

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0777

Date of Decision: 25 September 2018

Complaint

The customer submits that his business property suffered sewerage flooding on 4 occasions in 2016. The customer is dissatisfied with the way the floods were addressed at the time, the outcome of his complaint raised about the same and the amount of compensation paid. The customer requests that the company pay him £2500.00 in compensation for the damage caused, the costs of cleaning and time spent on the issues.

Defence

The company submits that the dispute concerns sewerage floods and as the issues all relate to operational matters, responsibility falls to the wholesaler, including for repairs and compensation for damage. It admits there were some delays in responding to complaint correspondence on its part, however, it has already paid the customer compensation in acknowledgement of these delays. The company did not make any settlement offer.

Findings

As the customer's retailer, the company is not responsible for sewerage floods, repairs or for any damage caused to the customer's business premises as a result of the floods as such matters are operational, responsibility for which, falls to the wholesaler, RST Water (RST). However, the company is responsible for handling customer service for sewerage services and as it delayed in replying to complaint correspondence received from CCW and did not always provide adequate support to the customer when handling his complaint, this constitutes evidence of it failing to provide its services to the standard to be reasonable expected. Accordingly, I find it shall pay the customer a further amount of £50.00 on this basis.

Outcome

The company is required to pay the customer £50.00 in compensation and to follow up on the issue of RST ' offer of £1000.00 in compensation and reimbursement of the cost of dehumidifiers (in its remit as the customer's retailer), if sought.

The customer must reply by 23 October 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 25 September 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- His dispute concerns 4 sewerage floodings (from the toilets in the basement) at his business premises (Green Restaurant) at [] ('the business property') experienced in 2016.
- The company (Wave) and RST were tardy when investigating the reason for the flooding and effecting repairs. He believes the further incidents could have been prevented if the company and RST had acted sooner and with more urgency.
- He remains unhappy with the outcome of his complaint and disputes the reasoning given by RST for the floods. He purchased dehumidifiers, as these were not provided by RST despite its offer to provide these.
- He is dissatisfied with the level of customer service he has received at the time of the sewer flood incidents and since as there have been delays in resolving the issues.
- The customer is unhappy with the amount of compensation awarded and with the additional amount offered (£1,000.00). He requests the sum of £2500.00 in compensation for damaged fixtures: (walls, restaurant table laundry/table clothes); staff shoes and trousers x 5; cleaning equipment and; time spent cleaning up the mess on each occasion, plus for the ongoing dampness and smells the floodings have caused which are still being managed by disinfectant.

The company's response is that:

- As of 1 April 2017 (when the market opened), it became the customer's retailer and it is known as [], (formerly []). It is responsible for billing, arranging meter reads and

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handling customer service for water and sewerage. It is also responsible for responding to the WATRS referral received.

- The wholesaler, RST , is responsible for handling anything operational, including flooding incidents (and repairs). The complaint relates to 4 sewerage floods at the customer's restaurant experienced in 2016, therefore it cannot accept any responsibility for the floods or for any of the operational delays the customer has experienced since.
- When the complaint was raised in February 2017, it was going through the shadow market opening for non-household customers in England and Wales, which occurred on 1st April 2017. Prior to this the customer was not its customer. As the customer's new retailer, the responsibility fell to it to ensure that his complaint was managed and dealt with according to the market codes.
- It received communication from the customer on 2 February 2017 advising that he was waiting for Guaranteed Standard Scheme (GSS) amounts RST had agreed to pay following the sewerage floods experienced.
- It contacted RST regarding the outstanding payments and the full outstanding GSS amount for £1,257.48 was added on 14 March 2017. However, as it was unable to make contact with the customer to obtain his bank details in order to proceed with the transfer of funds into his bank account, the amount was not paid out to the customer until 3 April 2017, after these details were obtained with the help of CCW.
- Once the outstanding money owed to the customer was paid out, everything beyond this point was purely operational.
- On 19 May 2017, it received a Stage 2 referral from CCW advising the customer was unhappy with the way his complaint had been handled. It responded on 2 June 2018 advising it was unable to answer the Stage 1 Referral as it is still awaiting on RST to establish answers to the original referral and RST advised the delay was because it was waiting history notes from Cambridge Water (his water supplier).
- It replied to CCW on 13 June 2018 advising it was still chasing RST for answers and as this was not an acceptable level of service, it applied two payments of £50.00 due to failing to meet the standard, including the time taken for it to credit the compensation into the customer's account (3rd April 2017).
- It issued a formal response to CCW on 29 June 2017 following its receipt of answers from RST . It also provided £40.00 in goodwill payments.
- It received further correspondence from CCW on 20 July 2017 asking for: a response to prior requests for a timeline and a further explanation and; a further goodwill gesture due to the

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length of the delays. In its response to CCW of 14 August 2017, it advised that RST would like to send out a Senior Representative to meet the customer and to discuss review the case properly.

- On 2 October 2017, RST met with the customer however whilst it was made aware of the visit, as everything outstanding was operational, RST was responsible in regards to any agreed outcomes of the meeting.
- On 7 December 2017, it received an email from CCW (also to RST) highlighting 5 points that needed attention including a request for a full breakdown of payments and GSS paid to date. It responded on 18 December 2017 and RST responded separately on 28 December 2017. On 20 April 2018, CCW advised it that the complaints procedure had been exhausted and the customer wishes to approach WATRS. On 21 August 2018, it received the customer's WATRS referral.
- Therefore, the company acknowledges that there were delays on its part in responding to both the customer and CCW and for this it apologises. However, this was partly due to delays by RST in responding to the (operational) issues raised, something it had no control over. It also transpired that [] Water held all of the relevant information in its capacity of the customer's water supplier.
- It believes that it is not liable to pay the customer any further GSS or compensation, as everything outstanding is operational and should be dealt with via RST's loss adjusters, Gallagher Bassett.

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?

3. The dispute relates to: sewer floods at the customer's business premises in 2016; the outcome of his complaint raised regarding the sewer floods and; the amount of redress received in relation to the above.
4. At this juncture, I remind that parties that the company is the retailer and that RST is the wholesaler for the region in which the business property is located (and it supplies sewerage services to the customer). I note this division occurred as a result of government changes which opened up the water market which came into effect on 1 April 2017. I find that the company and RST are therefore two distinct and separate entities. Further, a WATRS application can only be brought against one party. As the customer is a 'non-household' customer, his case has been defended by the company; the retailer and therefore for the purposes of this decision, my remit is to determine the issues between the customer and the company. I am unable to consider any claims or complaints in relation to RST or other third parties.
5. Having reviewed the case papers, it is clear that the dispute stems from 4 sewerage escapes which occurred at the customer's business premises in June, September and November (x 2) in 2016. I find that, as this aspect of the complaint concerns an operational issue, responsibility for investigating and addressing the leaks as well as deciding the GSS payments due to the customer, would fall to RST. Therefore, I cannot consider either these issues, the reasons for the floodings or the customer's submission that RST should have acted sooner with more urgency, as such fall outside of the scope of this adjudication. However, the company is responsible for handling customer service for sewerage matters, which I consider includes complaints. As such I am able to consider the dispute from the perspective of whether the company, in its role as the customer's retailer, provided its customer services to the standard to be reasonably expected when dealing with the customer's complaint about the same.

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6. I am mindful however that the sewerage floods occurred in 2016 which is prior to date the company became the customer's retailer (1 April 2017) therefore I am limited to only being able to consider the service provided by the company from this date onwards. However, I note from the timeline supplied by the company that it took on the customer's case on 2 February 2017, whilst in a transitory stage (with RST) prior to the market opening up on 1 April 2017. As such this adjudication will consider the service provided by the company since this date in relation to the disputed matters.

7. The customer is dissatisfied with the level of service received, the outcome of his complaint and the amount of redress he has been awarded. At the time the customer's complaint was referred to the company (2 February 2017), it was thought that he had only received one GSS payment of £419.16 in relation to the floods and whilst three further payments totalling £1257.48 had been agreed by RST, these had not been paid. The company submits therefore that as the customer's retailer, it became its responsibility to ensure the customer received the GSS payments he was entitled to for all four instances of internal flooding. I find that on 14 March 2017, RST had paid the outstanding GSS amounts to the company for it transfer to the customer. The company then paid this amount to the customer on 3 April 2017. The company has since explained that the initial delay (of 6 weeks) was because it had taken this long to come to an agreement with RST about how it would go about claiming the funds back from RST in the wake of the new arrangements as there was no agreed process in place, at the time. The company also explained that the further delay in transferring the money to the customer once it had the funds, was because it did not have the customer's bank details. In light of the evidence, I accept the company made numerous attempts to contact the customer from 13 March 2017, without success until shortly before it transferred the funds to him on 3 April 2017, therefore I do not consider the company was to blame for this particular delay. However, whilst I accept its above explanation that arrangements between it and RST in relation to customer payments was not yet in place, this does not excuse the resulting delay caused to the customer and I am satisfied this further delay caused to the customer, is evidence of it failing to provide its services to a reasonable expected standard.

8. However, I can see that following complaints received from CCW on behalf of the customer, the company paid the customer GSS compensation of £100.00 on 13 June 2017 for service failures on its part, including time taken for it to credit the compensation to the customer's

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account. I am satisfied that this amount is reasonable for the delays encountered by the customer in receiving GSS payments due to him (from that date the company took on his complaint until when they were paid to him on 3 April 2017).

9. I acknowledge that the company paid the customer a further sum of £40.00 on 29 June 2017 which it states was a goodwill gesture for its late responses to CCW. Having reviewed the evidence, it is clear that there were several delays by the company in responding to the complaint raised by CCW; the company failed to provide a response (although it acknowledged receipt of the correspondence received) to either the CCW Stage 1 Referral (sent to the company on 27 March 2017) or the CCW Stage 2 Referral (sent on 19 May 2017) within the 10 working day GSS timeframe or without being chased for it by the customer/CCW. These are further instances of service failures by the company, however, I am satisfied that the amount already paid of £40.00, is reasonable in the circumstances. I am also satisfied that in its response to the Stage 2 Referral dated 29 June 2017, the company explained the delays by RST in rectifying the sewerage problem and in providing GSS payments. It also explained that the delay in answering his complaint was due to RST waiting for the customer's notes from [] Water (in their possession because they are the customer's water supplier). The company also provided an apology (also on behalf of RST and included details of RST ' loss adjusters Gallagher Bassett in relation to the customer's request for further compensation.

10. However, I can see that the company received further communication from CCW on 18 July 2017 on behalf of the customer advising he was not happy with its response as no timeline had been provided and due to the issues encountered, he was dissatisfied with the compensation of £140.00. Having reviewed this evidence, it is clear that the company delayed again in providing a response to the issues raised in the further CCW correspondence. However, in its response dated 14 August 2017 it advised that RST would like to send out one of its Senior Representatives to meet with the customer at the property to discuss the issues raised. I can see this meeting went ahead on 2 October 2017 between the customer and RST and whilst I accept it was not necessary for the company to attend as it concerned operational issues (and because CCW attended to support the customer), it is evident that during this meeting RST offered the customer further compensation of £1000.00 in resolution of the issues. It had also come to light around this time that RST had not paid (or credited) the customer the first GSS payment of £419.16 which it had previously

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claimed had been paid. According to RST ' e-mail to CCW of 26 October 2017, this amount was then paid to the customer on 26 October 2017. As it is clear that the company would not have known about RST 's error (which occurred in 2016), I do not consider this issue shows any service failing on the part of the company.

11. It is clear that RST sent the customer correspondence (via CCW) on 17 October 2017 following on from the meeting advising of its findings in relation to the cause of the floodings. I can see that the company was copied into correspondence exchanged between RST and the customer during this timeframe, however as I accept that the issues concerned operational matters and CCW was also providing support the customer in relation to his complaint at the time, I do not consider the company's lack of involvement at this stage constitutes any service failing. However, I can see that CCW then sent further correspondence to the both the company and RST on 7 December 2017 outlining 5 areas that the customer had asked to be addressed, including the question of further compensation. The company responded to CCW on 18 December 2017 but its response only confirmed the payments it had made and did not consider the further points raised. However, I can see that on 28 December 2017, RST issued a response that addressed the other points. This included giving a breakdown of payments made to the customer and an audit trail. It also agreed to provide dehumidifiers and confirmed that it was unwilling to increase its offer £1000.00, as sought by the customer. I acknowledge that there was further correspondence between RST and CCW in early January 2018 whereby RST provided clarification on the amounts paid. However, it appears that the next communication received by the company from CCW, was to advise that the customer intended to approach WATRS. Whilst the company took no action in relation to the customer's complaint after its response provided of 18 December 2017, I cannot see any contact from the customer or CCW following on from this or RST ' response advising that the customer was unhappy with its response. However, I consider it would have been clear to the company that due to the customer not accepting RST ' offer of £1000.00 in compensation, none would have been paid to him. Therefore, in this circumstance, I would have expected the company to have followed up on this matter and the offer of providing dehumidifiers and enquired with the customer as to whether it could progress this matter any further for him. As such I find that its failure to take any action in this regard constitutes a further service failure by the company.

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12. Therefore, it is clear that there were gaps in the level support provided to the customer by the company surrounding his complaint, therefore I cannot accept the company's submission that it did all it could to support the customer. Whilst the company has already paid £140.00 in recognition of the admitted service failings up to 29 June 2017, in light of my above findings, I am satisfied that there were further instances of the company failing to provide its services to the standard that can be reasonable expected between this date and when the customer applied to WATRS.

13. The customer requests £2500.00 in compensation, however it is clear from the breakdown given, as set out above, that for the main, this amount relates to the issue of damage caused to his business premises as a result of the floods. For the reasons explained above, I have not considered the issue of damage caused to the customer's business premises as a result of the floods as the company is not liable for such operational issues. I am unable to rule on the appropriate amount of further compensation from RST , if any, because, as explained above, RST is a third party in these proceedings and such matters fall outside of the scope of WATRS. However, in light of my above findings that the company failed to provide its services to the customer to the standard to be reasonably expected to the effect that it delayed in responding to complaint correspondence and did not follow up with the customer in order to find out the course of action he wished to take in regards to the compensation offered by RST , I find it appropriate for the company to pay the customer a further amount of £50.00 in compensation for stress and inconvenience caused. Furthermore, in the circumstances, I find it is appropriate to direct that the company, in its capacity as the customer's retailer, shall follow up on the issue of RST ' offer of £1000.00 in compensation in order to progress this matter for him, if sought by the customer, as well as following up on RST 's offer to reimburse the customer with the cost of the dehumidifiers purchased.

Outcome

The company is required to pay the customer £50.00 in compensation and to follow up on the issue of RST' offer of £1000.00 in compensation and reimbursement of the cost of dehumidifiers (in its remit as the customer's retailer), if sought.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.

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- The customer must reply by 23 October 2018 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.
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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb
Adjudicator

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