

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X131

Date of Final Decision: 23 September 2022

Party Details

Customer:

Company:

Complaint

The customer states that the company refuses to pay compensation for certain costs incurred directly as a result of an internal sewage leak into the cellar which its service partner admitted liability for. Further, the company has refused to pay compensation for inconvenience despite him and his wife being exposed to sewage left in their property for 271 days. The customer requests compensation of £3,685.00 comprising of: £2,500 for inconvenience and distress; £385.00 for the cost incurred for unforeseen works and; £800.00 for the additional cost of electricity to dry out the cellar following the sewage leak.

Response

The company states that as the faulty service was provided by its service partner, it is not responsible to pay the customer's outstanding claims. It has told the customer throughout that its service partner would cover the costs for the work and the additional electricity used. Nonetheless, it recently offered to pay the customer £385.00 for the cost incurred for unforeseen works as a goodwill gesture.

Findings

The company acknowledges that the internal sewage flood into the customer's cellar was caused by a failure in the service provided by one of its service partners when carrying out lining work to the customer's street. Initial works to resolve the issue were completed and its service partner's insurers paid for further works to be carried out by a third party builder. The company offered to pay the customer for the unforeseen cost incurred in order to fully restore the property to its original condition. However, it is reasonable to expect the company to also: reimburse the customer for the extra cost of electricity incurred for drying out the property and; pay compensation for inconvenience and distress caused by the impact of the internal flood and instances of the

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company's service not reaching a reasonably expected standard whilst handling the customer's communications and associated complaint.

The company offered the customer £385.00 to settle the claim for the cost of unforeseen work to restore the property back to its original condition.

**Final
Outcome**

The company needs to take the following further action:

- Pay the customer £1,000.00 in compensation for stress and inconvenience caused by the internal sewage leak and instances where the company's service provided did not reach an expected level over the subsequent months whilst the customer pursued a resolution to the issues raised.
- Pay the customer £385.00 for the cost of additional work required as per its offer, if it has not already done so.
- Pay the customer £800.00 for the cost of extra electricity incurred to dry out the cellar.

The customer must reply by 21 October 2022 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The customer states that on 2 August 2021, the company installed a Pollution Lining into the main drain, which runs down the centre of their street. During the works, it lined over the exit of their drain, which is also shared with their neighbour. As a result, all waste water and sewage which runs from their property and their neighbour's property, became blocked, backed-up and entered their property on 18 August 2021.
- The floor of their cellar (approximately 22 sqm) was flooded with up to six inches of sewage which stood in their property for 17 days, while numerous teams of engineers tried to drill through the pollution lining. Eventually, the main bulk of sewage was released, but the sewage had sunk below the floor level and into the ground below.
- After trying to dry out the cellar using air movers and a dehumidifier, the sewage kept resurfacing. They were exposed to sewage left sitting in their property for a total of 271 days.
- The customer states that during the last twelve months he and his wife have made numerous calls, sent numerous emails and have escalated their complaint through the correct procedure with the company. They first contacted the Consumer Council for Water (CCW) on 26 December 2021 to escalate the complaint further; however, for the last seven months they have been trying to resolve three remaining issues with the company:
 - Payment of £385.00 for the cost incurred for unforeseen repairs carried out by their builder after they lifted the cellar floor (clearing the gully and laying a land drain, surrounding with pea gravel, and covering it with mesh, before laying the new concrete floor);
 - Payment of £800.00 for their electricity used to power air movers and the dehumidifier to dry out the cellar (122 days). On 16 November 2021, they received £105.00 for electricity used for the air movers and dehumidifier machines (installed for the first time) from 3 September 2021 to 23 September 2021 for a total of 21 days. The company's Service Master reinstalled air movers and a dehumidifier into their cellar on 20 October 2021.

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Their electric meter read: 76676. The Service Master removed the air movers and a dehumidifier from their cellar on 18 February 2022. Their electric meter read: 79322. The readings were provided to the company. The air movers and a dehumidifier were in their cellar for a total of 122 days. In an email from the company dated 14 June 2022, it stated that its service partners were covering the costs of the electricity.

- Payment of £2500.00 for inconvenience and distress. They were exposed to sewage left sitting in their property from 14 August 2021 until 11 May 2021 (271 days). They could not use their utilities or their toilet from 26 August 2021 until 1 September 2021. From 25 August 2021 to 4 September 2021, they spent days moving kitchen appliances and cleaning. They were unhappy about the company telling them that its service partner was responsible for their claim for damaged items and that they should contact them directly. They have spent hours making telephone calls and writing emails to the company and also to its service partners and their insurers trying to resolve their case when the company is responsible for this. They have had to make themselves available for workmen, visiting technicians, key controllers/inspectors and the clean up team (Service Master) on numerous occasions. They have also had to monitor the work, and deal with issues as the builder and his team carried out the rectification works in May 2021. They were unable to sit in their living room for a total of 271 days due to the odour, the room being too cold from having the windows open and because of the noise of the air dryers and dehumidifiers below.
- The company has refused to pay for any of the above mentioned items which total £3,685.00.
- The customer seeks that the company pay them £3685.00 in total compensation.

The company's response is that:

- The customer first made contact with it on 25 August 2021 advising they had internal flooding to their cellar. It attended the property the next day and completed various investigations. The outcome of this indicated that when its service partner REDACTED (service partner) completed the lining work, they had covered the customer's lateral connection. Not cutting out the lateral connection had caused the internal flooding.
- It arranged for its service partner to reattend, to remove the section of patch liner that had been left over the lateral connection. This work was completed by 31 August 2021.
- The customer then contacted it on 31 August 2021, to discuss compensation for the damaged items and it advised that because the damage had been caused by its service partner, they would need to submit a claim to its service partner's insurers.

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- It arranged for its Service Master to attend and carry out a deep clean, install air movers and a dehumidifier. Its Service Master was asked to dispose of any contaminated items and ensure a list of these was made, to help the customer with their insurance claim.
- On 27 September 2021, after its Service Master had attended, it was made aware that damp patches were present in the customer's cellar. Its Service Master believed this could be secondary damage and a job was raised for it to reattend.
- It attended on 28 September 2021 to carry out investigations, including camera surveys and dye testing. No defects were found on the sewer and there were no positive results from the dye testing.
- It offered to sanitise the cellar due to the odour, but this was declined by the customer. A further job was raised for its Network Controller to attend.
- On 4 October 2021, two Network Controllers attended and spoke to the customer. Investigations found no further defects and the damp patches were believed to have been caused by the previous flooding. No strong odour was found.
- It authorised for its Service Master to install the dryers for an additional few weeks, to help dry the cellar out. It instructed its Service Master to arrange with the customer a delivery of dehumidifiers by 14 October 2021. During this time, its service partner was dealing directly with its Service Master in relation to the ongoing repairs and claim.
- It has communicated with the customer throughout the complaints process, to help them to resolve the issue at the property:
- On 10 December 2021, it received a Stage one written complaint from the customer and responded via email on 10 December 2021, to advise it was looking into the matter and would contact the customer with an update no later than 15 December 2021. A direct phone number for the complaint handler was provided to the customer.
- On 16 December 2021, it received a Stage two written complaint from the customer and it called him on 29 December 2021 and followed this up with an email.
- Throughout the course of the Stage two complaint, it liaised with its service partner and their insurers to help the customer with their claim.
- On 11 February 2022, it then received a request for an inconvenience payment from the customer. As the damage was caused by its service partner, it spoke with its legal team for advice on the claim. It sent the final Stage two written response to the customer on 14 June 2022.
- It received no further communication from the customer until 5 August 2022.

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- It has conducted a full review of the case and in response to the customer's claim for £385.00 on 16 August 2022, it advised that because its service partner's insurers had now settled the claim for works carried out, as a gesture of goodwill, it would reimburse the £385.00 invoice as full and final settlement of the customer's complaint. This was not accepted or rejected.
- Regarding the customer's claim for the cost of additional electricity incurred, it has advised the customer throughout their complaint that its service partner would be covering the costs for the work and the additional electricity used.
- Regarding the customer's claim for compensation for distress and inconvenience, whilst it appreciates and understands the distress the customer has experienced due to flooding, as the damage to the property was caused by its service partners, it is not liable for any inconvenience costs.

Reply

- The customer provided further details and clarification on the events and points made by the company. Regarding the company's comment that he declined its offer of sanitising the cellar (on 4 October 2020), he said that the company's own Network Controllers agreed there was no point in disinfecting the floor when the sewage was still resurfacing. The redelivery of the air dryers and dehumidifier was delayed until 20 October 2020.
- The customer disputed the company's assertion that it is not liable for stress and inconvenience; the insurer confirmed to them on 2 December 2021 that it would not offer any compensation amount for distress or inconvenience.
- The customer said the company had not acted with urgency to rectify the issues and had not informed their service partners of the amount of distress and inconvenience they had endured.
- They had to pursue a resolution to the problems and had to chase the company and its service partners to get things done, which has been a lengthy process and caused inconvenience and distress. The customer submits that the company should have been more proactive in resolving the issues.
- The amount of time taken by the company to fix their property and to liaise with their service partners has caused distress and inconvenience.
- As customers of the company, it is directly responsible to reimburse them with £385.00 and £800.00 for the costs of additional work required to rectify their cellar and for electricity incurred to dry out the room, respectively.

Comments on Preliminary Decision

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- The customer submitted comments and asked that the award for compensation is increased, as this amounted to £3.69 per day (for 271 days) and did not sufficiently reflect the extent of the stress and inconvenience caused. He asked that his points made in his previous submission on WATRS is reconsidered.
- The company did not submit comments.

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. The customer's complaint concerns a compensation claim in relation to an incident of internal sewage flood into their cellar in August 2021.
2. Based on the party's submissions and supporting evidence, it is clear that the sewage flood (six inches) was as a result of the company's service partner carrying out lining work to the customer's street whereby the customer's lateral drain was inadvertently covered. As the customer's property is on a shared supply with their neighbour, sewage from both properties got blocked, was backed up and entered the customer's property via their cellar – which is slightly lower than the neighbour's property.

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3. In its Defence, the company accepts that not cutting out the lateral connection had caused the internal flooding. For the purposes of this adjudication process, it is reasonable to hold the company responsible for any actions of its service partners that did not reach the expected standard where this causes a loss or detriment to the customer. Therefore, the acknowledged failure by its service partner to cut out the customer's lateral connection when lining the street constitutes evidence of the company failing to provide its service to a reasonably expected standard.
4. Following the incident on 18 August 2021, I accept from the evidence that:
 - a. The company and/or its service partners reattended the property on 31 August 2021 to remove the section of patch covering the lateral connection. It also carried out a deep clean of the customer's cellar and on 3 September 2021 installed air dryers and a dehumidifier to dry out the room. This is evidence of the company promptly taking steps to put right the issues caused by the failure in the service provided. The company acted in accordance with its obligations in this regard.
 - b. The company also advised the customer on 1 September 2021 to submit their claim for damaged property to its service partner's insurers. As it is usual for claims relating to damage to property to be made via the relevant insurer, this was appropriate advice provided by the company.
 - c. Following the company's removal of the dryers and dehumidifiers on 24 September 2021, the customer reported damp patches of sewage resurfacing through the floor.
 - d. The company reattended on occasions including 28 September 2021 and 4 October 2021 to check its assets when it found no issue with the internal sewer. However, the company confirmed that sewage had sunk below the floor level and into the ground below. The company agreed to reinstall the air dryers and dehumidifier to help dry the damp patches; these were provided on 20 October 2021.
 - e. In order to stop the sunken sewage resurfacing through the stone slabs when the air dryers and dehumidifier were turned off causing damp patches, the company advised the customer to obtain a quote for works to address the issue as the company confirmed it did not carry out this type of work.
 - f. The customer provided a quote to the company on 12 November 2021 for works to: remove the stone slab flooring; remove the contaminated soil and; re-concrete the cellar. The service partner's insurers subsequently accepted liability, agreeing to cover the cost of rectification works to the sum of £4,550.00. It provided this payment to the customer on

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4 February 2022. The works were completed on 11 May 2022 which resolved the issue and restored the property back to its original condition.

5. Therefore, whilst the internal sewage flood and resulting damage has been addressed, as mentioned above and outlined in the customer's WATRS application, the remaining issue in dispute concerns the customer's request for the company to pay compensation. This relates to: £385.00 for unforeseen extra work, £800.00 for the cost of additional electricity used to run the dryers and dehumidifier and; £2,500.00 for inconvenience and distress.
6. Regarding the £385.00 for unforeseen extra work, it is not in dispute between the parties that during the rectification works, the builder discovered that additional work was required in order to re-lay the concrete floor (installing a land drain, surrounding the drain with pea gravel, and covering it with mesh). In this circumstance, I find that the customer's claim for the reimbursement of this additional cost incurred (in addition to the original cost paid by the company's insurers) is reasonable.
7. In its stage two complaint response dated 14 June 2022, the company told the customer that it had passed his request to its service partner's insurers, however, as at the date of the customer's WATRS application, the customer had not been reimbursed this amount. It is noted that the company has since offered to pay the customer £385.00 (as per its letter to the customer dated 15 August). As the company has now agreed to provide the customer with this remedy, I will not address this claim further. However, I have included the company's above-mentioned offer in the directions below which I find is appropriate in the circumstance.
8. Regarding the claim to cover the additional cost of electricity incurred to dry out the cellar, it is noted that whilst the customer has been reimbursed £105.00 for the additional cost of electricity incurred between 3 September 2021 and 23 September 2021, the claim for £800.00 relates to the second period the air dryers and dehumidifier were installed at the property from 20 October 2021 to 18 February 2022. As electricity to power such equipment represents a cost incurred directly as a result of the faulty work carried out, it is reasonable to expect the company (or its service partner) to provide a full reimbursement of the additional costs incurred where proven. Whilst in its stage two response the company told the customer its service partner was responsible to cover this cost, as at the date of the customer's WATRS application, the customer had not received any payment. Therefore, it is fair and reasonable to direct that the company reimburse this cost to the

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customer (the company may wish to seek repayment of this amount from its service partner). It is noted that the customer provided the company with meter readings in support of this claim, which have not been queried disputed by the company. However, if the company requires any further evidence from the customer, it should explain what this is to WATRS via Comments on the Preliminary Decision.

9. Regarding the customer's compensation claim for inconvenience, it is noted that:
 - a. The customer's claim was initially refused by the company's service partner (on 2 December 2021).
 - b. The customer raised a complaint via CCW, who raised the matter of the customer's compensation claim for inconvenience with the company on the customer's behalf.
 - c. The CCW call note dated 8 February 2022 (within the CCW bundle provided to WATRS) indicates that the company's stage two case handler told CCW at that time that it could not consider compensation for inconvenience yet as the issue was still ongoing, however, the case handler said that this would be considered.
 - d. In its stage two complaint response to the customer dated 14 June 2022, the company advised that as the claim was with a third-party insurer, it would not offer any inconvenience costs.
10. In light of the significant impact caused by the internal flooding as a result of the failure to cut out the customer's lateral connection, it is reasonable to expect the company to pay the customer a measure of compensation for the inconvenience and distress suffered. This is in accordance with its advice to CCW.
11. When assessing a suitable level of compensation, I have also taken into account:
 - a. The prolonged length of time taken to fully restore the customer's property back to its original condition (271 days).
 - b. The delay of approximately six months by the company when formally responding to the customer's stage two complaint dated 16 December 2021. This delay was unreasonable and prolonged the complaints process and the timeframe the customer had to remain in communication with the company regarding the resolution of the issues.
 - c. The lack of any timely payments provided by the company in respect to the customer's above mentioned claims.

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12. Taking into account the above factors, I find a fair and reasonable amount to be £1,000.00 in compensation. This falls in Tier 3 of the WATRS Guide to Compensation for Inconvenience and Distress. Whilst I have considered the customer's request made in the Preliminary Decision for the level of compensation to be increased, I confirm all his submissions were fully considered when determining the compensation figure awarded and I am satisfied the sum directed is in line with the WATRS Guide to Compensation for Inconvenience and Distress. I remind the parties compensation awarded under WATRS is not calculated in the same way a court may award damages.

Outcome

The company needs to take the following further action(s):

- Pay the customer £1,000.00 for stress and inconvenience caused by the internal sewage leak and instances where the company's service provided did not reach an expected level over the subsequent months whilst the customer pursued a resolution to the issues raised.
- Pay the customer £385.00 for the cost of additional work required as per its offer, if it has not already done so.
- Pay the customer £800.00 for the cost of extra electricity incurred to dry out the cellar.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 21 October 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.

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- 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.

A handwritten signature in black ink, appearing to read 'A. Jennings-Mitchell', with a stylized flourish at the end.

A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)
Adjudicator

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