

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X197

Date of Final Decision: 10 November 2022

Party Details

Customer:

Company:

Complaint

The customer asks for compensation of £7,820.00 comprising damage to her fence panels (£120.00), replacement garden (£7,470.00) and replacement play equipment (£230.00). She complains that the company incorrectly denies liability for allowing sewage to escape from a manhole and contaminate her garden and her neighbourhood. She complains that the company did not provide adequate customer service in respect of its attendance to clear a blockage in the sewer and then did not provide the equipment (the jetvac tanker) that the crew considered would be needed. This led to a delay in clearing the blockage for an extra day. The customer also says that the company did not provide adequate services to clean up and her garden remains too contaminated for her 4-year-old son to use.

Response

The company says that it is not liable for an escape of sewage which was caused by fat, oil and grease and a large piece of metal. It says that it provided its services to clear the blockage to the expected standard and cleansed the area affected to an appropriate standard. The company denies liability for the claim, except that it says that in addition to the Guaranteed Service Standards payment of £145.51 that it has made, together with £40.00 in respect of failure to respond to the customer's complaint on time, it has discovered further customer service failures. It acknowledges these and has offered £225.00 to the customer.

Findings

Although the company is not liable for the escape of sewage from the manhole, the customer was advised by the crew that it had asked for a jetvac tanker due to the size of the obstruction. Although she was told that this would attend the next day, other vehicles were sent which were insufficient and contributed to the distress and inconvenience experienced by the customer. Additionally, the customer did not receive return calls or emails from her liaison officer regarding an alleged promise that the company would accept liability for the damage. Although I find that no such promise was made, the company's failure to return

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calls was an omission by the company to supply its customer services to the correct standard.

As the offer of compensation did not take into account the additional distress and inconvenience caused because the jetvac did not attend for approximately one day after the customer expected it, the company's goodwill offer for non-compliance with service standards should be increased, A fair and reasonable sum overall (excluding the payments already made) is £300.00.

Outcome

The company needs to pay £300.00 to the customer.

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Case Outline

The customer's complaint is that:

- Following an inquiry by her neighbours on 3 February 2022 because they were experiencing a flood of excess water including human faeces by their back door, the customer discovered that the manhole cover in her garden was releasing foul water into her garden.
- The customer telephoned the company. She explained to the company that the same thing had happened twelve months earlier, and that to clear the blockage the jet vac tanker had been needed. She was told that, because she has a 4-year-old son and her two oldest daughters are young carers as the customer suffers with mobility problems, the company would treat this incident as high priority and the crew would attend by 10pm.
- She heard nothing further that evening and the sewage contents were left to soil the garden and travel to other gardens and also down the alleyway.
- The customer's husband rang the company on his return from work and was told that the matter was with the jet team, which would be in contact the following morning to arrange time to visit.

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The company later made contact saying that a crew was on its way. This was 23 hours after the incident was reported.

- The crew that attended tried to clear the blockage was unable to do so. The customer says that it was then escalated to the technicians' supervisor that the jetvac was needed. The customer was told that it could be twelve hours before it could arrive.
- On Saturday 5 February 2022 two crews attended without the jetvac but still were unable to clear the blockage. The crews said that they had been told to try their best to clear the blockage. The customer says that the second crew that came on Saturday told the scheduling team that their vehicle was not working but they were sent anyway. The customer said that the consequence of that jetting was that the situation became worse and resulted in pushing more water into the system and more water and faeces had exited the manhole cover and run into other gardens and down the alleyway. Both crews that attended on Saturday said that the jetvac was needed as the blockage was so severe. The customer said that she kept ringing the company, but it would not send the jetvac out because this was too expensive. In the end, the jetvac was sent and the this cleared the problem in 30 minutes.
- The customer says that she has suffered a financial loss for damage to her garden and fence panels, the shed, time off work and her son's toys. The aftermath is that the garden is still contaminated, and her neighbours had to move out of their home for three days because they were unable to let their dog out into the garden. The cleaning crew did not attend when it promised so the situation was allowed to continue for longer than necessary.
- The customer says that although she understands that the company has a process to follow but as this had happened twelve months earlier, and three crews had said that the jetvac was needed, this could have been sent sooner. The customer says that the company did not pay attention to her family's welfare. The customer also says that the company's website refers to attendance to deal with external flooding within 6 hours but from the first call, but it took 24 hours for anyone from the company to arrive.
- The company has reduced the customer's bill by £140.00 but made no other payment. The customer asks for compensation of £7,820.00 comprising damage to her fence panels (£120.00), replacement garden (£7,470.00) and replacement play equipment (£230.00).

The company's response is that:

- Following a report by the customer of external sewer flooding, a team was sent out the following day. It attempted to remove the blockage from the network, which ultimately took a larger machine and three attendances from different crews.

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- The blockage / flooding was the result of a build-up of Fat, Oil and Grease (FOG) as well as a large piece of metal which restricted the flow within the network. The company did complete some remedial work to the network, but this was not a contributing factor in the flooding.
- The customer has been told that the company is not liable for any damage or loss as a result of flooding from the public sewer network as it is not able to control what people dispose of incorrectly in the sewer. In accordance with company policy, the company advised the customer to direct any claims to her home insurer and they would be able to assist with any losses.
- The company has paid the customer a Guaranteed Service Standard payment of £145.51 as a result of the external flooding plus an additional £40.00 for failing to respond on time to her letter of complaint.
- The company also acknowledges that there have been some additional service failings which resulted in the company offering a gesture of goodwill for £225.00 to the customer. This has been declined.

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.

Following the issue of the Preliminary Decision, neither party has made comments on this. The outcome of the Final Decision is the same as of the Preliminary Decision.

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How was this decision reached?

1. Although an escape of sewage from the sewers is always an upsetting occurrence for a customer, it does not follow that a company will always be liable to compensate customers for damage caused when this happens.
2. The background to this situation is that:
 - a. Under the Water Industry Act 1991, decisions relating to the provision and maintenance of a sewerage network are matters that are overseen by Ofwat. In a case that concerned repeated escapes of sewage called *Marcic v Thames Water*, ([2003] UKHL 66) the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving or maintaining the network. The reason for this decision was that overview of the company's decision-making in this area was the responsibility of Ofwat and not the courts. This means that when a company has made a decision as to the allocation of its priorities and resources for maintenance purposes, a court may not pass judgment on this.
 - b. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. Its function is to resolve individual disputes between customers and companies, not to undertake a strategic review. Rule 3.5 of the Water Redress Scheme Rules states that WATRS cannot be used to adjudicate disputes which fall into one or more categories, including "any matters over which OFWAT has powers to determinate an outcome". Accordingly, in accordance with the Scheme Rules, any claims that flooding was caused due to an alleged breach of duty by the company to maintain the network cannot be adjudicated under the WATRS Scheme.
 - c. Only where companies have been negligent, therefore, will courts take action. The fact that a sewer or manhole has fallen into disrepair (for example due to eroded benching or lack of channeling as the customer argues) does not automatically mean that the company has been negligent, however. The company may have been unaware of this or (consistently with the reasoning referred to above) it may have decided that other areas of its network needed more urgent repair. Household discharges such as grease, fat and domestic waste can lead to unforeseen blockages and the companies cannot, despite providing advice and information, physically prevent third parties from abusing the

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network. The fact that such a blockage occurs as a result of misuse of the sewer is not a failure to maintain it. In this case, the sewer contained a piece of metal as well as a blockage of fat, grease and domestic waste.

- d. As companies are not usually liable for flooding incidents, the law compels companies to make guaranteed payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The company explains that a payment under these Regulations was made to the customer in March 2022.
 - e. The primary financial protection or redress for householders for flooding from sewers, therefore, is private insurance and the documentation indicates that the customer has been advised about this.
3. Applying the principles explained above, I find that the company is not liable to compensate the customer for damage caused by the overflow of sewage. As indicated above, I find that the fact that there has previously been a blockage in the sewer and that the sewer required some repairs (which in any event the company argues were minor and not causative of the discharge) is not evidence that the company has failed to supply its services to the expected standard.
4. I am mindful, however, that the customer's complaint here is largely that the company provided poor service in responding to her report of the flooding from the sewer. This is a different matter. The customer also says that the company promised that it would take liability. The customer complains that:
- a. The company was slow to respond to her complaint of escaping sewage and did not attend within 6 hours as stated on the website or before 10 pm that day as she had been told by company personnel when she made her complaint at 16.20 pm. The company attended at 15.30 on the following day.
 - b. The company did not send a jetvac tanker when she said that a previous blockage had needed this. The company's technicians also having recommended a jetvac to their supervisor on the first and second site visits did not result in the company sending this and, instead, further attempts to break the blockage with jetting rather than suction meant that more foul matter was distributed into her garden and the wider neighbourhood.

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- c. The jetvac was promised for Sunday 6 February 2022 at 6am but did not attend until 8am.
- d. The time between first complaint and clearance of the blockage was too long.
- e. The cleaning crew did not attend when promised. The customer was told that they would attend on 6 February 2022 but did not attend until the following day. She was then told that all her grass would be gone but the clean-up was not undertaken properly. The customer took photographs and videos which she sent to her liaison officer who confirmed that the clean-up was unsatisfactory and sent a crew again on the following day. Soil samples taken four weeks after the flood showed that the land was still contaminated and this is preventing her 4 year old son (who has health issues) from using their back garden.
- f. The customer also says that the company's flooding leaflet states that notification of insurers is only necessary if the blockage or flooding is the homeowner's fault and it has come from a privately owned sewer into the public sewer. The customer says that this is not the case in this instance. She says that there are no connections in that manhole to her property, and that her household waste is removed at the front of the property. The customer says that her insurer will not look at this claim because it is not her fault.
- g. In support of her claim, the customer also says that she was told on 15 February 2022 by one REDACTED on behalf of the company that the company would take responsibility but then REDACTED blocked her calls. The customer has submitted some text messages in which she asked REDACTED to repeat in an email the statement that the company would take liability. REDACTED responded that she would call the customer. After that, the customer sent a number of further requests for the same thing, but REDACTED did not reply to the texts and there has been no email.

5. The company says that:

- a. As the customer contacted the company at 17.20 on 3 February 2022, the timeframe for this job was attendance before 10 pm the next working day.
- b. The company's engineers attended at around 2 pm on 4 February 2022. They had to leave to gather materials to be able to complete the job (dust sheets) and reattended the same

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day around 4:30 pm. There was a need for re-attendances because the blockage could not be cleared.

- c. Following this attendance another kind of vehicle was required to clear the blockage.
 - d. Engineers attended the next day (5 February 2022) at around 2:30pm. There was an unforeseen issue where a piece of equipment was not working correctly on the vehicle and a further vehicle was required.
 - e. The company then arranged a clean-up for multiple houses involved which took place over a span of 4 days (6 February to 9 February 2022).
 - f. The customer has been compensated by a payment under its Guaranteed Service Standards Scheme of £145.51 in respect of the flooding and £40.00 in relation to a late response to her written complaint. In respect of customer service failings, the goodwill payment of £225.00 that has been offered is fair and reasonable.
 - g. Additionally, as there have now been a number of incidents of “FOG” in the sewer, this will be cleansed on a three-monthly basis to prevent build-up in this area.
 - h. The company has no telephone recording of the conversation with REDACTED, but states that the company would not compensate the customer for sewer flooding.
6. I am mindful that adjudication is an evidence-based process and that a party to a dispute will not be able to succeed unless the evidence submitted to the adjudicator supports that party’s complaint. Bearing this consideration in mind, I now turn to the various concerns expressed by the customer.

Timing of first attendance

7. I find that although the customer says that the company’s published statements say that the company will attend within 6 hours of the report of a flooding incident, the customer has not submitted a screenshot of the extract from the website to which she refers. The company says that it does not promise to attend within 6 hours of a report of an external flooding incident and no

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reference is made on the website to this. The company has provided an extract from its Code of Practice that states:

Where the incident disrupts service or causes flooding to property, we will aim to arrive as soon as possible. We aim to attend within four hours but during times of exceptionally heavy rainfall, when there are a large number of flooding incidents, it may take a little longer.

8. It is notable that this 4-hour target relates to flooding both internal and external and a company would reasonably be expected to give priority to internal flooding, which the customer did not experience. Moreover, it is clear that the 4-hour period is only an “aim” and the company expressly states that the call may take longer.
9. The company explains that the company has service level agreements in place for a vast number of their operational jobs and these are always provided to any customer who contacts the company and raises a job with them. Where any contact is made prior to 12 pm, the visit will usually take place on the same day. Should the contact be made after 12 pm, it will attend by 10 pm the following day.
10. I find that although the customer says she contacted the company at 16.20 and the company says that the contact was at 17.20, both timings were after 12 pm. The customer says that she was informed that the attendance would be before 10 pm that day. As it is clear that there is a reference to 10 pm and as the company’s service level agreement is for 10 pm the next day, I find that it is likely that there was a misunderstanding. As, on any account, the company sent a crew round before 10 pm the next day, I find that the company supplied its services in accordance with its service level agreement.
11. As I find that what was said to the customer is not substantiated by supporting evidence and it is probable that there was a misunderstanding, I find that it has not been shown that the company omitted to supply its customer service to the correct standard in relation to this complaint.

Attendance of the jetvac

12. The customer has provided a good level of supporting detail about conversations with a supervisor regarding use of the jetvac tanker and the comments made by attending crew as to the desirability of using this for the customer’s job. The customer says that:

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- a. She was told by the crew that they had spoken to a supervisor and the jet vac would be out the following morning (Saturday).
- b. The crew that attended on Saturday morning were not a jetvac crew and attempts to remove the blockage added the quantity of water and effluent at surface level. They recommended attendance of the jetvac tanker.
- c. A further crew attended on Saturday afternoon, also without the jetvac, and with a defective vehicle.

The customer explains that she also spoke to the supervisor who told her the jetvac would be present the next day, at a slightly earlier time than its actual arrival time.

13. The company has not responded to these comments about the jetvac, either to the Consumer Council for Water (CCWater) or directly to the customer, although it has provided its job notes which make no reference to the jetvac before the day when it attended. These are, however, only very brief summaries of the attendances. As, in contrast, the customer has provided a convincing level of detail about these conversations and the company has not denied them, I find that it is more likely than not that the initial assessment by the company's contractors was that this was a job that needed the jetvac but for reasons that were not explained before the non-arrival of this machinery, it was not supplied until approximately one day later.
14. I find that an average customer would reasonably expect to be informed about how work was progressing and if particular machinery was designated as appropriate, why this could not be provided when it had been promised. I therefore find that this was a significant communication failure with the customer and I find that it is also likely that the degree of inconvenience that she experienced was increased by the additional delay and unsuccessful attempts to clear the blocking with insufficiently powerful equipment.
15. I find that the company did not supply its services to the expected standard in this regard.

Flooding leaflet

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16. The customer says that the company had misinformed its customers because its flooding leaflet suggested that it would not be necessary when a flood was not the fault of a homeowner. The customer has not supplied the text that she relies upon, but the company has supplied a copy of the information provided in its Code of Practice, which, in the absence of evidence to the contrary, I find is likely also to be replicated in other documents (if any) concerned with flooding. In the section under Flooding, the Code of Practice states:

We're not legally liable to customers for loss or damage caused by flooding from public sewers unless we've been negligent. Our sewers are an open network so we can't control what gets put into them. If you're affected by flooding and it has resulted in loss or damage to your property, your insurance company should be able to help. It's a good idea to check your insurance regularly, because its up to you to ensure you're properly covered. If your home insurance company believe we are liable for the sewer flood, they will contact us. As a matter of course we ask that any query comes from your insurer as they're best placed to make these enquiries.

This indicates therefore that the customer should inform her insurers and that it was for the customer to ensure that her policy covers flooding by sewage.

17. I do not find that the evidence supports that the company did not provide its services to the expected standard in relation to this complaint.

Communications with REDACTED

18. Although the customer says that she was told that the company would accept liability for the damage caused by the flood, she states in her email to the company of 8 March 2022 that she was told by REDACTED that the company would provide a Guaranteed Service Standard payment (which the company had not at this stage done). It is notable that in the email of 8 March 2022, the customer does not say that REDACTED said that any further payments would be made even though the customer stated that she would be sending the company a bill for the damage to her garden. I find that if REDACTED had made a statement that the company would be liable to pay compensation of this type, it is likely that the customer would have referred to this expressly in her email of 8 March 2022.

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19. Moreover, I find that it is unlikely that REDACTED would have stated that the company would accept liability over and above making a Guaranteed Service Standard payment, because that is not the company's policy and I am mindful that for the reasons stated above, it is not generally the policy of sewerage undertakers. The company has, moreover, set out its policy in its Code of Practice which is a publicly available document and both the customer and REDACTED would have had access to this:
20. I further find that it is particularly unlikely that REDACTED would have agreed to liability because at that stage the customer had not put forward a statement of her loss. I find that it is improbable that REDACTED would have agreed that the company would accept liability for an unknown sum. There is additionally no evidence, I find, that REDACTED was authorised to make such a promise to the customer, and I find that even if she did say something along those lines to the customer, it does not follow that the company was bound by that statement.
21. I do find, however, that the customer has submitted supporting evidence for her statement that, despite requests for REDACTED to return her call or provide an email in support of the company's position, REDACTED did not do so and that was, I find, a failing in the company's customer service.

Clean-up

22. I am mindful that the clean-up operation for this job was extensive. The documentation I have seen shows that, not only had the customer's property been affected, but also that of her immediate and other neighbours. Foul water had settled in the gardens and travelled down an alleyway in the form of a small stream and affected a block of flats at the end of the alleyway.
23. The customer explains that the clean-up had not been thorough and, in particular, whereas she had been told that her grass would be gone after the first day, it was still there when she returned from work.
24. The company's notes state that it was explained to the customer that it would be hard to get the grass cleaned but they would try their best. The company believed that it had achieved a 90% clean-up on its first day of attendance at the customer's garden. The company also attended on subsequent days for other gardens and the customer says that the company carried out a repeat cleanse of her garden as a result of her request to the company.

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25. I find that the evidence shows that the company took significant steps to try to resolve this difficult and widespread cleaning problem and, if the company re-attended having achieved what it believed to have been a cleansing operation that had been 90% successful, this was evidence of good, rather than poor, customer service. Moreover, although the customer complains that the garden remains unhygienic for her son and refers to some soil samples, no supporting evidence has been supplied in respect of this.
26. Overall, I find that the company cleaned to the standard that would reasonably be expected and supplied its services to the expected standard in relation to the cleaning up that it undertook.

Redress

27. It follows from the above that I find that there are some ways in which the company has failed to supply its services to the expected standard and that, in consequence, the customer experienced increased inconvenience and distress.
28. I am also mindful, however, that the company is not liable for the escape of sewage from the company's manhole which was, I accept, caused by the presence of unsuitable sewer contents introduced by third parties. For this reason, I find that the customer does not succeed in her claim for the cost of replacing her garden, her fence or her son's toys.
29. However, I am also mindful that the company's offer of compensation of £225.00 only takes into account the customer service and communication failures with the customer in respect of this episode. It does not take into account the increased level of distress and inconvenience caused because the customer was told that the jetvac (which remedied the problem quickly) would be used but it was not utilised until approximately one day later, in which time the quantity of foul surface water had increased.
30. I find also, however, that the matter was cleared up to a reasonable standard within a short period after the initial complaint.
31. Overall, I find that a fair and reasonable level of compensation (in addition to the Guaranteed Standards payments that have already been made), including the customer service and

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communication failures that the company has already accepted, and the increased inconvenience and distress referred to above is £300.00.

Outcome

The company needs to pay £300.00 to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- 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.

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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