

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1467

Date of Decision: 13 January 2020

Complaint

The customer has had an ongoing problem of sewer flooding to his garden since 1994. The customer has experienced eight flooding incidents that he considers to be major and several others he considers to be minor.

The customer has suffered loss as a result of these flooding incidents. Losses include the death of 15 high value fish the customer keeps in a garden pond plus damage to plants and property in the garden.

Flooding incidents have caused stress and health problems for the customer over several years. The customer seeks that the company resolve the flooding issues.

The customer has withheld payments and seeks an explanation as to why he has been pursued for payments despite his ongoing dispute with the company.

The customer seeks to have six Guaranteed Standards Scheme payments credited to his account plus interest on overdue payments.

The customer seeks compensation for calls made to the company since September 2017.

The customer claims the sum of £9,965.00 as compensation for his losses.

Defence

The company has received four reports of sewer flooding at the customer's property and flooding has been verified on two occasions. The required GSS payments for flooding incidents have been processed.

In respect of losses claimed by the customer, the company considers that there is no evidence that the company has failed to maintain its assets or provide services to a reasonable standard.

The company offered the customer the sum of £400.00 as a gesture of goodwill in recognition of the calls he had made to the company and this sum was accepted by the customer and paid by the company.

The company notes that the customer has not made any payment since December 2014 and the latest outstanding amount on the customer's account is £2,205.06. The company has continued to provide water and sewerage services to the customer. The company considers the bills sent to the customer are correct and due for payment.

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Findings

The company has investigated the flooding incidents. Whilst the company acknowledges it has not fully concluded its investigations, I find no evidence that the recorded flooding incidents are the result of any failure on the part of the company.

The company has made the required payments under the Guaranteed Standards Scheme in respect of recorded and verified flooding incidents.

The company has failed to meet the standards to be reasonably expected in relation to its communication with the customer in the resolution of the flooding problems. The customer has suffered distress and inconvenience as a result.

Outcome

The company shall pay the customer the sum of £750.00 in respect of distress and inconvenience caused to the customer. The company may, at its discretion, apply this as a credit to the customer's account.

The company shall also issue the customer with a letter confirming the outcome of its investigations to date and setting out details further action planned, if any.

The customer must reply by 10 February 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/STW/1467

Date of Decision: 13 January 2020

Party Details

Customer: Mr Martin Goody

Company: Severn Trent Water, a water and sewerage company.

Case Outline

The customer's complaint is that:

- The customer has experienced problems with sewage flooding his garden. The problem has been ongoing since 1994. The customer's main complaint relates to the company's failure to carry out works first identified on or around 23 February 2011.
- The company was due to carry out works nearby but that work was postponed. The customer states that the company had deemed the problem causing the flooding to be private. The customer states that the company failed to issue a letter to the customer confirming its position.
- The customer states that he met representatives of the company on 17 March 2017 and they advised him that their investigations were over and the issue was private. The customer refused to accept this as he considered his complaint had not been addressed.
- The customer states that the company advised on 23 May 2017 it would send a closure letter. That letter has not been received.
- The customer had experienced eight flooding incidents that he considered to be severe and a number of additional flooding incidents the customer considered to be minor.
- The flooding incidents contributed to the death of a number of valuable fish kept by the customer in a garden pond. Additional fish were lost in 2019 following works in the customer's garden by the company.
- The flooding incidents and the consequences of flooding have caused stress to the customer and the customer has suffered serious health problems as a result.

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- The customer seeks a written explanation as to why he has been pursued for payments despite the ongoing dispute between the customer and the company.
- The customer seeks that the company resolve the cause of flooding and provide compensation.
- The customer seeks to have six Guaranteed Standards Scheme (GSS) payments in relation to flooding incidents credited to his account plus interest on overdue payments.
- The customer seeks to have the company clear the remaining outstanding balance on his account.
- The customer seeks compensation for calls made to the company from September 2017 onwards.
- The customer claims further compensation in the overall amount of £9,965.00.

The company's response is that:

- The company is still investigating the cause of the external flooding as reported by the customer and therefore is yet to provide a full response to the customer's complaint.
- The company has received four reports of sewer flooding at the customer's property. Flooding has been verified on two occasions and the required GSS payments for flooding incidents have been processed.
- The company states that the customer has only been registered as the account holder since 2013 and therefore any payments which may be due to the customer under the (GSS) would only apply from 2013.
- The company states that following a site visit in March 2017 the company believed that it had fully investigated the customer's concerns and found no issues, The customer requested a closure letter which the company agreed to send. The company states that the customer does not consider the issue has been resolved, continues to withhold payment for water charges and has continued to raise concerns that require investigation. The company has therefore been unable to issue the closure letter. The company has acknowledged its failure in not keeping its promise and the delay in sending a closure letter.
- The company notes that the customer has not made any payment since December 2014 and since that time his account has been on hold. The customer has advised he will not make any payments while the sewage issue is still ongoing. The current outstanding amount on the customer's account is £2,205.06 which dates back to April 2015. The company has continued to provide water and sewerage services to the customer. The company has paid the required GSS payments. The company considers the bills sent to the customer are correct and due for

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payment. Whilst the company considers it is entitled to pursue the outstanding debt, it has agreed to the customer's requests to place a hold on his account.

- The company notes the customer's claim for compensation. The company acknowledges its obligations under relevant legislation to fully investigate reports of sewer flooding to establish whether the company's assets are the cause and, if repairs are needed, to make such repairs to prevent further incidents. The company submits it cannot be held liable unless it can be proven it has been negligent. The company states that the cause of flooding has not been fully identified and states that there is no evidence that the company has failed to maintain its assets or provide services to a reasonable standard.
- In January 2018, the company offered the customer the sum of £400.00 as a gesture of goodwill in recognition of the calls he had made to the company in respect of his ongoing dispute. The company notes that the customer accepted this payment and a cheque was sent to the customer on 5 January 2018.

How is a WATRS decision reached?

In arriving at my decision, I have considered the following key issues:

- a. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
- b. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard which would be reasonably expected and 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 I have not considered it in reaching my decision.

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How was this decision reached?

1. From the evidence provided it is apparent that the customer has experienced incidents of sewer flooding in the gardens of his property over several years. Sewer flooding can be highly distressing and unpleasant for those affected. The company notes the seriousness of sewer flooding and states that this is something it is working hard to reduce. The company states that it has to prioritise funding to resolve flooding issues and therefore takes into account a number of factors in relation to its impact on customers. These include the frequency and severity of incidents and whether flooding enters houses or affects external areas.
2. The customer keeps a number of valuable fish in his garden. It is apparent that the customer has a high level of knowledge in the keeping of fish and takes their welfare seriously, ensuring, among other things, that the risk of infection is minimised as far as possible. It is also apparent from the customer's submission that any external influences that cause or risk causing harm to his fish would be distressing to the customer. It is understandable that sewage flooding the customer's garden, whatever the cause, would give the customer serious concerns for the welfare of his fish, particularly if that flooding lead to any contamination of the fishpond.
3. The customer states that his property has suffered incidents of external sewer flooding since 1994. I have been unable to find in the documents any details relating to flooding incidents prior to 2011. I am therefore unable to consider any incidents prior to that date. However, the main aspects of the customer's complaint relate to the period following 2011. I also note that, although the customer states he has lived at the property since 1994, he has not been the registered account holder throughout that time. In examining any claim for compensation or GSS payments, I am only able to consider such claims in relation to the time the customer has been the registered account holder.
4. The company has referred to reports of incidents of external flooding on four occasions as follows:
 - a. 19 March 2011 which the company reports was prior to the customer being the registered account holder. The company states flooding was confirmed and a GSS payment was made to the registered account holder at that time.

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- b. 8 June 2016 when the customer reported that heavy rain was causing sewers in several gardens in the area to overflow with sewage and the customer expected his property would be affected. The company reports that it attended the following day and found no flooding as it had already been cleaned up by the customer.
 - c. 11 June 2016 when it was reported that the manhole in a neighbouring property was blocked and during the heavy rainfall the previous day had overflowed and flooded the customer's garden. The company reports it attended on 12 June 2016 and the manhole was clear, although the company states it did clear some rubble from the manhole chamber. The company notes there was no record of flooding.
 - d. 5 May 2018 when the customer reported flooding. The company attended on 6 May 2018 and saw evidence of sewer flooding. The company states a GSS payment was processed.
5. The company notes that the customer claims there have been more instances of sewer flooding than the company has on record and has asked the customer for further details of these incidents. The company states that no supporting information has been provided by the customer.
6. The customer has, within file reference 20191128162006434, included a photograph which the customer states depicts typical flooding of his garden. The customer notes against that photograph that flooding has occurred to a level similar or worse than that shown on the photograph in 2013, 2014, 2015, 2016 and 2018. Flooding in these years is also noted in the customer's application to WATRS on Page 11. I could find no specific dates mentioned in relation to the flooding incidents and no photographs of the specific flooding incidents. Whilst there are a number of photographs showing flooded areas of the customer's garden, a number of these have no date reference. None are time and date stamped. In a number of photographs it is unclear whether the flooding is sewage or surface water. With the exception of a flood that was recorded in 2018, I have been unable to find evidence supporting the customer's claim that sewer flooding to his property has occurred as referred to above.
7. I am unable to determine conclusively from the evidence provided that there have been any external sewer flooding incidents since 2011 other than those noted by the company. However, it is apparent from the evidence that the customer considers he has had issues in relation to sewer flooding for a number of years.

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8. The customer considers he is entitled to six further GSS payments for incidents of flooding. The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 cover external flooding from sewers under Regulation 12. Under Regulation 12(2), a sewerage undertaker must make a payment to a customer if effluent from a sewer under the control of the undertaker enters the customer's land or property. This is reflected in the GSS. Under Regulation 12(4)(d) the customer must make a claim within three months of the date of the incident. Regulation 12(5) requires that a claim for payment must be accompanied by a statement detailing the effect of the flooding on the customer's land or property. If the customer has reported the incident and the company has witnessed the effects of flooding, the company will make a payment automatically. If someone other than the customer has reported the incident then it would be incumbent on the customer to make the company aware if his land had been affected.
9. The company states it made one GSS payment to the customer on 5 May 2018 in the sum of £119.80 and that this payment was credited to the customer's account. This is confirmed in a letter to the customer which is dated 13 December 2019. The company also states that a GSS payment was made to the registered account holder in March 2011. The company considers it has made all required GSS payments in respect of verified instances of external flooding.
10. I have found no evidence of any flooding incidents beyond those verified by the company. I find no GSS payments in relation to flooding incidents to be due beyond those already paid by the company. I make no direction in respect of further GSS payments.
11. The customer has claimed the following amounts as further compensation in respect of external sewer flooding to his property:
 - a. £6000.00 in respect of the loss of 15 fish (Koi).
 - b. £200.00 in respect of slate edging.
 - c. £100.00 in respect of timber to repair a rotten frame.
 - d. £385.00 in respect of plants, trees shrubs, grass etc.
 - e. £650.00 in respect of lawn replacement and removal of contaminated soil.
 - f. £700.00 in respect of time spent cleaning up after flooding incidents.
 - g. £550.00 in respect of telephone calls from May 2015 to December 2017.
 - h. £900.00 in respect of time and labour digging graves for fish.
 - i. £360.00 in respect of damage to rear fence caused by the company.

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j. £120.00 in respect of ink and paper for the case.

Total claimed as further compensation in respect of external sewer flooding is £9,965.00.

12. The customer also seeks to have the outstanding balance on his account cleared. The customer seeks this in addition to the compensation claimed.
13. In order to succeed in a claim against the company for compensation in respect of damage caused by external sewer flooding, the evidence available must show on the balance of probabilities that that flooding originated from the sewer network for which the company was responsible; flooding was a result of failure by the company to provide its services to the standard which would be reasonably expected; that failure resulted in loss or detriment to the customer.
14. The company has stated that sewer flooding has been verified on two occasions since 2011. I am satisfied that sewer flooding originated from the company's sewer network and that the company has acknowledged this.
15. The customer states that in 2011, the company located two blockages in a nearby street that the company considered were the cause of flooding incidents. The customer notes that removal of those blockages solved the issue immediately. The notes from the company support this. I also note that the company's notes concerning the 2011 flooding refer to access to the customer's property as having previously been via a neighbour's garden. This indicates there had been incidents prior to 2011. The customer states that the company was due to carry out further work in that location but the work was postponed. The customer states that work had still not been carried out up to 2019. The customer has also made references to flooding and investigations prior to 2011. It is apparent that the customer has developed opinions regarding the cause of flooding to his property over a number of years.
16. The company notes that following the sewer flooding incident in 2011, the customer considers the problems are linked to a sewer located in a nearby street and that the company has not done enough to investigate this to confirm the cause of the flooding. The company states that in the past few years it has conducted a number of CCTV surveys, cleansed and removed roots from all the companies known assets. The company also states it has opened an excavation at the rear of the customer's property to expose an unknown pipe and made repairs. The

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company states it has removed roots and silt from the unknown pipe and needs to construct a new manhole in the highway for the unknown pipe in order to continue the survey to identify what that pipe is and where it runs. The company states it has suspended the investigation as it has to make a decision on whether to build the manhole. The company notes that it has to prioritise funding to deal with sewer flooding and, as there have been no further reports of flooding, the company considers the priority in relation to this case is low.

17. The company's notes show various works had been carried out in the area around the customer's property throughout 2015, 2016, 2017, 2018 and 2019. These works included CCTV surveys, cleansing manholes and pipes, removal of roots, dye tests, excavations, repair and replacement of assets. The company also states that it has asked its Sewerage Management Plan Consultants to investigate and run computer models of the network to examine how surcharge in a nearby street could cause flooding at the customer's property. This work has not been concluded as the manhole referred to above is required to be constructed to complete necessary survey work.
18. Whilst I fully recognise the customer's concerns over flooding incidents, from the evidence I can see the company has undertaken various surveys, maintenance and investigations since 2015 to establish the cause of flooding. In relation to the flooding incident in May 2018, the company states that following investigation, the company cleared a blockage and removed roots from the sewer. The company states that no further incidents of flooding have been reported since then. The customer acknowledges on page 12 of file number 20191128162006434 that severe weather in June 2019 did not cause any flooding. The customer also notes that previously such weather would have caused serious flooding.
19. The company has undertaken various work since 2015 to investigate the problem and has taken action to rectify problems where found. Since there have been no flooding events since 2018 and the customer confirms that severe weather that would previously have caused flooding has not done so, I find it reasonable for the company to now deem this to be a lower priority in relation to allocating funds to sewer address flooding.
20. I have considered whether or not sewer flooding incidents can be attributed to any failure on the part of the company. As I have previously found, I could find no evidence supporting the customer's claim that there had been more incidents of sewer flooding than those recorded in 2011 and 2018. In each case, the company cleared blockages and that appeared to resolve

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the immediate problem. It is noted that blockages in sewer networks can be caused by a number of factors outside the control of a sewerage undertaker.

21. It is further noted that when, under The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, the company became responsible for pipework that had previously been regarded as private sewers, a number of these sewers were unmapped. The company has stated that it updates its records as it identifies further pipework. I find this to be a reasonable approach.
22. I find no evidence that the sewer flooding in the instances recorded were the result of any failure on the part of the company.
23. I will now consider the customer's claims for compensation in relation to my findings above.
24. The customer claims the sum of £6,000.00 in respect of the death of 15 fish (Koi). The company recognises the impact of the loss of fish on the customer. The company submits that no evidence has been provided to show the loss of fish has been directly caused by flooding incidents. The company also submits that, although the cause of flooding has not been fully established, there is no evidence that the company has failed to maintain the sewer network.
25. I have stated previously that I found no evidence that the incidents of sewer flooding were the result of a failure on the part of the company. I also note that the customer has acknowledged in the notes associated with certain photographs of his fish that the death of certain fish may be the result of some other factor not connected to the flooding.
26. I have reviewed various photographs of fish provided by the customer together with the notes added to those photographs. Notes dated 21 April 2019 refer to two fish deaths and refer to those fish suffering infections through scratches from a coot, which I take to mean the variety of water bird. The customer submits that a coot roaming in his and his neighbour's gardens and the surrounding area carried infectious bacteria on its feet to the customer's pond. The customer attributes this to the coot picking up bacteria from works left open by the company. Whilst I can understand that a bird will pick up bacteria in the course of its normal activities, that bacteria can come from a variety of sources, local or distant. I find no evidence that any bacteria picked up by the coot has been traced to the company's works. I find it has not been

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established that the deaths of these two fish can be directly attributed to works carried out by the company.

27. I find no evidence that deaths of the customer's fish can be attributed to any failure on the part of the company. I therefore find the customer's claim for loss of fish fails.
28. The customer claims the sum of £2,035.00 in respect of slate edging; repair of wooden frame; plants, trees and shrubs; damaged lawn and time spent clearing up. With the exception of photographs of vegetation contaminated through flooding, I have not seen any evidence from the customer supporting the claim of damage or costs associated with replacement or remedial work. Further, as I have already found the flooding was not the result of any failure on the part of the company, I find the customer's claim in respect of these items fails.
29. The customer claims the sum of £550.00 in respect of 28-day hold renewal calls from May 2015 to December 2017. The company submits that the customer made the decision to withhold payment for his water and sewerage charges due to his ongoing dispute. The company further submits that the customer made regular calls to ask that a hold would be placed on his account and that the action taken by the customer was the customer's choice. This company also states that in January 2018, the customer was offered and accepted a payment of £400.00 in respect of calls made to its operational centre.
30. During the course of the customer's dispute with the company, the customer continued to receive water and sewerage services from the company. The company is entitled to invoice the customer for those services. The customer's dispute did not relate to the water and sewerage services provided by the company. The customer chose to withhold payments to the company. I find no entitlement for the customer to recover the cost of calls to the company in respect of the customer's decision to withhold payment. The customer's claim for recovery of the costs of calls from May 2015 to December 2017 fails.
31. The customer claims the sum of £900.00 in respect of time and labour digging graves for fish. I have previously stated that I could find no evidence that the deaths of the customer's fish could be attributed to any failure on the part of the company. The customer's claim in respect of time and labour in digging graves for his fish fails.

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32. The customer claims the sum of £360.00 for damage to his rear fence by the company. I have found no reference to this matter in the customer's submissions and no evidence to support the claim that the fence was damaged by the company or the costs of repair of any damage. The customer's claim in respect of damage to his fence fails.
33. The customer claims the sum of £120.00 in respect of ink and paper in preparing his case. The company notes that the WATRS Guidance Notes state that the customer must pay any costs incurred in preparing his case. Rule 7.2 of The WATRS Scheme Rules (2019) states that a customer may include (subject to proof of loss) claims for incidental costs as part of his claim. Such incidental costs would not include costs of preparing the claim. No supporting evidence is provided. The customer's claim for recovery of costs for ink and paper in preparing his case fails.
34. The customer seeks to have the outstanding balance on his account cleared. The customer seeks this in addition to the compensation claimed. The customer notes that he would accept clearance of the outstanding balance on his account as covering what he claims are outstanding GSS payments and interest.
35. The company states that it has continued to provide water and sewerage services to the customer and is therefore entitled to receive payment. The company has stated that its invoices to the customer are correct and that payment is due. I have found no evidence that the customer is disputing the amounts of the invoices received from the company for the services covered by those invoices. The customer has withheld payment due to his dispute with the company regarding flooding incidents. This is not related to the services invoiced by the company. I therefore find no justification to direct the company to reduce or clear the customer's account balance and make no direction in regard to this matter.
36. Whilst I have found no evidence of failure on the part of the company in respect of the recorded incidents of sewer flooding, the evidence shows that company has been investigating the cause of the flooding for a minimum of four years. The company acknowledges that it has an obligation to fully investigate incident of flooding and, if it is established that its assets are at fault and repairs required, to make such repairs to prevent further incidents. The company acknowledges that it has not fully established the cause of the flooding.

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37. The Consumer Council for Water (CCW) publishes a document entitled “Flooding from Public Sewers, your questions answered”. This document notes that investigations into sewer flooding problems can be large scale projects and cannot always be resolved quickly. Whilst investigations may take time, it would be reasonable for the company to have written to the customer on completion of various stages of its investigations to explain their findings and what action they expect to take.
38. The customer refers to a closure letter he was advised would be issued by the company. The company’s notes make reference to issuing a closure letter early in 2017. The company’s manual note dated 25 May 2017 states “we’re in progress of sending a closure letter’. The company’s manual note dated 28 November 2011 states “We will draft closure letter for site investigation undertaken”. The customer has repeatedly referred to a closure letter which he states has not been received. I have seen no evidence that the closure letter referred to by the company has been issued. I note that the reason for the company not issuing the letter may be that the company has not concluded its investigations.
39. The company’s email to the customer dated 12 December 2018 acknowledges that the customer has had an issue for a number of years and that there have been customer services failures in the manner in which the company has handled the matter and in its contact with the customer. The company also notes that it would take into account the impact on the customer when considering any compensation payment.
40. The customer has been in contact with the company in relation to this dispute for several years. The customer was advised a closure letter would be issued and followed up on this on a number of occasions. However, the closure letter has not been received. This has been a long running problem and it is evident that this issue, which has still not been fully resolved, has caused distress and inconvenience to the customer. I find that the company has failed to act reasonably in its handling of communications with the customer concerning its investigations into the flooding incidents.
41. Under the WATRS Scheme Rules (2019 Edition), Rule 4.3.3. notes that, subject to the overall financial limits under the scheme, an adjudicator is not bound to simply award only the remedies claimed by the customer.

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42. I find that the customer has been adversely affected as a result of the prolonged investigations by the company over several years together with the failure of the company to fully communicate its findings to the customer. I award the customer the sum of £750.00 in respect of inconvenience and distress caused. I therefore direct the company to pay the customer the sum of £750.00 in respect of inconvenience and distress. The company may, at its own discretion, apply this amount as a credit to the customer's account.
43. I also direct the company to issue the customer with a letter confirming the outcome of its investigations to date and setting out details of further action planned, if any.

Outcome

The company shall pay the customer the sum of £750.00 in respect of distress and inconvenience caused to the customer. The company may, at its discretion, apply this as a credit to the customer's account.

The company shall issue the customer with a letter confirming the outcome of its investigations to date and setting out details further action planned, if any.

What happens next?

- This adjudication is final and cannot be appealed or amended.
- The Customer must reply by 10 February 2020 to accept or reject this decision.
- When the Customer notifies WATRS of acceptance or rejection of the decision, the Company will be notified of this. The case will then be closed.
- If the Customer does not inform WATRS of his acceptance or rejection of the decision by the date required, this will be taken as a rejection of the decision.

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Signed

A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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