointing that securing the permit took approximately thirty-eight days but as I have no evidence of negligence on the part of the company I am not persuaded that the company was unreasonably tardy in its investigations.
11. The customer has requested, in her application to WATRS, to have the company pay £8,000.00 in compensation for the restoration and repair costs associated with her garden and conservatory and for the stress and inconvenience she has suffered. I have not found any duty of care failure by the company, no evidence of negligence, and no liability for the payment of compensation. I am aware that the customer has submitted a breakdown of the items making up her claimed amount of £8,000.00 but as I find compensation is not applicable I shall not examine each head of claim individually. However, I do take note of the company's statement that no evidence was submitted by the customer to support her claim.
12. In summary, I have found no failure by the company to provide its services to the standard to be reasonably expected. I am satisfied, on balance, that the flood damage was not caused by any act or omission of the company. I find that the company has paid the full amount it is obliged to pay under the Ofwat GSS and has advised the customer to pursue her compensation claim via its insurance company. I find that the customer has not provided sufficient evidence to justify the claim.
13. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person, and therefore, my decision is that the claim does not succeed.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 February 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.



Peter R Sansom
MSc(Law); FCI Arb; FA Arb;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CEDR Arbitration Panel.

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.