

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X377

Date of Decision: 28/05/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The customer says that he has experienced repeated flooding at the Property, which has not been properly addressed by the company. He has also experienced poor customer service. He requests that the company take action to resolve the flooding, and that it reimburse him the cost he incurred reducing the risk of the Property being flooded.

Response

The company says that it has attended all reports of flooding and is engaged in an ongoing investigation into flooding in the area of the Property.

The customer has received GSS payments and was offered a goodwill gesture of £150.00, but this was declined.

Findings

The company has failed to provide its services to the customer to the standard to be reasonably expected by the average person in its responses to reports of flooding at the Property.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £400.00.

The customer must reply by 28/06/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- He has experienced multiple flooding incidents at the Property.
- The company has not responded appropriately to address the problems with the sewerage by the Property.
- The company has responded slowly when contacted, and he was forced to clean up himself after flooding.
- After problems with his toilet suggested there would be further flooding, he employed a specialist to carry out work to address the issue, as the company had failed to do so. He incurred a cost of £1,644.00 plus VAT.
- The company has refused to reimburse him this cost.
- The company says that it cannot currently resolve the flooding issue.
- He requests that the company take action to resolve the flooding, and that it reimburse him the cost he incurred reducing the risk of the Property being flooded.

The customer's comments on the company's response are that:

- He reiterates that while the company did attend all flooding events, it took 2-3 days to do so.
- The company's agents also failed to disinfect areas that they had contaminated during their visits.
- The company has previously acknowledged that the problem is a hydraulic capacity issue with its own network.
- The company has presented an incomplete picture of historical flooding at and near the Property.
- He challenges the accuracy of statements made in the Defence.
- He reiterates that the company has made no serious effort to resolve the problem.

The company's response is that:

The company's response is that:

- It acknowledges that the customer has experienced flooding and restricted toilet use at times of heavy rainfall.
- It has attended to all incidents and has carried out investigations into the cause of the flooding, including liaising with the local council.
- Investigations indicate that there is a hydraulic deficiency at times of heavy rainfall, but investigations are ongoing.
- The customer has received GSS payments. He was also offered a goodwill gesture of £150.00, but this was declined.

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.

How was this decision reached?

1. In *Marcic v Thames Water plc* [2003] UKHL 66, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
 2. In the words of the court, "The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise."
 3. The Court of Appeal subsequently reiterated in *Dobson v Thames Water Utilities* [2009] EWCA Civ 28, that the "Marcic principle" applies broadly to exclude claims based on a water company's performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
 4. The consequence of the House of Lords' ruling in *Marcic v Thames Water plc*, then, as interpreted by the Court of Appeal in *Dobson v Thames Water Utilities*, is that the customer's claim can only succeed if the company has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company's operation of its business would not suffice.
 5. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence. To illustrate, if the argument was that the company was negligent in not inspecting its sewers more regularly, this raises regulatory considerations and so in accordance with the Marcic principle such claims must be addressed to Ofwat and cannot be resolved through WATRS. On the other hand, if the claim was that the company undertook an inspection, but did so negligently and missed a problem that should

have been noted, this raises a question of standard negligence, and so can be resolved through WATRS.

6. In the present case, while I accept that the facts described by the customer will have had a significant impact on him personally, and I do not find that the expense he incurred having remedial work undertaken was clearly unreasonable under the circumstances, the company has satisfactorily established that the flooding at the Property relates to the potential need for enhancement and improvement of the sewer network. This is a regulatory matter that must be raised to Ofwat and cannot be resolved by a WATRS adjudicator.

7. As a result, the customer's claim for the company to take action to resolve the flooding at the Property cannot succeed.

8. The customer has also claimed compensation of £1,644.00 plus VAT for expenses he incurred reducing the risk of the Property being flooded.

9. However, while I accept that this may have been a reasonable action for the customer to take given the lack of indication from the company that the flooding problem would be resolved, the justification for taking this action ultimately relies on the company's failure to undertake enhancement and improvement of the sewer network, and so raises regulatory concerns that must again be raised to Ofwat and cannot be addressed by a WATRS adjudicator.

10. As a result, this element of the customer's claim also cannot succeed.

11. However, the customer has also argued that the company failed to respond to his reports of flooding in a timely manner, leaving him to clean up the sewage himself, and that when it did respond its agents failed to disinfect contaminated areas, again leaving this to the customer to perform. The company has not challenged the accuracy of the customer's account, which is supported by the available evidence.

12. I find, therefore, that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its responses to reports of flooding from the sewer by the Property. I accept that this will have caused the customer inconvenience and that the need to clean up sewage and disinfect contaminated areas will have caused him significant distress. This distress will then have been enhanced by the fact that the same flawed response occurred on more than one occasion and that he could be given no assurance that further flooding would not happen or that if it did he would receive a more timely and appropriate response.

13. In consultation with the WATRS Guide to Compensation for Inconvenience and

Distress, I find that appropriate compensation for the company's failings in this respect would consist of £400.00. This amount reflects the repeated nature of the company's failings and the enhanced distress that the customer would have experienced from the need to clean up the after-effect of a sewage flood.

14. Therefore, for the reasons given above, the company must pay the customer compensation of £400.00.

Outcome

1. The company needs to take the following further action: It must pay the customer compensation of £400.00.

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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in 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.

Tony Cole
Adjudicator