

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1133

Date of Decision: 31<sup>st</sup> January 2019

#### Complaint

The customer states that he has experienced sewerage flooding at his property, [ ]. He claims that the flooding was the fault of the company and has caused damage, stress and inconvenience to him. The customer seeks compensation of £10,000.00 and a direction that the company carry out a survey to map and trace all the pipes crossing his land. He has refused a goodwill offer of £2,000.00 from the company.

#### Defence

The company denies any liability for the sewerage flooding. It states that the customer has not shown any negligence on its part. The company states it has made Guaranteed Standard of Service payments to the customer of £843.78.

The company has made an offer of £2,000.00 as a goodwill payment, which was declined.

#### Findings

The company failed to provide an adequate service in respect of its customer care provided to the customer. I do not find any fault on the part of the company in relation to the flooding experienced by the customer.

#### Outcome

The company needs to take the following further action: Pay compensation of £2,000.00.

The customer must reply by 28<sup>th</sup> February 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1133

Date of Decision: 31<sup>st</sup> January 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- He has suffered loss, damage and inconvenience due to sewerage flooding in the garden of his property, situated at [ ].
- He states that this has been an ongoing problem and his first complaint was in 2013.
- He states that he has suffered damage to his property and has been caused financial loss due to this flooding.
- He states that he has wasted a lot of his time trying to resolve this matter. He notes that the problem appears to have been resolved since the company blocked up a pipe. He further notes that he cannot be sure that the problem will not return.
- He claims that the company has been slow to deal with the problem.
- He states that the company has refused to carry out a survey and mapping of the pipes across his property as requested by him.
- The customer states that he is not satisfied with the offer of £2,000.00 as a goodwill gesture made by the company, as this does not cover his out of pocket expenses.
- He seeks the following redress: £10,000.00 and a direction that the company carry out a survey to map and trace all the pipes crossing his land.

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

- The customer has failed to show any negligence on the part of the company in relation to its actions.

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- The company states that, even disregarding the issue of negligence, it does not believe that the customer has supported his claim for damages.
- The company states that the customer has not shown either that the damage was caused as a result of flooding or that the damage alleged was in the amount claimed.
- The customer has not provided receipts or evidence of much of the damage claimed.
- The company states that the customer was offered £2,000.00 as a goodwill gesture, which has been refused.
- The company states that it has paid £843.78 into the customer's account as Guaranteed Standard of Service Payments ("GSS" payments).
- The company does not accept that the customer has substantiated his claim for damages.

**In his comments, the customer states:**

- There are understandably no receipts for certain things, such as the death of plants.
- The first complaint he made was on 23<sup>rd</sup> December 2013.
- He believes that it is clear that the company acted in a negligent way and that there was a delay in its investigations into the complaint.
- He does not accept that the problem is necessarily resolved as the problem may occur again.

**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.

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### How was this decision reached?

1. The fact that there was flooding into the customer's property is uncontested. However, the company does not accept that it was always sewerage water causing flooding on the customer's property. The main contention between the parties lies in the matter of liability and whether or not the customer has shown that he suffered damage, stress and inconvenience as a result of the flooding.
2. For clarity, I note that the customer has limited his compensation claim to £10,000.00 on the application form.
3. Regarding liability: I refer to the Water Industry Act 1991 ("the Act") under which the company has no strict liability for sewerage flooding unless negligence is proven. It is important to explain that it must be first shown that there is evidence of negligence, that is fault, on the part of the company that led to the flooding, before matters of damage can be assessed. The onus is on the customer to show that the flooding happened because of the company's failure to provide an adequate service, that is, that there was some negligence or fault in that service provision that led directly to the flooding at the customer's property. The flooding is not, in itself, sufficient to show negligence on the part of the company.
4. I note that it is first necessary to ascertain whether or not there is liability in such a case, and only then would it be appropriate to go on to deal with damages.
5. The customer states that the eventual cause of the flooding was a "faulty [ ] pipe". This is noted in letters from the customer to the company in the CCW papers submitted in evidence.
6. The company states that there was a complex arrangement of pipes in place at the customer's property. The company submits a photograph at HP2 to show the close proximity of the pipework. The company states that it eventually decided to close off the last pipe that it investigated, the 150 mm pipe, and this took place in early 2017. Since that time the company states that the problem has not reoccurred. The customer accepts that he has not had a reoccurrence of the problem since then, I particularly refer to his letter in the CCW papers that

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relates to his meeting with the company. I do further note the customer's concerns that the problem may occur again in the future unless the pipework is surveyed and mapped.

7. I note that there is no allegation that the company was responsible for the way in which the pipework was laid.
8. I note that there is no evidence that the company did not maintain the pipes in an adequate manner.
9. The company cites *Marcic v Thames Water Utilities Limited (2003) UKHL 66* in its defence, a copy of part of the judgement in this case is included in its papers. I note that the company relies on this case for its assertion that it cannot be held liable for the flooding claimed by the customer. I agree that this is the correct legal position. The company states that the complexity of the pipework made seeking a resolution very difficult. In his comments on the defence the customer states he believes that the company has been negligent as it tried to "pass off" the problem as washing machine waste and also because there were long delays in the investigation and final resolution.
10. I take into account the letter dated 10<sup>th</sup> May 2016 from ABC Ltd that states, "It is therefore possible that groundwater is migrating onto the concrete from the abutting neighbor's high floor level." I have to consider that this evidence may well be an explanation for some of the flooding experienced by the customer and may be the cause of some of the damage experienced also.
11. I note that although GSS payments were made in relation to three incidents of flooding, this in itself is not an indication of negligence on the part of the company. Such payments are required by statute and do not require evidence of negligence or fault on the part of the company.
12. In considering the alleged negligence of the company I am not persuaded that the customer has shown a sufficient case for me to find that there is fault in the company's actions regarding the cause of the flooding. I appreciate that the customer may see a link between the company and the flooding that satisfies him that the company is to blame for any flooding; however, the law requires that the customer presents evidence of the company's specific actions or failures that lead to a conclusion that the company is negligent in law. I must also note that in this case, apart from the allegation regarding the washing machine waste, the customer has not made any particular assertions as to how he believes the company has been negligent in its actions. The

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company has presented case law that is not directly challenged by the customer. The Act I have referred to in paragraph 3 above also requires the allegation of negligence to be proven. The customer has not referred to any other legislation or guidance that supports his position. I have considered the legal position regarding the customer's claim and I cannot find that there is any supporting legislation, caselaw or guidance for his claim in respect of the negligence of the company.

13. It therefore follows that with regard to the liability of the company for the flooding, I do not find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
14. Regarding customer service and the delay in the investigation. The customer states that he first complained on the 23<sup>rd</sup> December 2013. He states this in his comments on the company's defence and also in his Statement of Fact, at page 60 of the CCW papers, where he says he has experienced "8 years of problems". There is no supporting evidence for this earlier complaint. The company has stated that the first complaint was 23<sup>rd</sup> June 2015. I note that the company was initially asked by the Consumer Council for Water ("CCW") what information it had on complaints arising since 2015. This may be the reason why previous issues have not been addressed. Nevertheless, the company has accepted that the investigation process was delayed. On the 12<sup>th</sup> November 2018 in a letter to the customer the company states that there was a, "*very lengthy period of investigation,*" which "*we apologise for.*"
15. I take into account that the company has offered £2,000.00 as a goodwill gesture in recognition of this delay, which was refused by the customer.
16. I note that the company has paid £843.78 into the customer's account as GSS payments. The customer has not disputed this in his comments. I do note that the company made three payments and that two of the three payments were not actually made at the time of the incidents. Whilst a payment had been made for the 23<sup>rd</sup> June 2015, there had been no payments for 4<sup>th</sup> January 2016 or 22<sup>nd</sup> September 2016. The company states it rectified this and calculated the appropriate payments, which it paid into the customer's account. I note that the company has apologised for the delay in these payments.
17. I consider that the delays in the investigation and the late payments of the GSS monies do amount to a failure of customer service on the part of the company. I therefore find that in this

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respect the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.

18. The customer claims that the company has failed to properly survey, trace and map all pipes crossing his property. The customer has requested this action from the company and claims that the company has refused. The company states that it has looked at the requested action and deems that it would be too expensive and disruptive a process to be justified at this time. The company states that the problem of flooding is now resolved and does not require further action of this nature. The company also states that the [ ] quotation obtained by the customer indicating the cost of such work is only in relation to investigative CCTV work and not a full excavation of the pipes, which would be required for such a survey and mapping process. The customer has not addressed this part of the company's defence in his comments.
19. The customer is clearly concerned about the potential of future flooding, which I appreciate. However, the evidence shows that at the current time there is no recurrence of the problem. I am not persuaded that there is any requirement on the company to carry out extensive works at a large cost to mitigate a potential problem that has not arisen. Further, there is no indication that such a survey and mapping process would necessarily prevent any future problems from arising. I do not find that the company has failed to provide its services adequately in this regard.
20. Remedies: Regarding the customer's claim for damages, which on its own amounts to £9,082.00, I do not make this award as I have not found that the company is liable for the flooding and therefore cannot make an award in relation to the damages claimed. I understand that the customer has put a lot of effort into his damage assessment and claim; it is not lightly dismissed. However, as I have explained above, I cannot consider the issue of damages unless the prior issue of negligence is proven.
21. The customer claims £4,500.00 for stress and inconvenience. I consider it appropriate to make a direction for compensation under this heading as I have found a failing by the company with regard to its customer service. However, I am not persuaded that the customer has substantiated his request for £4,500.00. I appreciate that the length of time that the customer has experienced problems is not insignificant; however, I do not have any evidence of any special factors that would indicate that such a high sum of compensation is due in this case. I consider that an amount of £2,000.00 is an appropriate figure and is more in keeping with the

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circumstances of the case. I therefore direct that the company pay compensation of £2,000.00 for stress and inconvenience.

22. The customer seeks a direction that the company survey, trace and map all company pipes on his property. I have discussed this matter at paragraphs 18 and 19, and for the same reasons I do not make this direction.

#### **Outcome**

The company needs to take the following further action:

Pay compensation of £2,000.00.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28<sup>th</sup> February 2019 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.

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J J Higgins, Barrister, ACI Arb.

Adjudicator

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