

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT 1113

Date of Decision: 28 October 2020

Complaint

The customer noticed damp problems in his property in 2016. The problem gradually worsened. He investigated and found flooding below floorboards during periods of rain.

The customer contacted the company on 13 April 2016. The company inspected the drains twice in a short period but reported no problems. After approximately 12 months, the company established a problem with a surface water drain. The company advised the customer that the problem was a soakaway in the customer's property. This was found to be incorrect. The customer considers the company was responsible for the surface water drains.

Flooding resulted in damage to the customer's property. The customer seeks compensation of £10,000.00 in respect of surveys, repairs and contributions to further repairs to his property for damage caused by the failed drain.

The customer has submitted comments dated 20 October 2020 to my preliminary decision issued 19 October 2020. These are addressed later in this decision.

Defence

The company says a shared surface water drainage pipe serving a number of properties had been cut a number of years earlier by a third party. The company says the third party had not reported this and the company was therefore unaware of the issue.

The company says it has no liability for the actions of the third party and therefore has no liability to the customer for damage caused to his property.

The company has reconnected the customer to its sewer system at a cost to the company of approximately £40,000.00.

The company has submitted comments dated 26 October 2020 to my preliminary decision issued 19 October 2020. These are addressed later in this decision.

Findings

In relation to the original flooding to the customer's property, I am satisfied the company was not responsible for that flooding.

In relation to the time taken to investigate the matter and complete the reconnection work, the company has failed to provide its service to the customer to a standard to be reasonable expected.

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The company has paid the customer the sum of £1,480.00 as a goodwill gesture for the time taken to resolve the matter also taking account of the cost of a private survey paid for by the customer. The company has paid the customer a further £30.00 for failure to update him on matters. In relation to customer service failures, I find the company has compensated the customer.

I find the delays in the company resolving the matter have caused inconvenience and distress to the customer and the company shall pay the customer an additional £2,500.00 compensation.

Outcome

The company needs to take the following further action:

The company shall pay the customer £2,500.00 for inconvenience and distress.

The customer must reply by 25 November 2020 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT 1113

Date of Decision: 28 October 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- His property has suffered from flooding since 2016. The cause was eventually established as a defective surface water sewer.
- The surface water sewer is a shared system with 11 properties discharging into a common sewer. Occupiers of the properties pay the company for surface water drainage. The customer's property is at the lowest point in the system and suffered flooding during rainfall. Flooding has caused damage to his property.
- He says that the sewer is owned by the company and that the company is responsible for the unreasonable amount of time his property has suffered from flooding.
- He has spent £7,989.20 for investigation work, external repairs and surveys. He also has quotes ranging from £31,200.00 to £38,024.00 for additional repairs in respect of damage caused.
- The customer seeks compensation of £10,000.00 from the company.

The company's response is that:

- The company acknowledges the customer's property has suffered from flooding. The company says that it investigated and established flooding was due to a third party cutting through a shared surface water pipe several years ago.

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- The company says that it had not been made aware that the third party had cut the pipe and was therefore unaware of any problem. The company says that it has no responsibility or liability for damage caused by the third party and that any claim for damage to the customer's property should be directed to the third party.
- The company says that after the surface water pipe had been cut and disconnected from the main sewer, the remaining pipework became private and was therefore no longer the company's responsibility.
- To help stop the flooding, the company says that it has provided a new sewer connection and capped off the affected pipework at a cost to the company of approximately £40,000.00.
- The company says that it has paid the customer £1,480.00 in recognition of the time taken to complete its investigations and the connection work. The company also says that it has made a further payment of £30.00 for its failure to update him on 22 February 2019.
- The company says that it has no responsibility for the damage to the customer's property. The damage was caused by a third party and the customer's drains were private. The company denies any liability for the customer's losses. The company says the matter should be directed to the customer's insurance company.

How is a WATRS decision reached?

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

1. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
2. 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 one would reasonably expect 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. There are two main elements to consider in this case. The first relates to responsibility and liability around the cause of the flooding to the customer's premises. The second relates to the company's responses once they had been notified of the flooding and whether the service provided by the company was to a standard to be reasonably expected.
2. The customer says that he became aware of an issue in 2016 when he noticed damp problems in his property. His investigation showed that the area below the floorboards in his property was being flooded during periods of rain. It is not known how long flooding had been occurring before the customer became aware of it.
3. Details provided indicate that the customer's property is one of several properties that had a shared surface water drain running through each garden. The customer's property was the last one served before the drain left the customer's property.
4. The company says in its response that the surface water flooding was the result of a third party cutting through a shared surface water pipe some years earlier. The company also says that the third party had not notified the company of its actions and the company was therefore unaware that the pipe had been cut.
5. The Water Industry Act 1991 (the "Act") requires sewerage undertakers to provide a system of public sewers, to maintain those sewers and to ensure that areas are effectively drained. The company notes that it has this responsibility but says that it is not responsible for damage from flooding if the cause is outside its control, unless it has been negligent. The company says that the complaint raised by the customer concerns complex legal issues, specifically the company's compliance with section 94 of the Act. The company says that under the WATRS Rules this matter is outside the scope of the scheme. The company also says that it would be OFWAT's role to take action against companies that have not fulfilled their statutory duties under the Act. The company had objected to this matter being dealt with under WATRS. This objection was not upheld. The complaint also includes matters of customer service, which are dealt with under WATRS.
6. If the company had breached its statutory duties under the Act and been negligent, this would be for OFWAT to investigate. Events that led to the customer's property being flooded,

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specifically the cutting of the surface water drain, are believed to have been the result of actions by a third party. The company has confirmed that it was unaware of this action. The company has referred in its response to a reactive system of maintenance, carrying out repairs to its systems where there is a known issue.

7. The company is responsible under the Act for maintaining its pipework. However, due to the extensive systems under its control, it would not be reasonable to expect the company to continually check all of its pipework. A reactive approach to repairs is reasonable, making repairs when the company becomes aware of failures in its systems.
8. I conclude that there was no failing on the part of the company in relation to initial flooding to the customer's property resulting from the sewer pipe being cut.
9. The customer is free to take action against the third party believed to have caused the damage. The customer would need to prove that the third party damaged the sewer and the resulting flooding caused damage to the customer's property.
10. The second matter to consider is the company's response once it had been notified that the customer's property was subject to flooding.
11. The plans provided for the drainage system show a shared system for surface water drainage serving several properties. The customer's property is the last one to be connected before the drain leaves his property. The layout is a typical arrangement where the company is responsible for a shared system. The customer has also provided a copy of a plan that shows the drainage over a larger area. This includes the route through the adjacent streets and connection to another branch from other properties. It is also noted that the customer says he has been paying for surface water removal. No bills have been provided to show this. However, the company has not denied that the customer pays for surface water removal.
12. From the evidence provided, I am satisfied that the surface water drainage, including the shared surface water drainage through the customer's property, was the company's responsibility. The company was therefore responsible for maintaining this shared surface water drain.

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13. The company says in its response that when the pipe was cut, the remaining pipework became private and was no longer part of the company's system. The company has provided no details to support this statement. I do not accept the company's position on this matter. It is evident from the plans provided that the shared sewer leaving the customer's property served around 11 properties and fed into the company's mains. It is reported that a third party disconnected the properties from the sewer at some point outside the customer's property without the knowledge of the company or the customer. I find the company's position that this action created a private sewer that became the responsibility of the customer to be unreasonable.
14. Emails sent by the company during the course of the investigations show that the company considered the customer's surface water drain to be private. The reasons the company provided in its emails varied. Initially the company said there was a soakaway. The company's email dated 11 December 2018 makes reference to a rear garden in a neighbouring street and to the pipe possibly being removed rather than cut or damaged. This appears to be the first reference to the company finding that the surface water drain had been disconnected from the main.
15. I find the shared sewer serving the 11 properties was, and remained, the company's responsibility. It was therefore the company's responsibility to resolve the problem once it had been discovered.
16. The customer says that he raised the matter of flooding with the company on 13 April 2016. The company says that it carried out extensive investigations to establish the cause of the problem. It is apparent from the evidence provided that it took the company considerable time to determine the cause of the flooding.
17. During its investigations the company gave incorrect advice to the customer. In an email from the company dated 20 June 2018, the company advised that there had been some confusion over whether the sewer was private or public. The company also said that the cause of the flooding was a soakaway in the customer's garden that was not part of the company's systems.
18. The customer engaged a private company to carry out a survey of the drains. The survey showed that, contrary to the company's statements, there was no soakaway on the customer's property.

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19. The company sent an email to the Consumer Council for Water (CCW) on 13 September 2018 referring to its investigations and cleaning operations. It said that it had determined there were no public sewers in the vicinity of the customer's property that the customer's surface water drains could have connected to. The company also said that there were no current or historical drawings that showed the customer's surface water drains had discharged to a public sewer. It said that it was likely the system had drained to a soakaway or a pond.
20. Investigations into the cause of flooding can take time. However, the time taken for the company to complete its investigations was unreasonable. During that time, the company provided information to the customer that was inaccurate. In particular, the company told the customer his surface water drain was private and discharged to a soakaway. This caused the customer to incur expense by engaging a private contractor to carry out a survey.
21. The company told the customer that there were no public sewers in the vicinity of his property that could be connected to. The company also said that there were no drawings showing that the surface water drains discharged to a public sewer.
22. The company's response includes a drawing showing the surface water drains and has been marked up to show where the pipework had been disconnected. The customer has also provided a copy of a drawing that shows the surface water drains from his property and adjacent properties. That drawing shows the wider network of surface water drains extending beyond the boundaries of the customer's property. The customer says that this drawing is included within the deeds of his property.
23. Whilst there is no date on the drawing provided by the customer, it does indicate that there were records of the surface water drainage system in the area. It is reasonable to expect that the company had access to these records. It is also reasonable to expect that as part of its investigations the company would have referred to relevant drawings or records. Had it done so, it is likely the company's investigations would have found the cause of the flooding much earlier. It is evident from the statement in the company's email dated 13 September 2018 that the company had not referred to relevant drawings.
24. It is noted that the company decided to connect the customer's surface water drain to a sewer towards the end of 2018. This is referred to in emails sent during September 2018 and October 2018. The customer reported on 13 September 2019 that the company had completed its work

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to reconnect the surface water drain to its system on 12 September 2019. This is approximately three and a half years after the flooding problem was reported. It is also approximately one year after the company said it would connect the customer's drains to its system.

25. In relation to the time taken to investigate and resolve the flooding issue following the report by the customer, I find that the company has failed to provide its services to the standard to be reasonably expected.
26. Under the OFWAT Guaranteed Standards Scheme (GSS) if a customer's property is flooded from a sewerage company's system, the company must make an automatic payment to the customer. That payment is equal to the customer's annual sewerage charge up to a maximum of £1,000.00 for each flooding incident.
27. I have already found the company not to be liable for the initial flooding incident. However, the ongoing delays in investigating and resolving the matter resulted in further flooding of the customer's property. I find that the customer is entitled to a payment under the GSS in respect of the ongoing flooding. I note that following a customer service review the company has paid the customer £1,480.00. The company says that the review took into consideration the cost of a private drainage survey paid for by the customer. No bills have been provided that show the relevant annual drainage charge. I am however satisfied that the sum of £1,480.00 takes due account of the GSS payment required and I make no further award on this matter.
28. The GSS also requires companies to make an automatic payment if a response to a written complaint is not made within 10 working days. The company says that it has paid the customer £30.00 for its failure to update him in February 2019. I find this to be in line with the required payments under the GSS and make no further award on this matter.
29. Since I have found that the company failed to provide its service to the standards to be reasonably expected, I have examined whether that failure has resulted in loss or damage to the customer.
30. The customer first reported damp problems to the company in April 2016. His own investigations found flooding below the floorboards during periods of rain. This damaged the customer's property. I have already established that the company could not reasonably be held

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liable for the initial flooding problems. The company cannot, therefore, be held liable for the cost of repairs arising from the initial flooding. The issue that remains is whether or not the delays due to the company's service failures caused additional damage. If so, it needs to be established whether that additional damage added to cost of repairs.

31. The customer claims £3,950.00 for repairs to the exterior to his house, £2,839.20 for work carried out to establish why his property had flooded and £1,200.00 for a sewer survey. The customer also claims £31,200.00 for repairs inside his house but acknowledges the limits of the WATRS scheme. The total compensation claimed by the customer is £10,000.00.
32. I note that it took approximately three and a half years from the time the matter was reported to the company to reach a final resolution. However, I have been unable to identify any evidence that would confirm that the delays caused additional damage that would have increased the cost of repairs beyond that of the initial flooding. The company was not liable for the initial flooding. Therefore, in respect of the customer's claim for repairs to the exterior and interior of his house, I am unable to make any determination.
33. During investigations, the company told the customer that the problem related to a soakaway and that it was a private matter. As referred to earlier, this was incorrect as there was no soakaway. The customer did, however, engage a private contractor to survey the drains. The customer says that the survey showed there was no soakaway. The customer says that the survey cost was £1,200.00 and has claimed reimbursement of that cost.
34. As noted earlier, the company has made a payment to the customer in the sum of £1,480.00. The company states that the review resulting in this payment took account of the cost of the drainage report commissioned by the customer. I am satisfied that the sum of £1,480.00 incorporates a payment in respect of the survey and make no further award on this matter.
35. The customer claims £2,839.20 for work to establish why his property had flooded. There is limited information about this work. The description on the account provided refers to tests to find the cause of flooding, inspection of drains and excavations to install a water proofing membrane. I have not found any evidence that this work was carried out because of a failure of the company. I therefore make no award on this matter.

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36. The customer complains that the time taken to resolve the flooding issue caused stress and worry. Flooding in a person's home is a distressing and disruptive experience, made worse when it remains unresolved for a significant period. Whilst the company has now resolved the matter, the customer had a long period of uncertainty during which the company provided incorrect information. I conclude that the customer has suffered inconvenience and distress resulting from the service failures by the company.
37. The company points out that the customer is not seeking any compensation for distress, inconvenience or any customer services issue. Rule 4.3.3. of the WATRS Rules lists the remedies that may be claimed under the scheme. It also says that an adjudicator is not bound to only award remedies claimed by the customer. Rule 6.4 limits an award for non-financial loss, which includes inconvenience and distress, to £2,500.00.
38. An award for distress and inconvenience is appropriate in relation to delays and incorrect information provided by the company during its investigations. An award for distress and inconvenience is also appropriate for the delay in carrying out the reconnection of the customer's drainage to the company's sewer network once it decided to do so. I consider an award within Tier 4 of the WATRS Guide to Compensation for Inconvenience and Distress is appropriate. I direct that the company shall pay the customer the sum of £2,500.00.
39. The company and the customer have submitted comments in relation to my preliminary decision. I will deal with these matters here.
40. The customer says that the damage to his property would have been greatly reduced had the company made the necessary repairs when the issue was first discovered. He says it is unfair that he should pay for the extended damage due to the slow action of the company.
41. I have referred to this in my decision. To consider this matter, there would have to be evidence that showed that the damage to the customer's property became worse over time and that the cost of such repairs increased as a result of the time taken. I found no evidence within the documents provided that the delays in resolving the problem increased the costs of repairs. I therefore make no change to my decision in relation to this point.
42. The company refers to my award for inconvenience and distress. The company says that the customer's claim was only for money for the damage to his property. The company says that

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no part of the customer's application stated he was seeking compensation for stress, distress, inconvenience or time taken. The company says it had therefore not defended any claim for inconvenience and distress. The company also says that the customer was satisfied with the payment of £1,480.00 he received at the complaint stage for the time taken to resolve the issues and the overall journey.

43. In relation to the payment of £1,480.00 to the customer, I have referred to this in my decision. In its response to the customer's application, the company says that the payment was to say sorry for the time taken to complete investigations, complete the work and for his overall journey.
44. In my findings I said that the customer was entitled to a payment under GSS for flooding incidents. GSS payments in relation to flooding must be made automatically. The company had not made any GSS payment in respect of flooding. The customer claimed £1,200.00 for the cost of the survey he commissioned. I have referred to this in my findings. The company had indicated to the customer they would look into reimbursing the cost of that survey. I noted that the company said that in its review resulting in the £1,480.00 payment it had considered the cost of the private drainage report. From this I concluded that the payment of £1,480.00 incorporated an element to cover the survey cost. In the absence of any additional information, I also concluded the balance to be sufficient to cover the required GSS payment for flooding. I therefore found no justification to direct any additional payments in respect of the survey or GSS failures.
45. In relation to the issue of distress and inconvenience, the company says that as the customer had not claimed inconvenience and distress it had not defended a claim for it. The company also says it has been denied the opportunity to defend its actions or the time taken. It says that it only defended the information contained on the WATRS application.
46. The customer had said in the evidence submitted with his application that the issue had caused stress and worry over a long period. The company's actions and time taken to resolve the matter are evident from the documents provided with the application. The company has had the opportunity to review those documents and prepare its response accordingly. Whilst the customer has not claimed an amount for inconvenience and distress, I have referred in my decision to Rule 4.3.3. of the WATRS Rules. This Rule includes the note, *"In the discretion of the adjudicator and subject to the overall maximum financial limits the adjudicator is not bound*

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to simply award only the remedies claimed by the customer". If appropriate, an adjudicator can make an award that has not been claimed by the customer providing the scheme limits are not exceeded.

47. After consideration of the comments made by the customer and the company, I make no changes to my decision.

Outcome

The company needs to take the following further action:

The company shall pay the customer the sum of £2,500.00 in respect of inconvenience and distress.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 November 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.

Signed

Name

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Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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