

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0863

Date of Decision: 29 August 2018

Complaint

The customer's claim is that, when her property suffered internal sewer flooding, the company delayed resolving the issue and this led to an infestation of sewer flies as well as the company using her property as a construction site. Furthermore, as a direct result of the sewer flooding, she was unwell, inconvenienced and stressed. The customer is seeking the company provide compensation of £10,000.00 for the health issues caused, using her property as a construction site and the inconvenience and stress.

Defence

The company submits that the blockage on the 11 September 2017, which caused the flooding, was from unacceptable items being discharged into the sewer from an adjacent property, which is outside the company's control. However, once aware of the flooding, the company visited the same day. It states that the flooding was rectified within a few days, with the subsequent fly infestation being sorted by the 30 November 2017. The company took ownership of this shared sewer in October 2011 and, as the only access to this sewer was through a previously installed manhole within the customer's kitchen, the company has a statutory right to access the manhole. In any event, the company submits it did not use the customer's property as a construction site. Furthermore, with regard to any failures regarding customer service, the company has paid a CGS payment of £150.00 and also made various additional goodwill payments. Therefore, no further sums are due. In respect of the redress requested for the customer falling ill, the company submits as this is a personal injury claim this falls outside the scope of this adjudication. The company has not made any further offers of settlement.

Findings

I find the customer has not proven the company failed to provide its services to the standard to be reasonably expected with regard to the sewer flooding and fly infestation, nor has the customer proved the company failed to provide services to the standard to be reasonably expected when investigating these issues. Furthermore, I am satisfied there have been no failings with regard to customer service as the company has provided a good level of service throughout its dialogue with the customer.

Outcome

The company does not need to take any further action

- The customer must reply by 26 September 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 29 August 2018

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The customer's claim is that, when her property suffered internal sewer flooding, the company delayed resolving the issue and this led to an infestation of sewer flies as well as the company using her property as a construction site.
- The customer further states that as a direct result of the sewer flooding she was unwell, inconvenienced and stressed.
- The customer is seeking for the company to pay compensation of £10,000.00 for: the health issues caused; using her property as a construction site; and, the inconvenience and stress.

The company's response is that:

- Any claim relating to health or personal injury is more appropriately directed to another body as the matter of personal injury is a complex issue and falls outside of the scope of WATRS under rule 3.4.1 and 3.4.3.
- The company's position is that they are not responsible for blockages, which occurred due to unacceptable items being put in the sewers or sewer abuse.
- The company cannot be expected to know when blockages of this type are going to occur and do not accept that it has been negligent before or after 11 September 2017 when the internal sewer flooding occurred.
- Once aware of the flooding, the company visited the same day. The flooding was rectified within a few days with the subsequent fly infestation being resolved by 30 November 2017.
- The company has made a payment for £150.00 to the customer under its CGS for the internal sewer flooding and a goodwill payment of £250.00 towards some rugs which were damaged during the flooding.

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- The company undertook significant and costly steps to help the customer and it disputes that any compensation the customer is seeking is due to her. Furthermore, the company states that throughout its dialog with the customer the company provided a good level of service and they have been no failings in this regard.

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 dispute centres on whether the customer is entitled to redress where her property suffered internal sewer flooding and an infestation of sewer flies. The company is required to meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of a leak, the company needs to investigate fully if the company's assets are to blame and, if repairs are needed, make such repairs to prevent further leaks.

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2. Furthermore, the company also has certain obligations in respect of its customer services as set out in OFWAT Guaranteed Standards Scheme and the company's own Customer Guarantee Scheme.
3. With regard to the customer comments and requested redress regarding her health issues caused by the sewer flooding, I find that this aspect of the customer's claim falls out of scope. This is by virtue of Rule 3.4.1 and 3.4.3, as the determination of personal injury is a complex area of law and a more appropriate forum would be the courts. However, I find I can consider "inconvenience" and "stress" aspects of the customer's claim in the context of the level of inconvenience/distress experienced during the repair period.
4. From the evidence put forward by the customer and the company, I understand that on 11 September the customer contacted the company informing them that her property was experiencing sewer flooding through a manhole cover situated within her kitchen. The evidence shows that on the same day the company attended the property and established that the flooding was due to a blockage caused by sewer abuse by another property on the shared sewer. The blockage was also cleared the same day. Between the 11 and 14 September the company cleaned the sewer and removed a Buchan Trap, to help avoid further blockages, resulting in the sewer being fully operational.
5. On the 15 September the customer reported sewer flies emanating from the manhole cover within her kitchen. The company attended the property the same day and undertook a clean-up and disinfection of the kitchen and area surrounding the manhole cover. On a further visit by the company on the 19 September, further evidence of flies were found and company organised another company to attend and undertake a deep clean of the property. This deep clean took place on the 27 September, a date agreed between all the parties. However, further evidence of flies were found and after various correspondence and site visits a further deep clean took place between the 5 and 6 October 2017. The company's defence shows that from the start of the issue the company contacted the customer daily regarding this issue and to reassure the customer.
6. Between the 9 and 10 October, the customer contacted the company to advise that the flies were still present and that she had organised Rentokil to report on the issue. The documents show that the company offered and subsequently paid for the report and all remedial action required. The company also offered to put the customer up in a hotel whilst the Rentokil works were being undertaken, which the customer refused. Between the 11 and 23 October 2017

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Rentokil contacted the customer and undertook the necessary fumigation to clear the sewer/kitchen of flies. On the 31 October 2017, the company received the report from Rentokil and, on the basis of the report, decided that a relining of the shared sewer would be prudent to prevent further issues. During this period, the customer made known to the company that she had been to the doctors and was having further tests.

7. Between 2 and 30 November 2017 various discussion took place between the parties regarding the relining, as initially the customer did not want to provide access via the manhole in her kitchen. No other access could be found by the company and the customer eventually agreed to allow access and on the 30 November 2017 the lining works were complete, and the manhole cover resealed.
8. Between the 30 November and 8 December 2017, the parties had various discussions regarding the customer's illness and her request to put more sealant around the manhole in the kitchen. On 12 December 2017, the customer confirmed that additional sealant had been put around the manhole.
9. On 9 January 2018 the company made a goodwill payment to the customer of £250.00 towards rugs that had been damaged by the earlier flooding. The evidence shows that from this date various discussions then took place between the parties regarding compensation until 21 May 2018, when CCWater provided the customer with a summary of why they were unable to challenge the company's position that no further compensation was due.
10. The job notes included with the company's defence shows that the initial blockage and subsequent flooding was caused by foreign objects in the sewer from another property connected to the same shared sewer. Whilst, since October 2011, the company is responsible for the repair and maintenance of the shared sewer, it cannot be liable for damage from flooding where the root cause is outside its control and the company has not been negligent.
11. After careful analysis of the evidence put forward I find there is no evidence that shows the company has been negligent in any regard. I am mindful that the company responded the same day to the initial flooding and kept the customer informed throughout the progress to clear the blockage and removal the sewer flies. Furthermore, the company removed the Buchan trap and relined the shared sewer to prevent further blockages. I find that the company in this respect did all it could and as quickly as it could. Therefore, I am satisfied that the company are not liable in

this respect, as it provided its services to the customer to the standard to be reasonably expected by the average person.

12. It is unfortunate that the only access to the shared sewer was through a manhole situated within the customer's kitchen and this necessitated that any work force had to go through the customer property. However, as the company correctly points out, it has statutory right to access the manhole. The evidence also shows that the customer had agreed with the company the steps to clear the blockage and then the subsequent fly infestation, which included access to her property. As set out in the defence the company engaged third party cleaners to ensure the kitchen was cleaned and restored its earlier condition before the flooding. Furthermore, the company offered to put the customer up in a local hotel, which was refused on the grounds that the customer insurance company would not have agreed to temporary relocation to a hotel whilst the issue was being resolved. Bearing the above in mind, I find that it most likely that the customer's property was a construction site whilst the works were in progress, and this was an unfortunate situation for the customer. However, this does not entitle the customer to redress as the company was entitled to access the property for the works, the works were necessary, the works would surely benefit the customer in the long run to avoid further issues and I would expect a company to do all it could to take preventative measures. It was a necessity to enter the property as the only access to the sewer was through the customer's kitchen. This access was not the fault of the company as the manhole existed before the company's ownership of the shared sewer in October 2011. From the evidence, it seems that the manhole had been installed when the shared sewer was privately owned by a previous owner of the customer's property. Had the company been aware of the position of the manhole before any build over consent was requested I am mindful that the company would have not approved the build over consent as stated within its defence. Therefore, I find the customer's requested redress for access through the property fails in this instance.

13. With regard to the customer being inconvenienced and stressed, this is understandable due to the length of time it took to resolve the issue. The company in its defence states that on the 3 October 2017 under its CGS the company it paid the customer £150.00 due to the sewer flooding. The payment of £150.00 is a fixed sum due to the customer under the company's CGS where a property has experienced flooding. The company also throughout the issue paid for various cleaning, fumigation and repair items, which I understand would normally be paid by the customer in cases where the company is not liable. I am mindful that these various gestures would have help alleviate some of the stress incurred. However, as above, as I have found the company is not liable for the flooding I find it is not liable for any further redress regarding

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inconvenience and stress as the stress and inconvenience was caused by the situation, not the company's actions.

14. The company has certain obligations in respect of its customer services. From the evidence provided I am satisfied that by the end of the company's dialogue with the customer, the company had adequately explained the reasons why the company required access through the customer's manhole and why the steps taken to repair the sewer and clear the flies was necessary.
15. The evidence shows that the company endeavoured to locate an alternative access point elsewhere that the manhole within the customer's kitchen. However, due to the nature of the shared sewer no other access points could be found. Furthermore, the evidence does not show any failings due to the company's sub-contractors or about any of the work undertaken either by the company or its sub-contractors. It is also clear from the evidence that the company was in constant dialog with the customer throughout the works. Therefore, I am satisfied there have been no failings with regard to the customer service provided by the company.
16. In light of the above, I find the customer has not shown that the company failed to provide its services to the standard to be reasonably expected with regard to the sewer flooding and fly infestation, nor has the customer proved the company failed to provide services to the standard to be reasonably expected when investigating these issues. Furthermore, I am satisfied there have been no failings with regard to customer service, as the company has provided a good level of service throughout its dialogue with the customer.

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 26 September 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 be closed.

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- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



**Mark Ledger FCI Arb
Adjudicator**