

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0810

Date of Decision: 5 June 2018

Complaint

The customer states that a sewerage overflow required that he vacate his property, resulting in considerable distress to his family. He requests that the company apologise for what his family has experienced; that his bill be recalculated; that the company pay compensation of £197.74 as council tax for his property while he was in temporary accommodation; £69.30 as costs incurred for taxi receipts; and £5,000.00 for emotional distress.

Defence

The company states that the sewerage overflow did not result from its negligence, and that the relocation of the customer resulted from the actions of third parties. It has already made payments to the customer totalling £1,192.66.

Findings

The sewerage overflow at the customer's property did not result from negligent or wrongful acts of the company, and the company was not responsible for the relocation of the customer. However, the company has not met its obligation to pay statutory compensation to the customer, or to recalculate his bill to reflect a period in which no water services were provided.

Outcome

The company needs to take the following further action:

It must pay the customer total compensation of £252.51.

The customer must reply by 3 July 2018 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.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0810

Date of Decision: 5 June 2018

Party Details

Customer: []

Company:[].

Case Outline

The customer's complaint is that:

- On 20 June 2017, the drains outside his house flooded his garden.
- A few days later it entered his kitchen.
- On 27 June 2017, his youngest child fell ill with pneumonia.
- From 20 June 2017 until 30 June 2017, he had no use of toilets or water at his property.
- Beginning on 30 June 2017, he and his family were forced to leave their home for several weeks.
- The temporary accommodation with which they were provided was too small for his family.
- The company assisted financially for the first two weeks.
- As a result of his relocation, he has lost £1,000.00 of tropical fish, and has spent extra money on food and transport.
- His family has suffered considerable distress as a result of their experiences.
- He requests that the company apologise for what his family has experienced; that his bill be recalculated; that the company pay compensation of £197.74 as council tax for his property while he was in temporary accommodation; £69.30 as costs incurred for taxi receipts; and £5,000.00 for emotional distress.

The company's response is that:

- On 19 June 2017, it was discovered that the drain outside the customer's property was blocked.

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.

- The customer contacted his property management company, who engaged a maintenance contractor.
- A large hole was dug in the floor of the property's kitchen by that contractor, and it is suggested that as a result of this hole, sewerage entered the property.
- The cause of the blockage was ultimately discovered to be a collapsed sewer.
- The customer and his family were temporarily relocated to another property two miles away by his property management company.
- Prior to June 2017, there was no history of issues with the sewerage network at the customer's property.
- The company first became aware of the issue on 23 June 2017, when it was contacted by the maintenance manager of the property.
- It was determined that access was required to other properties in the street to establish if a blockage could be cleared. Access could not be obtained that day, and so contact cards were left at the relevant properties.
- An attempt was made to resolve the issue by jetting the sewer.
- On 30 June 2017, it was determined that access to an additional property would be required.
- The kitchen floor of the property was not excavated by the company, or with the involvement or approval of the company.
- The company believes that the excavation of the kitchen floor was unnecessary.
- There was a delay to starting work due to access issues at the neighbouring property, and work began on 19 July 2017.
- Reports were substantively completed on 2 August 2017, and totally completed on 4 August 2017.
- It understands that the customer did not move back into his property until late August/early September, due to repairs being undertaken inside the property required due to the hole dug in the kitchen floor.
- It has already expressed its regret and has apologised for what happened, but it was not negligent in its actions, and is not responsible for actions taken by the contractor hired by the customer's property management company.
- It believes it went above and beyond what would reasonably be expected of it.
- On 19 July 2017, a representative of the company visited the customer at his temporary accommodation and offered to provide furniture, but this was declined.
- A larger holiday let was also offered, but was declined.
- Groceries and toys were purchased on 19 July 2017 and 25 July 2017, totalling £482.41.

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.

- A ticket was purchased for the customer and his family to an aquarium, at a cost of £80.25.
- The customer and his wife were provided with goodwill payments of £500.00, and given an additional payment of £90.00 to allow them to eat out at restaurants while in temporary accommodation.
- No evidence has been provided that council tax was paid at the property while it was uninhabitable, and an alteration to the customer's council tax bill could have been requested from the local council on the ground of the uninhabitability of the property.
- The customer was able to claim taxi costs back from his property management company, but nonetheless the company has already paid him a goodwill gesture of £40.00 for such costs.
- The company has already provided the requested apology.
- The customer's bill does not need to be recalculated, as his water usage is not metered, and he would have had to pay for water usage at his temporary accommodation.
- The company has made total payments to the customer of £1,192.66.

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

- The company was contacted at the beginning, when the property management company was contacted.
- No furniture was ever offered by the company.
- No holiday was ever offered by the company.
- They were offered a bed and breakfast, but with restrictions that made it less appropriate than their current accommodation.
- The payment of £500.00 was for purchasing takeaway meals.
- He continued paying council tax at the property.
- The £40.00 was not paid directly to him, but to the taxi company.

The company comments on the customer's comments that:

- It began to internally escalate the customer's issues on 17 July 2017, and was not contacted by the press until 18 July 2017.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 primary claim is for compensation of £5,000.00 for emotional distress experienced by his family as a result of being relocated from his property for several weeks after a sewerage overflow.
2. 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.
3. However, as argued by the company, 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. As a result, the company can only be required to pay the requested compensation if it has acted negligently or otherwise wrongfully.
4. On the balance of the evidence available to me, I find that the experiences of the customer did not result from negligent or otherwise wrongful acts of the company. The company has emphasised that there was no history of problems with the sewer near the customer's property, and the customer has provided no evidence of prior problems, or of previous complaints that were not addressed by the company.

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.

5. Moreover, I find on the balance of the evidence available to me that the proximate cause of the relocation of the customer and his family was not the blockage of the company's sewer, but the decision by the contractor hired by the customer's management company to dig a hole in the floor of the property's kitchen.
6. While I accept that the hole in the kitchen was created in response to the sewerage overflow, this was an action taken without the company's knowledge or agreement. Moreover, the company has stated that digging a hole in the kitchen of the property was unnecessary, and no evidence has been presented to challenge that position. Therefore, on the balance of the evidence available to me, I find that responsibility for the hole in the kitchen of the property lies with the contractor who decided to create the hole, rather than with the company.
7. Similarly, on the balance of the evidence available to me, I find that it was through this hole that sewerage entered the customer's property. As a result, responsibility for the entry of sewerage into the customer's property, and for the consequences of that entry, does not lie with the company, but with the individuals responsible for creating the hole in the property's kitchen floor.
8. The customer also objects to what he perceives to have been an inadequate response by the company to the relocation of this family. However, as the company was not responsible for the problems internal to the property that required the relocation of the customer's family, it was not obligated to provide the customer with assistance while he was relocated. Nonetheless, some assistance was provided to the customer by the company, resulting in a total expense to the company of £1,192.66.
9. Consequently, the customer's claim for compensation of £5,000.00 for distress does not succeed. However, it should be emphasised that this conclusion is based on the specific question of the responsibility of the company, and so does not address whether such a claim may be viable against any other party.
10. However, while the decision of the House of Lords in Marcic v Thames Water plc exempts the company from standard rules of liability, it does not exempt the company from liability completely. The underlying reasoning of the court, after all, was that standard rules of liability should not be applied precisely because a specifically designed statutory scheme of liability had been put in their place. The company, therefore, remains liable under this statutory scheme.

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.

11. Under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, the company is obligated to pay the customer specified compensation for sewerage entering his land, and if it enters his buildings.
12. I have already found that the responsibility for sewerage entering the customer's building is that of the individuals responsible for digging a hole in the company's kitchen, rather than the company, and so compensation is owed to the customer under Regulation 12, relating to external flooding.
13. Under Regulation 12, the company must pay the customer compensation of the lesser of "a sum equal to 50% of the sewerage charges payable by the customer to the undertaker for the financial year in which the incident occurs" or £500.00.
14. The company has already made payments to the customer, but has insisted that these were goodwill payments, rather than the compensation payments it is statutorily required to make.
15. Neither the company nor the customer has specified the sewerage charges owed by the customer, however the company has noted that the customer is on its Watersure tariff, and on its website the company states that the annual sewerage charge on its Watersure tariff is £325.02.
16. Consequently, the company must pay the customer compensation of £162.51, representing 50% of £325.02.
17. The customer also claims compensation of £69.30 as costs incurred for taxis during his relocation.
18. However, as the company did not relocate the customer's family, and was not responsible for the circumstances requiring their relocation, it is not legally obligated to pay compensation to the customer for any expenses he incurred due to that relocation.
19. Consequently, this element of the customer's claim does not succeed.
20. The customer also claims compensation of £197.74 as council tax for the property while he was in temporary accommodation.

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.

21. However, while the customer has provided evidence that a demand for payment was made, he has not provided evidence that he made the payment, and has not addressed the company's objection that it would have been possible to receive an exemption from the council due to the property being uninhabitable.
22. Moreover, I have already found that the uninhabitability of the customer's property did not result from wrongful actions of the company, but from the consequences of the hole being dug in the customer's kitchen. As a result, if the customer has a valid claim relating to his payment of council tax on the property during his relocation, it is not against the company.
23. Consequently, this element of the customer's claim does not succeed.
24. The customer also requests that the company be ordered to apologise for what his family has experienced.
25. However, the company has supplied letters in which it made precisely the apology being requested by the customer. There are, therefore, no grounds on which it would be appropriate to order a further apology.
26. Consequently, this element of the customer's claim does not succeed.
27. The customer also requests that his bill be recalculated.
28. As the company notes, the customer is not on a metered tariff, and so would have been responsible for water even at the temporary accommodation. As a result, he is not entitled to recalculation of his bill for the period in which he was relocated from his property.
29. However, the customer has stated, and the company has not denied, that he was without water and use of the toilets in his property from 20 June 2017 until 30 June 2017.
30. The company states that it was not notified of the problems at the customer's property until 23 June 2017, and I accept this as true.

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.

31. Therefore, under the Guaranteed Standards Scheme, the company is obligated to pay the customer compensation of £90.00.
32. Consequently, the company must pay the customer compensation of £90.00 for the period in which he was unable to use water or the toilets at his property.
33. For the reasons given above, the company must pay the customer total compensation of £252.51.

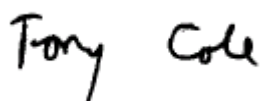
Outcome

The company needs to take the following further actions:

It must pay the customer total compensation of £252.51.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 3 July 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Tony Cole FCI Arb

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.



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.

www.WATRS.org | info@watsr.org