

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1840

Date of Decision: 11 March 2020

Complaint

The customer submits that in 2018 he experienced external flooding on two occasions. The company provided a basic clean up and he contacted his insurance company. He paid for the works to be completed as a one-off event as the company declared that it had found the problem and assured him that it would not re-occur. He experienced external flooding again in October 2019. He sought the cost of a thorough clean-up and damaged items directly from the company. When the initial clean-up was carried out, the company's contractor disinfected the rose beds killing the vegetation and hosed the human waste into a pea gravel patch causing further contamination. The company also delayed in dealing with the matter and provided a poor level of customer service. The customer requests that the company provide reassurance that it has taken steps to eliminate the risk of further flooding at his property; pay £1,000.00 for the cost of cleaning out and disinfecting the log cabin and a small monetary amount towards the cost of replacing the damaged items in the log cabin and patio furniture; pay for the cost of disposal and replacement of the pea gravel; and pay compensation for poor customer service and inconvenience.

Defence

The company submits that the flooding in 2018 was due to a blockage, whilst the flooding in October 2019 appears to have been due to heavy rainfall at the time. It has not been negligent and so it is not liable for any damage caused by the flooding incident. It can never guarantee that sewer flooding will not occur. Any run off into the pea gravel would have been mainly water. Any bacterial contamination would have been minimal, and this would have died off naturally during the days following the flooding. It has offered a goodwill payment of £175.00 to the customer in recognition of the service he received.

Findings

Under the Water Industry Act 1991, a company is not generally liable for sewer flooding unless the flooding was caused by its negligence. No evidence has been submitted to this adjudication to show that the flooding in either 2018 or 2019 was caused by the company's negligence. There is also no evidence to show that after the 2018 flooding the company informed the customer that flooding would not re-occur. I accept the company's submissions that it can never guarantee that sewer flooding will not occur as flooding incidents can be as a result of a variety of different factors. As there is no evidence to show that the company has been negligent, I accept the company's submissions that it is

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not liable for any damage caused by the flooding incidents. The company has submitted in evidence its sewer flooding policy and information from the Water Research Centre (WRC). In respect of the customer's submissions about the pea gravel, I am not satisfied that the company met its obligations to remove solids left behind. However, in accordance with the WRC document there is no evidence to show that the company is under an obligation to dispose of and replace the pea gravel. In accordance with the WRC document, the company failed to provide its services to the customer to the standard to be reasonably expected in relation to the rose beds. The company also failed to provide a reasonable level of customer during the period of the complaint.

Outcome

The company needs to take the following further action:

I therefore direct that the company pay the customer the sum of £200.00 in compensation.

The customer must reply by 8 April 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1840

Date of Decision: 11 March 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In 2018, he experienced external flooding on two occasions. The company provided a basic clean up and he incurred costs for damaged items in the garden e.g. garden furniture, a proper clean up and replacement of contaminated gravel. He contacted his insurance company in 2018, who stated that an excess of £500.00 would be payable and the ongoing premiums would significantly increase due to a claim being made and flood risk.
- He paid for the works to be completed as a one-off event as the company declared that it had found the problem and assured him that it would not re-occur.
- He experienced external flooding again in October 2019. He sought the cost of a thorough clean up and damaged items directly from the company. Over the course of the initial flooding the company failed to turn up to even complete an initial clean up on at least 5 occasions without any courtesy of informing him.
- When the initial clean-up was carried out by the company's contractor (Amey) the situation was made worse as they disinfected the rose beds which has now killed the vegetation and hosed the human waste into a pea gravel patch causing further contamination.
- He has also sought reassurance from the company that the risk of any future flooding incident be abated.
- The customer requests that the company provide reassurance that it has taken steps to eliminate the risk of further flooding at his property; pay £1,000.00 for the cost of cleaning out and disinfecting the log cabin and a small monetary amount towards the cost of replacing the

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damaged items in the log cabin and patio furniture; pay for the cost of disposal and replacement of the pea gravel (which contractors swept the sewage/disinfectant into); and pay compensation for poor customer service and inconvenience.

The company's response is that:

- Following an external flooding incident in May 2018 it fully cleansed the sewer to remove some debris, and the sewer was left running freely. It carried out a CCTV survey which showed there were no faults. The customer reported further flooding in October 2018. Although no flooding was found, it checked the sewer, which was found to be running freely.
- The flooding in October 2019 appears to have been due to heavy rainfall at the time. It is currently carrying out investigations to check whether there are any hydraulic deficiencies, along with CCTV surveys to make sure there are no defects which could have contributed to the flooding. Once the investigations are complete, it will be able to identify if work is needed or if anything can be done to help protect the customer's property.
- As it has not been negligent, it is not liable for any damage caused by the flooding incident, and is unable to reimburse the customer for any costs he may have incurred as a result.
- It can never guarantee that sewer flooding will not occur as flooding incidents can be as a result of blockages caused by debris, fat, sanitary products, root intrusion etc, sewer pipes can break or collapse and rainfall can be in excess of the current design criteria for sewerage systems.
- Sewage largely consists of water and domestic waste from bathrooms and kitchens. During wet weather, as was the case in this instance, it is also highly diluted by rainwater. As part of the clean-up at the customer's property it removed any solids and debris and then applied disinfectant and jet washed the affected area. Any run off into the pea gravel would have been mainly water. Any bacterial contamination would have been minimal, and this would have died off naturally during the days following the flooding. This information was provided to the customer and is in line with advice from the Water Research Council. It does not consider that it is liable for replacement of the pea gravel.
- It has offered a goodwill payment of £175.00 to the customer in recognition of the service he received, which has not been accepted.

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. 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.

Sewerage flooding

4. The customer experienced external flooding to his property in 2018 and 2019.
5. Under the Water Industry Act 1991, a company is not generally liable for sewer flooding unless the flooding was caused by its negligence.
6. No evidence has been submitted to this adjudication to show that the flooding in either 2018 or 2019 was caused by the company's negligence.

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7. The evidence submitted to this adjudication shows that the flooding in 2018 was caused by a blockage caused or exacerbated by roots. There is no evidence to show that the company was aware or should have been aware of this issue prior to the flooding. Due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. This is 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. Once alerted to an issue that falls within its remit a company is typically under a duty to take action. If a company cannot and does not know that a part of its infrastructure requires repair then it has no duty to repair.
8. There is also no evidence to show that after the 2018 flooding the company informed the customer that flooding would not re-occur. I accept the company's submissions that it can never guarantee that sewer flooding will not occur as flooding incidents can be as a result of a variety of different factors.
9. The company submits that the October 2019 flooding appears to have been due to extreme weather. The company states that it is currently carrying out hydraulic modelling of the area to check whether there are any deficiencies in the sewerage system. The evidence submitted to this adjudication indicates that hydraulic modelling can take some time to complete. In addition, as the evidence shows that a CCTV survey subsequently carried out after the flooding revealed no faults, in the absence of any evidence submitted to this adjudication showing otherwise, I also find no failing on the company's part in this regard.
10. As there is no evidence to show that the company has been negligent, I accept the company's submissions that it is not liable for any damage caused by the flooding incident.
11. The company has submitted in evidence extracts from its website and 'Your Guide to Sewer Flooding' leaflet setting out its sewer flooding policy.
12. No evidence has been submitted to this adjudication that shows that the company's sewer flooding policy is contrary to any law or code and/or does not comply with any OFWAT, the Water Industry Regulator, guidelines. In the absence of which, I accept this evidence submitted by the company. In addition, for the avoidance of doubt, in the absence of such evidence, I can

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only assess whether the company has applied its policy as outlined. I cannot review this policy and/or assess whether this policy is fair.

13. I note that the company's sewer flooding policy states the company is only obliged to carry out a basic clean-up; the company will remove any excess liquid or solids left behind, however, customers are advised to arrange a thorough clean-up by professional cleaners through their insurance.
14. The customer submits that the company did not remove solids but just hosed them into a gravel patch. The customer's submissions are clear, credible and consistent. I am therefore inclined to accept the customer's submissions on a balance of probabilities, I am not satisfied that the company met its obligations to remove solids left behind. I find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in this regard.
15. However, notwithstanding the above, I note the information from the Water Research Centre (WRC) submitted by the company. Again no evidence has been submitted to this adjudication that shows that the WRC's advice is contrary to any law or code and/or does not comply with any OFWAT guidelines. In the absence of which, I accept this evidence submitted by the company. The WRC document confirms the company's submissions that any bacterial contamination would have died off naturally during the days following the flooding. There is no evidence to show that the company is under an obligation to dispose of and replace the pea gravel.
16. In respect of the customer's submissions that the company disinfected the rose beds, it is not disputed that disinfectant was swept into the rose beds and that this was done without the customer's permission. The WRC document confirms that it is not normal practice to apply disinfectant to gardens as it can kill plants. I find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard.
17. Finally, it is not in dispute that there were some other failures in customer service. The evidence shows that the company delayed in responding to the customer, delayed in completing the clean-up and failed to attend the property as promised. The company failed to provide its services to the customer to the standard to be reasonably expected in this regard.

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Redress

18. In respect of the customer's request that the company provide reassurance that it has taken steps to eliminate the risk of further flooding at his property, as discussed above, I accept the company's submissions that it can never guarantee that sewer flooding will not occur as flooding incidents can be as a result of a variety of different factors.
19. In respect of the customer's request that the company pay £1,000.00 for the cost of cleaning out and disinfecting the log cabin and a small monetary amount towards the cost of replacing the damaged items in the log cabin and patio furniture; as discussed above, the company is not liable for any damage caused by the flooding incident and the company is only obliged to carry out a basic clean-up.
20. In respect of the customer's request that the company pay for the cost of disposal and replacement of the pea gravel, as above, there is no evidence to show that the company is under an obligation to dispose of and replace the pea gravel.
21. However, in respect of the customer's request that the company pay compensation for poor customer service and inconvenience, in light of my findings that the company failed to provide a reasonable level of service in relation to the pea gravel, rose beds and other customer service failures, I am satisfied that the customer is entitled to a measure of compensation for the distress and inconvenience caused. Having carefully considered the evidence provided, I find the sum of £200.00 to be a fair and reasonable level of compensation and in line with the WATRS Compensation Guidelines. No evidence has been submitted to this adjudication to support a higher level of compensation. I therefore direct that the company pay the customer the sum of £200.00 in compensation.

Outcome

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

I direct that the company pay the customer the sum of £200.00 in compensation.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 April 2020 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.
- 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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