

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1766

Date of Decision: 23 March 2020

Complaint

The customer states that he experienced financial losses, inconvenience and distress as a result of problems with the company's pipework and the company's flawed response to his complaint. He seeks compensation of £8,000.00.

Defence

The company states that it is not liable for the customer's losses unless it has been negligent, and it was not negligent.

No offer of settlement has been made.

Findings

The company failed to provide its services to the standard to be reasonably expected by the average person in its handling of the customer's claim for compensation.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £500.00.

The customer must reply by 20 April 2020 to accept or reject this decision.

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Date of Decision: 23 March 2020

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- From November 2018 until April 2019 his business had a blocked toilet with rising water.
- He was initially advised by the company to call a private plumber, who advised that the problem was not a blocked toilet but something further down the pipe.
- The company sent a subcontractor and as a result of their work the customer's business had a constant influx of sewage, smells, and no customer toilet for months.
- The company ultimately established that the pipe had collapsed, after numerous visits.
- He raised a complaint and was referred to the subcontractor's insurance company.
- He claims compensation of £8,000.00.

The company's response is that:

- The customer made contact on 11 October 2018 as his services were not draining properly.
- The company attended and concluded there was a blockage, but could not clear it.
- The pipework in question is private and a private plumber was hired to address the blockage.
- The customer's sister called that evening to report sewage in the cellar.
- The company attended and the customer acknowledged that their plumber had disconnected a connection to an internal sewer pipe in the basement.
- It was ultimately determined that the problem was a faulty Buchan trap outside the Property, of which the company had been unaware as it was covered by street paving.

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- Final resolution of the problem occurred on 14 May 2019, although a number of actions had been taken prior to his.
- The company is only liable for damage from flooding if it has acted negligently, which the company denies.

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

- His business lost thousands of pounds because of the situation.
- He was advised by the company to call a private plumber.
- Once the company recognised the problem, his business experienced closures, loss of days, loss of food and bad odours.
- A large pipe had to be run through his shop every week.
- When he was not present when the company arrived it was because the business had been forced to close due to the smell, and the company was unreliable in turning up at appointed times.

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?

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1. In Marcic v Thames Water plc [2003] UKHL 66, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
2. In the words of the court, “The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise.”
3. The customer, of course, is not complaining only about sewer flooding, and so the factual basis of the customer’s claim is different to that considered by the Supreme Court in Marcic v Thames Water plc. However, as emphasised by the Court of Appeal in Dobson v Thames Water Utilities [2009] EWCA Civ 28, the “Marcic principle” applies broadly to exclude claims based on a water company’s performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
4. The consequence of the House of Lords’ ruling in Marcic v Thames Water plc, then, as interpreted by the Court of Appeals in Dobson v Thames Water Utilities, is that the company can only be required to pay the requested compensation if it has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company’s operation of its business would not entitle the customer to compensation.
5. In the present case, while I accept that the facts described by the customer will have had a significant impact on his business, I find that the company was not negligent in being unaware of the presence of the Buchan trap that was ultimately determined to be the source of the problems.
6. In addition, as the presence of an unknown Buchan trap significantly complicated diagnosis of the problem, I do not find that the company was negligent in the delay that occurred from when the customer first made contact on 11 October 2018 until the probable location of a blockage was identified on 11 January 2019. While that delay was substantial, the company has provided a detailed report of the actions taken in that period, including attempted visits by the company that were unable to result in work because the customer was not present, and while I accept that

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the company could have been more active in its efforts, I do not find the evidence shows non-responsiveness sufficient to support a finding of negligence on the company's part.

7. The customer experienced a flood on 11 October 2018, however I find that the evidence is insufficient to support a conclusion that this flooding resulted from negligence on the part of the company. The flooding occurred after actions were taken by a private plumber, not the company, and even if it were found that the private plumber's actions were entirely warranted and the flooding resulted from the problems subsequently identified by the company in its own pipework, I have already found that the company's lack of awareness of the Buchan trap, and hence their failure to quickly diagnose and address problems caused by the trap, did not reflect negligence on the company's part.
8. The customer also objects to the impact on his business of the company's decision to run a pipe through his premises in order to drain the sewer. However, given that the only known access point to the relevant part of the sewer was at the back of the customer's premises, I do not find that the company's action was unreasonable.
9. As a result, while I accept that the customer's experience will have impacted on his business and will have caused him significant distress, the law does not allow me to award the customer the lost profits and related damages that he claims.
10. While an award is possible under the WATRS Scheme for inconvenience and distress arising from a company's failure to provide its services to the customer to the standard to be reasonably expected by the average person, I have not found that the company failed to meet this standard with respect to its response to the customer's initial complaint.
11. However, the company has also acknowledged that when the customer initially raised his claim for compensation he was mistakenly referred to the insurers of the company's contractor, resulting in a significant delay in his claim being addressed. In addition, further delays occurred once the customer's claim was directed to the company's lawyers. I find that in its handling of the customer's claim the company did fail to provide its services to the customer to the standard to be reasonably expected by the average person. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £500.00.

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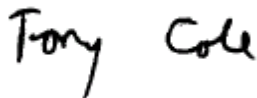
12. Consequently, for the reasons given above, the company must pay the customer compensation of £500.00.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £500.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 April 2020 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Tony Cole, FCI Arb

Adjudicator

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