

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1318

Date of Decision: 7 August 2019

Complaint

The customer's claim is the company has failed to maintain its assets and this has led to periodic flooding of raw sewage surrounding and within the boundaries of his property. This periodic flooding of raw sewage has contaminated his clean water supply, led to damage to his property and caused inconvenience and distress. The customer is seeking the company to hold local residents liable for sewer abuse, stop using debt collection agencies to pursue monies owed for services provided and pay compensation of £3,650.00.

Defence

The company submits that in the absence of negligence under section 94 of the Water Industry Act 1991 the company is not liable for the escape of the contents of public sewers. The company submits it has not at any time been negligent, as it has conducted various investigations into the reasons behind the flooding and undertook CCTV surveys on the sewer which found it fully operational. On each occasion the customer has experienced flooding this has due to sewer abuse and to try to prevent further blockages the company has sent the residents of the customer's local area letters and information leaflets. The customer has been provided compensation of £385.00 for various failures in customer service and to cover some of the flooding incidents, which is in line with the company's Customer Guarantee Scheme (CGS). The company has not made any further offers of settlement.

Findings

I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected, with regard to maintain its assets surrounding and within the boundaries of the customer's property. With regard to customer service, I find no additional failings for which the customer has not been already adequately compensated for.

Outcome

The company needs to take no further action.

- The customer must reply by 4 September 2019 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.

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ADJUDICATOR'S DECISION

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Date of Decision: 7 August 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The company has failed to maintain its assets surrounding and within the boundaries of his property, and this has led to periodic flooding of raw sewage into the property grounds.
- This periodic flooding of raw sewage has contaminated his clean water supply, led to damage to his property and caused inconvenience and distress.
- The customer is seeking the company to hold residents liable for sewer abuse, stop using debt collection agencies to pursue monies owed for services provided and pay compensation of £3,650.00 which comprises of; £2,500.00 for inconvenience and distress; £900.00 to replace a new garden wall and £250.00 to replace damaged clothes and shoes.

The company's response is that:

- The cause of the flooding the customer has experienced was due to sewer misuse in the customer's local area. The company has sent the residents of the customer's local area information leaflets to try to prevent further blockages.
- Under section 94 of the Water Industry Act 1991 the company, in the absence of negligence, is not liable for the escape of the contents of public sewers. The company has not at any time been negligent, as it has conducted various investigations and CCTV surveys on the sewer which found it fully operational.
- The company has investigated the customer's concerns relating to contamination of his clean water supply and found that his clean water supply has no leaks and is fully sealed so there is no risk of contamination.
- In recognition of a lack of liability in respect of the escape of contents of its public sewers, the company operates a Customer Guarantee Scheme pursuant to the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. In line with the CGS the

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customer has been provided a cheque totalling £225.00 for each occasion when the customer has experienced flooding. Accordingly, no further sums are due in this respect.

- The company admits some failures with regard to customer service and in line with the CGS the customer has been provided a cheque totalling £160.00 for these failures. Accordingly, no further sums are due in this respect.

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 dispute centres on whether the company has failed to maintain its assets surrounding and within the boundaries of the customer's property. The company is required to meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of a leak, the company needs to investigate fully if the company's assets are to blame and, if repairs are needed, make such repairs to prevent further leaks.
2. Furthermore, the company also has certain obligations in respect of its customer services as set out in OFWAT Guaranteed Standards Scheme and the company's own Customer Guarantee Scheme.

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3. From the evidence put forward by the customer and the company, I understand the customer has experienced external flooding emanating from the company assets surrounding his property on numerous occasions since 8 December 2010. The customer initially contacted the company in May 2015 concerning an unpaid bill which was resolved on 6 July 2015. In August and September 2016 external flooding of the customer's property was reported by various third parties and a blockage caused by sewer misuse was removed by the company. The customer next contacted the company in January 2018 concerning a build over agreement with his neighbour. The company responded on 11 January 2018, explaining they were unable to discuss with the customer the neighbour's build over agreement. Within April 2018, the customer contacted the company regarding a leak on his outside stop valve, the evidence shows the company investigated and no leak could be found. On 25 May 2018, the customer contacted the company once again regarding his bill and the fact he had been experiencing external flooding emanating from the company assets surrounding his property. Between 25 May 2018 and 18 October 2018 various correspondence took place between the parties and the evidence shows that, within this period, on 27 July 2018, further flooding occurred at the customer property and on investigation the blockage was found to be caused by a build-up of wipes. On 3 September 2018, the company sent a letter and a '*Bin it, don't block it*' leaflet to the customer's local residents in an effort to educate people of what should and shouldn't be disposed of into the wastewater network. On 18 October 2018, the customer contacted CCWater to pursue the matter further. Between 31 October 2018 and 10 November 2018 various CCTV surveys were undertaken by the company that show the sewers surrounding the customer's property had no significant defects and were operating freely. On 10 November 2018, the company replaced the manhole covers near the customer property and on 16 November 2018 the company contacted the customer to request access to his property so it could investigate the possibility of replacing an interceptor trap with a straight pipe which would reduce the likelihood of further flooding. I understand from the evidence the customer did not wish the interceptor trap replaced. On 14 March 2019 and 3 April 2019, the customer reported further flooding which in both instances was caused by sewer misuse and cleared by the company the same day. Further correspondence took place between the parties without result and on 9 July the customer commenced the WATRS adjudication process.
4. With regard to whether the company has failed to maintain its assets surrounding the boundaries of the customer's property. As stated within the company's defence documents under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers. After careful analysis of the

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correspondence and evidence, I cannot find any indication the company has been negligent with regard to the sewer. CCTV surveys were undertaken by the company that show the sewer had no significant defects and was operating freely. As shown by the evidence, on each occasion, the company investigated the cause of the flooding and took appropriate action if cleaning was required. The evidence shows that, after the customer's dialogue with CCWater, the company made discretionary CGS payments to the customer totalling £225.00 for three of the external flooding incidents. On each of the external floods the blockage was found to be caused by local residents' sewer abuse. As stated within the company's defence there is no legislation which states the company are to police the use of the sewer network, so even if I was minded to, I would be unable to direct the company to identify and pursue the individuals who have caused sewer abuse. Whilst I appreciate the customer's position, I am of the view the company did investigate the flooding as best it could and acted appropriately according to the results of its investigations. By sending a letter and a '*Bin it, don't block it*' leaflet, I am satisfied the company made a reasonable effort considering the circumstances to educate the customer's local residents to sewer abuse. I am also satisfied the company's offer to investigate the possibility of replacing an interceptor trap located on the FW sewer line within the customer's property boundary, with a straight pipe could prevent future blockages. The company states within its defence documents that the customer has currently refused this option. However, I note in the customer's comments to the defence the customer now states he wishes the interceptor trap to be replaced, if this correct, he will need to engage with the company to ensure this takes place. Therefore, I find I am in agreement with the company's position there is nothing further it can do for the customer in respect of his complaint on sewer flooding except to continue to react and clear any future blockages unless the customer engages with the company regarding replacing the interceptor trap. In light of the above, I find there are no grounds to conclude the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with regard to the investigating of the source of the flooding and clearing any blockages at the customer's property.

5. I note the customer's comments regarding the alleged damage to his garden wall, shoes and clothing by the sewer flooding. As above, I have found the company did not fail to provide its services to the customer to the standard to be reasonably expected by the average person with regard the investigating of the source of the flooding and clearing any blockages. Furthermore, under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers. Accordingly, the company cannot be held responsible for any damage caused by such escape. Furthermore, even if company could be found liable, which it cannot, I am conscious there is no evidence to support the customer's

requested redress of £250.00 for the damaged clothing and shoes or the £900.00 for the damaged wall. The WATRS scheme is evidence based and I am satisfied the customer has neither supported his position with evidence nor explained why he is unable to do so. Accordingly, I accept the company's position and find that no sums are due in this regard.

6. I note the customer comments regarding the sewer flooding has contaminated his clean water supply. As shown by the evidence, the company has investigated this issue and found his clean water supply has no leaks and is fully sealed so there is no risk of contamination. Accordingly, I find the company need take no further action in this regard.
7. I refer to the customer's comments regarding credit reference agencies. In compliance with OFWAT's guidelines on collection of debt, if no payment plan is in place with the company or full payment has not been received the company is entitled to report this to the credit reference agencies. Therefore, I am of the view the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person with regard to reporting any late payment to the credit reference agencies. Accordingly, this aspect of the customer's claim fails.
8. The company has certain obligations in respect of its customer services. The evidence shows, where appropriate, the company made CGS payments as required by the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The company admits the customer is due payments under the CGS for non-substantive replies to his correspondence dated, 14 June 2015, 3 January 2018, 25 May 2018 and 31 July 2018. I understand from the evidence that this was dealt within the customer's dialogue with CCWater and a satisfactory conclusion reached with the company sending the customer a cheque for £160.00. I am therefore satisfied there have been no failings with regard to customer service, which the customer has not been already adequately compensation for.
9. In light of the above, I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected, with regard to maintaining its assets surrounding and within the boundaries of the customer's property. With regard to customer service, I find no additional failings for which the customer has not been already adequately compensated for. Consequently, the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 September 2019 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 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.



**Mark Ledger FCI Arb
Adjudicator**