

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X398

Date of Final Decision: 20 March 2023

Party Details

Customer: XX

Company: XX

Complaint


The customer states the blockage in the sewer line caused an internal sewage flood at his business premises and as a result he had to permanently close his business. He says that he needs the company to provide a report to confirm that the source of the fat and oil causing the blockage was the upstairs' takeaway business. Its operatives confirmed during visits at the time that it would confirm this in a report, however, the company has since refused to do so. During the company's attendance, a gas monitor alarmed which he states posed a risk to his health and safety. The customer requests that the company confirm the source of the fat and oil found, in a written report and pay him compensation for the mental stress caused.

Response

The company states it cleared a blockage found in the sewer line in the vicinity of the customer's business premises. Whilst it found the cause of the blockage to be fat and oil, due to its obligations under the General Data Protection Regulations, it is unable to provide a written report to the customer advising of the source of this, as requested. The company says it has applied a credit of £100.00 for any miscommunication provided to the customer during a phone call at the time. It does not agree to pay any further compensation to the customer or provide the report requested. The company made no offer of settlement.

Findings

It is not in dispute that the blockage in the sewer line resulted in an internal sewage flood at the customer's premises and that this was caused by fat and oil having been illegally disposed of into the sewer. However, in accordance with its obligations under the General Data Protection Regulation, the company had a right to decline the customer's request for a written report confirming the source of the fat and oil causing the blockage as this involves third party information. I find that there was an instance of the company failing to provide its service to the standard to be reasonably expected whilst handling the issue in dispute. However, I am satisfied that the company has provided an apology



to the customer for this and applied a credit in recognition of the inconvenience caused.

Outcome

The company does not need to take any further action.

The customer has until 17 April 2023 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:


- During the summer of 2022, the drains were blocked at his business premises and he called a plumber who lifted the manholes and found cooking oil. The drainage company sucked the oil from the manhole and provided him with a drainage report that stated cooking oil was coming from the manhole above.
- In October 2022, the drainage was blocked again and the manhole was full of cooking oil. He called the company on 20 October 2022 and its operative attended and told him the fat and oil was coming from the upstairs' take away business and they raised a job to address this.
- The next day he called the company to request a report of the findings, however, the company said its operative should not have advised him it would provide this as it could not do so until it had completed its CCTV and investigation.
- Five of the company's operatives attended the next day and confirmed the fat and oil was coming from the upstairs' take away and that a report confirming this would be provided.
- Whilst the company was completing works, gas monitors went off and they had to evacuate. After airing the building out the operatives continued to work, flushing the oil downstream.
- When he called the company the next day he was told that it could only confirm that the cause was due to fat and oil in the sewer, but it could not share the source due to the General Data Protection Regulation (GDPR). Without this evidence he cannot take any action.
- During the same call the company said the gas monitors were faulty and this was the cause of the alarm.
- Financially, the customer states they he is unable to repair the damage caused and he had to permanently close his shop, the situation has "ruined his life".
- The customer requests that the company confirm the source of the fat in a written report and pay him compensation for the mental stress caused (unspecified amount).

The company's response is that:

- The customer contacted it on 20 October 2022 about a blockage at the property. It visited the property on the following day to investigate. It cleared the blockage on 28 October 2022 and cleansed the sewer line on 4 November 2022.
- During a visit on 26 October 2022, there was an incident where one of the alarms on its inspector's gas monitors went off. It investigated this incident and confirmed that this was due to a faulty filter. It confirms that the other monitor was working as designed and it was not triggered whilst on site.
- Whilst it recognises and apologises for the concerns this caused the customer, the alarms on the other gas monitor were working as they should. The company explains that even though the gas monitors are calibrated on a six-monthly basis in line with regulations, its teams do inspect the monitors daily.
- It recognises that whilst it was carrying out its investigations, the customer believed that it would provide a report to confirm the source of the blockage. The company states that due to GDPR, it is unable to provide this.
- It has reviewed its records and there is no evidence in the job notes to support his claim that operatives told him it would provide a report to confirm the source of the blockage. However, its notes from the call with the customer on 25 October 2022 indicate the customer requested a report to confirm the source of the blockage, to which it advised it would first need to complete its investigation. The company apologises that this led the customer to believe that he would receive the report requested and it has ensured that feedback has been provided to prevent any miscommunication in future.
- In recognition of the miscommunication and by way of an apology for this, it has arranged for a payment of £100.00 to be credited to the customer's account within the next 10 days.
- Whilst it understands this is not the outcome the customer was hoping for it is satisfied that the actions taken have been fair and reasonable.
- The company confirms that it has paid the customer £764.22 under its Guaranteed Standard of Service for the internal flooding.

Reply

- In his 24 February 2023 submission, the customer states he cannot understand why the company will not confirm the facts in writing. The company's drainage map shows there is only one business on the upstream of his line. This is preventing him from moving forward. He says this matter has "financially and mentally broken him".

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- The customer states that the gas monitor went off and it was not reported. The company then told him it was a faulty gas meter. The customer asserts that it was “not ok” to endanger his life in a confined space.
 - In his 9 March 2023 submission, the customer provided details and evidence in relation to recent drainage issues experienced in his area. He says if incidents like those with his Premises were taken more seriously by the company, wider problems with drainage may be avoided.
 - The customer says when the company recently came to another property where he is now working, it told him the nearby river was polluted due to a detached pipe caused from floods. It undertook a dye test to locate the issue. It did not undertake a dye test when investigating the issue at this Premises. The customer says that he feels he has been treated unfairly.

Comments on the Preliminary Decision

- The customer comments that his local counsellor heard the company’s contractor say where the source of the oil came from and he can provide evidence of this.
- He states that the company did not use a tanker or any suction vehicles, pushing jetting the oil downstream. The same thing happened in 2018.
- He states that the company did not use a dye test.

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?

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1. The customer is a business customer and the premises to which the complaint relates is known as **XX** (the Premises).
 2. It is not in dispute between the parties that the cause of the blockage identified by the company on the sewer line when it attended on 22 October 2022 following the customer's report, was fat and oil. I note that sewerage flooding entered the Premises and that as a result of this, the customer states that he had to permanently close his business.
 3. The customer's main claim concerns the company's refusal to provide him with a written report confirming the source of the fat and oil causing the blockage. The customer states during visits to clear the blockage that the company's operatives told him that the cause of the flood was due to the upstairs' take away business's disposal of oil and fat into the public sewer and that it would provide a written report confirming this.
 4. In its Response, the company explains that it is unable to provide the report requested by the customer as this relates to a third party and under the GDPR, it is unable to share any third party's details.
 5. I acknowledged that the situation the customer found themselves in as a result of the internal sewerage flooding is unfortunate. At this juncture, I remind the parties that Scheme Rules 3.4. and 3.4.1 state that WATRS may reject part or all of an application where it considers that a customer should be referred to a more appropriate forum for the resolution of the dispute. Therefore, any question as to whether the company has adhered to its obligations under the GDPR is outside of the scope of WATRS, as the Information Commissioner's Office considers disputes concerning the GDPR.
 6. However, I am able to consider if the company acted reasonably when responding to the customer's request for a written report advising of the source of the fat and oil causing the blockage. The company explained to the customer that as his request involved it sharing third parties' personal data, it was unable to provide the report requested. In this circumstances, I am satisfied that it was reasonable for the company to decline the customer's request to provide a report confirming the source of the fat and oil. I note that the company confirmed in its complaint response to CCW dated 13 January 2023, that it has written that to the trader in regards to food waste being illegally disposed of, which I find is reasonable. Therefore, I find that no failures in the service provided by the company have been established here.

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7. Regarding the customer's claim that various operatives told him whilst attending the property, that the blockage was caused by the upstairs' take away business and it would confirm this in a report, the company states it has reviewed the job notes from its visits and that there is no evidence to support the customer's claim. I find that the notes of the visit dated 27 October 2022 provided at Appendix 2, do not refer to the source of the fat and oil causing the blockage or indicate it agreed to provide a report to the customer confirming this. Therefore, in light of this evidence and in the absence of any alternative evidence demonstrating that operatives misled the customer in this regard, I find there is a lack of evidence to establish any failing by the company. I acknowledge the customer's Comments on the Preliminary Decision, however, after carefully considering these, I find that they do not affect my above findings.
 8. In its Response however, the company acknowledges that during a phone call with it on 25 October 2022, the customer requested that it provide a report confirming the source of the blockage and that it advised him it would need to first complete its investigations. The company says this may have led the customer to believe he would receive the report. The company in its Response, apologises for this and confirms that it has arranged for a credit of £100.00 to be applied to the customer's account in recognition of this. Having reviewed the notes of the call, I find they confirm the company did provide such advice the customer and, on balance, I accept this may have given the customer a false expectation that it would provide a written report. I find this demonstrates that the service provided by the company on this occasion did not reach the standard to be expected. However, I am satisfied that the company's offer to apply a £100.00 credit to the customer's account, is sufficient redress for any confusion caused by its advice provided to the customer on this occasion.
 9. I acknowledge that in his Reply, the customer has referred the company's drainage map and states this shows that the upstairs' take away is the only food business on the upstream of his sewer line. I remind the parties that in accordance with Scheme Rule 3.5, I am unable to consider or rule on complaints regarding third parties. As such, I am unable to comment on the customer's submissions in this regard.
 10. In his WATRS Application, the customer explains that the alarm on the gas monitor sounded whilst the company was carrying out work during the visit on 26 October 2022 and he is concerned about any risk posed to his health and safety. In its complaint response to the customer dated 16 November 2022, I can see that the company explained to the customer that its investigations found the alarm from one of the two gas monitors went off due to a faulty filter, which resulted in a premature alarm. I note that the company apologised for any

miscommunication which may have taken place during the visit as the team were not aware of the fault with the gas monitor. The company reiterated this position in its response to the customer's **XX** dated 18 November 2022, who had contacted the company on the customer's behalf. In its Response, the company has also provided further details regarding the regularity of checks carried out to the monitors.

11. Therefore, as the company has apologised to the customer and explained both the cause of the alarm sounding and the routine safety checks carried out to its equipment, on balance, I am satisfied it has acted reasonably by fully addressing the customer's concerns raised.

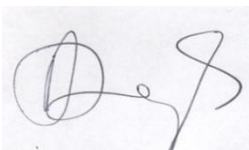
12. In summary, apart from one instance of the company's service provided not reaching the standard to be reasonably expected for which it has provided adequate redress, no further failures in the service provided by the company have been shown. Therefore, the company is not responsible to provide the customer with the report requested or pay any further compensation.

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 17 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.



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

Adjudicator