

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX40

Date of Decision: 20/07/2021

Party Details

Customer: "The Customer"

Company: "The Company"

Complaint

The customer says that she has not received appropriate compensation for the sewer flooding she experienced.

Response

The company says that the customer has received compensation in accordance with the Guaranteed Standards Scheme and no additional compensation is owed.

The company offered the customer additional compensation of £25.00, but this was declined.

Findings

The company provided its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company does not need to take any further action.

The customer must reply by 17/08/2021 to accept or reject this decision.

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Adjudication Reference: WAT-XX40

Date of Decision: 20/07/2021

Case Outline

The customer's complaint is that:

• The customer's friend contacted the company on 25 January 2021 because there was sewer flooding in her rear garden. • The company did not attend the Property until **XX** February 2021. • She received a Guaranteed Standards Scheme (GSS) payment of £139.56, but believes she is owed additional compensation due to the long delay before the problem was addressed. • The customer claims compensation of £500.00.

The company's response is that:

• The customer's neighbour made contact on **XX** January 2021 to report wastewater flooding in the customer's rear garden. • The company advised on this call that it could only guarantee to attend before 10pm on **XX** February 2021. • At the time, the company was experiencing nearly four times as many incidents as normal due to the impact of Storm Christoph. As a result, it had to prioritise some work over others. • The company attended on **XX** February 2021. • The blockage was not the responsibility of the company, but was the result of items that should not have been flushed into the sewer. • The customer was paid the GSS compensation applicable of £139.56. • Additional compensation of £25.00 was offered, but 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 **XX v XX** [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 **XX v XX** [2009] EWCA Civ 28, that the “**XX**” 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 **XX v XX**, then, as interpreted by the Court of Appeal in **XX v XX**, 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 **XX** 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, it is entirely understandable that the customer is unhappy with the significant delay she experienced having the sewer flooding in her garden addressed. However, an evaluation of whether the company has been negligent must take into account the specific factual context in which the company was operating, and the company has satisfactorily established that at the time of the flooding experienced by the customer, it was dealing with substantially increased demand due to the impact of a major storm.
 7. While this does not reduce the inconvenience and distress that I accept the

customer experienced, I find that given the demands on the company at that time and the lack of immediate urgency to the customer's claim, the company's delayed response did not constitute a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person. I also acknowledge that the company then paid the customer an appropriate GSS payment without objection or delay.

8. Therefore, while I do not dispute the impact of the customer's experience on her, I cannot find that additional compensation is owed.

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.

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Tony Cole
Adjudicator