

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1788

Date of Decision: 25 February 2020

#### Complaint

The customer's claim is the company has failed to maintain its assets and this has led to periodic flooding of raw sewage within the boundaries of his property. The customer is seeking the company to carry out the remedial work suggested by his insurers to prevent further flooding and pay compensation of £3,500.00 for the damage to his property, the distress and inconvenience incurred.

#### Defence

The company submits that in the absence of negligence under section 94 of the Water Industry Act 1991 the company is not liable for the escape of the contents of public sewers. The company submit it has not at any time been negligent, as it has conducted various investigations into the reasons behind the flooding and undertook CCTV surveys on the sewer which found it fully operational. On each occasion the customer has experienced flooding this was due to sewer abuse and to try to prevent further blockages the company has sent the residents of the customer's local area letters and information leaflets. Furthermore, the customer has been compensated in line with the company's Guaranteed Standards Scheme. The company has not made any further offers of settlement.

#### Findings

I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected, with regard to identifying any defects with the sewer and clearing any blockages caused by local residents' sewer abuse. With regard to customer service, I find no additional failings for which the customer has not been already adequately compensated for.

#### Outcome

The company needs to take no further action.

- The customer must reply by 24 March 2020 to accept or reject this decision.

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## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1788

Date of Decision: 25 February 2020

### Party Details

Customer: [ ]

Company: [ ]

### Case Outline

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

- The company has failed to maintain its assets within the boundaries of his property, and this has led to periodic flooding of raw sewage into the property grounds.
- The customer is seeking for the company to carry out the remedial work suggested by his insurers to prevent further flooding and pay compensation of £3,500.00 for the damage to his property and the distress and inconvenience incurred.

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

- The cause of the flooding the customer has experienced was due to sewer misuse in the customer's local area.
- Under section 94 of the Water Industry Act 1991 the company, in the absence of negligence, is not liable for the escape of the contents of public sewers. The company has not at any time been negligent, as it has conducted various investigations and CCTV surveys on the sewer which found it fully operational.
- In recognition of lack of liability in respect of escape of contents of its public sewers the company operates a Guaranteed Standards Scheme (GSS) pursuant to the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. On each occasion the customer has experienced flooding the customer has been compensated in line with these regulations. Accordingly, no further sums are due in this respect.

### How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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. 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. The dispute centres on whether the company should carry out the work suggested by the customer's insurers to prevent further flooding. The company is required to meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of a leak, the company needs to investigate fully if the company's assets are to blame and, if repairs are needed, make such repairs to prevent further leaks.
2. Furthermore, the company also has certain obligations in respect of its customer services as set out in OFWAT Guaranteed Standards Scheme and the company's own Customer Guarantee Scheme.
3. From the evidence put forward by the customer and the company, I understand the customer has experienced external flooding emanating from the company assets within his property on eighteen occasions between 24 April 2007 and 9 February 2019. Between 8 May 2014 and 9 February 2019 correspondence took place between the parties following various flooding incidents and the evidence shows that, within this period, the company conducted various CCTV surveys of the sewer and various remedial works were completed to the public sewer. These works involved the creation of a new manhole downstream to a third-party property and a non-

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return valve was also fitted. Whenever, flooding had occurred, it was found to have been caused by debris and non-flushables being deposited in the sewer. Furthermore, after each incident of flooding the company arranged for the customer's garden to be cleaned as required. The company states that within this period it sent correspondence out to local residents concerning sewer abuse, however, the customer in his reply to the defence disputes this. I understand from the evidence that in mid 2018 a Planned Preventative Maintenance program was recommended for the manhole at the front of the customer's property which would ensure that the sewer would be jetted on a six-monthly basis going forward.

4. After the incident on 12 April 2019, the company undertook further CCTV investigations and remedial works were undertaken to tackle two areas of the sewer identified as needing repair. The evidence shows that these works were completed on 24 May 2019. A further CCTV survey was undertaken on 5 July 2019 and it was found that no further works were required. However, to reduce any further blockages the company arranged for the sewer to be jetted every 2 months under the Planned Preventative Maintenance previously setup. On 21 September 2019, the customer once again contacted the company to report that the manhole outside his property was full, but not overflowing. The evidence shows that company then investigated the matter further and found that the cause of the full manhole was once again due to sewer abuse. After cleaning the sewer the company contacted the customer in November 2019 stating no further action regarding the sewer was required as the sewer was fully operational, and no serious defects could be found.
5. With regard to whether the company should carry out the remedial work suggested by the customer's insurers to prevent further flooding. Firstly, it is not clear from the evidence exactly what work was suggested by the customer's insurers. Secondly, as stated within the company's defence documents under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers. After careful analysis of the correspondence and evidence, I cannot find any indication the company has been negligent with regard to the sewer. CCTV surveys were undertaken by the company that show the sewer had no significant defects, was operating freely and where minor defects or blockages were found, the company undertook the required repairs in a timely manner. As shown by the correspondence within the CCWater and the company's defence documents, on each occasion previous to 21 September 2019, the company investigated the cause of the flooding and took appropriate action if cleaning was required. The evidence shows that the company made discretionary GSS payments, refunds of sewage charges and paid compensation to the customer totalling £5,749.23.00 for thirteen of the external flooding

incidents. On each of the external floods the blockage was found to be caused by local residents' sewer abuse or due to a pump failure caused by bad weather. Whilst I appreciate the customer's position, I am of the view the company did investigate the flooding as best it could and acted appropriately according to the results of its investigations. In light of the above, I find there are no grounds to conclude the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person with regard to the investigating of the source of the flooding at the customer's property.

6. I note the customer's comments regarding the alleged damage to his garden by the sewer flooding. As above, I have found the company did not fail to provide its services to the customer to the standard to be reasonably expected by the average person with regard the investigating of the source of the flooding and clearing any blockages. Furthermore, under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers. Accordingly, the company cannot be held responsible for any damage caused by such escape. Moreover, even if a company could be found liable, which it cannot, I am conscious there is no evidence to support the customer's requested redress of £1,000.00 for the damaged garden. WATRS is an evidence based scheme and I am satisfied the customer has neither supported his position with evidence nor explained why he is unable to do so. Accordingly, I accept the company's position and find that no sums are due in this regard.
7. The company has certain obligations in respect of its customer services. The evidence shows that, where appropriate, the company made GSS payments as required by the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. I am therefore satisfied there have been no failings with regard to customer service, which the customer has not been already adequately compensation for.
8. In light of the above, I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected, with regard to identifying any defects with the sewer and clearing any blockages caused by local residents' sewer abuse. With regard to customer service, I find no additional failings for which the customer has not been already adequately compensated for. Consequently, 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 24 March 2020 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 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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**Mark Ledger FCI Arb  
Adjudicator**