

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X015

Date of Decision: 15 September 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding sewage flooding at her dwelling that has been ongoing for more than eleven years and the company has not solved the causes. The customer is also disappointed with the £250.00 level of its proposed goodwill offer for the poor customer service she claims she has received. The customer says that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore she has brought the claim to the WATRS Scheme and asks that the company be directed to provide an increased goodwill gesture that reflects the events she has suffered.

Response

The company states that it is in full compliance with its obligations under the Water Industry Act 1991 in respect of its sewage network. The company also says that it is not liable for damage caused by sewage flooding, and denies it provided poor customer service. The company did not make any formal offer of settlement to the customer and says the goodwill gesture of £250.00 previously made was reasonable and will not be increased.

Findings

I find that the evidence does not support the customer's claim. I am not satisfied that the evidence shows any negligence on the part of the company in not having developed a long-term plan to deal with foul water flooding in the customer's neighbourhood or at her property directly. I am also satisfied that the evidence does not support a poor level of customer service. I find that the evidence shows that the company has provided its services to a reasonable level and has managed the customer's 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 13 October 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- She has experienced an ongoing dispute with the company concerning issues with wastewater and sewerage services on her account. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- She has been experiencing sewage flooding on numerous occasions since 2012, including nine separate incidents of internal flooding.
- On occasions the flooding has been so severe as to necessitate her landlord having to temporarily move her and her family out of the property.
- The flooding has increased in frequency and severity during a fourteen-week period between June and October 2021 and resulted in her having to relocate to a hotel since 27 July 2021.
- She acknowledges that the company commenced works in June 2021 to construct a new pumping station aimed at preventing future floodings but notes the estimated date for completion is January 2022.
- Although she has been flooded on more than nine occasions the company has not assisted her in respect of cleaning, providing any anti-flood devices, or in applying flood mitigation measures.
- Her landlord is not able to undertake any repair to sewage flood damage until such time as the pumping station commences operation.
- She has been in continuous contact with the company but does not accept its position that heavy rainfall causes hydraulic overload that in turn leads to flooding.
- Believing the company had not properly addressed her concerns she, on 24 November 2021, escalated her complaint to CCWater who took up the dispute with the company on her behalf.
- The records show that on 26 November 2021 CCWater contacted the company and submitted a Pre-Investigation letter requesting its explanation of events and to check the level of customer service it provided. The company responded on 22 December 2021.
- CCWater requested additional information from the company.

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- A response was received from the company on 29 March 2022 in which it noted that it had completed a review of the customer's complaints and had approved a £250.00 goodwill payment to the customer.
- CCWater advised her on 18 May 2022 that it believed the company had issued its final position on the dispute and therefore it concluded that it could not take any further measures to have the company change its position and was thus closing her case.
- Continuing to be dissatisfied with the response of the company she has, on 15 June 2022, referred the matter to the WATRS Scheme where she requests that the company be directed to increase the amount of its goodwill gesture above the currently offered amount of £250.00.

The company's response is that:

- It provided its response to the WATRS claim in its submission dated 29 June 2022.
- It confirms that its records show that the customer's property has suffered numerous flooding events, although its records show eight incidents and not eleven as stated by the customer.
- Of the eight incidents, two were the result of equipment failure and six were caused by hydraulic overload resulting from exceptional rainfall.
- The company is not liable for damage caused by sewer flooding unless it can be established that the company had acted negligently.
- In 2019 it retained a specialist contractor to survey the wastewater drainage system in the customer's neighbourhood and its report led to a £2,000,000.00 scheme being included in the company's Asset Management Plan for the period 2020 to 2025.
- In August 2021 it retained third-party expert engineers to carry out a flood mitigation survey of the customer's property that showed that mitigation could not be offered.
- It confirms that the £2,000,000.00 scheme was successfully completed on 11 February 2022, and notes that no further flooding events have been reported in the customer's area since completion.
- It has a duty under the Water Industry Act 1991 to provide, improve, and extend the public sewer network and this duty is enforced by Ofwat. The company is satisfied that it complies with this duty.
- It notes that it is not liable when a flood event is resulting from causes outside of its control and this includes hydraulic flooding after heavy rain.

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- It refutes the customer's allegation that it has provided a poor level of customer service, and believes it has responded to all the customer's written complaints as well as organising surveys of her property, etc.
- In summary, it believes it has satisfied its statutory obligations, has not failed to provide satisfactory customer service, and has offered the customer a goodwill gesture that is fair. The company does not agree to increase the goodwill gesture.

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

- On 05 August 2022, the customer submitted detailed 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 questions why the company waited so many years before organising a flood mitigation survey. The customer reiterates her position that she has received a poor level of customer service over a period of several years. The customer also submits a detailed chronological list of pertinent events.

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 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.

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How was this decision reached?

1. The dispute relates to the customer's dissatisfaction that the company has not prevented sewage flooding events over an eleven-year period and has provided a low level of customer service. The company contends that it has complied with its obligations under the Water Industry Act 1991 in regard to the sewerage network and has provided a reasonable level of customer service.
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. It seems to me that there are two separate limbs to this case, (i) have the company actions caused the flooding events at the customer's property and (ii) has the company provided a reasonable level of customer service.
4. In the case of *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.
5. 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.*"
6. 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.
7. 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.
8. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence.

9. In the present case, I do not find that the evidence establishes that the company acted negligently.
10. The customer, on her WATRS application form, has requested that the company *“be directed to give a goodwill gesture that reflects the events that [she] has suffered”*
11. The company believes, and I concur, that the customer is alleging that it is not meeting its statutory obligations as set down in the Water Industry Act 1991, Section 94.
12. However, as explained above, any question of the company’s performance of its statutory obligations must be addressed to Ofwat and cannot serve as the basis of a claim at WATRS.
13. I now turn to the customer service limb of the customer’s complaint.
14. The customer claims that she believes she has been basically ignored by the company during the eleven-year period of the flooding events. The company refutes the claim.
15. The evidence shows that the company first received an official complaint from the customer in September 2021 and the company says that it had minimal contact from the customer prior to this date.
16. I can see that the company has made four separate payments as compensation for internal sewer flooding events in December 2012, September 2020, and two payments in October 2021.
17. Additionally, I take note that the company held liaison meetings with residents in the surrounding neighbourhood, not all of which were attended by the customer.
18. The customer claims that the £250.00 offered by the company is insufficient and I note that she has confirmed returning the cheques to the company.
19. I am not satisfied that the evidence establishes that the company has provided a poor level of customer service. For clarity, I confirm that I am only referring to the interaction between the parties and not to any general level of service provided by the company in respect of flooding, flood prevention, damage from flooding, etc.
20. 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. I shall not direct the company to make any goodwill gesture to the customer.

The Preliminary Decision

- The customer has, on 04 September 2022, submitted comments on the Preliminary Decision.

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- The customer states that the adjudicator’s Decision is a missed opportunity to “make an example of the company”. However, I am satisfied that the Preliminary Decision is an unbiased evaluation of the evidence submitted having in mind the Scheme is not about punishing either party.
- The customer compares the actions of CCWater with those of the adjudication process. It must be pointed out that CCWater undertake a mediation type function whereas the adjudication is a quasi-legal process based upon reaching a decision based on evidence submitted.
- The customer reiterated her previous position but does not enter any additional evidence.
- The customer also questions why the adjudicator did not request additional evidence, but I am satisfied that the volume of evidence originally submitted by the parties was sufficient to reach a fair, balanced, and unbiased decision.
- The company has, on 08 September 2022, submitted comments on the Preliminary Decision, and noted the contents thereof.
- The parties have not submitted any new evidence and thus I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the responses of the parties I am satisfied that no amendments are required to the Preliminary Decision.

Outcome

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 by 13 October 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; FAArb;
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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