

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 4132

Date of Decision: 24 November 2020

Complaint

The customer's property was flooded in June 2020 during a period of heavy rain. Sewage escaped from the drains and caused damage to her property. The customer says that the company has not given a reasonable response as to why this occurred. A similar event happened in 2010.

The customer wants to see a complete report on why the events happened in 2010 and 2020. She also wants the company to carry out work to prevent future flooding affecting properties in the area.

The customer claims £11,350.00 compensation for damage caused.

Defence

The customer's property is in a flood risk area. The company says that the flooding in June 2020 was the result of an extreme weather event. The event increased runoff from land which overwhelmed the company's drainage systems.

The drainage systems in the area were upgraded in 2009 and the company says that they are working as designed. No further upgrades are planned.

The company says it had referred the customer to her insurer in relation any damage caused by flooding.

The company says that as this was an extreme weather event and outside the company's control, no payment is due to the customer under the Guaranteed Standards Schemes. It denies responsibility for the flooding.

Findings

The flooding in June 2020 followed a period of heavy rainfall. However, the company has not demonstrated that this was the result of exceptional weather conditions. A payment under the Guaranteed Standards Scheme is therefore due.

The company has provided information to the customer concerning surveys it carried out but has not given any interpretation or explanation of its findings.

The customer has not shown that the company was responsible for the flooding incident. No evidence has been provided that shows the company has failed to fulfil its statutory obligations.

Outcome

The company needs to take the following further action:

Provide a report to the customer detailing its investigations and findings

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relating to the flooding incident in June 2020.

Make a payment to the customer under the Guaranteed Standards Scheme of 50% of her annual sewerage charge, subject to the minimum and maximum payments of £75.00 and £500.00 respectively.

The customer must reply by XXXX to accept or reject this decision.

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Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- Her property suffered flooding in June 2020 during a period of heavy rainfall. Sewage escaped from the drains and damage was caused to her property. She says the company has not given a reasonable response to her request for an explanation as to why this happened.
- She says a similar flooding incident occurred in August 2010. This was after sewer upgrading works in the area in 2009.
- The customer wants to see completed root cause analysis for flooding events in 2010 and 2020.
- She requests effective remedial work to alleviate future sewerage spillages onto properties.
- She claims £11,350.00 compensation.
- The customer has made comments on my preliminary decision. I have addressed these later in this decision.

The company's response is that:

- The customer's property is in a flood risk area.
- It says the last flooding incident for the local area occurred in August 2010. It says that in June 2020, a significant amount of rainfall resulted in flooding.
- It says that this was an extreme weather event with an increase in runoff to storm water gullies, onto roads and into drainage systems. The result was the public sewer was overwhelmed and unable to cope with the volume of water.

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- It says that it constructed a new system in 2009. It says that it is satisfied the system is working as designed and does not plan any further upgrades.
- It has completed repairs to the road outside the customer's property.
- It says the incident did not qualify for a Guaranteed Standards Scheme (GSS) payment as it was beyond the company's control.
- The company says that it referred the customer to her insurers. It says that it does not believe it should compensate the customer for an event that was not its fault.
- The company has made some comments on my preliminary decision. I have addressed these later in this decision.

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.

How was this decision reached?

1. The customer's property, along with a number of other properties, was flooded in June 2020 during a period of significant rainfall. The customer reports that raw sewage escaped from the drainage system and that damage occurred to her property and the adjacent highway. The customer says a similar incident occurred in August 2010.

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2. The company says that it constructed a new system in the area in 2009. It says that this was designed to prevent hydraulic flooding. It acknowledges that there was a flooding incident on 20 August 2010 but says there have been no further recorded events since then. It says that the sewerage system is designed to cope with most storms but that on occasions flooding can happen due to factors outside the company's control.
3. The customer has asked the company to provide a copy of its root cause analysis. She does not consider that the explanations provided by the company are adequate.
4. The company says that it uses root cause analysis to identify the classification of a flooding incident during its investigations. It says that does not provide this as a document as it is a process the company goes through when an incident occurs. It says that it has established that the incident on 18 June 2020 was due to extreme weather and outside the company's control.
5. The company has explained that the customer's property is in a flood risk area. It says that in June 2020 a significant amount of rainfall resulted in flooding. It also says the last flooding incident was in August 2010. It describes the incident in June 2020 as an extreme weather event with increased runoff from land into the drainage systems. It says the public sewer was overwhelmed and could not cope with the volume of water. It reports many properties including the customer's property experienced flooding.
6. The company says that it cannot confirm whether the incident has been classed as a storm return period greater than 1 in 20. It says that it cannot do this as the return period of rainfall is calculated by Natural Resources Wales (NRW) and the incident has yet to be confirmed by them. The company has provided comparative rainfall data for August 2010 and June 2020 but has given no interpretation of the data. The company says that whilst there was an incident in August 2010 there have been no recorded events since that time. It says that it has concluded that in June 2020 the sewer was operating as designed at maximum available capacity at the time of flooding. It also says that the flooding has been classified as 'coincidental' flooding due to external contributing factors. The company has not explained this further but I note has referred elsewhere to runoff getting into the drainage systems.
7. The company refers to the incident as an extreme weather event and that flooding was coincidental. However, it has not explained how it has reached this conclusion. It has provided a flood risk map of the area. It has also provided rainfall data for August 2010 and June 2020

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but has not explained the relevance of either the rainfall data or the flood risk map in relation to this event. The company has not been able confirm whether the incident has been classed as a storm return period greater than 1 in 20. This is important as storm return periods are used by Ofwat to decide whether or not an incident is classed as a severe weather event.

8. It is apparent that there was significant rainfall and this led to the sewers being overwhelmed. However, the company has not explained how it has come to the conclusion that the incident in June 2020 was an extreme or severe weather event. As it is giving this as the reason for the sewers being overwhelmed, it is reasonable that it should demonstrate how it has come to this conclusion. If the company cannot demonstrate that that the incident was a severe weather event, it is reasonable to expect it to investigate other causes. It is also reasonable that the customer should be provided with a copy of the company's findings.
9. I direct the company to provide a report to the customer of the results of its investigations into the flooding incident in June 2020. It will be for the company to decide on the detailed content of that report. However, it should as a minimum provide explanations and interpretations of any data it has used in preparing the report. It should give the findings of any surveys and inspections carried out and the conclusions drawn. It should also address the customer's concerns about raw sewage escaping from the drains. Where appropriate, it should compare its findings with the previous event in 2010.
10. The customer seeks to have improvements made to the sewerage system.
11. Under the Water Industry Act 1991 (the "Act"), sewerage undertakers have a responsibility to provide, improve and extend systems of public sewers and to maintain sewers under their control. The duty of sewerage undertakers to comply with the Act is enforceable by the regulator, Ofwat. Rule 3.5 of the WATRS Rules prevents a WATRS adjudicator deciding on a matter that is enforceable by Ofwat. The question of whether or not the company should make improvements to its systems is therefore not for this adjudication and I make no direction on the matter.
12. The customer claims £11,300.00 compensation for damage caused by the flooding.
13. Whilst I have concluded that the company has not shown that this incident was the result of an extreme weather event. In order to show the company was responsible for the incident, it

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would be necessary to show the company had been negligent or that it had failed to fulfil its obligations under the Act. I have seen no evidence that would support this. The matter would in any case be outside the scope of a WATRS adjudication. Failure by the company to fulfil its obligations under the Act would be a matter for Ofwat.

14. I also note in relation to the claim for £11,350.00 that a copy of a letter dated 2 July 2020 from a loss adjuster has been provided. The letter refers to insurers being asked to issue a payment of £11,350.00 to the customer as full and final settlement. This suggests that an offer of settlement had been made by the customer's insurers equal to the amount claimed by the customer.
15. The customer's claim for a payment of £11,350.00 fails.
16. I have examined the company's performance in relation to the GSS. The GSS requires that companies must make a payment to customers if sewerage from a company's systems enters a customer's land or property. The amount payable depends on whether flooding is external or internal. The exceptions where GSS payments for flooding do not have to be made are exceptional weather conditions; industrial action by the company's employees; actions of the customer; a defect, inadequacy or blockage in the customer's drains.
17. If flooding is caused by exceptional weather conditions, a company is not required to make a GSS payment. If a company considers flooding has occurred as a result of exceptional weather, it is for the company to demonstrate that the event has been classed as exceptional weather. If a company cannot show that exceptional weather has caused the flooding, a GSS payment should be made.
18. The company notes the GSS requirements in relation to flooding incidents. However, it says that when flooding incidents are classified as coincidental and beyond the company's control, GSS payments are not required to be made. It considers for the June 2020 incident, no GSS payment is due. This was confirmed in the company's email sent 24 July 2020.
19. The customer has said that the incident that occurred in August 2010 occurred under the same circumstances. She says that exceptional rainfall caused flooding that overwhelmed the drainage system. At that time, the customer says that a GSS payment was made.

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20. I have said earlier that the company has provided certain information but that it has not shown that the incident in June 2020 resulted from a severe weather event. For a GSS payment not to apply, the company would have to demonstrate that the flooding was the result of exceptional weather conditions. I have explained the relevance of the storm return period in relation to how Ofwat considers a weather event to be severe. Whilst the company has said that the June 2020 incident was classified as coincidental, it has not supported that statement. It has also acknowledged that it had not been confirmed whether or not the event could be regarded as a storm return period greater than 1 in 20.
21. I find the company has not demonstrated that the June 2020 event qualified as an exception to making a GSS payment due to exceptional weather conditions. A GSS payment is therefore due to the customer. The company reports that flooding occurred at the front of the property, driveway, through a garage and onto the garden. This is external flooding as defined in the GSS. I have seen no indication in the documents of any internal flooding and therefore have taken the flooding to be external.
22. The GSS says that for external flooding, the customer must claim the payment within three months of the event. I note that the company had said in its email dated 24 July 2020 that the event did not qualify for a GSS payment. I also note that the customer challenged that statement in her response to the company's email, referring to a GSS payment made in 2010. I therefore conclude that the matter of the GSS payment had been raised with the company by the customer within the three month time period.
23. I direct the company to make a payment to the customer under the GSS in respect of the Jun 2020 flooding incident. GSS payments for external flooding should be 50% of the customer's annual sewerage service charge subject to a minimum of £75.00 and a maximum of £500.00. No bills have been provided showing the annual sewerage charge and therefore I am unable to decide the actual amount to be paid. I therefore direct that the payment shall be 50% of the customer's annual sewerage service charge. Such payment shall be not less than £75.00 and not more than £500.00.
24. The customer provided comments on my preliminary decision on 19 November 2020. I have referred to her main comments below.

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25. The customer says that damages sustained to her property were assessed by a loss adjuster as £11,350.00. She also says that her insurance premiums have increased. I have referred to the amount claimed in my decision. Under WATRS, an adjudicator's powers are limited to determining whether the company has met its own standards and, if not, make an appropriate payment under the GSS. I have directed that a GSS payment is to be made. Anything beyond that would, as I have said, require demonstrating negligence by the company or a failure to fulfil its obligations under the Act. This is not within the scope of a WATRS adjudication and would be a matter for Ofwat.
26. The customer says there has been no remedial work since 2009 and refers to additional housing estates being added. A WATRS adjudicator has no power to direct a company to proactively maintain, clean or upgrade a sewer system. This would amount to determining the standards of maintenance or improvement required under section 94 of the Act. Matters of that nature are reserved for Ofwat.
27. The customer refers to a third person managing and reviewing any report from the company. I have directed that the company produces a report and have set out the minimum that the report should include. I have no power to direct any third party to take part in managing or reviewing any report. However, this decision, if accepted by the customer, requires compliance with directions within a set time frame. The process in the event a company fails to comply is set out in the WATRS rules.
28. The company provided comments on my preliminary decision on 23 November 2020. I have referred to its main comments below.
29. The company makes reference to clarifying GSS payments in relation to flooding. It has referred to Ofwat guidance and provided an extract from an Ofwat document. The document referred to is Ofwat's guidance for companies to report sewer flooding. The highlighted items show incidents of flooding that do not have to be reported. The document relates to flood reporting and not GSS payments. It does, however, define a severe weather event as one with a storm return period greater than 1 in 20 years.
30. The company refers to emails dated 10 September 2020 and 11 September 2020 within the CCW documents. It says these emails and attachments evidence the steps taken to investigate the flooding. The emails referred to summarise certain actions taken by the company. In my

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decision I have acknowledged that the company conducted surveys. However, there is no explanation of findings or conclusions resulting from those surveys. As I have said, the company has not provided an explanation as to how it has concluded this was a severe weather event.

31. I have explained above that it is for the company to show that the flooding in June 2020 qualified as an exception to making a GSS payment due to exceptional weather conditions. The company has not done so in this case.
32. 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:

Provide a report to the customer detailing its investigations and findings relating to the flooding incident in June 2020.

Make a payment to the customer under the Guaranteed Standards Scheme of 50% of her annual sewerage charge, subject to the minimum and maximum payments of £75.00 and £500.00 respectively.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 December 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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Signed

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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