WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/1936

Date of Decision: 10 July 2020

Complaint

The customer advised that the company has not provided adequate compensation for an escape of water from a tank at a nearby reservoir that flooded her home and residential barns. She says that company had taken insufficient steps to prevent overflowing and seeks £2,500.00 in relation to stress, inconvenience and damage to her mental health; project management costs of £3,750.00 in relation to five months of restoration work and £3,000.00 compensation for interruption to the customer's holiday. She also seeks a meeting, an apology and that consideration of a culvert diverting the water away from her home.

Response

The company says that it did not fail to maintain the equipment but discovered an electrical fault that had failed to operate. It does not have a statutory liability to make payment and the customer has already been paid £44,969.55 for the restoration costs. While stress and inconvenience might be a legitimate head of claim, the amount claimed is disproportionate and the customer has already received a final payment made in August 2019.

Findings

Although the flood and subsequent restoration work would have been very distressing, time consuming and may have caused mental illness, the storage of reservoir water is undertaken for common benefit under a statutory scheme that is overseen by OFWAT. There is no statutory provision for compensation for an escape of water from a reservoir tank and I find that the company was not negligent. The company arranged for compensation to the customer for restoration purposes because it treated the escape as though it was escape of water from a pipe, where it had strict liability. I find that it did not have to do this. Moreover, I find that the customer has accepted a final payment. I find that an average customer would find that in declining to make a further payment for the matters claimed, the company has provided its services to the standard that would reasonably have been expected. It was not required to do more.

Outcome

The company does not need to take any further action.

The customer must reply by 7 August 2020 to accept or reject this decision

ADJUDICATOR'S DECISION

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Date of Decision: 10 July 2020

Party Details

Customer: Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The customer seeks financial compensation from the company to recognise worry, stress, inconvenience and disruption to the life of herself and her husband and to their health and damage to their micro-business for six months following an internal and external flooding incident to their home and barns on 3 March 2019 by water escaping from a drinking water reservoir/tank.
- This also caused particular worry because the customer and her husband were in India at the time of the flood.
- They have lost time obtaining quotes and overseeing works in relation to the damage to the house and the homes of the tenants in the affected barns.
- The customer says that it was made clear by an employee of the company that the cause of the flood was inadequate maintenance of batteries that should have shut valves in the company's assets in the event of a power outage. They have been advised that there is a new, doubly powerful back-up power supply and a second set of valves has now been fitted that will be maintained by a third party.
- The customer explains that the restoration project took some 6 months and approximately 250 in which she had to liaise with the loss adjuster and was told that she had saved him

much time. The dining room floor had to be dug out to a depth of 18 inches and then could only be crossed by boards.

- The customer began to suffer panic attacks and loss of sleep and had to visit her GP. Her husband also suffered stress-related health issues.
- The customer seeks:
    - compensation of:
        - £2,500.00 in relation to stress, inconvenience and damage to her mental health;
        - Project management costs of £3,750.00;
        - £3,000.00 interruption to the customer's holiday.
    - Practical action to build a culvert under the road to prevent an overspill of water from entering her property again. She says that although the ditch has been temporarily cleared there is a total blockage under a gateway 20 m above her property which then opens into only a small pipe before going underground across (removed). She says that this means that the water will again overflow and run into her house. She says that part of the internal damage was caused by water entering from the neighbour's driveway.
    - A meeting with senior managers from the company.
    - An apology.

The company's response is that:

- The company confirms that the flooding incident was unforeseen and was due to a power cut in the area that caused the main breaker from the tank to trip. It denies that the fault was due to insufficiency of the equipment or failure to maintain.
- The company says that it attended as soon as it was made aware of the incident. It says that it put in place the necessary measures to alleviate the incident and provided all customers affected with information as to how to proceed.
- The company also raised the incident with its claims handler who liaised with the loss adjuster.
- The company explains that the loss adjuster worked with the customer and discussed the elements of claim that would be considered. It confirms that payments totalling £44,969.55 were made to the customer as follows:
    - 27 March 2019 - £ 5,000.00 to cover the cost of replacing carpets and flooring
    - 2 May 2019 - £20,000.00 to cover the cost of repairs

- 7 June 2019 - £12,500.00 to cover the cost of reinstating the garden, plumbing fees and contents, and
- 23 August 2019 - £7,469.55 to finalise all outstanding elements of the claim.

- The customer then inquired by letter as to what had happened. A reply was sent on 25 October 2019. On 12 December 2019 the company sent an email to the customer providing an explanation as to why it could not agree to her request for further compensation totalling £22,500.00.
- On 30 December 2019 the company received a Stage 1 complaint, sent by the Consumer Council for Water (CCW) on behalf of the customer. A reply was sent on 8 January 2020. The company thereafter communicated with CCW.
- The company asserts that it is unable to consider the compensation that the customer now seeks. It points out that where an escape of water from its pipework has caused damage to a customer's property it is strictly liable for losses to customers because of s209 of the Water Industry Act 1991. As the water did not escape from a pipe but was a reservoir incident, this was not a strict liability matter. However, the company dealt with the claim on a without prejudice basis by applying the same process. The company asserts that while stress and inconvenience is a valid head of claim, there is no automatic entitlement to a payment. The test the courts apply to such a claim is whether a dwelling is fit for habitation and even where the disruption is ongoing for a period of months, the monetary awards are extremely modest; generally less than £3,000.00 for an individual unable to reside in their property at all for a whole year. As for the project management costs, the loss adjuster states that the customer chose to arrange her own contractors for the majority of the works required who had installed the original works. The company des not believe that it is liable for these costs. The customer denies any liability for the customer's holiday, compensation for which was not foreseeable and therefore too remote.
- The company also does not believe that the proposal to alter the culvert, which would be a substantial engineering scheme, was not necessary and could not be prioritised.
- It is content to offer meeting with senior members of the reservoir team to reassure the customer.
- The company also recognises the distress and inconvenience suffered by the customer as a result of the flooding to her home and would be happy to issue an apology for this. It would not be willing to issue an apology for failing to maintain its equipment because it does not believe this to have been the case.

- **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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 customer has submitted photographs showing the state of her home and barns when the flood occurred. I am completely satisfied that this was a significant incident: the farmyard is completely full of dirty water of some depth and it had entered her home and destroyed the flooring of some part of this. In one image, water can be seen flowing out of one of the barns into the road. Even though the customer was not initially present, I accept that this would have been a matter of considerable distress and the clean-up and restoration operation would have been distressing and gruelling. The customer says that she has had to seek treatment from her doctor and there is no evidence to the contrary.

2. The company has submitted evidence that the cause of this incident was that the tank at reservoir had overflowed. It said that there had been a power cut and as a result, the pumps that move the water out of the tank had stopped. This caused the water level to rise as water was still entering the tank, and eventually caused the tank to overtop. The customer has submitted an email from the company dated 19 June 2019 in which the company said that it would not ever be 100% sure who was to blame but agreed that it owned and maintained the equipment in place to prevent flooding and states “it doesn’t appear that it was sufficient”. The customer says that this indicates that the company’s precautions were not sufficient in the first place and the

system was not maintained. The company denies this. It says that it is not known why the valves were not prompted to close by the back-up battery but this was not due to lack of maintenance. It says that the assets at the reservoir were maintained in accordance with its guidance for this type of site. The site, including the battery back-up, was inspected every 36 months and the last inspection had taken place on 7 January 2019. The company said that this was the first time that there has been an issue of this nature at this site but that once the company became aware of the failure, a full review was undertaken to try and understand what had happened and what measures could be put in place to prevent this from happening again. The company explains that in consequence of the review, an electrical fault was found on a piece of equipment and this has since been replaced. An additional maintenance schedule has been put in place with a specialist contractor and there will be an annual inspection of the tank by a company reservoir engineer on top of the weekly site visits that take place. Additionally, there has been a review of the alarms generated on the tank to ensure early notification of any issues.

3. It argues that work to install a culvert would be a substantial engineering scheme and would protect only a small number of properties. It says that a review took place after the incident in March 2019 and a number of changes/improvements have been made at the site. There is nothing to suggest that these are insufficient. As for maintenance of the ditch referred to by the customer, this is a council asset and the responsibility of the local council not the company.

4. Against this background, my findings and reasons are as follows:
    a. The requirement on a water undertaker to provide and maintain the water supply is imposed by statute and is overseen by OFWAT in accordance with a procedure provided for under s 18 of the Water Industry Act 1991. It is not for the courts (and by inference an adjudication scheme such as WATRS) to usurp the function of OFWAT by providing additional liabilities that are not envisaged by that statutory scheme.
    b. In circumstances where there is an escape of water from an asset held and maintained under the governance of statute for the public benefit, a water undertaker would be liable, therefore, only where legislation provides to the contrary or where there has been negligence.
    c. Where there is an escape of water from a pipe, the Water Industry Act 1991 does impose an obligation on the water undertaker to compensate those affected. The circumstances affecting the customer, however, did not involve an escape of water from a pipe but from a reservoir tank, for which no statutory provision is made.

d. Although the WATRS scheme does not determine whether there is negligence, but looks at whether the company provided its services to the expected standard, these ideas are linked. In particular, it is notable that:
    i. No previous incident has occurred and there is no known reason, save for the escape itself, to suspect the adequacy of the protections that were in place. Accordingly, I find that an average customer would not reach a conclusion based on a single adverse event resulting from environmental water coupled with the failure of electrical equipment for an unknown reason which had not happened before, that the water supplier had failed to provide its services to the appropriate standard.
    ii. It also does not follow that, because a water company increases the level of its protections after an adverse occurrence such as the distressing events experienced by the customer, an average customer would reasonably conclude that the protections were insufficient beforehand. This is a situation, I find, that is not to be judged by hindsight.
    iii. There is no evidence that the company had failed to follow its internal procedures or that there was reason, prior to the incident, to believe that its procedures were insufficient.
e. Accordingly, I do not accept that an average customer would reasonably have drawn from the email dated 19 June 2019 the inference that the company had not performed its services to the requisite standard, not least because that email commences with the statement that it cannot be sure who was to blame. As I have indicated above, merely owning the equipment does not mean that the company had failed to provide its services in a way that an average customer would reasonably expect.
f. In consequence, notwithstanding that the company decided that it would treat an escape of water from its tank in the same way as it would an escape from a pipe, I find that it was not required to do so and I further find that the company cannot be compelled to accept greater liability than it has already agreed to do.
g. Moreover, even if it had been possible to compel the company to accept liability, the history of this matter is that the company has settled the matter with the customer through its underwriter. Although I have not seen the relevant correspondence from either party relating to the basis of the payments made to the customer, it is notable that the company refers to the last of the four payments made as “finalising” all outstanding aspects of the claim. The customer says that these payments only related to physical damage and did not apply to the losses that she now claims, but I find that an average

customer would not reasonably expect that the company, having made a final payment, would subsequently have to compensate the customer for a claim that could previously have been made but which did not form part of the final settlement: it is notable that the final compensatory payment by the company was made in August 2019, some five months into the period of five or six months that the customer says it took to restore her home and by which time she would have recognised that she was experiencing inconvenience and distress, had lost the benefit of some of her holiday and had been organizing the restoration works at her home. The customer would therefore, by the time that she received the final payment, have known of the nature of the losses she now claims.

5. Taking all the above factors into account, I find that the customer has not proved that the company provided its services in a way that was sub-standard, either in respect of management of the events relating to the flood or in refusing to make a further compensatory payment.

6. Furthermore, in relation to the customer's wish that the company should construct a culvert under the road and/or increase the capacity of the ditch belonging to Council, I find that an average customer would reasonably expect that the company would weigh up the need to protect the customer with the other needs of all its customers. The company has satisfied itself that it has taken sufficient measures to protect the customer in the future and, although the customer expresses anxiety about this, she has put forward no persuasive evidence that the measures now taken by the company are insufficient. Accordingly, I find that an average customer would not reasonably expect the company to direct its finite financial resources to an issue that it believes has been resolved.

7. The company has expressed willingness to meet the customer to reassure her, but as I have found that the company has not fallen short of the standard that would reasonably be expected, I do not direct this and for the same reason I do not direct an apology.

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 7 August 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.

Claire Andrews (Barrister, FCI Arb)

Adjudicator