

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X419

Date of Final Decision: 21 March 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer says the company's sewer collapsed, flooding her garden. She claims compensation in the sum of £2959.23 to cover her insurance excess and the cost of rectifying her garden.

Response

It denies liability for the flooding. It repaired its sewer and cleaned the customer's garden in a timely manner. It also told the customer to make an insurance claim for any damage. It has offered a goodwill gesture of £100.00.

Findings

The evidence shows the company failed to provide its services to the standard to be reasonably expected, as it did not initially accept the damage was on its own asset.

Outcome

The company should pay the customer compensation in the sum of £100.00 for distress and inconvenience.

The customer must reply by 20 April 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- A drain collapsed causing sewage to flood her garden.
- She was impacted from 9 November 2022 until this was fixed on 20 December 2022, as any use of water in her property would cause another overflow of the sewage drain. She was also put to trouble arranging for the company to clear her garden.
- Although the company cleaned the garden, the artificial grass is permanently damaged and unusable. Decorative stones, sleepers and planters were also damaged. She has made an insurance claim but if paid this will include £350.00 excess and may result in increased premiums.
- The company has offered £100.00 as a goodwill gesture however she seeks compensation in excess of this.
- She claims compensation in the sum of £2959.23 to cover her insurance excess, skip hire and the cost of replacing grass, cobbles, sleepers, sand, wood and membrane.
- In comments on the company's response, the customer says she spent time trying to resolve the issue and the company's communications were poor. She has since received the outcome of her insurance claim. She has paid £350.00 excess and her premium has increased by £200.00. However, her insurers will not cover the cost of replacing planters.
- In comments on a preliminary decision the customer says:
 - The company would not have inspected and cleaned her garden but for her chasing this in person.
 - The drain was blocked while she awaited remedial work.
 - The grass may not have been damaged if the company had acted promptly and so she feels it should cover the cost of her insurance excess of £350.00.

The company's response is that:

- Upon the customer's first contact, it initially identified a failing on a private asset. However, on 14 November 2022 it identified a collapsed sewer.
- There is no absolute duty on a water undertaker to maintain sewer pipes and it cannot be held responsible for a sewer collapse.
- It carried out relieves of the system every three days to alleviate further issues until it could undertake a permanent repair. It completed the final repair on 15 December 2022.
- It carried out a clean-up of the customer's garden which included a basic external clean-up of the surrounding area including removal of three tanks of sewage. It completed the necessary remedial work in a reasonable timeframe.
- In accordance with **XX** policy, all damage must be reported to an individual's home insurance.
- It denies the claim.

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. Only in the event that I find a failing by the company can I consider a remedy for any disadvantage arising from that failing.
2. It is not in dispute that the company's sewer collapsed, causing sewage to flood the customer's garden.
3. There is nothing to suggest the company is at fault for the collapse.
4. The company accepts it did not act immediately following the customer's report of flooding as it was some days before it accepted the issue was with its own asset. This is evidence that it failed to provide its service to the standard to be reasonably expected.
5. On review of the correspondence exchanged between the parties, I am satisfied the customer's garden was flooded for two days before the company cleaned this. I consider this to be evidence that the company took action in a timely manner. As to the clean, while not to the level the customer expected, the company had no obligation to do more than this when it was not responsible for the flooding.
6. On review of the company's records, I consider the company was in regular contact with the customer. I appreciate the customer wanted frequent updates on the company's works to repair the sewer, however I am satisfied the company met the standard to be reasonably expected.
7. The company says it carried out relief efforts until the permanent repair. I consider it acted reasonably in doing so. Although the customer says she experienced flooding during this period, there is no evidence that she reported this to the company.
8. It is not in dispute that the company completed the permanent repair within two months. Bearing in mind it mitigated against further damage during this period, I do not consider this to be evidence that it failed to meet expected standards.
9. I have found one failing proven and therefore I will consider if a remedy is due.
10. The company did not accept responsibility for the flooded asset immediately, however this did not delay its clean-up of the customer's garden or cause her to suffer any further damage. It would however have caused her some distress and uncertainty. Additionally, the customer

reports spending time contacting other agencies to establish who had responsibility for the asset. Bearing these points in mind, I consider a Tier 1 payment under the WATRS compensation guide to be appropriate. I therefore direct the company to pay the customer compensation in the sum of £100.00 for distress and inconvenience.

11. I have considered the customer's comments on my preliminary decision however my findings remain the same. This is because I had already taken into account that the company did not accept responsibility or clean the customer's garden immediately. However, I nonetheless found it acted in a timely manner. As I found no undue delay by the company, I cannot hold it responsible for any damage arising due to it not cleaning the garden immediately. As explained at paragraph 1, I can only consider a remedy for a proven failing. Further, I was already aware the customer was inconvenienced while awaiting repair. However, as I did not find the company responsible for the sewer failing or delay in its repair, I could not consider a remedy for this either.

Outcome

The company should pay the customer compensation in the sum of £100.00 for distress and inconvenience.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 April 2023 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.
- 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.




J Mensa-Bonsu LLB (Hons) PgDL (BVC)
Adjudicator