

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-XX19

**Date of Decision:** 30/11/2020

#### Complaint

The customer's property has suffered external flooding at least three times a year over the last six years. In early November 2019, the sewers flooded the garden during a storm and the property was flooded internally. Following conversations with the company, the customer realised that the company was unlikely to take measures to prevent the sewers flooding again in the near future, so the customer took matters into her own hands and had a survey done to recommend suitable mitigation measures. As a consequence, she installed a pump to divert water away from her property, air bricks and flood barriers. One of the company's engineers told the customer that the company may pay for the mitigation measures; however, it has refused to do so. The customer paid £4,368.00 for door barriers, £1,990.00 for a pump, and £600.00 for the survey, and she wants the company to reimburse these costs.

#### Response

The company is not legally responsible for damage caused by flooding from public sewers, unless it has been negligent. Thorough investigations have shown that the frequent flooding at the customer's property is caused by hydraulic inadequacy, not the company's negligence, but the company carried out a mitigation survey to see whether non-return valves or sealed manhole covers could reduce the risk of further flooding. However, the survey ruled out the possibility of taking these mitigation measures as they would increase the risk of flooding elsewhere. The company is considering long term solutions, but these would need substantial funding and cannot be guaranteed. The mitigation measures taken by the customer are not on the drainage or sewerage systems, and so the company cannot fund them. It accepts that it may have raised the customer's hopes that it could contribute to these costs and has made a goodwill payment to the customer to recognise this, but further responsibility is denied.

The company has not made an offer of settlement.

### Findings

The evidence shows that the frequent flooding at the customer's property is most likely caused by adverse weather conditions and hydraulic inadequacy. The company is considering taking mitigation measures to resolve the problem in the long term but, on balance, I find no failing on the company's behalf in its refusal to pay for the mitigation measures taken by the customer. The company's engineer incorrectly told the customer that the company may consider paying the cost of the mitigation measures; however, whilst I find that the engineer's inaccurate comments fell below the expected standard, the customer suffered no financial loss or other disadvantage as a result. In view of the above, I cannot find that the company is responsible for reimbursing the customer and the customer's claim cannot succeed.

### Outcome

The company does not need to take any further action.

The customer must reply by 30/12/2020 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX19

Date of Decision: 30/11/2020

## Party Details

**Company:**

## Case Outline

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

1. • Her property has suffered external flooding at least three times a year for the last six years because the main sewer that passes through her garden backs up in heavy rain. In early November 2019, the inside of her home was flooded with twenty centimetres of sewage water, causing severe damage and disruption; luckily the huge cost of the repairs was covered by her home insurance policy. • The company has blamed the internal flooding on a one-off storm and says that the brook floods the garden. However, the sewers always flood the garden before the brook overflows and, in light of the history of flooding, she disputes that the internal flooding was caused by a one-off storm event. • Despite many conversations with the company over the years, and further discussions after the internal flooding occurred, it became clear that the company was not going to invest in long term measures to prevent the sewers flooding due to funding issues and the fact that the flooding only affects her property. • The flooding has caused a lot of anxiety and stress, and has ruined her enjoyment of her home. She has considered selling the house, but the issue is likely to put any prospective purchasers off and reduce the value of the property. Therefore, rather than sit and wait for the property to flood again, she paid for a survey to recommend appropriate mitigation measures and, as a consequence, she installed a pump to move the sewage and flood water away from the property to the bottom of the garden, and installed flood air bricks and flood defences on the doors. • One of the company's engineers said the company would consider compensating her for the mitigation measures she had taken. She paid £6,958.00 and asked the company to reimburse the costs; £4,368.00 for door barriers, £1,990.00 for pumps, and £600.00 for the survey. However, the company refused to pay, even though it recognised that it had led her to believe it would consider doing so. Instead, it paid a £50.00 goodwill gesture for falsely raising her expectations. The company says that it cannot afford to remedy the problem with the sewers, but she cannot accept that a company that made almost half a billion

pounds in profit last year cannot afford to stop its sewers flooding her home and garden. • In view of the above, she claims £6,958.00 as a reimbursement of her costs.

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

1. • It has no legal liability for damage caused by flooding from public sewers, except where it can be shown that it has been negligent. In addition, it is not liable for flooding from a customer's private drains. However, when flooding occurs, it does all it can to determine who is responsible and what action should be taken. • Flooding can occur in periods of heavy rainfall when a large volume of surface water from rooftops, drives or highways enters the sewer in a short period of time and overloads it. This type of flooding is known as 'Hydraulic Inadequacy' as the sewer does not have adequate capacity to deal with the volume of water. Flooding may also happen when heavy rainfall causes a brook, stream or river to overflow. It is not responsible for flooding caused by extreme weather conditions. • On 21 September 2018, the customer applied for a payment under its Guaranteed Standards of Service ("GSS") for external flooding. A payment of £103.09 (50% of the customer's sewerage charges) was made on 4 October 2018. • On 24 September 2018, the customer called to explain that she was concerned about the flooding incidents and she wanted the problem resolved. On 26 September 2018, it called the customer to confirm that her concerns had been passed to the Drainage Delivery Engineer who would review a recent camera survey and contact her with an update. • In October 2018, it visited the customer and explained that, to get a better understanding of the issues, it would need to carry out modelling work on the network, subject to funding approval. • On 10 April 2019, the customer telephoned to say that she remained concerned about the flooding in her garden and she raised concerns about the possible impact of a new development in the area. It explained that a developer has a right to connect to the network and that it has limited powers under planning law to prevent new connections being made. • On 18 April 2019, it contacted the customer to explain that a further camera survey had been carried out and the engineer would make an appointment to share the results. However, while the team was on site they told the customer that the likely cause was hydraulic inadequacy. • On 18 June 2019, it met with the customer to confirm the results of the camera survey and arranged for a mitigation survey to be carried out. As part of a mitigation survey, all drainage routes from a property are identified and then modelling is carried out to see whether fitting sealed covers to the manholes or non-return valves could prevent wastewater flooding from the sewer network onto a customer's property. However, the customer was told that mitigation measures would not be taken if the results of the modelling indicated that flooding would occur elsewhere. • On 15 August 2019, the customer submitted a further claim for external flooding. As a result, a GSS payment of £106.69 was paid, with an additional payment of £20.00 as a late payment penalty. • On 18

September 2019, the mitigation survey was carried out and, on 31 October 2019, it wrote to the customer to explain that it was not possible to install mitigation measures because the non-return valves and sealed manhole covers would reduce the risk of external flooding at the property, but increase the risk of flooding elsewhere and possibly cause a brook to be polluted. • On 6 November 2019, it telephoned the customer and explained that there were alternative ways to prevent flooding, but these would require funding that could not be guaranteed. • The customer said that she had reported internal flooding on 27 October 2019 but had not received an internal flooding form. A GSS payment of £213.38, an additional £100.00 discretionary payment, and a £20.00 late penalty payment were paid to the customer on 20 November 2019. • On 13 February 2020, the customer claimed for a further incident of external flooding and a GSS payment of £106.69 was paid with a £20.00 late penalty payment. • On 21 February 2020, the Drainage Performance Technician spoke to the customer about the lack of funding for measures to stop the flooding at her property. The customer said that she had already decided to install flood mitigation measures herself and the work was due to begin the following week. At that time, the possibility of the company making a contribution towards the mitigation measures was discussed with the customer. • On 6 April 2020, the customer asked for the mitigation costs to be paid and invoices were requested to confirm what works had been carried out. • On 10 July 2020, it informed the customer that it could not contribute towards the pump she had installed in her garden, or the flood barriers she had fitted to her property, as it can only pay for mitigation measures on drains and sewers. • On 26 July 2020, the customer emailed to say that she was unhappy with the ongoing flooding issues and stated that nothing had been done to help her. • On 7 August 2020, it replied to explain that it had carried out extensive investigations and found the issue to be the hydraulic capacity of the sewer network local to the property, and that it had added the sewer to an annual de-silt programme to make sure the sewer runs freely. It explained the findings of the mitigation survey again and explained that it would take substantial investment to resolve the issue. It explained the funding criteria and told the customer it was important to report all further incidents of flooding. • In view of the above, it believes that it has provided the customer with help and assistance to the expected standard, and it denies responsibility to pay for the mitigation works carried out by the customer.

### 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:**

### **How was this decision reached?**

1. Under the provisions of the Water Industry Act 1991, I accept that the company is not responsible for damage caused by sewer flooding, unless it has been negligent.
2. Having reviewed the evidence, I find that the company investigated the flooding at the customer's property and concluded that it was caused by adverse weather conditions and hydraulic inadequacy.
3. The evidence shows that the company conducted a mitigation survey and found that fitting non-return valves and sealed manhole covers would transfer the risk of flooding elsewhere and, therefore, these measures could not be taken. The company says that it is now considering more costly mitigation measures, but a cost/benefit assessment will be undertaken and approval cannot be guaranteed.
4. The customer explains that the threat of further flooding causes considerable worry and stress and, considering the frequency of the flooding and the extent of damage caused, I have no doubt that this is the case. The customer explains that she could not just sit and wait for further flooding to occur while the company decided whether to fund mitigation measures, so she installed mitigation measures herself; a pump in the garden to direct flood water away from the property, air bricks and door defences.
5. The customer wants the company to pay the cost of the work and survey, but the company has refused on the basis that it only funds flood mitigation measures on sewers and drains. On balance, I find no failing on the company's behalf in its refusal to pay for the mitigation measures taken by the customer. I am satisfied that it is reasonable that the company is only willing to pay for limited mitigation measures to prevent flood damage it has not caused and is not responsible for.

6. The evidence confirms that the company's engineer incorrectly told the customer that the company may consider paying the cost of the mitigation measures. However, the evidence shows that the customer had decided to install the pump and door barriers before the engineer suggested the company may pay and, therefore, I find that the engineer's comments played no part in persuading the customer to get the work done. Therefore, whilst I find that the engineer's inaccurate comments fell below the expected standard, the customer suffered no financial loss or other disadvantage as a result of being told the company may pay.

7. In view of the above, while I understand that my decision will disappoint the customer, I cannot find that the company is responsible for reimbursing the customer. Therefore, the customer's claim cannot succeed and I make no direction to the company in this regard.

### **Outcome**

1. The company does not need to take any further action.

### **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.

- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then 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.

---

**Kate Wilks**  
**Adjudicator**