

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X500

Date of Final Decision: 15 June 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer says that she experienced financial losses and substantial distress due to overflowing from the company's network.

#### Response

The company acknowledges that the customer experienced the overflowing she describes, but says that it was a result of exceptional weather conditions.

The company offered the customer a goodwill gesture of £1,600.00, but this was declined.

#### Findings

The law does not permit an award of the compensation that the customer requests.

#### Outcome

The company does not need to take any further action. However, this decision does not preclude the company voluntarily paying the customer the £1,600.00 goodwill gesture it has previously offered the customer, should it wish to do so.

The customer must reply by 13 July 2023 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X500

Date of Final Decision: 15 June 2023

## Case Outline

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

- The customer experienced drain and sewer overflows in recent periods of heavy rainfall.
- She experienced losses including damage to her car and lost chickens, and was not given assistance in clearing up the mess.
- All the outbuildings were covered in sewage and water, with everything in those buildings being lost. This took her a year to clean up, due to difficulties accessing the recycling centre.
- The company missed an appointment, and only paid compensation of £25.00.
- The company has denied responsibility, referring to exceptional weather.
- The company offered a goodwill gesture of £1,600.00, but this was declined.
- The company has taken remedial action, but did not do so competently.
- The customer emphasises that after the remedial work undertaken by the company, the problem did not repeat in times of similar rainfall.
- She has experienced substantial inconvenience and distress.
- The company refuses to take responsibility.
- The customer requests unspecified compensation.

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

- The customer experienced flooding on both 25 October 2021 and 31 October 2021.
- On both occasions, the flooding was caused by exceptional rainfall and by the neighbouring river breaking its banks.
- The sewerage network was working as designed, but was overwhelmed.
- The customer had also connected her surface water to the foul sewer, contributing to the problem.
- The company made numerous visits to the customer and took remedial actions agreed with the customer.
- Although the customer was not entitled to compensation, the company offered her a goodwill gesture of £1,600.00, but this was declined.
- The company acknowledges that there were some customer service failings.

- The flooding that affected the whole garden and outbuildings was caused by the river bursting its banks.
- The company believes it has provided its services to the customer to the standard to be reasonably expected by the average person.

### 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, I do not find that there is evidence that would justify a conclusion that the company acted negligently and that this resulted in the harm that the customer has identified. The customer has provided clear evidence of drains overflowing, but the company has satisfactorily established that this occurred during a period of unusually high rainfall. Absent direct evidence, which has not been provided, that the cause of the flooding experienced by the customer was not the unusual weather conditions referenced by the company, but negligence on the part of the company, the *Marcic* principle entails that a WATRS Adjudicator cannot award the customer the compensation that she claims, even though I accept that the customer has experienced the losses she describes.
7. The customer has also referenced the substantial time it took for all the cleaning up to be completed, and that the company did not assist. However, the customer has acknowledged that this delay resulted from a later discovery of damage to things stored in outbuildings, and the customer has not presented evidence that she requested assistance from the company in performing a cleanup, either at the time of the flooding or when the problems in the outbuilding were discovered, and the company unreasonably refused to assist.
8. Ultimately, I accept the customer's description of her experiences and of the losses that she incurred. I also do not question the substantial distress and inconvenience that she has

experienced. However, as explained above, in this context the law only allows an award of compensation if evidence has been provided that the company was negligent. As I have found that there is insufficient evidence to justify such a conclusion, I cannot award the customer the compensation she claims.


9. In her comments on the Preliminary Decision in this case, the customer has expressed her unhappiness with the complaint process through which she has gone, describing it as “long-winded” and producing a result that she believes is unjust. However, while I understand the customer’s frustration, a WATRS adjudicator is bound by the law, and where the law is clear, as it is in the present case, a decision can only be issued on the basis of that law. If the customer had produced new evidence alongside her comments on the Preliminary Decision that justified a finding that the company had been negligent, then this could have justified a revision to the decision, but no new evidence was provided.
10. For the reasons given above, the customer’s claim does not succeed. However, this decision does not preclude the company voluntarily paying the customer the £1,600.00 goodwill gesture it has previously offered the customer, should it wish to do so.

#### **Outcome**

The company does not need to take any further action. However, this decision does not preclude the company voluntarily paying the customer the £1,600.00 goodwill gesture it has previously offered the customer, should it wish to do so.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13 July 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.



Tony Cole

**Tony Cole FCI Arb**

**Adjudicator**