

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0961

Date of Decision: 1 November 2018

#### Complaint

The customer claims that he experienced a power outage as a result of the company's negligence in cutting the mains power cable. This caused all of the computers to shut down, loss of lighting, security systems, heating and air conditioning. This affected one hundred workers and led to losses in excess of £10,000.00. The customer seeks £10,000.00 in compensation.

#### Defence

The company admits to accidentally severing the mains cable, which led to a loss of electricity for approximately four hours. It denies liability in negligence as the damage claimed is unforeseeable and negligence claims do not extend to pure economic loss, as this is too remote. The company disputes liability and no settlement offer has been made.

#### Findings

The claim for negligence does not succeed. The company did owe a duty of care to the company and in severing the power cable and causing a power outage it breached the duty owed to the company. However, the company has not sufficiently quantified or otherwise evidenced the losses claimed and therefore has failed to demonstrate his entitlement to the compensation claimed.

#### Outcome

The company does not need to take any further action.

The customer must reply by 29 November 2018 to accept or reject this decision.

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- The company has been working in the area for many months and he is aware that it has agreed to settle in relation to vehicles, which have been damaged for small sums. The customer contends that the company is liable for the losses, which have resulted from its negligence.

**The company's response is that:**

- The customer seeks an “unsubstantiated sum” of £10,000.00 for man hours lost, loss of productivity of 100 staff, for 30 serviced offices and industrial businesses including its own head offices.
- The company confirms that it was carrying out works on its water main and despite “due diligence and care” it accidentally cut through a power cable, severing the electricity supply to the Industrial Estate for approximately 4 hours.
- The company acknowledges that there has been inconvenience, but denies negligence. Every utility runs the risk of damage to other utilities’ assets due to the nature and extent of underground pipework and cabling.
- The company states that in order to succeed in any claim resulting from accidental damage, the customer would need to prove that the damage was “foreseeable” and there would need to be evidence of negligence (Hadley v Baxendale 1854). If negligence was established liability cannot extend for “pure economic loss”, as this is “remote” (Spartan Steel and Alloys Ltd v Martin and Co Contractors Ltd 1973).
- The company contends that it has been unable to locate the customer being billed for water or wastewater services. Since April 2017, all business customers have been transferred to Castle Water, who has not been able to locate an account for this business address.
- The customer has not provided evidence that he or the “asset owner of the electricity cable” has shown that the company is negligent. The company believes that this claim should be directed towards the service provider.
- The company does not believe that the application falls within the scope of the WATRS scheme.

**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.

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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 company asserts both within its defence and objection that this claim falls outside of the scope of the WATRS scheme.
2. On 1 October 2018 WATRS determined that the claim fell within the scope of the scheme, as under Rule 3.3 the issue had been the subject of an internal complaint procedure. WATRS provide an alternative forum to court proceedings in relation to Rule 3.4.1. The company claimed that negligence is a complex area of law and under Rule 3.4.3 it should be excluded. The company did not provide a further explanation. It was decided that the law on negligence is not particularly complicated and the submissions provided by the parties do not indicate complexity. On this basis the application was accepted and the objection was unsuccessful.
3. The company asserts that it does not have a contractual relationship with the customer. Since April 2017, all business customers have been transferred to Castle Water, which has not been able to locate an account for this business address.
4. The customer states within his response that he has a [ ] Water account [413[ ]-[ ] – water meter 213[ ]. The eligibility of the claimant has previously been determined by WATRS and therefore I am satisfied that I need not address this further.

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5. The company has a duty of care to someone who could reasonably expect to be affected by its acts or omissions. Under *Caparo Industries Plc v Dickman* 1990; the harm must be a reasonably foreseeable result of the company's conduct, a relationship of proximity must exist and it must be fair just and reasonable to impose liability. The company was working on services directly connected to the customer's business premises, its actions in cutting the power cable impacted on the customer's business and this was a foreseeable outcome of the power-cut. In these circumstances, the company owed a duty of care to the customer and this is fair, just and reasonable.
6. The customer's claim is based on negligence and he needs to show that the company has fallen short of the standard to be reasonably expected. The company has a duty of care to ensure that it carries out work with reasonable care and skill. While the company's contractors were working on site it is agreed that they accidentally cut through power cables. It is reasonable to expect the company's contractors to be able to avoid cutting through other utilities when carrying working on its mains service. This would be the standard of a reasonably competent contractor. I therefore find that the company is in breach of its duty of care to provide its services with reasonable care and skill, by its contractor severing the electricity cable.
7. Furthermore, the company claims that the loss was not foreseeable. However, when severing a power-cable to business premises during working hours it is reasonably foreseeable that financial losses will arise by virtue of employees being unable to work. The company's contractors also confirmed to the customer that he had severed the cable and was therefore aware of the impact loss of electricity would have upon the business. The company highlights that claims for "pure economic loss" are not recoverable. Pure economic loss includes expenditure, loss of profit, profitability or loss of other forms of financial gain. Whilst pure economic loss is not recoverable "consequential loss" is recoverable from a claim of negligence. The customer refers to air-conditioning/ heating engineer costs, additional security costs.
8. In order to quantify an award it is necessary for the customer to provide evidence of loss. It is the customer's responsibility to substantiate his compensation claim. I note within the claim that the customer has not taken time to gather "exact evidence". Within the correspondence, which took place during the complaint it is clear that the company requested evidence of financial loss. The customer was did not provide the requested

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evidence and stated that it was “impossible to monetise the disruption” and simply refers to losses exceeding £10,000.00. In his letter of 22 May 2018 he appears to be claiming for all of the businesses that let the same premises. There is no evidence to suggest that these companies consent to the customer acting on their behalf. It is for the customer to show that he has suffered a loss or detriment.

9. While the customer would not be expected to provide exact evidence, it is a requirement that evidence be produced to substantiate the claim for financial losses. For example, the customer has referred to bringing in extra security. It would have been reasonable to provide the additional costings and confirmation of this. Similarly, the heating and air-conditioning engineer’s costs could have been reasonably supported by the production of invoices. I find that the customer has failed to substantiate the individual losses claimed.
10. While I have found that the company failed to reach the standard to be reasonably expected, I am not satisfied that based on the evidence submitted the customer has substantiated his entitlement to the compensation claimed. If I were to make an award it would be in the form of damages to put the customer in the position he would have been in but for the failure of the company. Financial losses themselves are capable of being quantified however, I find that the claim is too vague and there is no quantifiable evidence of any actual economic loss; the claim has not been substantiated. In these circumstances, I am unable to make an award.

#### **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 29 November 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.

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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.
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*D. M. Curnow*

**D.M. Curnow BA (Hons), LL.M, LPC, Solicitor (non-practising).**

**Adjudicator**

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