

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX51

Date of Decision: 12/12/2020

Complaint

The customer complains that he has had repeated incidents of flooding of sewage in his cellar, which have got worse in 2019 and 2020. He asks for practical action by the company to stop this from happening and compensation of £8,721.59 to compensate him for the costs he has incurred and interest.

Response

The company says that it heard from the customer about this for the first time in February 2020. It had investigated the property previously in 2012 when no defects were found. It has installed a non-return valve and may obtain funding for installation of a pumping station or large tank. The company denies liability for this claim but says it is willing to make a goodwill payment of £520.00.

Findings

I do not have power to direct that the company shall take action in relation to expenditure on its network, which is a matter for Ofwat nor can I direct payment of compensation for failure to take action. The company also did not know of the problem until February 2020 and therefore would not reasonably have been expected to have done anything about it. However, the documentation submitted shows that the company did not consider until after 8 July 2020 whether other measures could be taken and did not communicate appropriately with the customer. This was a customer service failing. The customer therefore incurred costs in June to try to stop the flooding. The company should contribute towards these. Because the customer has benefitted from these steps, the contribution should be 1/3rd of the costs incurred in 2020 plus £20.00 for failure to attend an appointment and £200.00 for distress and inconvenience.

Outcome

The company must pay £512.86 to the customer.

The customer must reply by 13/01/2021 to accept or reject this decision.

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Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. • He has experienced repeated sewer flooding inside the basement/cellar of his property. This has been going on for the past 5 years. Since the end of 2019 and into 2020, the flooding has become worse and more frequent in line with wetter weather and heavy rainfall conditions. • Although the customer has complained and the company has investigated, it has been unable to come up with a permanent solution to stop the flooding. • This is causing distress, anxiety and financial detriment because each time his cellar floods, he has to claim on his insurance policy. • Solutions suggested by the company (other than a large engineering project) require the customer to pay, for example, by diverting his outside drains to soakaways. The customer says, however, that he is paying the company for a service, and he wants the company to drain the area it serves and to clean and maintain its sewers and lateral drains. • The customer has already put some measures in place at his own expense. • He also comments on the company's defence that the reason that there has been no flooding recently is that the measures that he has paid for are working and the bad weather has not yet started. • The customer wants the company to take practical action to stop the flooding and pay compensation for the losses he has suffered. He calculates a total of £8,721.59 as follows: o Insurance Excess (£400.00), o Insurance Premium Increases (£400.00 and £200.00), o Mitigation works Inside (£1439.99), o Mitigation Outside (£4181.60) and o Stress/Inconvenience (£2500.00), • The customer also asks for interest.

The company's response is that:

1. • The customer took up residence at the property in 2015. Prior to that, a customer had reported internal flooding in 2012. • No further reports of flooding were made until February 2020. On 24 February 2020, the company checked the public sewer (which is the responsibility of the company and found no defects or issues. Had the

company been aware of more incidents it could have started investigations and implemented mitigation measures sooner. Further reporting from the Customer could have prevented damage and reduced the need for the insurance claims. • Sewage flooding occurs when there is exceptional rainfall, resulting in the sewer system becoming overloaded. The company is not in control of this as it cannot stop the rain from entering the sewerage system. • From February 2020, the company has completed an in-depth investigation to understand the options for resolution. The solution proposed by the company in this instance would be to install a sewage pumping station. With the customer's signed agreement, the sewage pumping station would then become the customer's responsibility. This option has been suggested and the company is currently awaiting a review to understand if the work and funding can be approved. • For the purposes of mitigation, the company fitted a Non-Return Valve (NRV) to a private manhole on the customer's property on 17 September 2020. This meant that the capacity and storage space for water increased, therefore protecting the property from water backing up and entering the cellar. Since the NRV has been fitted the company has not had any further flooding reports from the customer. If this is not effective the company will revisit, do further investigations to understand the issue and propose a new form of mitigation. • The company has paid the customer £231.12 in Guaranteed Service Standard charges, as he is entitled to a refund of 100% of his annual sewerage charges when there is an internal flooding incident. This payment was made on 22 April 2020. • The customer has also been offered a £520.00 goodwill payment. This offer was made in writing on 1 October 2020 as a contribution to the customer's associated insurance excess costs and towards a potential increase next year. This also includes a £20.00 missed appointment payment as per the company's Customer Charter. The customer has refused it but this offer still stands and the company will process the payment should the customer wish to accept it.

How is a WATRS decision reached?

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

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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. 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.

Customer: The Customer

How was this decision reached?

1. In reaching the decision in this case, I have taken into account all the arguments made and documents submitted. I have taken into account also the submissions made by the customer in response to my Preliminary Decision. The company has not made comments.
2. The customer says that he moved into his home in 2015. Since that time there have been many incidents of flooding in his cellar. The company, however, says that, although it had received a complaint in 2012, it received no reports or complaints about flooding of sewage until February 2020.
3. The customer explains that the inconvenience in his home due to the flooding is considerable. He says that it causes stress and inconvenience as well as being a health risk. There is also a risk that electricity circuits will become disrupted and dangerous. He is worried that his house will become uninsurable. He says that he has spent a lot of money on work to stop the floods. He explains that he has installed water alarms, made a concrete step to raise appliances above the waterline, introduced a more watertight door and sill, built a new chamber to provide relief and made access to install a non-return valve. He has paid to restore the garden area on several occasions. He told the Consumer Council for Water (CCWater) that he intends to install further non-return valves to low drain points in the cellar.
4. I understand the customer's sense of distress about these repeated and unpleasant events. However, as CCWater has explained to the customer, the rules which water and sewerage companies must follow are laid down by the Water Industry Act 1991. In a legal case (Marcic v Thames Water [2003] UKHL 66) England's most senior court considered a complaint about flooding by sewage from a provider's network when rainfall was heavy. The court decided that it had no power to make decisions about the strategic management of the sewerage and the associated priorities. This was because the Water Industry Act refers questions about the maintenance and management of the sewerage to Ofwat, not the courts. The Court also pointed out that Ofwat, as a regulator, is best placed to consider the interests of customers as a whole and the position of companies generally. This decision is therefore binding on all other courts and it means that an escape of

sewage is not, without more, negligent.

5. I find that adjudicators under the WATRS Scheme are bound to take the same approach as the courts. Contrary to the customer's submissions in response to my Preliminary Decision, this is not bias towards the company, but because adjudicators under the WATRS Scheme must take into account the relevant law. I cannot therefore direct the company to take any specific steps affecting the network merely because there have been escapes of sewage into the customer's cellar, no matter how upsetting this will have been for him. Nor can I direct that compensation is given merely because the company has not organised its network in a way that prevents an escape of sewage when large quantities of rainfall enter the sewers.

6. I also draw the customer's attention to the fact that I do not have jurisdiction to decide on questions of negligence, but only to whether the company has done what an average customer would reasonably expect.

7. I therefore turn to whether the company has provided its services to the expected standard.

8. Having regard to the documentation submitted in this case, including the file of documents submitted by CCWater, I find that the following has occurred:

- A complaint or complaints were made about flooding from the sewer in about 2012. Visits to the property were made by the company in 2012 and the sewers were found to be running correctly. I find that further action was then decided by the company not to be necessary. Although the customer complains that there had been repeated flooding before 2012 and this should have directed the company to take additional steps between 2012 and 2020, there is no supporting evidence that complaint had been made to the company on more than one occasion. Moreover, the fact that no further complaint was made after 2012 for approximately eight years would, I find, have borne out the decision to take no further action at that time.
- A further complaint of flooding by sewage occurred in February 2020. This complaint was made by the customer. There is no evidence in the documentation submitted to me that the company had been told until that date that the property was experiencing repeated sewer flooding, even though the customer had lived in the property since 2015. I find therefore that the company did not know. I further find that the company cannot reasonably be expected to have responded to incidents of which it had not been made aware.
- The CCWater case file also shows that the company reports a visit in April 2020 following a complaint of flooding in the basement. The company found that a private Non-Return Valve had been fitted on the company's sewer, causing it to flood. There was also a soft blockage in the customer's private drain. I find that

this is a different issue and I do not treat this as relevant to the customer's main complaint.

- In February 2020 the company had started an investigation but had not reported back to the customer with a conclusion. In May 2020, the customer emailed CCWater stating:

"This has got exceptionally bad and more frequent at the end of 2019/ start of 2020. I have formally complained in YW but so far despite many investigations they cannot conclude on a formal response or strategy. I have had to claim on my insurance for damage to appliance and the health and safety risk is significant. They are just not moving quickly enough and whenever I call in, it's like starting again."

The company says that during this time it was considering its options, but I find that communications with the customer were not at that point to the standard that an average customer would expect.

- CCWater wrote to the company. Although neither CCWater nor the customer say they received an email from the company, the company has provided the text of the emails it says were sent to both. As, however, neither the customer nor the company received the response, I find that it is more probable than not that, although written, the email was not sent.

- The texts of the emails were, however, supplied to CCWater on 5 June 2020. In the email to the customer, the company said:

"To stop the sewer from getting overloaded we would need to install a sewage pumping station or a tank to store the extra water in times of heavy rain. As these options would cost a significant amount of money, we would need investment to carry out this work.

As agreed by Ofwat every five years we are allocated a set amount of money to fix or upgrade our sewage assets where it is most needed. Investment such as these go through a strict prioritization process. This takes into account the number of customers affected and the impact the problem is having. Every time a problem is reported the investment request is updated so when this is reviewed, we have all the information we need to get the funding required."

- On 18 June 2020, the customer responded saying that the very least that he expected was reimbursement of the costs incurred so far.

- The company denied liability for this and on 6 July 2020, the company repeated its statement above that it was investigating funding for a pumping station or tank and offered a goodwill payment of £500.00. The customer emailed CCWater about this email.

- On 8 July 2020, CCWater emailed the company. The case officer stated:

"I am understanding the need for investment when it comes to major work. However, I am not as understanding of the lack of interest in looking to mitigate against the effects of flooding you know is going to happen – – how is this not

negligent?”

The case officer then repeated the request for a contribution to compensation.

- This resulted in a reply by the company that stated:

“There are no defects on our sewer, it is running as it should, but I recognise that we need to help in the short term and put some mitigation in place to help reduce the risk of sewage escapes. We would like to check if we can install a non-return valve in the private manhole at the front of Mr Worthington’s home, a non-return valve will reduce the risk of flooding. At this point we do not know if this is a definite option for mitigation, there are some other checks that we need to complete to understand if this is the best short-term solution. We will attend on 21 July 2020 to complete these checks and I will provide you with an update no later than 23 July 2020 with our findings. Should this not be the best option, I will speak with our technicians to understand what are the short-term mitigation options we can put in place to help.”

- Further investigations then took place and work was done in September 2020. This did not prevent the customer from saying on 18 September that he had had three visits in recent weeks, one to remove the Windsor trap, the second to survey the manhole and the third to install the NRV. The customer says that the NRV merely allows the company to use his property as a water storage area if their system becomes overwhelmed. He was not satisfied with the company’s intervention and he asked about compensation.

- On 1 October 2020, the company provided further information to CCWater that stated:

We have fitted a non-return valve on Mr Worthington’s private sewer, this is close to the public line. This NRV will prevent the flows backing up towards his property and it means that there is a 40 m stretch on his driveway which only contains flows from his home and not our network as well. This massively reduces the risk of flooding to Mr Worthington’s home. He also has his own NRV which he has chosen to keep in place, this is not our responsibility, but it means he has two forms of flood protection.

The sum of £520 was again offered as a goodwill payment including £20 for a missed appointment.

9. Against this background, I find the customer has not proved that the company failed to supply its services to the required standard as at the date of the flood in February 2020 for two reasons:

a. As stated above, I have no jurisdiction to direct that the company should have taken steps to alter its network; and

b. As I find that as the customer did not notify the company of the flooding problem until 2020, the company could not reasonably have been expected to have taken any mitigation measures in that time.

10. However, in respect of the period after February 2020, I find that, although the company had considered long-term measures to assist the customer, it did not apply its mind to whether it should or could take any immediate measures. This was a failure in its customer service because it did not consider whether it could do anything to help the customer in the short-term. As is apparent from the correspondence above, the company did not tell the customer that it would be willing to install an NRV until being prompted by CCWater in July 2020, nearly 5 months after the flood. I find that the company had not previously thought about this because at that point the company needed to investigate whether an NRV could be fitted, and it had also not communicated effectively with the customer about what it was prepared to do. I find that this standard of service fell short of that which an average customer would reasonably expect.

11. The invoices submitted by the customer in support of his compensation claim show that works to the customer's garden, including the NRV at his manhole, were done in 2019. The invoice for gardening works were for repairing of flooding in February 2020 and the customer has also submitted evidence that the installation of a concrete plinth occurred in February 2020. For the reasons given above, I find that the company is not liable for these. However, in June 2020, the invoices submitted show that the customer installed a new door which he says is to keep out flood water and he installed a water alarm. These invoices total £878.59. I find that it is improbable that the customer would have incurred these costs if he had been told within a reasonable time after the report in February 2020 that the company would in fact install an NRV that "massively reduces" the risk of flooding, as stated in the company's communication of 1 October 2020. It follows, therefore, that I find that the customer was prompted by the company's apparent inaction to incur expenses that he did not need to.

12. As this was a consequence of a failure by the company to supply its services to the correct standard, I find that it is fair and reasonable that the company should contribute to this cost. On the other hand, I also find that it is probable that the customer has had benefit from a new and better door and from the security of an alarm. I do not, therefore, find that it is fair and reasonable that the company should be required to compensate the customer in a sum that matches the full cost. I find that it is fair and reasonable that the company should pay compensation to the customer of 1/3rd of the cost, that is, in the sum of £292.86.

13. Additionally, I note that the company agrees that the customer is entitled to compensation of £20.00 in accordance with its customer charter. Notwithstanding the customer's further submissions made after the Preliminary Decision in this case concerning insurance, I do not find, however, that the company is liable to contribute to the costs of the customer's insurance: the documentation submitted

shows that this was renewable in October 2020 when the company had installed the NRV. The previous insurance would have been renewable in 2019, before the problem had been reported to the company. While the customer has expressed concerns about increased premiums in the future and the risk that his property might become uninsurable, there is no evidence that the work already done by the company will not suffice to keep the cellar dry in the future. Moreover, I find that the company is not liable in principle for the future costs of insurance of the customer's home. It follows that I find that the company is not liable to make the goodwill payment that it previously offered.

14. I do find that it is fair and reasonable to direct that the company shall pay some compensation for inconvenience and distress for the period during 2020 when its communications were, I find, substandard. This includes not only the period to July 2020 when the company said that it would investigate the possibility of installing an NRV, but also subsequently. The documentation shows that the benefit of this installation was not properly explained to the customer in writing until 1 October 2020. I find, therefore, that the customer has had to endure seven full months of uncertainty and stress. The customer's claim for £2,500.00 is, I find, disproportionate. Although he points out that the effects on him and his family are "grave", I bear in mind that damages awarded for stress and inconvenience are not large in value. I also bear in mind that there is no evidence that the remedial works undertaken by the company so far will not protect the customer's home in the future. I find that it is fair and reasonable, in the circumstances of this case to direct that the company shall pay an additional sum by way of compensation of £200.00.

15. Interest is claimed by the customer. This is payable under the WATRS Scheme rules in relation to charges that were incorrectly imposed by the company. This is not the issue in this case, and I find that no interest is payable.

16. It follows from the above that in summary, I do not make any direction for practical action but I do direct that the company shall pay £512.86 to the customer.

Outcome

1. The company must pay £512.86 to the customer.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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 in 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.

Claire Andrews
Adjudicator