



ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X818

Date of Decision: 23 March 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to increase an offered goodwill payment. The customer says that a fault on a company asset caused sewage to flood his garden and the company initially wrongly stated the blockage was his responsibility before eventually repairing the problem. The customer asserts that the company's actions caused him financial loss and physical inconvenience and that a goodwill gesture offered by the company is insufficient. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to increase the goodwill gesture offered.

Response

The company says it has refunded the actual costs incurred by the customer. The company acknowledges its delay in identifying the location of the problem, and service failings. The company says it has assessed the history of the problem and believes its goodwill gesture is set at a reasonable level. The company has not made an offer of settlement to the customer over and above the goodwill gesture and confirms that it will not increase the amount offered.

Findings

I find that the evidence does not support, on a balance of probabilities, that the company's current goodwill offer is inadequate or unreasonable. I am satisfied that the evidence does not substantiate the customer's request that the offered amount be increased. Overall, I find that the company has not failed to provide its services to a reasonable level and has not failed to manage the account to the level to be reasonably expected by the average person.

Outcome

The company does not need to take further action.

The customer must reply by 20 April 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company concerning issues with wastewater/sewerage charges. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- He experienced a blocked sewerage pipe at his property and retained a specialist drainage contractor to investigate. The contractor identified that the blockage was in the company's main sewer pipe shared with other properties in the area.
- On 29 March 2021 he contacted the company to complain of the blocked sewerage.
- On 30 March 2021 company engineers attended his property, made investigations, and advised him that the problem was not on a company asset.
- Subsequently, he contacted his insurance company that sent a different contractor to investigate. The customer says that the contractor attended on 17 April 2021 and confirmed the findings of the previous contractor that the blockage was located on the company's main sewer. The customer says he was charged an excess fee in the amount of £350.00 by the insurers.
- On the same day, 17 April 2021, he again contacted the company and on 18 April 2021 it again sent engineers to the property. The investigation confirmed the issue was with a company asset.
- On 21 April 2021 the company fixed the problem.
- He was forced by the ongoing situation to temporarily relocate to the home of his parents because his own dwelling was uninhabitable for a period of time.
- The company stated it would disinfect his garden, but has not done so.
- The company advised it would refund the cost of the first specialist contractor, but again it did not do so.

- Believing the company had not properly addressed his concerns he, on 20 July 2021, escalated his complaint to CCWater who took up the dispute with the company on his behalf. The records show that CCWater contacted the company and requested more detailed information from it and to review the customer service provided.
- Following the CCWater intervention the company paid the specialist contractor costs plus the excess insurance costs.
- The company has also offered a goodwill payment of £420.00. The customer believes this is insufficient and derisory.
- Ongoing communications continued between the three stakeholders but without the company changing its position, and on 10 January 2022 CCWater submitted another pre-investigation request to the company.
- On 14 January 2022 the company replied to CCWater confirming its position and explaining the reasons for declining to increase its goodwill offer.
- Subsequently, on 26 January 2022, CCWater advised him that it had received a formal response from the company answering in reasonable detail the questions posed to it. The company had confirmed that it had not changed its position and would not increase the goodwill offer. CCWater also informed him that it could not take any further action to have the company change its position and was therefore closing his complaint.
- The customer remains dissatisfied with the response of the company and has, on 09 February 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to increase the amount of its goodwill offer.

The company's response is that:

- It provided its response to the claim in its submission dated 16 February 2022.
- It acknowledges that the customer first contacted it on 29 March 2021 to complain of sewage flooding at his property.
- It further acknowledges that its engineers attended the property the next day and identified the blockage as being located on a private asset.
- It confirms receiving a written complaint from the customer dated 21 April 2021.

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- It acknowledges that the customer maintained contact with it throughout the months of May, June, September, October, November, and December 2021 as he sought confirmation as to when his garden would be disinfected and an explanation for the poor customer service received.
- It confirms that it has refunded to the customer the costs incurred in retaining a contractor and the costs of his insurance excess.
- It acknowledges that it delayed carrying out its investigations and admits to service failings. Thus, it made a goodwill offer of £420.00 as compensation for these shortfalls.
- It acknowledges that the customer has declined the offer describing it as derisory. However, it believes the offer is fair recompense for the delays and service failings and refuses to increase the amount offered.

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

- On 17 February 2022, the customer submitted comments on the company's Response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer reiterates that the company has not disinfected his garden. The customer also repeats his unhappiness that he was forced to temporarily relocate to his parents' home because of the sewerage problem at his own house.

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.

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

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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 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. The dispute relates to the customer's dissatisfaction that the company has refused to increase the amount of a goodwill offer previously made.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I can see that the parties agree that the customer first contacted the company on 29 March 2021 to express concern about sewage flooding in his garden. This followed the customer retaining a private drainage contractor that identified the blockage was located on a company asset.
4. The company acknowledges that the engineers it sent to the property to investigate did not identify that the problem was located on one of its assets.
5. The customer contacted his insurer who organised a second contractor to investigate, and it also identified the problem was located on the company's main sewer.
6. I see that the company again sent an engineer to the property on 18 April 2021 and accepted to fix the problem and did so on 21 April 2021.
7. I further note that the parties agree that the company subsequently refunded the customer with the costs for the retained contractor and the insurance excess fee.
8. The company has accepted it caused delay in identifying and repairing the problem and that there were service failings on its part.

9. To compensate for these failings the company offered the customer a goodwill gesture of £420.00. I can see that the customer has rejected the offer and described it as “derisory”.
10. I can see that the customer directly, and through his dealings with CCWater, requested the company to increase the offer. The company in its final position statement declined to increase the offer.
11. In his application to the WATRS Scheme the customer requests the adjudicator direct the company to increase the level of the goodwill offer. The customer has not stipulated the amount of compensation he is actually seeking.
12. The customer has submitted invoices for the contractor and insurance costs, and these were refunded by the company. The customer has not submitted any further invoices.
13. It seems to me that the customer is unhappy that the company has not disinfected his garden. The customer asserts that the company promised to do this, but the evidence does not support his understanding and the company has claimed that cleaning the garden is a private issue.
14. The customer is also unhappy that he was forced to relocate his family to the home of his parents because his own dwelling was uninhabitable. Again, I am not provided with any independent third-party evidence to confirm that the property was at any time uninhabitable.
15. As the only claims made by the customer for financial loss have been refunded by the company and because he has not quantified what level of compensation he seeks, I am content to regard the customer’s claim to be based on the distress and inconvenience he may have suffered while the flooding issue was resolved.
16. Consequently, I refer to the *WATRS Guide to Compensation for Inconvenience and Distress*. Based on the evidence before me, I would be satisfied to grade the customer’s inconvenience at Tier 2 level, and that indicates a possible payment of between £100.00 and £500.00.
17. Thus, I find that the company’s offer of £420.00 sits reasonably in the Tier 2 payment band. Overall, I do not find that the evidence supports that the company’s offer is too low or that its service failings support a compensatory payment in excess of that currently offered.

18. It thus follows that I shall not direct the company to increase its current offer.
19. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person in respect of its dealing with the customer's complaints, and the compensatory offer is reasonable.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 09 March 2022.
- The customer has, on 13 March 2022, confirmed receipt of the Preliminary Decision.
- The customer has stated that he disagrees with the findings of the Preliminary Decision but accepts them.
- Having read the response of the customer I am satisfied that no amendments are required to the Preliminary Decision.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 April 2022 to accept or reject this 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.



Peter R Sansom

MSc (Law); FCI Arb; FA Arb; FRICS;

Member, London Court of International Arbitration.

Member, CI Arb Business Arbitration Panel.

Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.

Member, CEDR Arbitration Panel.

Member, CEDR Adjudication Panel.

Adjudicator

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