

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0709

Date of Decision: 23 April 2018

#### Complaint

An escape of water incident occurred on 4 January 2018, causing damage to the customer's garden and property. She submitted a claim to the company but this was not dealt with satisfactorily at all. Eventually, she received a cheque for £420.00 from the company but this is nowhere near adequate compensation. She seeks an apology from the company for the poor service provided. The flood water damaged her driveway and also a painting that she was storing in her garage. She seeks compensation of £1850.00 in respect of the driveway and £189.00 for the painting.

#### Defence

The various service failings complained of are acknowledged. The company considers that £420.00 was a sufficient amount to pay to say sorry to the customer. The company accepts in principle that it is responsible for the escape of water from its apparatus. However, in this specific case, it has not been proven that the damage to the driveway or to the picture was caused by the flood water on 4 January 2018.

No offer of settlement has been made.

#### Findings

That the £420.00 goodwill payment offered by the company was an adequate reflection of the company's customer service failings and no increase is due. That no compensation is due for the alleged damage caused to the painting. That the flood water on 4 January 2018 did result in damage to the driveway but not to the extent claimed and therefore £185.00 is awarded in compensation for this part of the claim.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum of £185.00 in compensation.

The customer must reply by 22 May 2018 to accept or reject this decision.

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## ADJUDICATOR'S DECISION

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Date of Decision: 23 April 2018

### Party Details

Customer: [ ]

Company: [ ].

### Case Outline

#### **The customer's complaint is that:**

- An escape of water incident occurred on 4 January 2018 and caused damage to her garden and property.
- She submitted a claim to the company. This claim was focused on damage sustained to:
  - her driveway ("Driveway"); and
  - a painting on canvas ("Picture"), which had been stored in her garage.
- The company's process of dealing with the claim was very unsatisfactory. The company asked for costings relating to repairing the Driveway. The requested costings were submitted but the company then delayed further on the basis that someone needed to attend the property to inspect. The person sent to inspect appears only to have looked at the Driveway without carrying out any other investigation. This served no purpose other than creating additional delays.
- The company has tried to mitigate its responsibility, too, by blaming a third party company.
- A compensation cheque for £420.00 eventually arrived from the company in early March 2018. However, given the length of time that the complaint has been open, the numerous failings on the company's part in resolving the matter, the cost of telephone calls incurred and all the stress endured, she does not regard £420.00 as anywhere near satisfactory compensation.
- She seeks compensation of:

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- £189.00 in respect of damage to the Picture; and
- £1850.00 in respect of damage to the Driveway.
- She would like these heads of claim to be met in full by the company, without the need for any further inspection.
- She would also like the company to give her an apology in respect of the service failings that occurred in the company's handling of her claim.

**The company's response is that:**

- On 4 January 2018, gas utility workmen from Resolve Limited ("Resolve"), who were working in the customer's cul-de-sac ("Lamb Road"), caused damage to the company's 4" water main. A flood ensued. Resolve removed sewer manhole covers in various locations to allow water to drain away. They put sandbags against properties close to the burst (presumably as a preventative measure) to protect them from flooding and damage. Resolve also erected barriers around the open manholes for safety reasons.
- The customer subsequently called to complain about the damage/mess on her Driveway. She wanted to know why the manhole cover had not been put back over the manhole. There was some degree of confusion at this stage. The customer was alleging that the company had caused damage and removed the manhole covers but there were no jobs on its systems showing that the company was conducting sewer repairs in Lamb Road.
- There was a delay before it was realised that in fact it was Resolve (and not the company) who:
  - had damaged the water main; and
  - had entered onto the customer's property; and
  - had removed the manhole covers.
- A goodwill payment of £150.00 was offered to say sorry for the delay (between 5 and 16 January 2018) in fully explaining the position to the customer.
- The company set about replacing the manhole covers and, as a gesture of goodwill, also agreed to arrange a clean-up ("Clean-Up") of the sand and mud that was spread over the customer's garage door.
- There were, however, a series of problems in organising and carrying out these works (and in communicating with the customer). By way of acknowledgment of these shortfalls in service – and to say sorry - a goodwill payment totalling £420.00 was made to the customer ("£420.00 Goodwill Payment"). This was comprised of:
  - £150.00: goodwill payment offered on 16 January 2018; plus
  - £40.00: attending incorrect address re Clean-Up; plus

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- £30.00: no claim form sent when requested; plus
- £30.00: no payment raised when customer was advised in writing it would be; plus
- £50.00: missed appointment; plus
- £30.00: poor communication / mixed messages; plus
- £30.00: wrong information given re liability; plus
- £30.00: cheque not received initially; plus
- £30.00: further delay in issuing cheque.
- Costings for the repair to the Driveway were indeed requested from the customer. Before any claims are settled, the company is entitled to investigate and satisfy itself that a liability has been made out. It is denied that the company insisted on an inspection only to delay processing of the customer's claim.
- In view of section 209 of the Water Industry Act, the company accepts in principle that it is responsible for the escape of water from its apparatus. However, in this specific case, it has not been proven that the damage to the Driveway or to the Picture was caused by the flooding incident or by any acts or omissions of the company's contractors.
- As to the Driveway, when the burst main occurred, the water pressure was just 1.8 bar. From the point of the burst through to the customer's property, the flow of water would have greatly reduced, making its way down the road and in the road gullies and drains. No evidence has been presented to show that the flow of water – to this extent - would or could have:
  - disturbed the bricks on the Driveway; or
  - damaged the grass or the border abutting the grass, as alleged.
- It is suggested that the damage appears more consistent with being caused by a tyre or wheel of a vehicle.
- Also, the customer's property is some distance from the burst. The company has not received any similar claims from any other householder closer to the location of the burst (or from anyone else on Lamb Road for that matter).
- With regards to the Picture, it is surprising:
  - that it was stored on the floor of the garage (which is not ordinarily meant to be a waterproof structure) as opposed to inside the property. There is normally no heating in garages and they will be damp particularly in the winter and spring months; and
  - that it was not wrapped in polythene to protect it from damage.
- In the company's view, the Picture could have been damaged at any time prior to the flooding on 4 January 2018. The following factors are referred to in this respect:

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- Resolve had put sandbags against the garage door to stop any possible water ingress; and
- extreme weather conditions and heavy rain had been experienced for some period before the 4 January 2018 incident; and
- it was identified during a visit on 6 March 2018 that the drain gully immediately in front of the garage had been (and remains) blocked; and
- In summary, it is submitted that:
  - the £420.00 Goodwill Payment (already sent) was a sufficient reflection for the relevant service failures unfortunately experienced by the customer; and
  - in view of the lack of evidence presented, the company ought not to be directed to pay the compensation claimed by the customer in respect of the damage alleged to the Driveway or the Picture.

### 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. I should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove their case on the balance of probability.

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2. I should also acknowledge that I have had the benefit of reading the customer's comments filed in response to the company's defence ("Comments").

Adequacy of the £420.00 Goodwill Payment

3. I note the customer's submission that the company handled her complaint "*dismally*". I have carefully reviewed the 'chain of events' detailed in the defence and have also taken account of the customer's Comments in response. In the period between January and March 2018, there evidently was a series of problems, I find, in the company's interactions with the customer. It seems to me that – taken collectively – these problems amounted to a significant service failure on the part of the company ("Service Failings"). I am satisfied, however, that the company has:
  - a. acknowledged its Service Failings in this respect and has not sought to dispute them; and
  - b. duly and repeatedly apologised to the customer for the Service Failings. (I accept the company's submissions in its defence on this.)
4. The key question is whether the £420.00 Goodwill Payment was an adequate gesture to have provided. I note the customer's argument on this: "*... I do not feel £420.00 is anywhere near satisfactory compensation ...*" When the customer first contacted the company about this matter, on 5 January 2018, there obviously was some confusion around the situation. It seems to me that, at the point of her first telephone call to the company, the customer's main concern was the fact that a manhole cover had been removed in her garden and there was a worry about safety. It transpired that – unbeknown to the company – Resolve had been responsible for removing the manhole cover. I accept that it took the company some time to resolve the confusion but I consider that some allowance should be made for the fact that (as I find):
  - a. Resolve's actions on 4 January 2018 were entirely outside of the company's knowledge and control; but
  - b. nevertheless, it was those actions (i.e. Resolve taking it upon themselves to remove the manhole covers) that – at least in part – gave rise to the customer's complaint in the first instance.
5. Given that Resolve's independent actions were the trigger, as I see it, I find that the £420.00 Goodwill Payment was an adequate reflection for the Service Failings. It has been helpful to see how the £420.00 Goodwill Payment was broken down. There appear to be nine separate

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issues or problems in respect of which a payment was agreed by the company. Looked at individually and as against the corresponding Service Failing in question, I am satisfied that each of the nine payments is proportionate, fair and reasonable. Also, I accept the company's point in its defence that the purpose of the £420.00 Goodwill Payment was partly "to say sorry" to the customer.

6. For the reasons given above, the customer's arguments for an (additional) apology from the company – and/or for an increase on the £420.00 Goodwill Payment already made – are unable to succeed.

#### The Driveway

7. I have given careful consideration to the company's defence on the Driveway issue. The company argues that there is insufficient evidence to suggest that the damage complained of was caused by the flood water on 4 January 2018. In support of its arguments in this regard, it points variously to:
  - a. extreme weather conditions and heavy rain that had been experienced for some period before the 4 January 2018 incident; and
  - b. "... the lack of maintenance [to the Driveway] and the blocked drain gully ..."; and
  - c. the fact that "... the water from the damaged water main would have been no more than that of a rainstorm ..."; and
  - d. the fact that no similar claims have been received from any other householder closer to the location of the burst (or from anyone else on Lamb Road for that matter).
8. Having examined the photographs annexed to the defence (showing the extent of the flooding on the day), I am not persuaded by the arguments that the company puts forward on this particular aspect. They seem rather speculative to me. As I see it, when it comes to the severity of the flooding, some inference can be drawn from the fact that Resolve removed the manhole covers and also sandbagged the customer's property. I accept the submission that the customer makes in her Comments about this. It is not clear why Resolve would go as far as to put down sandbags and remove the manhole covers (in the customer's garden) if the threat from the flood water did not justify such measures being taken.
9. I find it is more likely than not, therefore, that the damage complained of to the customer's Driveway was in fact caused by the flood water on 4 January 2018.

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10. For the damage to the Driveway, I note that the compensation that she seeks amounts to £1850.00. This is substantiated, I see, by an estimate she produces from [ ] Contractors [ ] Ltd. In this regard, I have examined the 'Evidence 6' photographs annexed to the company's defence. These show the condition of the Driveway as at 6 March 2018.
11. As to the compensation claim pursued, I note the company's position that the customer should *"... not expect to be compensated by way of a brand new block paved drive, for the small amount of damage ... [and it cannot agree that the flood water] ... would have caused substantial damage to the entire driveway to warrant payment of the amount [that the customer] is seeking for a new block paved driveway to be laid ..."*
12. I accept the company's submission as set out above. It seems to me that the damage in question is minimal. I do not consider that complete replacement of the Driveway (which is the work that the customer is proposing be carried out) can be justified in this case.
13. I consider that £185.00 – i.e. 10% of the customer's claim – would be an appropriate and much more proportionate sum to allow and that is the amount of compensation that I direct the company to pay to the customer.

#### The Picture

14. Turning to the Picture, again, the company's key submissions express doubt that the damage in question was – in fact - caused by the flood water: *"... The painting is on canvas and as such, if it was left on the garage floor for any length of time, it could have been damaged prior to 4 January 2018 by storms or adverse weather conditions, or simply damp and cold in the air or damp coming up from the floor. There has been no credible evidence provided to us that the water from the burst main caused the damage to the painting that day. The average customer who values their possessions would normally place a canvas picture that they wanted to enjoy in a safe place inside the home, in the dry, and well protected ..."*
15. I do note the customer's forthright submissions to the effect that the Picture must have been damaged by water entering into the garage on 4 January 2018.
16. Weighing up all the factors, however, I find the points that the company makes on this issue to be marginally the more persuasive. If a painting on canvas is stored on a garage floor - without any polythene wrapping to protect it - it seems to me quite likely that it would be prone to damage over a prior period of time (for all the reasons that the company has mentioned). On the balance of probability, I am unable to reach the conclusion that the Picture was damaged



(solely or specifically) by the flooding event on the occasion of 4 January 2018. The customer's claim for compensation in this respect cannot, therefore, succeed.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum of £185.00 in compensation.

#### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 May 2018 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.

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**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**

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