

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1870 – Sewerage and Flooding.

Date of Decision: 2 April 2020

#### Complaint

The customer states that his home has been flooded with sewerage on multiple occasions. It has left him and his family distressed, and has damaged his property. The company has refused to help prevent the flooding reoccurring and has also refused to pay compensation. The company has also changed its explanation of the cause of all the flooding. Only after complaining to the Consumer Council for Water (CCW) did the company carry out a thorough review of his case and admit that it had not been clear in its communication. The customer requests that the company prevent future flooding by carrying out an annual maintenance inspection of the public sewer with a camera. The company should also verify its claim that the flooding is coming from this property by inspecting all pipes flowing through his property with a camera to identify a cause. The customer also requests that the company provide an apology and pay compensation in the sum total of £4,436.70.

#### Defence

The company submits that it has always attended to reports of flooding made by the customer and pumped out any water found in the Property. On each visit, it has also checked its surrounding assets and cleared out blockages caused by inappropriate items placed in the sewers or repaired defects. Plans for further repairs and monitoring are in place. Until recently, it would appear the flooding incidents in the customer's basement have not been caused by sewer discharge and have been due to groundwater seepage into his basement (except for the most recent occasion in February 2020). It is the customer's responsibility to ensure he protects his basement from the risk of ground water ingress. When responding to CCW's referral of the customer's complaint it advised it would be sending him £150.00 as a gesture for previous misinformation about the causes of the flooding incidents. As part of its review, it can see that this cheque was not issued so, it has arranged for this payment to be made with an additional £50.00 for its delay in processing the payment.

#### Findings

Due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. If a company cannot and does not know that a part of its infrastructure requires repair then it has no duty to repair. Once alerted to an issue that falls within its remit a company is typically under a duty to take action. The company is not responsible for any issues on private pipework and any costs to investigate and

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remedy these. The evidence submitted to this adjudication indicates that every time the customer contacted the company to report flooding, reasonable attempts were made to rectify the issues which were being experienced. The evidence submitted to this adjudication indicates that the flooding incidents at the customer's property were due to groundwater seepage and/or sewer flooding caused by sewer misuse. A company is not liable for sewer flooding caused by misuse of the sewer. A company is also not liable for flooding caused by groundwater seepage. The company accepts that it provided incorrect information about the cause of the flooding in the customer's property. The company has also failed to provide a reasonable level of customer service on a number of occasions during the period of the complaint. The company failed to provide its services to the standard to be reasonably expected in these regards.

#### Outcome

The company needs to take the following further action:

I direct that the company pay the customer a further sum of £150.00 in compensation. I also direct that an authorised representative of the company issue the customer with a written apology.

The customer must reply by xx April 2020 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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## Party Details

**Customer:** The Customer

**Company:** The Company, a water and sewerage company.

## Case Outline

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

- His home has flooded with sewerage six times (that he knows of), in the last nine years.
- It has left him, his partner and their two children feeling distressed when it occurs each time and anxious as to when it will happen next.
- He has spent considerable time and effort in communication with the company with the aim of preventing further flooding.
- He has lost possessions each time and has had to purchase a pump to prevent the flooding causing further damage. He has also spent considerable time, each time cleaning the area from bacteria and other sources of infection.
- He is unable to use the basement area for storage due to the ongoing risk of flooding.
- The company has refused to help prevent the flooding reoccurring which has led him to ask for compensation instead which the company has also refused.
- Only after complaining to the Consumer Council for Water (CCW) did it carry out a thorough review of his case and admitted it had not been clear in its communication. The company has changed its explanation of the cause of all the flooding, leaving them confused and more anxious as it appears the company, now does not believe the property was ever flooded with sewerage despite many previous letters to the contrary.
- He does not feel that the company has taken his concerns seriously and believes that the company could have done more to resolve the ongoing problem.

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- The customer requests that the company prevent future flooding by carrying out an annual maintenance inspection of the public sewer with a camera. The company should also verify its claim that the flooding is coming from this property by inspecting all pipes flowing through his property with a camera to identify a cause. The customer also requests that the company provide an apology and pay compensation in the sum total of £4,436.70.

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

- They are not responsible for damage from sewer flooding, or indeed the flooding itself when the cause is outside of our control, unless it is proven we had acted negligently. This means, if sewer flooding is caused by a blockage in the sewer and, the blockage has been caused by inappropriate items having been placed in the sewer, which they have no ability to control or, predict when and where it may happen, we are not liable. Likewise, if an exceptionally heavy rainfall event occurs which overloads the capacity of the sewer (hydraulic overload), which in turn causes the sewer to discharge, they cannot be held liable.
- It is widely recognised that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. Of course, where there is a known issue, wastewater companies should repair their assets to negate or, reduce the risk of sewer flooding.
- In this case until recently, it would appear the flooding incidents in the customer's basement have not been caused by sewer discharge and have in fact been due to ground water seepage into his basement (except for the most recent occasion), because there has been no evidence to prove the flooding had been caused by sewer discharge.
- We have received reports of flooding in the customer's basement on 2 February 2015, 25 November 2017, 19 June 2019, and 28 February 2020.
- On 1 March 2016 our Network Engineer noted there is a sump in the customer's basement and confirmed that there were no channels that wastewater or surface water run through in the sump. A sump is effectively a catch pit for ground water to collect in underground rooms such as basements and a pump should be installed to pump out the ground water when it begins to fill a sump. The customer told their Network Engineer on this visit he never switches the pump on.
- The customer has advised in his WATRS application that the previous owner of his property had told him the basement had flooded once before and the company had paid compensation for the flooding. As the owner of his property, it is the customer's responsibility to ensure he protects his basement from the risk of ground water ingress, which is common in underground structures such as basements. As ground water ingress (which we are confident three out of four of the

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flooding incidents have been) is common in below ground basements, especially as our climate is changing and exceptional wet weather events are becoming more common, we cannot consider reimbursing the cost of the pump the customer bought.

- We have always attended to reports of flooding made by the customer directly or via his partner and pumped out any water found in their basement. On each visit, we have also checked the surrounding company owned sewers to check for any issues which could have caused or contributed to the flooding incidents and cleared any blockages that have been found.
- We have carried out extensive CCTV surveys of the Foul Water (FW) and Surface Water sewer lines in the vicinity of the customer's home to rule out any defects as being the cause of flooding at his home. Three defects were found as part of these investigations, which have since been repaired including;
  - Re-lined of a section of SW sewer (carried out 3 February 2017)
  - Replacement of a section of the FW sewer downstream of the customer's home (23-30 July 2018)
  - Re benching of a FW MH located outside the Public House over the road from the customer's home (21-23 October 2018)
- A fourth defect has recently been found (belly in the sewer line) and we have now put an annual planned maintenance programme in place to monitor the operational ability of the sewer.
- When responding to CCW's referral of the customer's complaint we advised we would be sending him £150.00 as a gesture for previous misinformation about the causes of the flooding incidents in our email to the customer of 27 August 2019. As part of my review, I can see that this cheque was not issued so, it has arranged for this payment to be made with an additional £50.00 for our delay in processing. To confirm, a cheque for £200.00 has now been sent 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.

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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. Please note that 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 must remind the parties that adjudication is an evidence-based process.
2. 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.
3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.
4. Please note that it is not part of the adjudicator's function to carry out an independent investigation of the facts, or for instance, contact witnesses. If evidence is said to be relevant, it should have been submitted to WATRS. Only in very exceptional circumstances would WATRS appoint an independent technical expert, such as in a scenario where the parties had each submitted an expert report that reached differing conclusions; a third technical expert may then be appointed to break the deadlock. This is not the case here.

### ***Third parties***

5. I acknowledge the customer's submissions about a previous occupier. However, for the purposes of this decision my remit is to determine the issues between the customer and the company only. Any issues relating to any third parties cannot be considered.

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## ***Negligence***

6. The customer submits that the company was negligent and has breached in its duty of care. I consider that the issue of “negligence” is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle. However I consider that I remain able to consider the dispute by considering whether or not the company failed to provide its services to the standard to be reasonably expected.

## ***The parties' responsibilities***

7. Property owners and/or occupiers are legally responsible for private pipework/assets within the boundary of a property. Any issues on private pipework/assets and any costs to investigate and remedy these are the responsibility of the property owners/occupiers.
8. In addition, I accept the company's submissions that due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt.
9. The company's submissions are supported by the approach to the regulation and supply of water in the UK. It is accepted that the complexity and age of the network means that companies cannot reasonably be expected to proactively maintain all parts of the network and are allowed to operate a reactive maintenance system for much of the infrastructure.
10. If a company cannot and does not know that a part of its infrastructure requires repair then it has no duty to repair. Once alerted to an issue a company is then typically under a duty to take action.

## ***The company's actions to meter reports of flooding***

11. The evidence submitted to this adjudication shows that the customer reported flooding to the company on 2 February 2015, 26 August 2015, 25 November 2017, 19 June 2019 and 28 February 2020.

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12. The evidence confirms that the company responded to these reports of flooding, attended the customer's property, carried out investigations and made attempts to remedy the issues being experienced.
13. During its investigations the company cleared blockages caused by sewer misuse such as fat and grease, wipes, a brick, and a clearing rod used by a third party. The evidence also confirms that the company carried out extensive follow-up investigations in the vicinity of the customer's property clearing root ingress, cleaning sewer sections and/or repairing three defects found on its assets. There is no evidence to show that the company was aware or should have been aware of these defects prior to the flooding.
14. The company submits that a fourth defect has recently been found and a section of pipe appears to have a belly (dip) to it. The company states that due to this it has placed this section of the sewer on an annual planned maintenance programme, beginning in January 2021, to monitor its operational ability. The company states that if a significant deterioration is noticed repair work will then be carried out. The company also submits that a channel in the vicinity needs to be replaced in the near future but it is not deemed an urgent repair. Again there is no evidence to show that the company was aware or should have been aware of these defects prior to the flooding in February 2020. Please also note that it falls outside the remit of WATRS to determine whether or when a defect should be repaired rather than monitored.
15. Having carefully considered the evidence submitted, in the absence of any evidence showing otherwise, I accept the company's submissions that every time the customer contacted it to report incidences of flooding reasonable attempts were made to rectify the issues which were being experienced.

### ***Cause of the flooding***

16. The evidence submitted to this adjudication indicates that the flooding incidents at the customer's property were due to groundwater seepage and/or sewer flooding caused by sewer misuse.
17. A company is not liable for any flooding caused by factors outside its control. A company is not liable for sewer flooding caused by misuse of the sewer by third parties. In addition, I accept the company's submissions that a company is not liable for groundwater seepage. The evidence

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supports the company's submissions that groundwater originates from rainwater and is seepage likely due to the makeup of the soil on which a property is located. Groundwater seepage is out of a company's control.

18. Accordingly, in the absence of any evidence showing otherwise, I accept the company's submission that it is not responsible for the flooding at the customer's property. I can appreciate the distress that this issue has been causing the customer and I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard and is responsible for the flooding at the property.

### ***The company's explanations as of the cause of all the flooding***

19. The company accepts that it provided incorrect information about the cause of the flooding in the customer's property. The company initially incorrectly advised the customer that the cause of flooding was due to blockages within its assets caused by sewer misuse. However, it subsequently concluded that the flooding (with the exception of the flood reported in February 2020) was due to groundwater seepage. The company acknowledges that this has led to potential delays in the customer initiating his own private investigations to resolve the issue. I am satisfied that this mis-information caused the customer distress and inconvenience. The company failed to provide its services to the standard to be reasonably expected in this regard.

20. However, notwithstanding the above, please note that as discussed above, the company is not responsible for flooding caused by sewer misuse and groundwater seepage. I am also mindful that the evidence shows that the customer was aware of there was a sump at the property, and had placed a pump in the sump but acknowledged to the company in March 2016 that he had never switched it on.

### ***Customer service***

21. Having carefully considered the evidence provided, it is clear from the company has failed to provide a reasonable level of customer service on a number of occasions during the period of the complaint. For example, the company does not dispute that a customer liaison officer failed to attend as promised; two promises to the customer to attend to check drains were not kept; Customer Guarantee Scheme (CGS) were not fully explained to the customer; the company's

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Bin it, Don't Block it leaflets were not sent to all relevant properties; the company failed to respond to written correspondence and despite promising to send the customer £150.00 in recognition of a number of mistakes, it was not until the customer brought the dispute to WATRS that this payment was made. I find that the company failed to provide its services to the standard to be reasonably expected in these regards.

## **Redress**

22. The customer requests that the company prevent future flooding by carrying out an annual maintenance inspection of the public sewer with a camera. The customer also requests that the company should verify its claim that the flooding is coming from his property by inspecting all pipes flowing through his property with a camera to identify a cause. As discussed above, companies are not expected to proactively maintain all parts of the network and are allowed to operate a reactive system of maintenance. The company has set out the repair and monitoring work it is due to undertake. It falls outside the remit of WATRS to direct that the company carry out any further works. In addition, the evidence submitted to this adjudication shows that the company is not responsible for cause of the flooding in the customer's property. Accordingly, in the absence of any evidence showing otherwise, I cannot direct the company to undertake any further investigations in the customer's property. In addition, as discussed above, property owners and/or occupiers are legally responsible for private pipework/assets within the boundary of a property. Any issues on private pipework/assets and any costs to investigate and remedy these are the responsibility of the property owners/occupiers. Consequently, the customer's requests are unable to succeed.
23. The customer also requests that the company pay compensation in the sum total of £4,436.70. The customer's submissions show that this sum comprises of costs to cover damage/remedial work, alternative storage space, and distress and inconvenience including time spent making complaints to the company, CCW and WATRS. In respect of the customer's request that the company pay for costs to cover damage/remedial work and alternative storage space, the company is not liable for any damage caused by the flooding incidents, nor is the company liable to provide the customer with alternative storage space. However, in respect of the customer's request that the company pay compensation for distress and inconvenience, in light of my findings that the company provided incorrect information about the cause of the flooding in the customer's property and failed to provide a reasonable level of customer service, I am satisfied that the customer is entitled to a measure of compensation for the distress and

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inconvenience caused. However, I find that the sum claimed by the customer is disproportionate to the failings shown and not in line with the WATRS Compensation Guidelines. I also take into account the fact that the company has already paid the customer compensation for some of its failings such as £40.00 for the failure to respond to correspondence; £150.00 payment for the misinformation (although I am not satisfied that this sum is wholly sufficient – see below); and £50.00 for failing to send this payment. The evidence also shows that the company will honour the £458.00 total CGS payments it initially paid the customer for sewer flooding and will not seek these payments back. Having carefully considered the evidence provided, I find a further sum of £150.00 to be a fair and reasonable level of compensation for the misinformation and additional customer service failings discussed above. No evidence has been submitted to this adjudication to support a higher level of compensation. I therefore direct that the company pay the customer a further £150.00 in compensation.

24. In respect of the customer's request that the company provide an apology, in light of my findings above, I find that that it would be fair and reasonable to direct that an authorised representative of the company provide the customer with a written apology.

#### **Outcome**

The company needs to take the following further action(s):

I direct that the company pay the customer a further sum of £150.00 in compensation.  
I also direct that an authorised representative of the company issue the customer with a written apology.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by **20 working days** 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.

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- 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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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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