

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1135

Date of Decision: 02 January 2019

Complaint

The customer's property was flooded by a sewer for the fourth time on 31 May 2018, causing damage to furniture and property. The customer has no insurance for this. She therefore requests compensation from the company for the damage caused.

Defence

The company was made aware of sewer flooding in 1997 and the customer's property was added to its flooding register. It was not made aware of flooding events in 2001 and 2007. The customer reported sewer flooding to it on 1 June 2018. Investigations found no issues with the company's sewer. It will not be liable to compensate the customer unless it has been negligent, which the company denies it has been.

Findings

The company had not been advised of flooding events in 2001 and 2007 and was therefore not made aware that the customer's property was at a continued risk of flooding, rather than the first flood being a one-off. Investigations showed no issues with the sewers. As the company had not been made aware of the later floods, it could not take steps to mitigate the flood risk to the customer's property. There was no indication of any negligence on the part of the company. The company had paid the customer the appropriate Guaranteed Standards Scheme payment for the flooding. The company could not be held liable to the customer unless it had been negligent and the evidence showed no indication of this.

Outcome

The company does not need to take any further action.

The customer must reply by 30 January 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

company denies any negligence in this case. The customer has advised that she was flooded in 1997, 2001, 2007 and 2018. The incident in 1997 was caused by heavy rainfall and the customer's property was added to the company's flooding register at this time. This enables the company to identify properties that are flooded repeatedly. The incidents in 2001 and 2007 are not recorded on the flooding register and there are no reports on the company's system for the 2007 incident. The company's records do not go back as far as 2001. Had the company been aware that further flooding had occurred, it is likely that some form of mitigation would have been installed to protect the customer's property. The company is unable to compensate the customer for any items damaged by the flooding and the customer would have to refer the matter to her insurers. The company is aware that the customer does not have insurance cover, however the company is unable to assist with this.

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. The customer's property was flooded internally by the company's sewer on 31 May 2018. This caused significant damage to the customer's furniture and other items.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

2. The customer states that her property has been flooded by the company's sewer on a total of four occasions. The first occasion in 1997 was reported to the company and the company placed the customer on its flooding register.
3. The next two flooding occasions were in 2001 and 2007. In the customer's comments, she confirms that "the reason why STW so called have not got it recorded for 201, 207,[sic] was because I never put in for a claim on all the 3 times I was flooded with sewage water as I had home insurance". I am satisfied from this that the customer contacted her home insurance directly, but did not make the company aware that her property had been flooded again.
4. I note that, as a result of the repeated flooding, the customer's insurer cancelled her home insurance, classing her property as a liability. Whilst I accept and acknowledge that this will have been upsetting for the customer, and that it means she is unable to make any insurance claim in respect of the most recent sewer flooding, my decision must be made in accordance with the relevant laws governing the sewers and flooding events. I am not able to direct the company to make any goodwill gesture, or otherwise provide assistance above and beyond what would reasonably be expected of a water and sewerage undertaker.
5. I am mindful that the company was made aware only of the flooding event in 1997 and the flooding event on 31 May 2018. As it had no knowledge of the events in 2001 and 2007, the company was not alerted to there being a continued problem at the customer's property. There was therefore no reason for the customer's property therefore to be flagged as an ongoing risk requiring steps to mitigate the risk of flooding.
6. Where internal sewer flooding occurs, the company will make a Guaranteed Standards Scheme payment to the affected customer equal to the annual sewerage charge, or £150.00 if the annual charge is less than this. I note that the company provided the customer with a credit of £166.95 to the customer, being equal to 100% of the customer's annual sewerage charges. I therefore find that the company has properly made payment to the customer in line with the Guaranteed Standards Scheme.
7. In respect of any further liability for the sewerage flooding, the company will only be liable to a customer for the damage caused where it can be shown that the company was negligent in some way.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

8. I am mindful that, as above, the company was not made aware of the two flooding incidents in 2001 and 2007. It was therefore not in a position to identify that the customer's property was at risk and that the flooding incident in 1997 was not merely a one-off.
9. I am further mindful that the cause of the flooding in this case was heavy rainfall, combined with a blocked road gully. The company's investigations found no issues with the sewers themselves, such as a collapse or other issue that would require repair.
10. There is therefore no evidence to indicate that the company could have avoided the 31 May 2018 flooding incident from taking place, or that its actions or inactions in respect of its sewers caused or exacerbated the incident. Accordingly, there is nothing to suggest that the company has been in any way negligent. The company was not made aware of two flooding incidents and was therefore not able to prioritise the customer's property for mitigation steps. There has therefore been no negligence on the part of the company in relation to it not having taken any mitigation steps prior to the 31 May 2018 incident as it was not made aware that this may be required.
11. In view of the above, I find that the company has acted, at all times, in the manner expected of a reasonable water and sewerage undertaker. It promptly provided the customer with the relevant payment under the Guaranteed Standards Scheme, and took action to investigate the cause of the flood, determine if there were any issues with the sewers, and to work with other bodies, such as the Environment Agency, to try to ensure that the customer's property is not subject to further flooding. In view of this, I am satisfied that there has been no negligence by the company, and accordingly that there is no legal liability on the company for the damage caused by the sewer flood. Whilst I acknowledge how disappointing this decision will be for the customer, I am only able to direct the company to make payments where it is liable to the customer. For the reasons given above, as there is no indication of any negligence on the part of the company, it cannot be held liable for the damage caused by the flooding.

Outcome

The company does not need to take any further action.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 30 January 2019 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 handwritten signature in black ink, appearing to be 'Alison Dablin', with a long horizontal stroke extending to the right.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.