

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X116

Date of Decision: 28 September 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding the causes of a flooding event that damaged her garden. The customer believes that pumping of water onto open ground adjacent to the garden by the company's contractor caused the flooding. The customer is unhappy that the company refuses to accept responsibility for the flood. 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 pay compensation in the sum of £7,000.00.

Response

The company denies being responsible for the flood and states that the customer has not submitted any evidence to support her contention. The company states that it has tested the floodwater and the testing confirms that it is not clean water from its main supply network. The company has not made an offer of settlement and refuses to pay the compensation requested.

Findings

I find that the evidence does not support the customer's position and I find that the evidence does not satisfactorily establish the causes of the flooding event. On a balance of probabilities, I am not satisfied that the company caused the flood and as such I shall not direct that it pay compensation. 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 26 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 flooding to her garden. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- Her garden flooded on 14 January 2021.
- She believes the flooding was caused by contractors retained by the company that pumped water out on to open ground rather than directly into drainage assets.
- The open ground sits adjacent to her garden but is at a higher level than the garden . The customer asserts that the flooding caused damage to the value of £7,000.00 and she requested the company compensate her in this amount.
- She believes that the pumping onto open ground is in contradiction of the company's policies and thus says that it failed to apply sufficient monitoring of its contractor. The customer contends that there appears to be a lack of communication between the company and its contractor.
- Upon complaining to the company and requesting compensation, she was referred to its insurers who informed her that her claim had been rejected because the company had stated that flooding was caused by heavy rainfall at the time.
- Believing the company had not properly addressed her concerns she, on 08 December 2021, escalated her complaint to CCWater who took up the dispute with the company on her behalf.
- The records show that CCWater were also directed to contact the insurer directly in respect of the customer's compensation claim, and on 31 January 2022 the insurer repeated its position that the claim was rejected.
- During an exchange of communications with the company it stated in its e-mail of 11 March 2022 that the contractor had accidentally left a valve open on the clean water main and this allowed water to discharge onto the high ground adjacent to the garden.
- Following the rejection of the claim by the company insurer it was passed to the contractor responsible for the pumping, but it also rejected the claim.

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- On 21 July 2022, CCWater concluded that the company's detailed response of 15 July 2022 was its final position, and 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 14 August 2022, referred the matter to the WATRS Scheme where she requests that the company be directed to pay compensation in the amount of £7,000.00 for damage to her garden.

The company's response is that:

- It provided its response to the WATRS claim in its submission dated 25 August 2022.
- It acknowledges that the customer's garden was flooded on 14 January 2021, but denies the event was caused by any act or omission on its part.
- It points out that the garden is at a low point in the street with a high water table, the area does suffer with ground water issues, and gardens flood at times of high rainfall.
- It acknowledges that retained contractors were working in the customer's neighbourhood but not adjacent to the customer's garden. The company accepts that the contractor was pumping water out of two chambers, but its records confirm that only 348 litres were pumped, and it contends that this quantity was insufficient to flood the customer's garden.
- It tested the flood water, and this confirmed the absence of chlorine or ammonia, and this shows that it was not clean water from a company asset.
- It denies that the customer's contention that the contractor's pumping of water onto a grass verge over a period of months was responsible for contributing to the flooding. The company believes if this was the case flooding to the garden would have occurred much earlier.
- In respect of the e-mail of 11 March 2022, it points out that it was only the opinion of a customer care advocate, who is not qualified in respect of technical issues, that an open valve discharged water onto the open ground and caused the flooding event. The company denies this and notes that its investigations showed that the discharge was in the opposite direction from the garden.
- The customer care advocate was not present on site on the day of the event and did not visit the garden until 20 January 2022.
- It notes that the customer has not submitted evidence to establish the cause of the flood, and particularly has not evidenced that the company was responsible for the event.

- It further notes that the customer has not provided any substantiation for the amount of £7,000.00 she requests as compensation.

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

- On 29 August 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 believes the Response document contains anomalies and new information that was not previously available to her. The customer questions the contention that the company tested for the presence of chlorine and ammonia as she was informed by the people taking the samples that it was to test for sewage. The customer refutes the statement that her garden is situated on a known flood plain.

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.

How was this decision reached?

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1. The dispute relates to the customer's dissatisfaction that the company has not accepted responsibility for a flooding event that caused serious damage to the garden at her property.
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 garden was subject to flood damage on 14 January 2021.
4. The customer contends that the flood event was the result of contractors retained by the company pumping water out of two chambers onto open ground that has an elevation some several feet higher than the adjacent garden. The pumping was necessary to empty the chamber such that the contractor could work on the water main.
5. The company has denied this contention and has stated that it tested the floodwater and neither chlorine nor ammonia were identified thus confirming it was not water from its clean water main.
6. I find that the evidence does not support the customer's contention.
7. I can see that the company accepts that a contractor was discharging water out of the chambers onto a grassed slope, but it has stated that its investigations show that only 0.348M3 was actually pumped before the flood event, and it believes this was insufficient to flood the garden to the extent that was identified.
8. The customer has not supplied any evidence that establishes that water pumped onto open ground by the contractor caused the flooding event.
9. I take note that the customer does not appear to have retained any independent third-party professional advice that could have examined the situation on site and produced a report in support of her position.
10. The customer has relied upon the comments of a company agent. The customer contends that the agent attended her garden on the day of the flood, whereas the company states that the agent only attended some six days later on 20 January 2022. I can see that this is confirmed by the agent's site visit report.
11. The customer refers to an e-mail from the company dated 11 March 2022 which says that the same agent subsequently stated that the contractors had left a valve open on the clean water main and this allowed water discharge onto the open ground. The company states that its investigations identified that the discharge was in the opposite direction to the garden and furthermore the absence of ammonia and chlorine in the tested samples of flood water confirm that it did not originate from the clear water main.

12. The company has stated that its investigations have identified that hydraulic overload was the most likely cause of the flooding and has submitted rainfall data for the period immediately before 14 January 2021 to support its position. I note that the customer has accepted the hydraulic overload effect but has stated she believes the company overloaded the system by pumping water onto the ground. Again, I do not find any evidence that supports the customer's understanding.
13. Similarly, I also take into consideration that the contractor was also consulted, and its investigations confirmed that the amount of water it pumped was insufficient to have caused the level of flooding experienced by the customer. Again, the customer has not supplied any professional third-party testimony to contest the contractor's position.
14. Overall, I find that the evidence does not establish that the company or its retained contractor was responsible for the flooding of the customer's garden on 14 January 2022.
15. It thus follows, that I further find that compensation is not appropriate, and I shall not direct that the company make any compensatory payment.
16. 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.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 15 September 2022.
- The customer has, on 21 September 2022, responded to the Preliminary Decision.
- The customer reiterates that the company spent several months pumping rainwater onto the green adjacent to her garden, and that this water eventually found its way into her garden because the company had altered the water table.
- The customer refutes the company's statements that her property is in a known flood area or is at the low end of her road.
- The company has, also on 21 September 2022, responded to the Preliminary Decision, and confirms it has nothing further to add.
- 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 26 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.
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Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
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Member, CEDR Adjudication Panel.

Adjudicator

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