

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1511

Date of Decision: 16 July 2019

Complaint

The customer states that her property was flooded and she suffered financial losses as a result. She requests that the company apologise and pay compensation of £1,070.10.

Defence

The company states that the flooding did not result from its negligence and so it has no legal liability for the customer's losses. It has paid the customer the required GSS payment. No offer of settlement has been made.

Findings

The flooding of the customer's property did not result from the company's negligence and so the company did not fail 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 13 August 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1511

Date of Decision: 16 July 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- Her home was flooded after a downpour, including her kitchen, dining room, sitting room and hallway.
- The company found roots in its pipework and states they have been removed.
- The company blames the council.
- She experienced flooding again in April 2019.
- She has lived in the property for 12 years and has never previously experienced flooding.
- She requests that the company apologise and pay compensation for stress and for the damages she has experienced, amounting to £1,070.10.

The company's response is that:

- The customer first made contact regarding flooding on 13 August 2018, with respect to flooding on 12 August 2018.
- The company attended the following day, including undertaking camera surveys of the sewers.
- The sewers were found to be clear, but as some sewer entrances were blocked, the company returned a week later to complete the camera surveys.
- The company then identified tree roots in the sewer network. Some were removed at the time, with the rest removed by 31 August 2018.
- The company was unaware of the presence of tree roots in the sewer network until the flooding occurred.

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- The customer has been made the appropriate payment of £322.73 under the Guaranteed Standards Scheme.
- The customer's property flooded during a period of excessive rainfall and other contributing factors, including blockages on third party assets.
- The customer experienced further flooding on 24 April 2019. This second instance of flooding is still under investigation and under review at the Consumer Council for Water (CCWater).
- The company has not been negligent, and so is not further liable to the customer.

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 parties are in agreement that the customer experienced flooding through no fault of her own, and the customer has provided clear evidence of the financial and personal impact of this flooding. The customer has also been admirably clear and modest in her compensation claim, and I find no reason to dispute that the customer has incurred the financial losses that she describes. If the company were a fully private actor, this might result in an award of compensation such as is being claimed.

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2. However, in Marcic v Thames Water plc [2003] UKHL 66, the House of Lords held clearly that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
3. In the words of the court, “The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e.Ofwat] was intended to discharge when questions of sewer flooding arise.”
4. The consequence of the House of Lords’ ruling in Marcic v Thames Water plc is that the company can only be required to pay the requested compensation if it has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company’s operation of its business does not entitle the customer to compensation.
5. I find, however, that there is no evidence on the basis of which I could conclude that the flooding experienced by the customer in August 2018 occurred because of negligence on the part of the company.
6. When contacted by the customer, the company responded promptly and undertook a thorough examination of the sewers. When a complete examination was not possible, it returned quickly to complete the examination. Once a problem was identified, it then addressed that problem immediately, ensuring that the tree roots were removed from the system.
7. If the company had been aware prior to the August 2018 flooding that there were tree roots in the sewers and had failed to take action, this might constitute negligence on the part of the company, and so might form the basis of a compensation claim by the customer if the presence of tree roots was the cause of the flooding. However, there is no evidence on the basis of which I could conclude that the company was aware that tree roots had entered the sewers. The customer has referred to a neighbour stating the he/she was aware there were tree roots in the sewer, however there is no evidence that this information was passed on to the company, and the neighbour’s statement may also merely be a consequence of an incident in 2014 when tree roots were again removed from the sewer.

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8. As already stated, then, given the evidence available in this case I am unable to find that the company has acted negligently, and that this negligence resulted in the flooding of the customer's property in August 2018.
9. I will emphasise, however, that this finding relates only to the company. The company has presented evidence indicating that problems may have existed with respect to matters that were the responsibility of the local council. The council is not a party to the present dispute, and so I make no finding as to whether or not the council may bear any liability to the customer for the losses she has experienced.
10. The customer has also referred to the fact that she has experienced a second incident of flooding in April 2019. This second flooding is still being addressed by CCWater and no evidence has been produced by either party specifically addressing this second instance of flooding.
11. The simple fact that a second instance of flooding occurred does not itself demonstrate that the company has acted negligently, as it may have had a different cause than the flooding in August 2018, rather than being a consequence of the company's failure to properly identify and address the causes of the flooding in August 2018
12. I will emphasise, therefore, that this decision makes no findings regarding the flooding of the customer's property in April 2019, and the customer retains the right to bring a subsequent WATRS claim relating to this second instance of flooding should she choose to do so. The customer will, however, still need to meet the legal requirement of demonstrating that negligence on the part of the company was the cause of this second instance of flooding and of any damage that she experienced.
13. For the reasons given above, the customer's claim does not succeed.

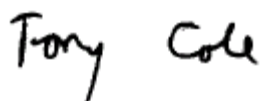
Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 13 August 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.
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Tony Cole, FCI Arb

Adjudicator

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