

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X358

Date of Final Decision: 21 March 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer says that the company was responsible for internal flooding she experienced. She requests unspecified compensation.

#### Response

The company says that it can only be held liable to the customer if it has been negligent, and it was not.

No offer of settlement has been made.

#### Findings

The company provided its services to the customer to the standard to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

The customer must reply by 18 April 2023 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X358

Date of Final Decision: 21 March 2023

## Case Outline

### **The customer's complaint is that:**

- She experienced sewage flooding inside the Property.
- A dehumidifier was needed, and flooring, bannisters and carpet had to be replaced.
- Her diabetes was affected, as she was unable to eat.
- She had to move out of the Property for a month.
- She experienced stress and high blood pressure.
- She requests unspecified compensation.

### **The company's response is that:**

- On 17 May 2022, one of the customer's neighbours reported an overflowing manhole.
- The company attended on 18 May 2022, finding the sewer to be clear and free flowing.
- On 1 June 2022, one of the customer's neighbours reported an overflowing manhole.
- The company attended on 2 June 2022, clearing a blockage in the sewer.
- On 7 June 2022, the customer contacted the company to report internal flooding in the Property, from her toilet.
- The company attended that day and found wastewater in the customer's bathroom, but the manholes outside the Property were clear and free flowing.
- The company's engineers concluded that the cause of the customer's problem was the private drainage system, and recommended to the customer that she contact her landlord.
- The customer subsequently claimed for compensation from the company, explaining that she believed the problem she had experienced was caused by the company's failure to maintain the sewerage and/or the company's actions several days before the Property flooded, when she believed the company's engineers pushed her neighbour's blockage to the Property.
- The customer has not provided sufficient evidence in support of her claim.
- The company argues that it can only be liable to the customer if it has been negligent, but it has not been.

## 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.
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.

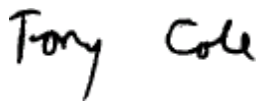
5. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence. To illustrate, if the argument was that the company was negligent in not inspecting its sewers more regularly, this raises regulatory considerations 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, particularly given the health concerns she highlights, 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 repeated flooding in the customer's neighbourhood, but the evidence shows the company responding quickly and appropriately when notified of flooding, and that when flooding has occurred it has been the result of third parties placing inappropriate material in the sewers, rather than negligence on the part of the company.
7. The customer has suggested that the company may have caused the flooding in the Property by moving a blockage from her neighbour's property to hers. However, no evidence has been produced in support of this conclusion. Ultimately, the customer has the burden of producing evidence in support of her claims, and a WATRS adjudicator cannot base a decision purely on speculation unsupported by any evidence.
8. While the flooding experienced by the customer will clearly have been distressing, and the customer has highlighted the significant impacts it had on her health and daily life, I must find that the available evidence is insufficient to support a conclusion either that the flooding at the Property resulted from negligence by the company, or that the company's response to the customer's report of flooding was negligent.
9. As a result, for the reasons explained at the beginning of this decision, the customer's claim cannot succeed.

### 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 18 April 2023 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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**Tony Cole** FCI Arb

**Adjudicator**