

Main issues

4. I consider that the main issues in this adjudication are:
 - a. Whether the company has failed to provide its services to the standard to be reasonably expected.
 - b. Whether the reasons given by the customer are sufficient to justify the remedies sought.

Background information

5. In order to succeed in a claim against the company the customer must prove 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 proved, the company will not be liable.
6. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

7. The customer submits that on 9 January 2015 at 6pm she noticed that the basement of her property was flooded with wastewater to waist height with all of her possessions floating therein. After frequent attempts and having had to call the Fire Brigade in the meanwhile, she eventually was able to get hold of the company on 11 January 2015. For the next 6/7 weeks the property was uninhabitable and remaining there would have exasperated her asthma as the customer submits that the stench was terrible as it rose through the floorboards. However she had to be there for at least 2 hours per day to facilitate the company's visits to pump out the sewage and then 3 days whilst it tested the PH levels and cleaning which caused significant inconvenience and deprived her of the opportunity to work (she is self-employed). A clean-up crew was sent on 11 February 2015 at very short notice and she had to cancel a job costing her £500.00. The company reassured her that her losses would be reimbursed. She lost goods in her basement to the value of £4836.00 that the company has verified were destroyed by the flood. The company's operatives told her she was not permitted to handle her own items due to the high levels of pollution and insisted on removing her items and promised her that losses for her goods would be compensated. The company has not kept to its word despite at least 20 hours of correspondence on her part to the company and CCWater. She would have kept her goods regardless of their state had she not been told she would be compensated. Many of the goods belonged to her deceased father and had great sentimental value. The customer asserts

that she had to remind the company of its statutory duty to pay her compensation and also the late penalty thereon. Reading the information supplied under her Subject Access Request, she saw examples of the company's attitude and callous approach to its customers. The company displays arrogance in its stated position that the onus is on the customer to have Home Contents insurance to cover damages resulting from flooding whether it is negligent or not. This is insulting. The customer claims compensation in the total sum of £9965.50.

8. The company asserts that unfortunately the customer flooded in January 2015. This was due to a partial collapse of the sewer underneath her property. Her basement was flooded and some of her belongings were damaged. Whilst it owns the sewer network that serves her property, it is not liable for the collapse or subsequent sewer flooding as they could not have been predicted, nor prevented. Therefore it cannot be held liable for any damage that occurred as a result of the flooding and it does not feel it appropriate to pay the customer the amount of compensation requested (£9965.50). The company contests the claim that the customer had to make frequent attempts before getting through to it to report the flooding as its call centres operate 24/7. The company denies it agreed to reimburse the customer her losses. It mitigated the flooding and damage as soon as it was contacted therefore it cannot be held liable, unless it is proven to have been negligent, which it is not. The customer never once mentioned any problems with asthma or her remaining at the property whilst it carried out investigations and repair work to the broken sewer in her home. It was extremely important for it to have access to her basement to prevent further flooding and damage and to remove any waste water. PH testing does not take 3 days therefore it denies the claim in this respect. When sewer flooding occurs it aims to clear the area within 48 hours of the flooding receding and it is disappointing to hear that the customer wanted more notice; most customers want this clean as soon as possible. The customer could have re-arranged the proposed date of the clean or asked her landlord or managing agent to grant access.
9. The company denies verifying the customer's goods at £4836.00, nor has the customer provided evidence of its verification. The company denies the claim that it insisted on taking away the customer's items. This is against its processes and ordinarily it would not remove anything from customers' homes in such a circumstance. It has spoken to the internal valet specialists (Clean Safe) who refute the customer's claim and state she specifically requested they take away the items damaged in the flood. This was done as a goodwill gesture for the customer. The company asserts that Clean Safe staff deny that it told the customer she would be reimbursed for any damaged items. The company disputes the list of items provided along with their value; the customer has not provided enough details to easily identify items and their costs, they appear inflated. Any household insurance usually covers the policy holder on a 'new for old' basis. The company asserts that even if it had liability, any compensation would be paid on the value of the goods at the time of the incident. In its letter to the customer dated 11 August 2015 it offered to pay the customer £163.80 for electricity costs she had incurred having

dehumidifiers in the basement (accepted by the customer) and £80.00 for the customer's time, emails and calls made in relation to this matter (declined by the customer). The company denies that the customer had to remind it of its statutory duty to pay her compensation.

10. The customer in the reply has reiterated the main points of the claim and provided additional evidence to support her claim for losses.

Adjudicator's findings and reasons

11. I find that:

- a. I remind the parties that in accordance with WATRS rules, I am unable to consider the new evidence provided by the customer in her reply.
- b. The claim concerns sewage flooding which occurred at the customer's (rented) property.
- c. The company admits that sewage flooding occurred in the basement of the customer's home due to a partial collapse of the sewer underneath the property. It took the company from 11 January 2015 to 24 February 2015 to repair and reinstate the sewers and complete the clean up, although it re-attended the property on 10 March 2015 to carry out a camera survey from the basement and downstream to its main sewer to ensure there were no further issues.
- d. The company confirms that due to the flooding, some of the customer's belongings were damaged. However it denies it is liable to pay the customer compensation for the loss of her belongings or for her time spent pursuing her claim for the same.
- e. The company accepts that it owns the sewer network that serves the customer's property however submits it is not liable unless the flood was caused by its negligence. In this case the collapse of the sewer under the customer's property could not have been predicted or prevented; therefore the company denies the claim. I consider that the issue of "negligence" is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle however I consider that I remain able to consider the dispute by considering whether or not the company failed to provide its services to the standard to be reasonably expected.
- f. The company has not provided any documentation or evidence detailing the reasons for the partial collapse of the sewer. I consider that a sewer collapse is not a routine occurrence and I would have expected the company to have determined the cause and

then explained why it was not responsible. It is not enough for it to simply deny liability. Therefore based on the evidence, I am satisfied that the partial collapse of the sewer in question is evidence of the company failing to provide its services to the standard to be reasonably expected.

- g. It is not disputed that the customer did not have household insurance. I acknowledge the company's submission that if the customer had had household insurance, she would have been able to claim for the damaged items. Whilst I acknowledge the company's submission that it should not be seen as a substitute for home insurance, in light of my above finding that the that the partial collapse of the sewer is evidence of the company failing to provide its services to the standard to be reasonably expected, I consider it fair and reasonable for the company to make a payment to the customer in recognition of her possessions damaged in the flood which I have considered below.
- h. The customer claims that she was unable to get through to the company when the property flooded on 9 January 2015, until 11 January 2015 to report the matter. The company asserts that its call centres operate 24 hours per day, 7 days per week. I accept that the company has a 24-hour emergency phone line and in the absence of more details from the customer, I consider it unlikely that the customer was unable to get through to the company for 2 days. Therefore I am not satisfied this is evidence of the company failing to provide its services to the standard to be reasonably expected.
- i. The customer asserts that the company's operatives told her she was not permitted to handle her own items due to the high levels of pollution and insisted on removing her items and promised her that losses for her goods would be compensated. The company denies the customer's claims and asserts it is against its process to remove items, and ordinarily it would not remove anything from a customer's home. The company has provided evidence from its internal valet specialists (██████) who carried out the work on behalf of the company which I find supports the company's position. As I consider that the evidence presented supports the company's position, I do not accept that the company insisted on taking away any damaged items from the customer's home, as claimed. However, as the customer has given a detailed and cogent account of the advice she was given, including the name of the representative who allegedly advised her that she would be compensated for any damaged goods, I accept that the customer was advised that she would be compensated for her damaged goods. In light of the company declining the customer's subsequent claim for compensation for her damaged goods, I find this is evidence of the company failing to provide its services to the standard to be reasonably expected.

- j. The customer claims she had to remind the company of its statutory duty to pay her compensation for the internal flooding and also the late penalty thereon. In light of the company's letter to the customer dated 7 July 2015 in which the company admits it failed to provide the Guaranteed Service Standard ('GSS') payment of £150.00 to the customer within 20 working days as required, however I have not been provided with any evidence that the customer had to point out its obligations in this respect as claimed. However as I note the payment was not made until 27 May 2015, I am satisfied that this is evidence of the company failing to provide its services to the standard to be reasonably expected. However I note that the company has paid the customer an additional £20.00 GSS penalty payment in respect of the delay.
- k. The customer has requested the amount of £4836.00 in compensation for losses due to damage to her possessions caused by the flood. The company suggests that where there is no obvious sign of damage to any item in the photograph provided, it should not be liable. In light of the severity of the flooding I accept that items from the room would have become contaminated by the flooding. Therefore I accept that all items claimed for were damaged in the flood, save for the following items which I have found there to be either a lack of detail or photographic evidence provided to support the claim:
- o 1 chin-up bar, 1 Breville kettle, 1 pair of Hunter wellingtons and a coffee table.
- l. In relation to the remainder of the items, I note that the company refutes the values provided by the customer in her breakdown. However I accept the company's submission that any compensation should be paid on the value of the goods at the time of the incident rather than the cost of replacing damaged items as new as it is unfair for the customer to be placed in a better position than she would have been by virtue of the flooding. The customer has not provided any evidence, such as receipts, to support the amounts claimed and I find that the individual amounts proposed by the company for certain items are supported by evidence. Therefore I accept the alternative amounts proposed by the company in these instances; however, I have reduced them by 50% to take into account the likely deterioration and the age of the items. I have applied the above when considering the below claims:
- o For items which the company has provided an (alternative) amount - 1 yoga mat, 2 rucksacks, 1 Breville smoothie maker, 1 supermarket shopping trolley grab bag, 2 fan heaters, 1 bread maker, 1 pair of Adidas trainers, 1 laptop case, 2 espresso cups, 1 microwave, 4 storage boxes and storage bags, I award the customer 50% of the amounts given by the company, totaling £205.84.
 - o For items where the company has agreed with the customer's figures or where the company has quoted a second hand price - Apple MacBook Pro, iPhone 4S, chain saw/garden hedge trimmer and a wooded slated chair, I have

awarded the full amount quoted by the company. For these items the company shall pay the customer a total amount of £340.00.

- For items where the company has not given an alternative amount - 3 Samsonite suitcases, 1 christmas tree, 3 Nokia phones and a charger, 1 DVD player, 2 cushions and a wooden shelf, I assess the total amount due to the customer to be £332.50. This is based on an approximate 50% reduction to the amounts quoted by the customer.
- For the following items, as I have not been provided with any evidence of the cost by either party but I accept from the evidence that these items were damaged, I have awarded nominal amounts totalling £450.00: 1 suitcase full of clothes and books, DVDs and a pair of Jimmy Choos (£100.00), 1 “expensive” coat (£50.00), 1 bag full of shoes and clothes (£100.00), 2 drills and tool boxes (£50.00), 2 boxes full of books (£50.00) and 1 box of 40 DVDs (£100.00).
- Total amount for damaged goods: £1328.34

m. The customer in her application has also requested an amount of £5129.50 in compensation broken down as below:

- £20.00 for 2 Standard Access Reports DPA 1998 – as I accept this is an incidental cost in accordance with WATRS Rule 7.2, I find that the company shall reimburse this amount to the customer.
- £15.00 for 1 affidavit evidence - in accordance with WATRS Rule 7.2, this cost is non-recoverable.
- £795.50 for her time spent at the company’s service (at the least 2 hours per day for 28 days 11.1.15 to 11.2.15 (56 hours) plus 3 whole days (30 hours) at £9.25 per hour - the company is not liable to pay the customer an hourly amount for any time she spent at the property to facilitate works, however I will take into account that such inconvenience was caused to the customer by the flooding when considering compensation for stress and inconvenience below.
- £500.00 for loss of earnings on 11 February 2015 due to the company’s short notice of its attendance - I accept from the evidence that the customer had a job booked for this day which she did not attend in order to allow the company access to the property. I consider it was reasonably foreseeable for the company to think the customer would incur a loss of earnings due to her having to be present to allow it access to carry out works. However the company is not liable to pay the customer the amount claimed in full as the customer is under an obligation to mitigate any loss incurred. As there is no evidence that she tried to re-arrange the company’s visit or arranged for someone else to attend, the company is liable to pay compensation to the customer in the amount of £100.00 only.

- £168.00 for 7 hours spent on the telephone at £0.90 per minute - the customer has not provided evidence of her costs incurred however as I accept that she did incur costs calling the company, I will take this into account when considering compensation for stress and inconvenience below.
 - £360.00 for 20 hours at £18.00 per hour (litigate in person rate) – the company is not liable to pay the customer an hourly amount for any time she has spent preparing her claim, however I will take into account that inconvenience was caused to the customer by her having to pursue her dispute to WATRS for redress when considering compensation for stress and inconvenience below.
 - £6.00 for post sundries - the customer has not provided evidence of her costs incurred however as I accept she did incur postage costs whilst corresponding with the company, I will take this into account when considering compensation for stress and inconvenience below.
 - £3265.00 for distress, inconvenience, disappointment and wellbeing by the company refusing to return her father's belongings - I am not satisfied that the full amount has been substantiated due to not all claims having been proven and due to the amount being disproportionate to the company's errors. However, as I accept that the company ought to have reasonably known that the customer had sentimental items in the home, I accept the customer's assertion that the loss of damaged items which had belonged to her late father caused upset. In light of this, the serious nature of the flooding which in view of the evidence I accept caused the customer discomfort and worsened her asthma and made the property uninhabitable, the length of time it took the company to resolve the issue and complete the clear up (approximately 6 weeks), and the stress and inconvenience caused to the customer, I find that the company shall pay her an additional compensation sum of £1000.00. I am satisfied that this amount, together with the GSS payment already made (£150.00) and £183.00 already paid for customer's electricity costs incurred for having dehumidifiers in the basement, is a fair amount for the stress and inconvenience caused and is proportionate to the extent of the company's mistakes.
- n. The customer requests an apology from the company. Whilst I accept that the company has already apologised to the customer for the flood occurring, in light of the company's proven failures I find it should provide an additional written apology to the customer for the delay in paying her a GSS payment and for declining to make any payment in respect of items damaged in the flood.

- o. The customer requests the company to provide a goodwill cancellation of her ongoing water bills. This remedy has not been substantiated and I consider it is not justified to direct this.
- p. The customer has requested for the restitution of her belongings. This request has already been dealt with above therefore I make no further direction.

Conclusion

- 12. My conclusions on the main issues are that:
 - a. There is evidence that the company has failed to provide its services to the standard to be reasonably expected.
 - b. The reasons given by the customer are sufficient to justify her claim in part.
- 13. Therefore, the claim succeeds in part and I direct that the company pay the customer £2448.34 and provide a written apology (please refer to paragraph 11 n).



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