

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1450

Date of Decision: 11th November 2019

Complaint

The customer states that the company is liable for losses and inconvenience to himself and other residents at Green Court, [] after an alarm sounded at the private pumping station indicating a problem with the waste water facilities. He claims that the company was unreasonably slow to act and that it has failed to adopt the pumping station.

He seeks a direction that the company adopt the private pumping station; make an apology to include an explanation of the poor service and an assurance of improvements to service; and provide compensation of £8102.25 to include reimbursement for Zylem.

Defence

The company denies that it has acted negligently or that it is liable for the losses caused to the customer. It states that it has carried out its duties in accordance with relevant legislation and guidance. It states that it has made payments amounting to £1,425.92 to the customer. It states that it does not accept any liability.

It has not made any further offers and disputes the remedies sought by the customer.

Outcome

The company has acted in accordance with its legal obligations and has not failed in its customer service. Overall, therefore, the company has not failed to provide its services to the standard to be reasonably expected.

Findings

The company does not need to take any further action.

The customer must reply by 9th December 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1450

Date of Decision: 11 November 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that

- The customer, who resides at [] ("the Property") states that on 22nd January 2018 an alarm sounded in the private pumping station near the Property.
- The customer states that he contacted third party [] ("Zylem") who confirmed that there was a blockage in the waste water pipe for which the company had responsibility.
- The customer states that he complained to the company on the 24th January 2018.
- The customer sent further correspondence to the company regarding its alleged responsibility and the costs implications.
- The customer claims that there were delays and inadequate communications from the company after the complaint was made.
- The customer criticises the company's complaint handling service as not suitable.
- The customer states that adequate checks of the relevant pipe have not been carried out.
- He states that no feasible explanation has been given by the company for the flooding of the pump chamber.
- The customer claims that due to the blockage pressure is being put on the discharge pipe causing it to fail and that repairs were deemed necessary by Zylem.
- The customer states that there were many delays in scheduled work that was not carried out until 8th March 2019.

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- The customer is not satisfied with compensation offered by the company. He seeks a direction that the company adopt the private pumping station; make an apology to include an explanation of the poor service and an assurance of improvements to service; and, provide compensation of £8102.25 to include reimbursement for Zylem.

The company's response is that:

- It was not aware of the flooding until it was contacted on the 24th January 2018.
- It states that an engineer attended on that date but did not have the necessary equipment.
- It states that in the 17th April 2018 an engineer carried out an inspection but did not inspect the drainage pipe or pumping station.
- It states that on the 2nd May 2018 an engineer discovered the blockage and that this was the first instance that the obstruction was identified.
- The company states that the obstruction was caused by an ingress of roots.
- The company states that the majority of the blockage was removed at this point but that a large tap root remained.
- It states that the tap root was not a priority and that no further blockages occurred after this date.
- The company states that delays were caused by a number of applications to the Highway Authority ("HA") being rejected.
- The company states that it will not consider adopting the private pumping station. It further states that this is outside the reach of the WATRS scheme to order.
- It states that it is also outside the scope of WATRS to make directions on the company's commercial policies such as staff training and allocation of work.
- It states that it has paid the costs for private engineers' reports in the amount of £469.92 and £676.00 (plus VAT).
- It states that it has also paid two amounts of £30.00 under the Guaranteed Service Scheme ("GSS") and a goodwill payment of £220.00 was made.
- It states Lanes, a third party, has made an offer of £30.00 on grounds of no further liability and that this was refused.
- The company does not accept any liability for the losses claimed and states that it has complied with its statutory duties.

In reply the customer states:

- He disputes the company's position regarding the adoption of the pumping station.
- He disputes the company's view of the communications between the parties.

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- He states that the operation of the company's complaints procedure is directly relevant to its customer service and should be subject to a direction if necessary.
- He states that the company is treating lightly the fact that the pump could not be turned on again.
- He states that the company took three months to clear the majority of the blockage and that this is not timely.
- Other further points are made in relation to the overall claim.

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. I remind the parties that this is an evidence based process and my decision is made solely on the information provided to me by the parties.
2. I note that the customer acts on behalf of the management committee in this application. I shall be referring to the customer throughout, for simplicity, however, it is with the understanding that he speaks for the other residents whose information and authority I have received.

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3. I shall firstly deal with the issue of the adoption of the pumping station. The customer states that he believes that the company should adopt the pumping station and the company disputes this. I take the view that this matter falls outside the remit of the WATRS scheme. The scope of the scheme is outlined at section 3 of the WATRS Scheme Rules. I remind that parties that in this respect section 3.1 states: *“The power to determine whether a dispute falls within the scope of the Scheme rests with WATRS. The decision of WATRS as to the eligibility of a dispute is final.”* Regarding the claim that the company should adopt the pumping station is a matter that involves potentially complex legal issues and one that is more properly heard in an alternative forum. I consider that this case, in part, falls under the following rule: 3.4.3 *“in exceptional circumstances, the dispute raises a complicated issue of law”*. I shall proceed to deal with the other matters raised in this application.
4. The customer states that the company took an unreasonably long time to effect a final resolution of the problem of the blockage in the company’s asset. The company states that the blockage was resolved on the 2nd May 2018.
5. I take into account the large amount of detail provided by both parties in this matter, for which I thank them. I note that the issue to be resolved is whether or not the company acted in a reasonable time frame and satisfied its legislative obligations when it acted in response to the customer’s complaint.
6. Firstly, the company received its first notification of the problem on the 24th January 2018. This is accepted by both parties. I consider that it is not reasonable to expect that the company should be held liable for any matters occurring prior to that date. This is due to the large undertaking that is involved in the service provided by the company. The company has indicated that it cannot know of a blockage in any particular part of its infrastructure unless it is told. I accept that this is the case and I cannot find that any fault attaches to the company, based on the evidence presented to me, in relation to matters prior to this date. I have taken into account, in coming to this conclusion, that there was a history of events before this present matter arose but, nonetheless, I do not consider that this raises an expectation that the company should be held to account for actions prior to the 24th January 2018 in relation to the most recent incident.
7. It should be noted here that I do not criticise the entirely understandable actions taken by the customer when the alarm went off on the 22nd January 2018. He has made a full explanation of why he chose to act in the manner he did and I find it is a logical and reasoned explanation.

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8. The company states that it sent out an engineer on the day it received the complaint. A further engineer's visit was arranged on the 17th April 2018 but that the drainage pipe and pumping station were not inspected at that time. It states that the blockage was first identified on the 2nd May 2018 and that with as dealt with effectively on that date.
9. I note that there were no more incidents of flooding after the 2nd May 2018. Therefore, I consider that this is the date that is relevant when considering the time frame taken by the company for the resolution of the immediate problem.
10. The time, therefore, taken by the company to effectively address the immediate problem is calculated between the 24th January 2018 and the 2nd May 2018. I have considered the timeline of events and the actions taken by the company. I have also taken into account the ordinary hinderances implicit in carrying out work and inspection of this nature and weighed it against the ordinary expectations of similar water service companies acting in respect of similar complaints.
11. I do not find, in all the circumstances, that there was an unreasonable delay in the actions of the company during this time. I am satisfied, on the evidence before me, that the company acted in accordance with its obligations and in a reasonable manner. I am also satisfied that the complaint was effectively addressed and resolved on the 2nd May 2018. I make no finding of fault in relation to this aspect of the claim.
12. The customer claims that the customer service he received was inadequate over the entire period of the ongoing complaint. I have reviewed the detailed circumstances of this period, between the 2nd May 2018 and the 8th March 2019, when the final work was carried out to remove the tree root. The company has stated that its ability to carry out the work was contingent on the permission of the HA which was difficult to obtain. I note that the company made repeated attempts to acquire the appropriate permission. The customer states that he does not see why the HA's permission was necessary in the circumstances. I have to bear in mind that the company is obliged to act in accordance with legal requirements and that this often entails seeking permissions from third parties. I cannot hold the company responsible for delays caused that are not of its own making.
13. The customer complains that the internal processes of the company when dealing with his complaint and the remedying of the blockage were poor. He states that his complaint was dealt

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with by several people and that this made the situation worse. I note that the correspondence between the parties reflects the increasing frustration felt by the customer. I do not find that disappointment with the events in these circumstances, where a third party such as the HA is involved, is necessarily an indication that the company is performing badly in its customer service. It is beyond the scope of the WATRS scheme to comment on company policy regarding staff allocation and other such matters. I am satisfied, from the evidence, that the company was fully engaged in the process of the customer's complaint.

14. The customer is aggrieved that the company states that he should have switched on the pump. He states his advice was otherwise. I take into account that nonetheless the company did undertake to pump out the waste water in circumstances where it did not accept liability. I consider that this was an act of goodwill towards the customer and that it does not support the allegation of poor service.
15. The customer has stated that he has incurred financial losses and inconvenience. He has listed these in his application form in the remedies section. I fully accept that the whole process must have been extremely frustrating for the customer. Especially as he has assumed the role of communicating with the company on the behalf of himself and other residents and that this must have been an additional burden to him. I also note that some of the costs are estimates from a third party regarding repairs. Nonetheless, I must be satisfied that the company has acted negligently or is in breach of its legislative obligations before any recompense can be awarded in these proceedings.
16. I note here that the company has made a payment to the customer to cover the costs for two private engineers' reports in the amount of £469.92 and £676.00 (plus VAT). The company has stated that this was not contingent on any admission of liability. I note further that the company has made a payment of £220.00 as a goodwill payment and two GSS payments of £30.00. I consider that these actions of the company, given that they have not admitted any liability and that I have not found any fault, are indicative of its goodwill towards the customer. I do not find that such actions support the claims that the company has provided poor service.
17. Overall, I do not find that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person. It therefore follows that this claim fails.

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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 9th December 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 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.



J J Higgins, Barrister, ACI Arb.

Adjudicator

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