

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1179

Date of Decision: 6<sup>th</sup> March 2019

#### Complaint

The customer states that since 2016 he has had problems with sewerage flooding and leaks at his business property. He states that delays in fixing these issues have meant that he has lost trade and has suffered financially. He states that he has had to expend time and money to clean up the damage left by the problems with the water services. He states that the matter was ongoing until 2018 and that to date there is still water leaking into his cellar.

He seeks a reimbursement of his costs and unspecified compensation as a gesture of goodwill.

#### Defence

The company states that it has fulfilled its obligations as a retailer and that while there may have been delays, these were caused by the investigations of a separate company, RST Water, into the complaints made by the customer.

#### Findings

I do not find that the customer has shown that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

The customer must reply by 3<sup>rd</sup> April 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1179

Date of Decision: 6<sup>th</sup> March 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

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

- He has suffered both a leak and sewerage flooding at his business premises, [ ]. (the "Property")
- The customer claims that the sewerage problem was first brought to the attention of RST Water in July 2016/2017.
- The customer states that his business has been affected.
- He states that he has lost income and also custom, which may not return.
- He believes that the slowness of RST Water (RST) to act has worsened the problems he has experienced.
- The customer states that (RST) carried out the pumping operations only an hour before his Property opened for business, leaving a foul smell.
- The customer claims he has suffered financial loss due to the negligence of RST in failing to act sooner.
- He seeks a reimbursement of costs and compensation as a gesture of goodwill.
- Both figures are unspecified, but receipts are submitted within the Consumer Council for Water (CCW) papers.

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

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- It was contacted in January 2017 with the first complaint and it has no record of any contact in July 2016 with RST.
- The company states that it acted on the information in January 2017 and that it contacted the wholesaler, RST, to arrange assistance.
- The company states it was contacted again by the customer in December 2017 and in January 2018.
- The company states that any delay was due to the investigations of RST.
- It states that the leak was due to a neighbouring private supply pipe and that the sewerage was due to an internal private asset, and that neither of these were the responsibility of RST.
- The company states that RST repaired the leak as a gesture of goodwill but did not accept liability.
- The company states that the customer has received a leak allowance of £2863.40. Further, £40.00 has been applied to the account for the delays and a goodwill payment of £20.00.
- The company states that the wholesaler has refused to pay compensation as it does not accept liability for the sewerage ingress, water leak or financial loss.
- The company is satisfied that it has fulfilled its obligations as a retailer by contacting RST on behalf of the customer.

**In his comments on the defence the customer states:**

- The company and the CCW have not taken account of the fact that his application is in two parts, one is a complaint about the sewerage and there is a separate complaint about the water leak.
- He states that the leak is still ongoing.

**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

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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. I find it important to remind the parties that adjudication is an evidence based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
2. In order to clarify any potential confusion, I must also remind the parties that the company and RST are separate and distinct organisations. Following the rules of the WATRS scheme I cannot make any findings on third-party actions in my decision and must limit my considerations to matters between the customer and that company. Therefore, I shall not be making any findings in this decision on the actions of RST.
3. For clarity I shall examine the following. In April 2017 the water market opened up to retailers. All non-domestic customers were moved to a wholesaler/retailer split at that time. It must be noted that under the new arrangements that started in April 2017 a non-domestic customer only has a relationship with the retailer. The customer cannot bring a claim against the wholesaler directly, but only against the retailer. Therefore, this direction can only deal with the liabilities and responsibilities of the retailer, the company, and with its actions. I shall be considering whether or not the company has satisfied its obligations as a retailer and those considerations will be based on the evidence presented in this case by the parties.
4. Regarding the sewerage problem referred to by the customer in his reply, which he states was highlighted to RST in July/August 2016. The water industry regulations mean that up until April 2017 the company had no relationship with the customer. I note that in the letter from the company to the customer, within the correspondence submitted by CCW at page 125, the company does state that RST have acknowledged that the customer's first complaint was made

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in August 2016. Although the company has stated in its defence that it has no record of this, I do accept on the evidence that there was a complaint made to RST by the customer at this time. However, due to the legislation introduced in 2017, as referred to above, the customer can only take action against the company (the retailer) and, as the company were not responsible for actions prior to 2017, this part of the claim, which precedes April 2017, must fail.

5. It therefore follows that in relation to this claim I can only take into account matters arising since the April 2017, for which the company is responsible.
6. The customer's claim rests mainly on his allegation that RST should have acted sooner and that he has lost financially as a result of this delay. I also take into account that the customer is aggrieved that RST did not carry out the pumping operations on the sewerage at more suitable times. I note here that the company named in this action can only be held responsible for its own actions, not those of RST.
7. The company states that it has communicated the complaints of the customer to RST and that any delay was due to the investigations of RST whilst looking into the problems. The company has submitted evidence that it advised the customer in January 2017, after he complained of the leak in his Property. The company has also submitted evidence in its defence that in May 2017 it referred the matter to RST as the leak was confirmed to be situated outside the customer's property. The next contact from the customer, according to the company, was the 5<sup>th</sup> December 2017. After this the company accepts that there were delays experienced by the company, but that these were caused by the investigations of RST into the complaints. I have looked carefully at the evidence on the CCW papers and note that the company was in regular contact with both RST and the customer and was also dealing with CCW regarding this complaint. I also note that the customer does not dispute the dates given by the company in his comments, apart from his assertion that he made his initial complaint to RST in 2016, which I have accepted. I take into account that the customer has received two payments of £40.00 and £20.00 which are in keeping with current goodwill payments. I am not persuaded that the customer has shown any fault on the part of the company in the manner in which it has acted in relation to his complaints.
8. The customer has not referred to any legislative provisions, nor has he referred to any guidance, in making his case that the company has failed in its service. I have carefully considered the legislation and cannot find any support for the customer's case in this regard.

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9. The customer has stated that the leak is still ongoing, but I have no further information in this application relating to that claim.
10. The evidence presented shows that the company did ascertain from the third party, RST, the root causes of the sewerage ingress and the leak and that these were caused by private assets that were not within the responsibility of RST. I refer to this not to make any assessment of the responsibility of RST, but rather to take account of the fact that, on the evidence, the company did endeavor to find out from RST what the causes of the problems were so that this information could be referred to the customer. I note that this is also reflected in the letters of CCW written to RST at page 151 of the CCW papers.
11. I realise that the limitations of this adjudication will be frustrating to the customer. However, I am bound to make my decision based on the actions of the company named in the action, as the customer has no course of action against the wholesaler, RST.
12. I appreciate that the customer will be disappointed at this decision, nonetheless, I do not find that he has shown any fault on the part of the company which causes me to attach any liability to its actions.
13. On balance, I do not find that the customer has shown that the company has failed to provide its services to a standard to be reasonably expected by the average person.

#### **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 3<sup>rd</sup> April 2019 to accept or reject this decision.

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- 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 handwritten signature in cursive script, reading "J J Higgins", on a light green background.

J J Higgins, Barrister, ACI Arb.

Adjudicator

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