

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1336

Date of Decision: 15 April 2019

Complaint

The customer states that his property experienced flooding due to problems with two of the company's manholes. He claims compensation of £108.32 for a reinforced hose, integrated pump and hose clips; £135.00 for a skip hire with parking permit; £24.00 for pea gravel; £300.00 for loss of income as he had to install the pump himself; and £2,500.00 for inconvenience.

Defence

The company acknowledges that there was a delay in its initial response, but denies liability for the amounts claimed by the customer.

The customer has already been paid £500.00, consisting of a £78.36 guaranteed standards payment and a goodwill payment of £421.64.

Findings

The sewage overflow at the customer's property did not result from negligent or wrongful acts of the company. The company initially failed to provide its services to the customer to the standard to be reasonably expected by the average person, but has already paid the customer sufficient compensation for this failure.

Outcome

The company does not need to take any further action.

The customer must reply by 16 May 2019 to accept or reject this decision.

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Date of Decision: 15 April 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- A neighbour had problems with two of the company's manholes.
- This resulted in the customer's property being flooded.
- He had to purchase and install a water pump in order to deal with the flooding.
- It was never clear when the company would attend to deal with the ongoing flooding, as it depended on the weather. This ruined plans to go out, including over Christmas when relatives were visiting.
- The company has consistently understated the amount of flooding the customer experienced.
- Power tools were damaged as the flooding also entered a store room adjoining the house.
- The foundations of the house are now very damp, and unless a door is left open a smell of damp penetrates the house.
- He has already received a payment of £500.00 from the company.
- He claims compensation of £108.32 for a reinforced hose, integrated pump and hose clips; £135.00 for a skip hire with parking permit; £24.00 for pea gravel; £300.00 for loss of income as he had to install the pump himself; and £2,500.00 for inconvenience (in addition to the £500.00 already paid).

The company's response is that:

- The customer's neighbour contacted the company on 24 November 2018 to report a drain blockage.

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- The company attended on 25 November 2018 and found a fat blockage and cleared a sewage escape.
- The company was also notified at this time that water had entered the customer's cellar.
- This information was not conveyed internally within the company.
- The customer contacted the company about the water in his property on 27 November 2018, and the company visited the property on 1 December 2018.
- On 3 December 2018, the company found that a manhole chamber had collapsed.
- On 4 December 2018, the company pumped out the customer's cellar.
- On 5 December 2018, the manhole cover was replaced.
- Further investigations were then undertaken, including dye testing to determine if water from the sewer was entering the customer's property.
- By 14 December 2018, the company determined that the matter had been resolved, although the company subsequently agreed to continue pumping the customer's property until the end of February 2019 to limit the impact of rainfall until dry weather arrived.
- Testing on 24 December 2018 confirmed that sewage was no longer entering the customer's property.
- Initially the company's visits were pre-booked with the customer. However, as the company agreed to pump the customer's cellar, this meant that subsequent visits were determined by the weather and so could not be pre-booked.
- The company believes that only a minimal amount of water was present in the customer's property.
- The customer first mentioned damaged power tools on 11 February 2019. However, the company is willing to consider contributing to the customer's excess from a claim on his house insurance.
- The customer has not mentioned odour and ongoing damp prior to his WATRS application. However, the company is willing to contribute to the cost of a domestic dehumidifier.
- The customer has already been paid £500.00, consisting of a £78.36 guaranteed standards payment and a goodwill payment of £421.64 in recognition of the distress and inconvenience experienced by the customer and his family and to contribute towards the cost of the pump.
- The customer's partner accepted this payment as full and final settlement of the claim, although she also stated that they planned to take the matter further.
- The company believes that with the actions it has taken and the payment it has already made, it has provided its services to the customer to the standard to be reasonably expected by the average person.

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The customer's comments on the company's response are that:

- The company has not acknowledged a test from mid-December that showed ongoing presence of sewage in his basement.
- There was more water in his basement than claimed by the company.
- The £500.00 payment was accepted so that a pump could be installed, not as a full and final settlement of the claim.

The company's comments on the customer's comments are that:

- There is no record of the additional test referenced by the customer, and the team sent on the date in question would not have carried the equipment necessary to do the test.
- The customer's wife did mention an intention to escalate the claim, but nonetheless accepted the payment as full and final settlement of the claim.

The customer's comments on the company's comments are that:

- He reiterates the correctness of his previous points.

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.

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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 company argues that the customer has already accepted a payment of £500.00 constituting a full and final settlement of his claims against the company. However, the company also acknowledges that at the time this payment was accepted, the customer and his wife were clear that they nonetheless intended to continue to pursue their claim against the company.
2. The consequence of this is that no matter what language may have been used to describe the payment, the company cannot have understood that the customer was indeed agreeing to forego any further claims against the company in exchange for the payment.
3. As a result, the customer's acceptance of the £500.00 payment does not preclude the customer from bringing his current claim.
4. The customer has detailed his family's experiences and I accept that his description of the distress they have experienced is genuine and accurate. If the company were a fully private actor, this might result in an award of compensation such as is being claimed.
5. However, in Marcic v Thames Water plc [2003] UKHL 66, the House of Lords held clearly 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.
6. 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."
7. The consequence of the House of Lords' ruling in Marcic v Thames Water plc is that the company can only be required to pay the requested compensation if it has acted negligently or

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otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company's operation of its business does not entitle the customer to compensation.

8. I find, however, that there is no evidence on the basis of which I could conclude that the original flooding occurred because of negligence on the part of the company. In addition, since the flooding, with one exception, the company has responded quickly and thoroughly to the customer's difficulties and has been supportive in its willingness to assist the customer in finding solutions.
9. However, the company was initially notified of the flooding of the customer's cellar on 25 November 2018, but this information was not communicated internally. Then, despite a further call on 27 November 2018 from the customer himself, the company still did not inspect the customer's cellar until 1 December 2018, and did not begin to pump the cellar until 4 December 2018. While I find that the company provided its services to the customer appropriately from this point onwards, I find that this initial delay constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.
10. Nonetheless, both parties acknowledge that in addition to the £78.36 guaranteed standards payment, the company has already made a payment to the customer of £421.64 in recognition of the distress and inconvenience experienced by the customer and his family and to contribute towards the cost of the pump the customer installed. I find that this payment meets or exceeds fair and appropriate compensation for the delay in the company's initial response.
11. Consequently, the customer's claim of £2,500.00 for inconvenience does not succeed.
12. The customer also claims a total of £567.32 for expenses incurred installing a pump in his property.
13. However, as I have stated above, there is no evidence on the basis of which I can find that the flooding experienced by the customer occurred due to negligence or wrongdoing on the part of the company. As a result, while the expenses incurred by the customer are unquestionably reasonable for the work undertaken, even if it is correct that the pump was required due to ongoing consequences of the overflowing of the company's sewer, nonetheless under the rule in Marcic v Thames Water plc, the company is not liable to compensation the customer for this expense.

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14. Consequently, this element of the customer's claim does not succeed.

15. For the reasons given above, while I fully acknowledge the substantial distress the customer and his family clearly experienced, the law limits the customer's right to compensation to a level equal to or less than the payment already made by the company, and no additional award of compensation may be made.

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 16 May 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.



Tony Cole, FCI Arb

Adjudicator

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