

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX88

Date of Decision: 11/01/2021

Complaint

On 14 February 2018, the company's contractor was working on the main sewer and caused flooding in the cellar of the customer's rental property; his property and belongings were damaged as a result. The customer wants the company to have his house and the hole in his cellar inspected by appropriate specialists, and take responsibility for the flood, the damage to his property, the costs he has incurred and the stress he has suffered, and pay him £10,000.00 in compensation.

Response

The customer's complaint is not within the scope of WATRS; under rule 3.4.1 of the WATRS Scheme Rules the customer should be referred to a more appropriate forum. In any event, the company's contractor has accepted full responsibility for the flooding and the damage caused to the customer's property, and the customer signed a contract with the cleaning company which allowed the damaged items to be removed and destroyed. The company is not responsible for the flooding or any damage caused to the customer's property and, therefore, all liability is denied.

The company has not made an offer of settlement.

Findings

The customer's claim is within the scope of this Scheme but can only succeed if the company is liable for the flood and the damage caused to the customer's property. The evidence shows that the company's contractor has accepted full responsibility for the flood and the damage caused to the customer's property, and the customer gave the cleaning company permission to dispose of the damaged items. It therefore follows that I cannot find the company responsible for the flood or any damage it caused, or the disposal of the damaged property, and the customer's claims cannot succeed.



The company does not need to take any further action.

The customer must reply by 08/02/2021 to accept or reject this decision.

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Party Details

Company: X Company

Case Outline

The customer's complaint is that:

1. • On 14 February 2018, the customer's rental property, and other properties in the same road, was flooded by sewerage. • The company admitted liability and drained the water away; this revealed a hole in the customer's cellar from which water had been gushing. The company removed all the ruined items from his cellar, some of which belonged to his tenant, and destroyed them. • He complained to the company and it referred him to its loss adjuster. However, the loss adjuster's priority was to protect the interests of the company and he was offered just £2,050.00 for all the damage to his property. • He has tried to negotiate with the company and it paid him £255.00 for the flooding under its GSS Scheme; however, it has refused to discuss the issue any further. • He has lost £100.00 in rent every month since the flood, his belongings have been ruined, his cellar has a hole in it, he has lost important paperwork he needs for tax purposes, and he has suffered considerable stress as a result of the flood. • He wants the company to take responsibility for the flood and pay £10,000.00 for the damage to his property and belongings, the expenses he has incurred, and the stress he has suffered as a result of the flood. He also wants the company to arrange for his house and the hole in his cellar to be inspected by appropriate specialists who can assess the damage.

The company's response is that:

1. • The customer's complaint is not within the scope of WATRS. Under rule 3.4.1 of the WATRS Scheme Rules the customer should be referred to a more appropriate forum, such as the customer's insurance company or the ombudsman dealing with insurance companies. Furthermore, the customer claims for losses incurred by his tenant but, as the customer's tenant is not a party to this case, this is also outside of the jurisdiction of the adjudicator. • The customer's rented property was flooded internally with sewage in the basement when contractors were relining the main sewer which the property is connected to. The flooding occurred because the

contractors placed bungs in the sewer while lining it and, after significant rainfall on that day, this caused the sewer to be overwhelmed causing a “blowback” into customer’s property and other properties on the same road. • It immediately attended with the police and fire brigade to pump out the flooded properties and to deal with any electrical issues. Loss adjusters and insurance companies were also on site to establish the extent of the damage caused by the contractor’s actions and to make note of the damage. • It immediately arranged for a clean-up of all properties once they had been pumped out. • After an investigation, the contractors accepted full responsibility and liability for the flooding and instructed their loss adjusters (X Company 2) and its insurance company (X Company 3) to deal with any claims. • It has no jurisdiction over how the contractor’s insurance company processes claims received, how long that process takes, or how much is offered to a customer to settle their claims. • The customer is mistaken when he states that it appointed a loss adjuster to deal with his claim and that it accepted liability. It has not accepted liability or responsibility for the incident, and neither has its loss adjuster or insurance company. In addition, it was the contractor’s insurance company’s loss adjuster who arranged for the visit to inspect the alleged damage to the basement floor. • The customer also claims that when the clean-up was being done, the cleaning company, X Company 4, removed items from the flooded cellar and destroyed them. However, the customer signed a contract with the cleaning company which allowed the items to be removed and destroyed. If the customer did not agree to the terms of the contract, he should not have signed it. The videos provided in evidence by the customer also show that he agreed to X Company 4 removing and destroying the items. The customer has been directed to X Company 4’s complaints process if he remains unhappy with their actions. • A Customer Guarantee Scheme (CGS) payment of £255.00 was credited to the customer’s water services account on 8 March 2018 for the sewer flooding incident. However, it is not responsible for the flooding or any damage caused to the customer’s property and, therefore, all responsibility is denied. • If the customer wishes to pursue this matter further, he should contact X Company 3 or X Company 2 who represent the contractor that caused the flood, and X Company 4, who removed the damaged items.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. The company states that the claim falls outside the scope of WATRS due to Rule 3.4.1, but this objection has already been assessed and it was decided that the customer's claim regarding his own losses is eligible for adjudication, but the customer's claim for his tenant's losses cannot be considered. Therefore, I shall not consider these matters further and my adjudication will be limited to assessing whether the company is responsible for the flooding and liable to compensate the customer for the damage, expense and stress he has suffered as a result of it.
2. The evidence shows that the company instructed its contractor to carry out work on the sewer that serves the customer's property and, because of the actions of the contractor, several properties were flooded, including the customer's tenanted property.
3. The customer states that the company initially accepted liability; however, although the evidence shows that the company attended the site when the flooding occurred, arranged the clean-up operation and made a CGS payment to the customer, there is no evidence to show that the company ever accepted legal liability for the flood or the damage caused by it.
4. The evidence presented by the company shows that the contractor's insurer appointed a loss adjuster, and the loss adjuster accepted liability for the flooding on the contractor's behalf. Therefore, the evidence shows that the contractor, not the company, is liable for the damage caused by the flood. The evidence also shows that the customer made a claim against the contractor's insurance company and a settlement was offered.
5. Having considered the evidence, I accept that the customer signed a form giving the cleaning contractor authority to dispose of the damaged items, but the customer annotated the form to say that the company was liable to compensate him for the damage. On balance, I accept that the customer gave authority to the cleaning company to remove and dispose of the damaged property, and the

statement added to the form by the customer cannot create liability on the company's behalf where there is no basis for liability in law.

6. In view of the above, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person by refusing to accept liability for the customer's claims. It therefore follows that, while I appreciate the customer will be disappointed by my decision, the customer's claims cannot succeed.

7. The customer has made comments on the preliminary decision and, although the comments do not affect my decision, I shall briefly address them. Firstly, it is common for a water company to make a CGS payment to a customer that has suffered internal flooding, irrespective of liability. Secondly, the customer is not obligated to accept my decision; if the decision is rejected, the customer is free to pursue the claim elsewhere.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

Kate Wilks
Adjudicator