

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X529

Date of Decision: 06/09/2021

Party Details

Customer:

Company:

Complaint

The customer says that he has experienced repeated flooding at the Property, which has not been properly addressed by the company. The company has also responded inadequately to reports of sewage overflow.

He requests that the company resolve the flooding problem and pay to repair the damage to his car.

Response

The company says that it is not liable to the customer as it has not been negligent. It has responded appropriately to reports of sewage overflow.

The customer received a goodwill gesture of £120.00.

Findings

The company has 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 04/10/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X529

Date of Decision: 06/09/2021

Case Outline

The customer's complaint is that:

• His car was damaged during flooding that occurred on 24 October 2020. • Flooding in the neighbourhood of the Property is a long-term problem. • The company has not made adequate efforts to resolve the problem. • He requests that the company resolve the flooding problem and pay to repair the damage to his car.

The company's response is that:

• It acknowledges that the customer experienced flooding. • The customer received a goodwill gesture of £120.00. • The cause of the flooding near the Property is hydraulic overload. • The company is not liable for the customer's claim as it was not negligent.

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. 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 “Marcicprinciple” 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, 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 near the Property cannot succeed. If the customer has a valid complaint in this respect, it must be raised to Ofwat and cannot be brought to WATRS.

8. The customer also argues that the company failed to respond promptly to reports of sewage overflow and failed to adequately clean the affected areas. However, the company has provided evidence of its cleaning operations and while there were at times delays, the company’s evidence explains those delays in terms of contemporaneous demands. No evidence has been provided by the customer that conflicts with the company’s evidence and would justify a finding that the

company was negligent in its response to the customer's reports of sewage overflow.

9. Therefore, this element of the customer's claim also does not succeed.

10. In his comments on the Proposed Decision in this case, the customer emphasised a number of ways in which he believed that the company had been "reckless". However, none of those concerns reflected the sort of "standard" negligence that can form the basis of a claim at WATRS, as explained above, and instead reflected regulatory concerns that must be raised to Ofwat.

11. For the reasons given above, the customer's claim does not succeed.

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