

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1463

Date of Decision: 27 August 2019

#### Complaint

The customer has had recurrent problems of sewage flooding at his property over the last 15 years. He believes that the flooding incidents are the company's responsibility and that he has never been properly compensated. The company said that they would fit a Door Bell Blockage Alarm ("Dobba") device. This would connect to the company's priority phone line and the company would respond within 2 hours. However, the customer is unhappy that this does not actually happen. In view of the effect that these matters are having on his health - and for the stress and inconvenience caused to him - the customer seeks financial compensation of £10,000.00.

#### Defence

In this case, the blockages appear to have resulted from residents depositing inappropriate items in the sewer network. The company: (1) is not responsible for damage from sewer flooding caused by factors outside of its control; (2) has no recorded instances of sewer flooding from its engineers or contractors who visited the customer's home; (3) has never found any operational defects within the local sewer network that could contribute to blockages being caused; but (4) acknowledges that there was a failure, on its part, when it omitted to tell the customer about its changed timescales for responding to the Dobba alarm ("the Acknowledged Failure").

No offer of settlement has been made.

#### Findings

There is no sufficient basis for finding that any flooding incidents that affected the customer in this case were caused by negligence or failures on the part of the company. In view of the visits made to the property and the measures put in place, the company took action, reasonably promptly, to try to address the relevant issues. The £30.00 already paid by the company reasonably compensated for the Acknowledged Failure. (This is particularly so, bearing in mind that the £30.00 element was included as part of a £270.00 cheque payment, which the customer cashed on 15 July 2019.)

#### Outcome

The company does not need to take any further action.

The customer must reply by 24 September 2019 to accept or reject this decision.

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He feels that the company simply makes excuses and fails to provide evidence to support its actions.

- He says that, in the last 15 years, he has been flooded a total of 15 times but feels:
  - that he has never been properly compensated; and/or
  - unhappy at the amount of compensation that has been received.
- He would like the company to compensate him now because he made a claim in 2010/11, which the company did not process correctly.
- The customer believes that the flooding incidents are the company's responsibility. Therefore, he considers that the company should pay for:
  - the damage to his furniture and carpet; and
  - the cost of his having to relay his drive in 2010.
- He has skin problems, now, due to the flood.
- In view of the effect that these matters are having on his health - and for the stress and inconvenience caused to him - the customer seeks financial compensation of £10,000.00.

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

- Section 94 of the Water Industry Act 1991 places a duty on wastewater companies to maintain their sewers to ensure that their area is effectively drained. That is the company's legal obligation.
- However, the company is not responsible for damage from sewer flooding, or indeed for the flooding itself, when the cause is outside of its control (unless it is proven that the company had acted negligently.) If, for example, sewer flooding is caused by a blockage in the sewer - and that blockage has resulted from inappropriate items having been placed in the sewer - the company submits that it should not be held liable. This is because the company has no ability to control or predict when and where flooding incidents may happen in this scenario.
- The company argues 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. Where there is a known issue, it is accepted that wastewater companies should repair their assets promptly to eliminate or reduce the risk of sewer flooding.
- In this particular case, the company contends that:
  - it has proactively attended to carry out annual or six-monthly cleaning and CCTV surveying of the local sewer network to the customer's home;
  - it has never found any operational defects within the local sewer network that could contribute to blockages being caused;

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- on many occasions, however, fat and grease has been found in the sewer, which ultimately means that there has been sewer misuse by residents in the area where the customer lives.
- The company advises that:
  - fat and grease should not be disposed of in the sewer network;
  - it cools when it solidifies and other inappropriate items (such as wet wipes) get caught on the solid mass of fat, making it larger;
  - this cycle continues until there is a blockage in the sewer, which prevents wastewater from passing;
  - unfortunately, when this happens, the wastewater will surcharge from the sewer at its easiest exit.
- The company's Sewer Flooding History Database ("SFHD") records all confirmed reports of sewer flooding to enable it to make Customer Guarantee Scheme ("CGS") payments to affected customers. This is also used as a primary tool to confirm whether any mitigation should be considered and/or funding allocated for a flood alleviation scheme. However, as the company has no other means of knowing when sewer flooding occurs, it is reliant on information from its customers and then confirmation from its engineers/contractors in their job notes (so that flooding can be verified.)
- The company confirms that it has no recorded instances of sewer flooding from its engineers or contractors who have visited the customer's home.
- On the question of the amount of compensation awarded, the company refers to its CGS requirements (by which the company makes payments to customers when it fails a service level). One of the service levels in its CGS, section 8, concerns external sewer flooding. The company guarantees to pay its customer a sum equal to half of the wastewater charges payable for the financial year in which the incident (i.e. external sewer flooding) occurs. This is subject to a minimum payment of £75 or a maximum of £500. The company points out that there are exceptions to this guarantee, however. These exceptions ("Exceptions") apply when the escape of the effluent was caused by one or more of the following:
  - exceptional weather conditions;
  - industrial action by employees of the company;
  - the actions of a customer;
  - or any defect, inadequacy or blockage in the customer's drains or sewers; or
- Further, there is no requirement to pay where the customer has not claimed (either in writing or orally), under the CGS, within three months of the date on which the effluent escaped onto his or

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her land.

- In this case, the customer has not suffered:
  - any damage, financial loss; or
  - (in the company's opinion) any serious loss of amenity in respect of the incident.
- Although the customer alleges external sewer flooding, the company submits that it has never seen any evidence of this. If the company had witnessed external sewer flooding on any of the attendances made to the customer's home over the years, in light of the Exceptions, he would not have qualified for a CGS payment in any event.
- Every time that the company has attended to reports of a blockage in the manhole at the customer's home, the cause has found to be *"the actions of a customer"* who has deposited inappropriate items in the sewer network causing a *"blockage"*.
- As to the claimed 'recurrent' problems of flooding, the company's records show that the customer reported drainage issues on the following six dates. The company attended at the customer's property on each occasion ("the Six Visits") and took the remedial actions described:
  - 19 November 2008 – blockage cleared early hours of 20 November 2008, no flooding has been noted, blockage caused by build-up of fat; [L] [SEP]
  - 4 June 2011 – blockage part cleared on the same day and fully cleared on 5 June 2011, no flooding noted, blockage caused by build-up of fat; [L] [SEP]
  - 12 June 2011 – blockage cleared same day, no flooding has been noted, blockage caused by build-up of fat; [L] [SEP]
  - 26 April 2012 – blockage cleared early hours of 27 April 2012, no flooding has been noted, blockage caused by build-up of fat; [L] [SEP]
  - 18 July 2017 – blockage cleared early hours of 19 July 2017, no flooding has been noted or pictured, blockage caused by tree roots; [L] [SEP]
  - 13 January 2019 – blockage cleared early hours of 14 January 2019, no flooding has been noted or pictured, blockage caused by rags/paper/wipes;
- From the company's most recent review of historic events:
  - it is unclear why, in September 2011, a goodwill payment of £3,000.00 was made to the customer. There is no apparent evidence of flooding or financial losses at the time; and
  - another goodwill payment of £1,000.00 seems to have been made to the customer in May 2012. Again, this is despite any evidence of sewer flooding or financial losses at the time.
- The company speculates that, unfortunately, the making of these historic payments may be the motivation for the customer now seeking compensation once again, without any evidence of

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sewer flooding. [SEP]

- The company understands the customer's concerns about becoming stressed and worried because of flooding. However, it is contended that the company is not at fault for any alleged flooding incident that the customer may have suffered and as such, it submits that it cannot be held liable for any ill health caused by flooding events.
- As to the point about the Dobba device, the company confirms that:
  - when it installed the Dobba alarm at the customer's home originally - its timescale for attendance was at that stage 'within two hours'. That timescale changed to 'within four hours'. The company accepts that it did not notify the customer of this change; and
  - in order to say sorry for not notifying him of the timescale change, it sent the customer a cheque for £30.00 as detailed in the company's letter of 6 March 2019. The customer later returned that cheque but the company included the same £30.00 payment as part of another gesture sent to him of £270.00 ("the £270.00 Cheque"). The £270.00 Cheque was cashed on 15 July 2019.
- As to the call that the customer mentions on 13 March 2019, the company responds that:
  - it does not appear to have received such a call on 13 March 2019;
  - it did, however, receive a call from the customer on 13 January 2019 (and this ties in with the customer's statement that a neighbour alerted him to the light flashing on the Dobba alarm outside his home but that it was not sounding inside his home.)
  - it only holds call recordings for six months due to space limitations but it still has a log of the call in question;
  - the record shows that the agent that the customer spoke to logged the instruction to the company's contractors to attend to reports of a blockage at 23.32;
  - whilst it is unable to substantiate the customer's claim that the agent he spoke to was unhelpful, the company always aims to provide a high level of service when speaking to its customers on the phone. If its service fell below the level that the company strives to provide then it apologises to the customer. As part of the £270.00 Cheque that was paid to the customer and cashed on 15 July 2019, an amount of £100.00 was included to say sorry for any poor service that he may have received from the company.
- As to the customer's claims that he has flooded on 15 occasions:
  - this cannot be substantiated by reference to the company's records; and
  - the notes of the Six Visits do not confirm the flooding incidents.
- As to the customer 'not receiving any compensation' for the claim in 2010/11, which allegedly was not processed correctly, the customer (as mentioned above) received a goodwill gesture of

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£3,000.00 in 2011 and a further goodwill gesture of £1,000.00 in 2012. The company says that these gestures were authorised at a high level within its business and without evidence on its records of flooding having occurred.

- The company says that it has put the following measures in place to help the customer (“the Measures Put in Place”):
  - the Dobba alarm (now removed at the customer’s request);
  - two Sewer Depth Monitors;
  - liaising with local businesses about their grease management;
  - educating local residents on what can and cannot be disposed of in the sewer network;
  - continued proactive sewer cleaning and CCTV surveying.
- Other than these measures, the company comments that there is nothing more that it can do. It cannot increase the capacity of the sewer network in the local area as the cost to do such work would far exceed the benefit that would be provided to the customer alone.
- The company suggests that the customer may wish to think about mitigation measures himself, with regards to the permeable drainage at his home, for example, by:
  - reducing the amount of paved area at his home in exchange for grassed area; or
  - creating surface water drainage channels into the existing grassed areas; or
  - building a soakaway at his home.
- With regards to the enclosed area outside his back door, the company suggests that the customer may like to consider drainage work to allow surface water to drain away (because - as the photographs that the customer has submitted show - there is the potential for flooding in this particular area of his property due to the layout of his back garden.)

### **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

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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 materials that I have reviewed include in particular:
  - a. the batch of evidence (appendices 1 and 2) and colour photographs submitted alongside the customer's WATRS application form; and
  - b. the detailed chain of events (and images and screenshots) as set out on pages 1 to 38 of the company's defence; and
  - c. the correspondence bundle, picture diaries and evidence items 1 to 10 appended to the company's defence.
2. I have also had the benefit of reading the customer's comments, which were filed by way of reply to the company's defence.
3. This is obviously a case with a very long history. I fully appreciate the degree of stress and anxiety that the customer says that - over the period in question - he has had to endure. I note that the company is sympathetic too. In the defence, Mr [ ] of the company explains that:

*"... Working in this industry [he has] seen the effect sewer flooding has on [the company's] customers and so [he] can understand when Mr [ ] says he becomes stressed and worried because of flooding ..."*
4. My focus has been on whether the company can and should be held responsible for the matters about which the customer is complaining.
5. The company argues that it should not be held responsible. This is essentially because, according to its records:
  - a. any sewer flooding in this case appears to have stemmed from factors outside of the company's control (specifically, misuse by residents and "*inappropriate items having been placed in the sewer*"); and

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- b. no “operational defects within the local sewer network that could contribute to blockages being caused” have ever been found; and
- c. on each occasion of the Six Visits, no flooding was noted. To support this point, the company refers to the following materials provided with its defence:

*“... Evidence 4 shows the picture diary for attendance at Mr [ ]’s home in the early hours of 19 July 2017, you’ll note our contractors have stated ‘No Flooding’ on the first page of this picture diary. You can see in Evidence 4 from images 2 & 3 it was a wet morning. Image 11 shows the MH within Mr [ ]’s property boundary, this can be confirmed by entering the GPS coordinates on google. As you’ll note, there is no evidence of the MH having surcharged. Likewise, Evidence 8 shows a picture diary of our attendance in the early hours of 14 January 2019 and image 14 shows no evidence of the MH within Mr [ ]’s property boundary as having surcharged. As before, our contractors have also stated on the first page of Evidence 8 ‘No Flooding’. For the four previous attendances ... our contractors haven’t noted flooding when they’ve attended as can be seen in the screen shots ... taken from the computer systems we use at [the company] ...”* [ ] [SEP]

6. The evidence on which the company relies is comprehensive and does seem to support its position. I do not see that there is a sufficient basis for finding that any flooding incidents that affected the customer in this case were caused by negligence or failures on the part of the company. Rather, I accept the company’s submissions that the blockages in question probably resulted from ‘misuse’ by residents who had deposited ‘inappropriate items’ in the sewer network.
7. I note also that, potentially relevantly, on pages 44 and 45 of the defence, the company alludes to possible hydraulic overload of the sewer capacity during periods of exceptional rainfall. It observes that:

*“... it appears the landscape of Mr [ ]’s home has helped to create a perfect storm with regards to the flooding Mr [ ] alleges he suffers from. Mr [ ] has included pictures with his Application that show his rear garden flooded ... it appears that it was raining when these pictures were taken. In these pictures the driveway slopes down (from the back to the front of the property) into the area at the back of his home and the paving area outside the double doors is enclosed by a garden wall. Thus, creating an area where water can collect and not drain away ... the majority of the external areas of Mr [ ]’s home have hard surfaces that*

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won't allow drainage. It also appears that from the front boundary of Mr [ ]'s home there seems to be an incline towards the rear and, as has been shown in Mr [ ]'s pictures, there is also an incline from the rear of the property towards the front creating a low point in the middle of the plot where Mr [ ]'s house is located. Over recent years excessive rainfall is becoming more common and with climate change, it will only become a more regular event ...”

8. Looking at all the evidence in connection with the Six Visits and the Measures Put in Place (and generally), I am satisfied that - when it has been made aware of drainage problems at the customer's property - the company has taken action, reasonably promptly, to try to address these issues.
9. On the issue regarding the Dobba alarm, I do find that - in not letting the customer know about the change in its response timescales (i.e. changing from 'within two hours' to 'within four hours') - the company fell below the standard to be expected.
10. This is a failing that the company itself acknowledges (“the Acknowledged Failure”).
11. I see that the company dealt with the Acknowledged Failure by paying over the £270.00 Cheque to the customer. £30.00 was included in this respect. I consider that £30.00 was a reasonable reflection for the omission made, particularly when rolled up with the other elements that were comprised in the £270.00 Cheque. The full breakdown of the £270.00 Cheque was, the company explains, as follows:
  - **“£50 - not notifying Mr [ ] he would be responsible for maintenance of the Dobba alarm [REDACTED]”**
  - **£30 – not notifying Mr [ ] of our timescale to respond changing from two hours to four hours (this gesture had previously been sent to Mr [ ] and was arranged again as he returned the previous) [REDACTED]”**
  - **£30 – because we sent Mr [ ] a letter with another customers name (although the body of the letter was relevant to Mr [ ]) [REDACTED]”**
  - **£30 – wrong address on one of our letters [REDACTED]”**
  - **£30 – because there was only one sewer cleaning and survey carried out in 2015 rather than two [REDACTED]”**

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- **£100** – general service provided to Mr [ ] as he had cited misinformation having been <sup>[ ]</sup>provided to him and was unhappy with service provided when he had called us". <sup>[ ]</sup>

12. The £270.00 Cheque having already been paid over, I do not consider that it would be warranted to require the company to make any additional payment of compensation to the customer in this case.

#### 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 24 September 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.



**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**

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