

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1470

Date of Decision: 25 June 2019

Complaint

The customer's property was flooded from the company's sewer causing damage to her flooring. The claim is not worth pursuing with her insurance due to the excess payment and premium increase. The customer requests the company cover the cost to clean and reseal her floors in the sum of £1050.00.

Defence

The company states that the cause of the sewer flooding was sewer misuse. It is not liable for damage caused by sewer flooding unless it has been negligent. It is not liable where third parties misuse the sewer. It has taken appropriate action including leafleting the local area about sewer misuse. It denies any liability to the customer and advises the customer to claim on her household insurance policy.

Findings

The sewer flooding was found to have been caused by fat and paper towels in the sewer. The company cleared this. The restaurant next door agreed to remove paper towels from its toilets and fit a fat trap and the company has leafleted the local area to educate customers about sewer misuse. There was no defect with the sewer that caused or contributed to the flooding. The company therefore did not cause the flooding through its actions or negligence and cannot be held liable for damage caused. The customer's home insurance is designed to cover these situations and, whilst the customer does not wish to incur the costs associated with a claim, the company cannot be held liable for these costs.

Outcome

The company does not need to take any further action.

The customer must reply by 23 July 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1470

Date of Decision: 25 June 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer's property was flooded on 23 September 2018 due to sewer misuse by the restaurant located next door. The team that cleared the blockage advised that it had been caused by fat and green paper towels that the restaurant's customers were putting into the toilet. This was the second time that the customer's property had been flooded; the first occasion, the customer was able to remove water before it caused any damage. The company has provided a £150.00 credit under the Guaranteed Standards Scheme for the flooding. It has also stated that she should claim from her insurer as the company has no control over what people dispose of into the sewer. The customer logged a formal complaint and the company provided £150.00 for inconvenience. The customer's entire ground floor was flooded. The customer is claiming for the cost to clean and reseal her natural stone floors due to damage caused by water being on them overnight. The customer's home insurance has an excess of £350.00 and the customer would lose her 'no claim bonus'; it is not in her interest to pursue the matter with her insurers. The customer believes that she should not be adversely affected by something she is not responsible for. The company's sewer configuration terminates on the customer's property and puts her at risk of sewer flooding. The company failed in its responsibility to monitor high risk properties like the restaurant. It has completed leaflet drops about sewer abuse in the area. The company appears not to have spoken to the restaurant owner who had said that he would pay for the damage if the company told him that he was responsible.
- The customer claims £1050.00 for the cost to clean and reseal the floor.

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The company's response is that:

- The company states that it is responsible for the repair and maintenance of its sewer assets so that the area is effectively drained. It is not responsible for loss or damage from flooding if the cause is outside of its control, unless the company has acted negligently. The law recognises that a reactive system of maintenance of sewers is a reasonable approach for the company to adopt. The company cannot be held responsible for third parties putting inappropriate items into the sewer. The customer experienced flooding as a result of this misuse. Sewer misuse cannot be foreseen and the company cannot know whether it is likely to happen. The Water Industry Act 1991 does not contain any legislation to state that the company has a strict liability for damage caused by sewer surcharge. Liability is entirely dependent on proof of negligence. There is no evidence of negligence on the part of the company in this case as the cause of the flooding was sewer misuse. The company denies any liability to the customer. The customer will need to claim through her home insurance for any damage to her floors.

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 customer experienced internal sewer flooding on 23 September 2018. This was reported to the company and a team attended. The company found that the flooding was caused by a blockage in the company's sewer "caused by paper towels by resteraunt[sic]".
2. The company cleared the blockage and the notes show that the team spoke to the restaurant who agreed to remove hand towels from the toilets to prevent the sewer from blocking. I also note that a 'fat trap' has been installed to the restaurant with the intention to reduce the potential for blockages and flooding in the future.
3. I also note that the company has delivered "Bin it Don't Block it" leaflets to properties in the area, with a view to educate customers and change customer use of the sewers to ensure that only appropriate items are flushed.
4. The customer is claiming for the cost of cleaning and resealing her floor due to the sewer flooding. In order to be entitled to recover this cost from the company, the customer must show that the company is legally liable for it.
5. I find that Section 94 of the Water Industry Act 1991 provides a general duty on the company to provide, a system of sewers and "to cleanse and maintain those sewers as to ensure that that area is and continues to be effectually drained".
6. I am also satisfied that, as a result of the size of the sewerage network, the Courts have deemed it appropriate for the company to use a reactive approach to maintenance of the network. This means that the company must resolve issues with the sewer once they have been reported to it. The company will only be obliged to take a pro-active approach, such as by conducting regular cleaning, where it is aware that the sewer itself is operating below an acceptable standard, resulting in a high risk of regular flooding.
7. In this case, I note that the customer states that the incident on 23 September 2018 was the second flooding incident, albeit that she was able to stop water entering her property during the

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previous incident. I have not been provided with any evidence as to when this previous flooding incident occurred.

8. I note that the company's team identified that the cause of the incident on 23 September 2018 was sewer misuse, with fat and paper towels being cleared from the sewer. The sewer structure itself was found to be clear and free flowing.
9. I find no evidence to indicate that the sewer itself is not fit for purpose. I am satisfied that there has not been a history of frequent sewer flooding in the customer's area such that a reactive approach to maintenance has become unsuitable and that the company should implement a pro-active maintenance schedule.
10. In response to the flooding incident, the evidence shows that the company spoke with the restaurant who agreed to stop using paper towels in the toilets and had a fat trap fitted. I find that these steps directly address the cause of the blockage and show that the company has met its responsibilities towards ensuring that the sewer continues to function properly. Notwithstanding this, the ultimate cause of the issue was sewer misuse and the company is not responsible for damage caused in the event third parties decide to misuse the sewer.
11. The customer has stated in her claim that she "should not be adversely affected by something that I am not responsible for; have no control over and could not avoid". I acknowledge and recognise that this is the case and that the flooding was wholly outside the customer's control. Notwithstanding this, in reviewing the evidence, I am satisfied that the company also was not responsible for the cause of the sewer flooding, and this was also outside of its control. The company has taken appropriate steps to address the sewer misuse with the relevant third parties, dealing with the restaurant directly and making a wider leaflet drop to educate others in the area about sewer misuse.
12. I am satisfied that the company will only be liable for damage caused by sewer flooding where it is responsible for the cause of this, or where it has been negligent in respect of the upkeep of the sewers. As above, the company is entitled to take a reactive approach to sewer maintenance. I also find no evidence to indicate that the sewer itself is damaged, that the sewer structure caused or exacerbated the flooding, nor that the company was aware of any such issue but failed to rectify it.

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13. In view of this, I find that the company is not liable to the customer for the damage caused by the sewer flooding. I also find that there was no failure by the company to provide its services to the standard expected of a reasonable sewerage undertaker. The appropriate step for the customer to take would be to claim for the damage under her home insurance. Whilst I acknowledge that the customer wishes to avoid paying the excess for such a claim and any increased premium, home insurance is designed to cover customers for losses for which no party is to blame or where it would otherwise be difficult or impossible to recover losses from third parties. For the reasons given above, the company is not liable to the customer for the cost of cleaning and resealing the floor.

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 23 July 2019 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.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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