

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1240

Date of Decision: 24 November 2020

Complaint

The customer purchased his property in 2016 and has since experienced several incidents of external sewerage flooding in his front and rear garden, and he is frequently unable to flush his toilet. The customer's neighbours, many of them elderly, have also suffered these issues, and the roads and footpaths in the lower end of his village also flood with raw sewage on a regular basis. The company states that the sewerage system does not have the capacity to cope during periods of heavy rainfall and, as a result, it floods the surrounding areas with raw sewage. Despite complaints from the residents, the parish council, the district council and the local MP, the company has failed to replace the outdated and inadequate sewerage system, in breach of its statutory duties. The customer also complains that the standard of customer service provided by the company has been poor. The customer wants the company to replace the sewerage and wastewater system with one that is fit for purpose as a matter of urgency.

Response

The company accepts that the customer and other local residents have reported incidents of flooding over the last few years; however, most of the reported problems were caused by blockages, mainly due to sewer misuse. Investigations of the sewer network found no issues that were a cause for concern; however, the sewers were added to a cleansing programme and computerised modelling of the sewers was undertaken to investigate the possibility of hydraulic overload. The modelling showed that the flooding was due to a downstream restriction from a local pumping station and, therefore, the pumping station has been submitted for an investment review. However, getting approval for such investment can be a lengthy process and investment has to be prioritised. In view of this, the company is already doing all it can to resolve the issues the customer and his neighbours have been experiencing.

The company has not made an offer of settlement.

Findings

In accordance with WATRS's Scheme Rules, the customer's complaint

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regarding the company's alleged breach of its statutory duty to maintain effectual drains, and the remedy the customer requests, falls outside the scope of this Scheme for several reasons; the complaint concerns complex issues of law, the complaint would be better addressed to a more appropriate forum, and the complaint concerns matters over which Ofwat has powers to determine an outcome. Therefore, I have no jurisdiction to assess whether the company has breached its statutory duty to maintain effectual drains or direct the company to replace the sewerage system. However, I am able to consider whether the company has provided its service to the expected standard while dealing with the customer's complaint. The evidence shows that the company has investigated the cause of the flooding, and has made an application for funding for work on the local pumping station. While I appreciate that the investment is not guaranteed, and the length of time this issue is taking to resolve must be frustrating for the customer, I accept that the company is working towards a long term resolution. In view of this, I am unable to find that the company has failed to provide its service to the standard reasonably expected by the average customer in this regard.

Outcome

The company does not need to take any further action.

The customer must reply by 22 December 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /2140

Date of Decision: 24 November 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- He purchased his property in the village of Hill Ridware in 2016 and has since experienced several incidents of external sewerage flooding in his front and rear garden, and approximately twenty days when he has been unable to flush his toilets; his neighbours, many of them elderly, have also suffered these issues. The roads and footpaths in the lower end of the village also flood on a regular basis, meaning that children often have to walk on footpaths covered in raw sewage on their way to and from school. The sewerage flooding generally occurs after periods of prolonged rain.
- The sewerage system was installed in 1961 to serve 86 houses, but now serves over 600. The company states that the system does not have the capacity to cope during periods of heavy rainfall and, as a result, it floods the surrounding areas with raw sewage.
- The company has received many complaints over the years, not just from him; other neighbours, parish councillors, district councillors, and the local MP have raised this issue but the company have failed to remedy the cause of the flooding. It has investigated the sewers with CCTV cameras, cleared a minor blockage, put the mains on a cleansing programme, undertaken modelling and identified that the pumping station cannot cope with the flow of water in wet weather but, in breach of industry standards and the company's statutory duties under the Water Industry Act 1991, it has failed to replace the inadequate sewerage system that cannot cope with the demands placed upon it from the growing village, or commit to doing so.
- The customer service provided by the company has been very poor at times and he had to contact the Chief Executive Officer in order to get a response to his initial complaint.

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- Considering the company makes vast profits, its delay in resolving this problem is unacceptable. He has included statements from many residents of the village that support his complaint and share his view that the company needs to take action to resolve this serious problem without delay.
- He has carried out work in an attempt to defend his property from external flooding, but wants the company to replace the sewerage and wastewater system with one that is fit for purpose as a matter of urgency.

The company's response is that:

- The customer made contact in October 2019 to report his concerns about the sewers in []. This issue had been investigated in 2013, and meetings had been held with the local residents. By August 2013, work had been carried out to check and cleanse a number of sewers in the area and no further concerns were raised until September 2018.
- The customer states that the flooding problem has been occurring since he moved into the property in 2016; however, most of the reported problems were caused by blockages, mainly due to sewer misuse. There was nothing to suggest that [] was at high risk of flooding and investigations of the sewer network found no issues that were a cause for concern; however, the sewers were added to a cleansing programme and they are now checked and cleansed every three months in order to make sure they are flowing freely.
- It also investigated a possible hydraulic capacity issue and arranged for computerised modelling of the sewer system in the area. This showed that the flooding was due to a downstream restriction from the pumping station in []. As the pumping station does not cope well with high flows in wet weather, it has been submitted for an investment review. However, getting approval for such investment can be a lengthy and difficult process as investment has to be prioritised.
- Issues considered when prioritising works include whether the flooding occurs inside a customer's property, the impact on customers, the frequency and severity of the flooding, and feedback from customers about whether they are happy to pay for certain enhancements and improvements to the sewerage network. The views of Ofwat, the industry regulator, and customers who are represented by the Consumer Council for Water, are also considered. This approach means that resources are directed to areas where there is the greatest need. The customer and his neighbours have been asked to report flooding each time it occurs so that the severity of the problem can be understood fully, and this will help to secure the investment needed to resolve the flooding.
- In view of the above, it is already doing all it can to secure investment for the appropriate remedial works.

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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.

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.

How was this decision reached?

1. Having reviewed the evidence provided by the parties, I start my adjudication by saying that I fully accept that the sewage flooding and toilet flushing problems the residents of []. are so frequently experiencing are serious in nature and difficult to live with. In light of this, I fully understand their desire for an urgent long-term remedy.
2. However, the customer wants me to direct the company to replace the local sewerage system, on the basis that the company has failed to carry out this work to date. Having considered the facts of the case and the evidence presented by the parties, particularly the customer, I find that the customer wants the company to be directed to comply with its statutory duty to maintain its sewers to ensure that the customer's local area is effectually drained.
3. Section 94 of the Water Industry Act 1991 outlines the company's duty to maintain its sewers and states:

“(1) It shall be the duty of every sewerage undertaker—

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(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—

(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and

(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

4. Since the customer’s complaint raises issues relating to the company’s obligations under section 94 of the Water Industry Act 1991, I consulted the WATRS Scheme Rules to establish whether the dispute is within the scope of this Scheme.

5. Rule 3.4 of the Scheme Rules states:

“WATRS may reject all or part of an application to the Scheme where it considers that:-

3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute; or

3.4.2 the application should have been made against an alternative water and/or sewerage company; or

3.4.3 in exceptional circumstances, the dispute raises a complicated issue of law.”

6. Rule 3.5 of the Scheme Rules states:

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“The Scheme cannot be used to adjudicate disputes which fall into one or more of the following categories:

- disputes concerning the Competition Acts 1998 and 2002 as amended;
- regulatory enforcement cases;
- bulk supply determinations;
- disputes between undertakers, between licensees and between undertakers and licensees;
- water supply licensing disputes;
- whistle blowing;
- any matters over which Ofwat has powers to determine an outcome;
- disputes relating to eligibility to transfer to a statutory licensee;
- water quality legal standards;
- enforcement cases under the Environmental Protection Act 1990 and the Environmental Act 1995 as amended;
- disputes that are subject to existing court action or on which a court has ruled unless the court’s decision has been set aside;
- disputes that are the subject of an existing or previous valid application under the scheme;
- the handling of CCWater and Ofwat complaints;
- complaints which are being or have been investigated by a statutory or regulatory agency or agencies including the Drinking Water Inspectorate and/or the Environmental Agency in respect of the breach of a statutory or regulatory requirement unless a WATRS Notification or Option Letter has been issued in respect of the complaint;
- resale and third party complaints;
- disputes relating to the fairness of contract terms and/or commercial practices;
- disputes concerning allegations of fraudulent or criminal activity; and
- any dispute or disputes that are considered by WATRS to be frivolous and/or vexatious.”

7. Considering the above, I find that the dispute falls outside the scope of this scheme for several reasons, which I shall now outline.

8. Having considered the facts of the case, I find that the complaint regarding sewerage flooding raised by the customer concerns complex legal issues, specifically the company’s compliance with section 94 of the Water Industry Act 1991 above. In view of this, I find that Rule 3.4.3 of the Scheme Rules prevents me from adjudicating on these issues.

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9. Also, in accordance with section 18 of the Water Industry Act 1991, Ofwat has the jurisdiction to take enforcement action against water companies that breach their section 94 statutory duties. Therefore, I find that the customer's request for a replacement sewerage system would be better addressed to Ofwat, which I consider to be "a more appropriate forum", as per Rule 3.4.1.
10. In addition to this, Rule 3.5 means that any matters over which Ofwat has powers to determine an outcome are outside the scope of this scheme. As above, section 94 (3)(b) of the Water Industry Act 1991 delegates enforcement powers to Ofwat and, therefore, as an adjudicator operating under the rules of this Scheme, I have no jurisdiction to consider a possible breach of section 94 or direct the company to replace the sewers.
11. In any event, the replacement of the sewers would cost significantly more than the maximum remedy of £10,000.00 allowed under the WATRS Scheme Rules. Therefore, I am unable to award the remedy requested by the customer.
12. For the reasons I have outlined, and in accordance with the Scheme Rules, I am unable to assess whether the company has complied with its statutory duty under section 94 of the Water Industry Act 1991 and, therefore, the customer's claim for replacement sewers cannot succeed. I appreciate that my decision will disappoint and frustrate the customer, and also the neighbours that have supported his claim, but I do not have the jurisdiction to consider or direct upon this matter.
13. However, I am able to assess whether the service provided by the company has met the expected standard and, although the customer does not claim compensation for customer service issues, he has commented about the level of customer service provided by the company during the course of his complaint.
14. The evidence shows that following the customer's complaint, the company investigated the cause of the flooding, identified a possible cause, and has made an application for funding for work on the local pumping station. While I appreciate that the investment is not guaranteed, and the length of time this issue is taking to resolve must be frustrating for the customer and the village residents who face the threat of foul flooding and/or problems flushing their toilets every time it rains heavily, I accept that the company is working towards a long term resolution. I also accept that investments of this nature have to be carefully considered and prioritised, and that

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this process can take a long time to complete. In view of this, I am unable to find that the company has failed to provide its service to the standard reasonably expected by the average customer in this regard and I make no direction to the company.

15. Having reviewed the evidence, I also find that the customer did not get a response to his initial complaint until he wrote to the company's Chief Executive Officer, and I find that the company did not provide its service to the expected standard in this regard. However, I note that the company provided the customer with a GSS payment for this failing and, on balance, I find no need to make a further direction to the company.

Outcome

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 by 22 December 2020 to accept or reject this 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.

K.S. Wilks

Katharine Wilks

Adjudicator

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