

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X867

Date of Decision: 16 May 2022

Complaint

The customer says that the company was responsible for flooding at the Property.

Response

The company says that it is not liable for sewer flooding unless there is proof of negligence, and it was not negligent.

The company has offered a goodwill gesture of £161.04.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the delay in its response to the flooding and in its handling of the customer's complaint.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £500.00.

The customer must reply by 15 June 2022 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT-X867

Date of Decision: 16 May 2022

Party Details

Customer:

Company:

Case Outline

The customer's complaint is that:

- The Property was flooded on 12 August 2020.
- She believes that the company was responsible, and that she is entitled to a GSS refund.
- She has experienced poor customer service in the handling of her complaint.
- She requests compensation of £1,500.00 for the costs she incurred as a result of the flooding.

The company's response is that:

- The customer made contact on 13 August 2020 to report flooding of the Property.
- The company attended on 14 August 2020.
- It was ultimately determined that the cause of the flooding was an extreme storm event.
- The company has subsequently undertaken mitigation actions to help reduce the impact of further rainfall, costing £7,337.50.
- Caselaw has confirmed that the company is not liable for sewer flooding unless there is proof of negligence.
- The company was not negligent.
- The company denies that it is liable for the customer's claim.

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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 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.

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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 don't dispute the impact on the customer of the flooding she experienced, no evidence has been provided that would justify a conclusion that the flooding resulted from standard negligence on the part of the company. The company has acknowledged that some problems with the sewer were identified, but there is no evidence that the company should have known of these problems prior to the flooding.
7. However, in a report by a representative of the local council, which was produced to the Consumer Council for Water as part of this dispute, the author notes that "REDACTED confirmed that the way their sub-contractor reported the flooding incident to them in this location resulted in delays in them responding to the incident, this was despite the issue being raised by the City Council." This is consistent with the customer's report of her own experiences, and the significant delay she witnessed before action was taken.
8. I find that this delay reflected a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person. While there is no evidence that would justify a finding that the delay in addressing the flood resulted in an increase in the damage caused to the Property, I accept that it added considerably to the distress and inconvenience that the customer experienced at the time.

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9. The evidence also supports a finding 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 handling of her complaint, which involved significant delays, complaints of rude treatment by the customer, and the need for the customer to repeatedly push the company to fully address her complaint.
10. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £500.00. This amount reflects that the company's failing was not the cause of the flooding experienced by the customer, but that both the avoidable delay in the company's response to that flooding and the failures in its handling of her complaint will have significantly magnified the distress the customer experienced.
11. For the reasons given above, the company must pay the customer compensation of £500.00.

Outcome

The company needs to take the following further action: It must pay the customer compensation of £500.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 June 2022 to accept or reject this 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 on 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.

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Tony Cole

Tony Cole FCI Arb

Adjudicator

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