

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1845

Date of Decision: 13 March 2020

#### Complaint

The customer states that she has suffered repeated sewerage flooding at her home and that this is due to the negligence of the company in failing to maintain an adequate system. Further she claims that the company has failed to install adequate measures to protect her property and that the measures that have been installed in other properties have caused her flooding risk to worsen. She states that she has been caused stress and inconvenience.

She seeks a direction for the company to compensate her for the damage and loss she has suffered. She estimates this to be an amount of £8,350. She also seeks an apology for stress and inconvenience

#### Defence

The company accepts that the customer has suffered flooding but states that it has taken appropriate measures and abided with its legislative obligations. It cites caselaw to support its defence that it has not been negligent in its service provision. It states that it has made goodwill payments including an amount of £1,500 and further amounts under the Guaranteed Service Scheme.

It does not make any offers of further compensation but it does apologise for stress and inconvenience caused to the customer.

#### Findings

I find that the customer has successfully evidenced her case in part and that the company failed in its provision of service to the standard to be reasonably expected by the average person surrounding its explanation of the measures it was taking to protect her property. Specifically, why it had decided not to install a Non return valve at her home. I have not found any fault on the part of the company in relation to the other matters raised.

#### Outcome

The company needs to take the following further action: Pay compensation of £300 for stress and inconvenience.

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

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1845

Date of Decision: 13 March 2020

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- There has been repeated flooding at [ ]. ("the Property".)
- The drainage system is not fit for purpose.
- There has been no updating of the assets for decades.
- The company has fitted non-return valves ("NRVs") to several neighbouring properties which has caused problems at the customer's property.
- The customer states that the company has refused to protect her property in the same way.
- She states that she has had to carry out refurbishment of her office and replace lost and damaged items from her home over the years.
- She states that the ongoing problem has caused her and her family stress and inconvenience.
- She seeks a direction for the company to compensate her for the damage and loss she has suffered. She estimates this to be an amount of £8,350. She also seeks an apology for stress and inconvenience.

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

- It accepts that there were incidents of flooding at the Property in 2012 and 2016.
- The Property is added to the Hydraulic Flooding Risk Register ("HFRR").
- Major works were undertaken in the neighbouring area to improve the service which are ongoing.
- It provided the Property with mitigating fixtures during the work.

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- It was not considered appropriate to fit an NRV to the customer's property.
- It does not accept that the protection afforded other properties has necessarily worsened the situation for the customer.
- In June 2019 there was a further flood to the garage of the Property. The company states that it paid the customer £1,500 as a goodwill payment for losses.
- Due to high rainfall there has been further flooding at the Property in December 2019 and February 2020.
- Guaranteed Standard Service payments ("GSS") have been paid on 15<sup>th</sup> June 2016 (£132.29), 23<sup>rd</sup> November 2016 (£119.21) and 13<sup>th</sup> June 2019 ((£156.24).
- The works undertaken are due to be finished in April 2020 and should resolve the problem.
- The company does not believe that the compensation sought is warranted. It has offered an apology for stress and inconvenience.

The customer has made the following comments in reply:

- The NRV's on the other properties have clearly affected the Property.
- The flood barriers set up repeatedly failed.
- It is not clear that the works undertaken will resolve the ongoing problem.
- She can provide evidence for the work done on the office.
- She has suffered stress and inconvenience I having to fight this case given that she is up against a large organisation.

### 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 customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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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 customer in this application has stated that she has suffered sewerage flooding at the Property over a number of years and that this is due to the negligence of the company. She lives there with her young son and claims that the repeated flooding has caused her loss, stress and inconvenience.
2. The company has accepted that there have been reported flooding incidents. It states that it has paid GSS payments and an amount of £1,500 for loss on the 30th July 2019. It states that the reason for the flooding is out of its control as it was due to adverse weather conditions overloading the systems capacity. It states that it is undertaking works to remove the weak spot from the customers Property to the [ ] pumping station and this should be completed in spring 2020.
3. As it is common case that there was flooding at the Property there is no need for me to rehearse the particulars of those incidents. I have noted the dates of the flooding as reported by the customer.
4. I note that the customer has not challenged the company's report that it has paid £1,500 as a goodwill payment for loss in July 2019. The company states that this was based on information given by the customer at that time.
5. Central to the customer's case it the allegation that the company has not installed a NRV on her Property. She also states that the fact that other properties in the area have had NRV's fitted has meant that the situation has worsened for her own Property which is now even more vulnerable to flooding.
6. The company has stated in its defence that the customer has not evidenced her belief that the installation of NRV's in other properties has caused the flooding in the Property.

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7. The company has stated that it fitted flood prevention measures at the customer's property as a goodwill gesture. The customer states that these failed to work. I note that the evidence shows that the company has accepted the failure of these measures in its correspondence to the customer and the Consumer Council for Water ("CCW").
8. Regarding the potential impact of the neighboring properties having been fitted with NRVs, the letter of 20<sup>th</sup> September to CCW from the company states "*we did not knowingly pass the flood risk on.*" I am persuaded that this is an acceptance that the flood risk was possibly passed on by the measures taken at other properties. I acknowledge that this was not purposefully done on the part of the company based on the evidence I have before me.
9. In considering this aspect of the claim, I take into account that the company has acknowledged that the customer's Property is a weak spot. This is evidenced in its letter to the customer at page 32 of the CCW papers, dated 19<sup>th</sup> July 2019. It has also stated in its defence that, "*it identified that it was not appropriate to supply an NRV at Mrs [ ]'s property as it carried the risk of exacerbating the internal flood risk at neighbouring property.*" I do consider that this statement may appear contradictory to the customer in light of the fact that this is what she is stating has happened to her own Property. Whilst I accept that the evidence in this application falls short of showing negligence on the part of the company in relation to whether or not it has caused a flood risk at the customer's Property, I am persuaded that the customer has not been fully informed of the process by which the company has mitigated other properties and how it has come to the decision not to install an NRV at her property. Neither am I satisfied that the evidence shows that the company has adequately investigated the possibility of installing an NRV at the Property. I especially note that the company is satisfied that it can move the weak spot to its pumping station in Spring 2020. This indicates to me that there is an element of control over where the weak spot lies. I find that, on the evidence before me, the customer has not been fully appraised of the decision making process or the rational involved in mitigating the neighbouring properties with NRV installation and not offering her the same protection. In respect of the company's customer service, I find that there is a failure here to provide its services to the customer to the standard to be reasonably expected by the average person.
10. The customer claims that the sewerage system is not fit for purpose. The company has defended this aspect of the claim and states that it is undertaking works to improve the service and also that it is not responsible for flooding that is caused by adverse conditions causing over capacity.

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11. I note that the company has produced evidence of its extensive works operations and that these are not directly challenged by the customer. I do not intend to rehearse the full list of measures undertaken and planned by the company as they are not in dispute, but rather the adequacy of these measures is challenged by the customer.
12. I do not find that there is supporting evidence that the measures suggested by the company are insufficient. I note that this would be a matter for engineering expertise and not something that could be speculated on without such appropriate expertise. Further, I do not find, on the face of this application, that the allegation that the system is not fit for purpose and that in failing to adequately maintain the system the company is negligent is evidenced. Consequently, I do not find any failing on the part of the company in this regard.
13. In relation to the assertion that the repeated failure of the system is indicative of a failure on the part of the company and shows negligence, the company has cited the case of Peter Marcic v Thames Water (2003) the House of Lords. The company has gone into some detail in its defence regarding the import of this case. The company states: *"In the leading case of Peter Marcic v Thames Water (2003) the House of Lords ruled that the water company could not be held responsible to pay compensation if the surcharge arose as a consequence of capacity issues."* I do not find that there is any challenge to the company's interpretation of this caselaw and my own understanding is in keeping with this view held by the company regarding the application of the law in relation to the question of negligence in this case.
14. On balance, based on the analysis above, I find that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person in the limited respect of its customer service relating to the information provided to the customer over its investigation and decision making process around the refusal to fit an NRV to her Property. Consequently, this application succeeds in part.
15. Remedy: The customer seeks a direction for the company to compensate her for the damage and loss she has suffered. She estimates this to be an amount of £8,350. She also seeks an apology for stress and inconvenience.
16. Regarding the request for compensation of £8,350 in damages. I note that the company has provided GSS payments and that this is not challenged by the customer. I further note that an

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amount of £1,500 was paid to the customer on 30 July 2019. This was for losses based on information provided by the customer to the company at that time. I understand that the customer now seeks a further payment as she feels that she had underestimated the true cost of the repeated flooding. I am not persuaded that the customer has properly supported this further claim. In any event, I do not find that it would be equitable to require the company to make further payments in respect of the same incident for which it has already offered and paid an amount of money to the customer. I do accept that there is an element of stress and inconvenience that the customer has not claimed for and that I may use my discretion to direct on this. I shall do this in a separate paragraph. I do not make the direction for compensation of £8,350.

17. The customer seeks an apology for stress and inconvenience. I note that the company has stated in its defence, *“We do realise how upsetting sewer flooding is and the distress and inconvenience it causes. [ ] are happy to offer its apologies to Mrs [ ] for this.”* I acknowledge that the company has indicated its position and I therefore consider that this element of the customer’s request has been fulfilled in this statement made in its defence. I make no further direction in this regard.

18. In regard to stress and inconvenience, which is acknowledged by the company, I intend to use my discretion to make an award in keeping with my findings above. In the limited respect of its customer service I have found fault on the part of the company. I consider that an adequate amount that is in keeping with other cases of a similar nature, would be compensation of £300. In making this direction I am taking into account what has already been paid to the customer and also the fact that there are ongoing works which are intended to resolve the problem in the near future. I consider this to be a fair reflection of the case as it is presented to me. I direct a payment of £300 to the customer for stress and inconvenience.

#### **Outcome**

The company needs to take the following further action: Pay compensation of £300 to the customer for stress and inconvenience.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
  - The customer must reply by 10<sup>th</sup> 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.
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A handwritten signature in cursive script, reading "J J Higgins", is displayed on a light green rectangular background.

J J Higgins (Barrister, ACI Arb)

**Adjudicator**

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