

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/1960

Date of Decision: 28 July 2020

Complaint

The customer's claim is that the company has not compensated him for a flood from its sewer that affected two properties. The customer says internal flooding ruined his carpet and lino in one of the properties and he has suffered a decline in his health because of this experience. The company has admitted that the flooding was as a result of a defective sewer pipe, yet denies liability. The customer requests £3,897.00 in compensation from the company and an apology.

Response

The company accepts the customer's two properties experienced internal flooding due to a blockage on the public sewer caused by a defective sewer. It submits that whilst this concerns a public sewer, its investigations concluded that the cause of the incident was not because of negligence on its part and as it addressed the cause of the flooding, it is not liable to compensate the customer for damage caused to contents. The company asserts that whilst a customer who is paying charges is entitled to be compensation under the Guaranteed Service Standards Scheme, in this case there is no live account due to the properties being registered as unoccupied and unfurnished and therefore it is not liable to pay the customer compensation.

Findings

The company has shown it carried out the required remedial works to address the cause of the flooding. In light of this and as there is no evidence to establish the flood was caused by an issue known to the company that it previously failed to take steps to avoid or reduce the risk of future floods, it is not liable for any costs incurred by the customer as a result of the flood. The question of the customer's eligibility for Guaranteed Service Standards payments, falls outside of the scope of WATRS, however, due to evidence of the company failing to provide its services to a reasonably expected standard when handling the customer's complaint and claim for compensation, I find it is reasonable for the company to pay the customer £300.00 in compensation for stress and inconvenience caused and also that it provide a written apology.

Outcome

The company shall pay the customer £300.00 in compensation and provide a written apology to the customer.

The customer must reply by 25 August 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.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/1960

Date of Decision: 28 July 2020

Party Details

Customer: (Removed)

Company: (Removed)

Case Outline

The customer's complaint is that (as stated in the Application completed by the Consumer Council for Water (CCW)):

- Two properties he owns (but does not live in) were affected by internal sewage flooding. The customer requests that the company pay him compensation for the damage caused to the properties' contents.
- The customer has explained that the company has admitted that the flooding was as a result of a defective sewer pipe.
- The customer is unhappy with the company's response to make a claim with his home insurers for compensation for loss or damage (he has building insurance but not contents insurance) and that it is unable to pay Guaranteed Standards Scheme (GSS) payments as the customer is not paying for the services at the properties.
- The customer requests £2,000.00 in compensation for distress and inconvenience and £1,897.00 for damage caused (a total of £3,897.00).

The company's response is that:

- The dispute relates to flooding at the customer's properties at (Removed) (Property 1) and (Removed) (Property 2).
- On 17 February 2020, the customer reported that a manhole located at the rear of the Properties, was overflowing. According to their records, there had been no blockage or flooding issues previously. On attending, it found that the Properties had experienced internal flooding, due to a blockage on the public sewer. Discharge from a gully had entered Property 2, and

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.

water had entered the kitchen and dining room area of Property 1. It jetted downstream from an accessible manhole at a neighbouring property to clear a blockage. CCTV was also carried out, where roots and fractures were identified.

- Additional CCTV footage found defects, where property connections had broken into the sewer line, running under the extensions. This caused the sewer line to fracture on each connection point.
- It carried out remedial work which included patching the sewer line after every connection, as well as fitting a new access chamber, to allow better access should it be needed, in the future. Whilst this concerns a public sewer, its investigations concluded that the cause of the incident was not because of negligence on its part.
- Where charges for its services are paid, and a property has experienced flooding, customers may be eligible for a payment under the terms of GSS. Any GSS payment is separate from claims made through an insurance provider and does not constitute an admission of liability.
- OFWAT's GSS Scheme's summary of standards and conditions, clarifies that a 'customer' is someone who receives water or wastewater services from a company and states that each sewerage company must inform billed customers of their rights under the GSS Regulations every year. It does this through its annual publication: 'For you, not for profit', which is provided to all billed customers. The customer is not eligible for a GSS payment. This is because whilst he is the owner of the Properties, no charges have been raised for its services at them (there are no live accounts).
- In relation to the status of the Properties, for Property 1, it has not been billed for water and sewerage services since 15 July 2018. According to its records, the customer was previously billed at the address from 5 May 2001 to 14 July 2018. The property has been registered as empty and unfurnished since that time, although the customer has since confirmed that this is still his home. As such, it will need to open a new account for the customer at the Property 1. The charges are unmeasured and for 2020/21, are £346.36.
- In relation to Property 2, this property has not been billed for water and sewerage services since 2 March 2019. It understand that this has been a rental property and is currently registered as empty and unfurnished, however, when visiting the Property it could see it is under renovation. As such it will need to open a new account for the customer in relation to Property 2 as per its Charges Scheme.
- It is the customer's responsibility to ensure that he has appropriate insurance for any property he may own. Whilst the customer has advised he has no contents insurance to cover contents,

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.

for the reasons explained, the customer is not eligible for a statutory payment under the terms of GSS.

- Whilst it is not liable, it has asked the customer to substantiate the damage and material losses to the Properties, as a result of the flooding. In his evidence, the customer has provided an order form, from '(Removed) Carpet and Flooring'. This is signed as 'Paid in Full', although it notes that the document date is incomplete, with the year missing. Therefore, whilst this document evidences that flooring was indeed bought at some time in the past, it does not substantiate the losses. As such, it does not believe it appropriate to make a payment to the customer.
- As mentioned above, charges for water and sewerage services at the Properties, must be paid for. Property 1 has not been billed for 2 years and Property 2 has not been billed for 16 months.
- It acknowledges that the customer may be disappointed with its response and it does sympathise with his situation and to assist, it will not backdate charges for the Properties. As a gesture of goodwill, it will open the accounts from the date of this Response to WATRS today. This brings a greater benefit than the monetary value of GSS payments, had the customer been eligible.
- The company contends this resolution is "fair and very reasonable".

Customer's Reply

- The customer reiterates the aspect of the claim including that he called the company (on 17 February 2020) when he discovered raw sewage floating inside his house from under his back door. This sewage had floated up via the gully from the public sewage pipe to the rear of the Properties and had soiled the kitchen lino and the lounge carpet. On visiting Property 2, he discovered that this property was also badly affected by the raw sewage floating inside the house via a gully from the public sewage pipe.
- The customer confirms he owns the Properties, however, Property 1 has been empty/unoccupied from 17 July 2018. He informed the company of this. This was his home and due to personal illness/disability, he is unable to live there.
- The customer asserts that the Properties are in a Cul de Sac with 2 other properties and all of the houses have very old public lead water supply pipes and sewage pipes to the rear of the properties. He and his neighbours have seen the company's operatives conducting investigations of leakages on these old pipes. The company was asked to replace the old pipes but it said it is too costly and it would only repair the pipes if they completely fail.
- In April 2019, one of these old lead pipes "popped open" under the rear of Property 1 and it caused major damage to the inside of the property. As a consequence of this, he had to remove

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.

everything inside the property and he informed the company that the property was now empty and unoccupied. There is no renovation being conducted at Property 1, as it is structurally unsafe. The property is connected to a water meter and he “would welcome” the company to read the meter to see that no water is being consumed and also no sewage is being discharged from the Property. Further, he would be happy for the company to totally disconnect the property from the mains whilst he unable to renovate this property.

- He has been “totally transparent” with the company that both properties are empty and unoccupied and it is now seeking to charge him for water/ sewage waste at Property 2.
- The sewer flooding ruined his carpet and lino at Property 1 and he has suffered a decline in his health because of this experience.
- He has contacted the company on several occasions and it has denied any responsibility even despite its report has identified that the public sewage pipe was defective.

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 concerns internal sewerage flooding at the two Properties owned by the customer (both currently registered as unoccupied and unfurnished with the company). The customer’s

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.

claim is that the company has failed to accept liability for damage caused to his Properties and has refused his request for compensation.

2. I find that, in accordance with section 94(1) of the Water Industry Act ('The Act'), the company is obliged to repair and maintain its sewers so that the area is effectually drained. However, I am mindful that in the context of litigation, the courts have on many occasions determined that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for water and sewerage companies to adopt, although, where there is a known issue, companies should repair their assets. Further, generally, unless a company has acted negligently, it would not be responsible for any damage from flooding as often the cause is due to factors outside of its control, for example items placed in the sewer network by third parties.
3. It is undisputed between the parties that following a report from the customer of an internal sewer flood incident at the Properties, the company attended and found a blockage on the public sewer and on further investigation, identified fractures and defects to the sewer. I acknowledge and accept the company's account given of the works carried out to address the issue, namely that it jetted downstream from an accessible manhole to clear a blockage and carried out remedial work which included patching the sewer line after every connection (completed on 14 March 2020), as well as fitting a new access chamber (to allow better access). I acknowledge from the evidence that the dispute arose following the company's refusal to pay the customer's claim for compensation for damage caused to his kitchen lino and carpets (in Property 1) when it advised the customer that it is for him to make a claim for loss or damage with his insurance company.
4. As above, I accept that a water company is not liable for damage caused by sewer flooding unless it is due to negligence on the part of the company. I find this is in accordance with the company's policy on sewer flooding, which I find is set in its "Flood Care booklet" (submitted at Appendix 2 of the Response). I acknowledge that in his Reply (to the company's Response), the customer says the (lead) water pipes and sewerage pipes are very old and that he and his neighbours have seen water operatives conducting investigations of leakages on these old pipes and furthermore that there have been leaks in the past. In its Response the company contends that it has no recorded incidents at this location prior to the flooding on 17 February 2020. I note this position is reiterated by the company in its response dated 26 March 2020 (to

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's MP (Removed). As I cannot find any evidence to establish that the company knew about the defective sewer or that there have been previous leaks that the company failed to address in order to reduce or avoid the risk of flooding, on balance, I find that there are insufficient grounds to establish that the company has acted negligently. It follows that the company is not liable for damage caused to the customer's Properties caused by the flood incident. As mentioned above, the company told the customer that in this circumstance, it is for him to make a claim for loss or damages with his insurers. I find this is in accordance with the company's policy on sewer flooding, which I find is set in its "Flood Care booklet" (submitted at Appendix 2 of the Response) and further, I am satisfied this is standard across the industry. Whilst I acknowledge that the customer has explained he does not have contents insurance and as such cannot make a claim, I find this does not alter the legal position to the effect that the company is not responsible for the damage caused.

5. However, I find that the company is otherwise obliged to conduct itself to the standard to be reasonably expected by the average person. Further, I acknowledge that under OFWAT's statutory GSS Scheme, a customer is entitled to compensation for sewerage flooding (the company highlights that this is separate from claims made through an insurance company). In the customer's case, I acknowledge that the company has not paid the customer GSS payments for the sewerage flooding in question. The company asserts this is because the customer is not eligible for a payment as this is based on a refund of annual sewerage charges (between a minimum of £150.00 and maximum of £1,000.00) and it has not raised any charges for its services at the Properties since 15 July 2018 (for Property 1) and since 2 March 2019 (for Property 2) when the Properties were registered as empty and unfurnished. I acknowledge however that in its Response, the company also says that the customer should be paying annual charges in respect of both Properties. I note from the company's submissions, this appears to be due to its belief that Property 2 is under renovation (this is denied by the customer) and because the water is not switched off at Property 1. The company refers to its Charges Scheme in support and submits that it has opened an account for each Property in the customer's name, effective from the date of the Response (it will not backdate charges).
6. However, I am mindful that GSS payments concerns a statutory scheme operated by OFWAT, therefore I am unable to consider the issue of the customer's eligibility for GSS payments (based on the status of the properties which appears to be in dispute between the parties), as this falls outside of the scope of WATRS in accordance with Scheme Rule 3.5. I must also

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.

highlight that under this process my jurisdiction is limited to considering if the company has failed to provide its services to a reasonable expected standard specifically in relation to the claims raised in the WATRS Application only, as such it follows that I am unable to address the counter-claim raised by the company in its Response regarding annual charges which the company now contend are payable for both Properties for 2020/2021.

7. In relation to the customer's claim for compensation for £3,897.00 (£1,897.00 to replace the lino and carpet and £2,000.00 in compensation), I acknowledge from the evidence that the company asked to customer to provide proof of losses incurred and on 27 February 2020, the customer submitted an invoice from '(Removed) Carpet and Flooring' for £1,897.30 in relation to '(Removed)'. However, the company subsequently advised it would not make any compensation payment to the customer for the reason stated above namely that he is not entitled to GSS payments. The customer disputes that GSS payments (based on a refund of sewerage rates) should be the only option for the company to pay him compensation for the damage caused. I acknowledge that in its Response, the company submits that as the invoice supplied by the customer states 'paid in full', it accepts this shows that flooring was bought at some time in the past, but asserts that as the date within the invoice is incomplete (with the year missing), this evidence does not substantiate the customer's losses. The customer has not disputed this point and having reviewed the evidence, I am inclined to accept that the invoice shows the original cost paid by the customer for the lino and carpet at Property 1 (prior to the damage), and as such does not substantiate either the value of these items when damaged or establish that the customer incurred this loss as a result of the sewerage flood. However, I am mindful that having requested this evidence from the customer, I consider that the company set an expectation that it would pay the customer compensation for damage caused from internal flooding (which is undisputed and shown in the company's photographs included in the document titled 'Report (Removed) and (Removed)' submitted at Appendix 1 of the Response). In light of the evidence, I accept this caused the customer stress and inconvenience and on balance, I am satisfied that the customer service provided by the company when handling the customer's case, was not to a reasonable standard.
8. In summary, as the company has demonstrated that it repaired the defective sewer and that it has not acted negligently, it is not liable to pay for the damage caused to contents from internal flooding. Whilst I acknowledge that the company has not paid the customer GSS payments, as explained above, I am unable to consider this aspect of the claim as such falls outside of 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.

scope of WATRS. Similarly, I am unable to make any finding in relation to the company's counter-claim regarding the applicability of annual charges. However, as I find that the company failed to provide its services to a reasonably expected standard when handling the customer's complaint and claim for compensation, I find it reasonable to direct that it pay the customer a measure of compensation for the stress and inconvenience caused. However, I am not satisfied that the amount sought of £2,000.00 has been justified in full. In the circumstance, I direct that the company pay the customer £300.00 in compensation. This falls into Tier 2 of the WATRS Guide to Compensation for Inconvenience and Distress and I find this amount to be fair and proportionate to the proven service shortfall.

9. The customer also requests an apology from the customer for the damage caused from flooding from its asset. I can see that the company apologised to the customer for the incident in its 7 April 2020 response to the customer. However, in light of the proven customer service shortfall by the company, I find it reasonable to direct that the company provide a further written apology to the customer on this basis.

Outcome

The company shall pay the customer £300.00 in compensation and provide a written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 August 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.

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.

- 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.
-



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCIArb
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.