

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-XX12

**Date of Decision:** 11/02/2021

#### Complaint

The customer's claim is that since 2017, the company has failed to maintain its sewage pipes surrounding her property. These failures have led to periodic flooding of foul water within her property's boundary. The customer is seeking the company to confirm when a long-term solution to prevent flooding will be implemented, pay £10,285 compensation to cover her contractor's clean up fees and provide further compensation for customer service failures.

#### Response

In the absence of negligence, the company is not liable for the escape of the contents of public sewers. The company says it has not been negligent at any time, as it has conducted various investigations into the reasons behind the flooding and has agreed to install flood defences to help prevent further flooding. Whilst some of the flood defences have now been installed, a long-term solution remains outstanding due to funds not being available in this year's budget. The company will review the situation annually but cannot guarantee that the works will be completed. In light of some customer service failings and the distress and inconvenience incurred due to the flooding, the company has made various goodwill payments and other payments under its Guarantee Standards Scheme totaling £6,551.22. The company has not made any further offers of settlement.

#### Findings

I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected, concerning identifying any defects with the sewer, installing flood defences and implementing a long term solution to prevent further flooding. Concerning customer service, I find no other failings for which the customer has not been already adequately compensated.

The company needs to take no further action.

## Outcome

The customer must reply by 11/03/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX12

Date of Decision: 11/02/2021

## Party Details

**Company:** XWater

## Case Outline

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

- Since 2017, the company has failed to maintain its sewage pipes surrounding her property. • These failures have led to periodic flooding of foul water within her property's boundary. • The customer is seeking the company to confirm when a long-term solution to prevent further flooding will be implemented, pay £10,285 compensation to cover her contractor's clean up fees and provide further compensation for customer service failures.

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

- The cause of the flooding the customer has experienced was hydraulic overload, this is when a sewer's capacity is insufficient for the volume of wastewater flowing through it. • In the absence of negligence, the company is not liable for the escape of the contents of public sewers. • It has not been negligent at any time, as it has conducted various investigations into the reasons behind the flooding and has agreed to install flood defences to help prevent further flooding. • Whilst some of the flood defences have now been installed, some defences remain outstanding due to funds not being available in this year's budget. The company will review the situation annually but cannot guarantee that the works will be completed. • In light of some customer service failings and the distress and inconvenience incurred due to the flooding, the company has made various goodwill payments and other payments under its Guarantee Standards Scheme totalling £6,551.22. • Accordingly, no further sums are due in this respect.

## 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. The dispute centres on whether to prevent further flooding, the company should complete a long-term solution promptly.
2. The company must meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of a leak, the company needs to investigate thoroughly to find out if the company's sewage pipes or other assets are to blame and, if repairs are required, make such repairs to prevent further leaks.
3. Furthermore, the company also has certain obligations regarding its customer services as set out in the OFWAT Guaranteed Standards Scheme and its Guarantee Standards Scheme.
4. From the evidence put forward by the customer and the company, I understand the customer has experienced external flooding emanating from the company sewage pipes within her property on multiple occasions since 2017. The customer first reported external flooding on 1 August 2017. The company was on-site on the same day and established that the sewer was clear. The company undertook further investigations over the following month and found that a pipe section upstream from the customer's property had collapsed. The sewer's repairs were made on 19 September 2019, and the customer informed that the issue had been resolved.
5. On 18 January 2020, the customer contacted the company to inform them of external flooding of her property on 17 January 2020 and previous incidents since she had occupied the property. The company attend the customer's property the

same day and found no evidence of either pollution or flooding. The customer was informed on the company's finding and that excluding the incident in 2017 no other reports of flooding had been received since 28 August 2015. The company says despite any lack of evidence, the company would investigate the flooding further.

6. Between 20 January 2020 and 14 June 2020, the company undertook investigations into the customer's flooding and undertook various mitigation work to prevent further flooding, including sewer lining, manhole refurbishment, and tree roots removal. I understand that during this period the company made considerable goodwill and Guaranteed Standards Scheme payments. The company also paid for various clean-up work to the customer's garden. The evidence shows that due to COVID-19 restrictions, there were some correspondence delays within this period.

7. On 14 June 2020, the customer contacted the company to report further flooding. The company attended on 15 June 2020 and removed some mud from the customer's patio. On 16 August 2020, the customer reported pollution into the watercourse at the rear of the property. The company attended the same day and whilst no pollution or sewage was found it was suspected that the flooding had occurred due to the volume of wastewater.

8. The customer reported further flooding on the 18 August 2020. The company established that the sewers were clear with no apparent issues except for two highway gullies that were no longer connected to the sewer network. I understand that these were reconnected in December 2020 due to a delay in the local council providing permit approval. During this period, the company made various further Guaranteed Standards Scheme and goodwill payments. The company also agreed to reimburse the customer up to £1,500 for future clean-up costs and at the same time decided to install flood defences to prevent further flooding.

9. The evidence shows that some of the flood defences were installed in December 2020 by the company's contractors. However, a long-term solution remains outstanding due to funds not being available within the company's budget. The company said that it would review the situation annually but cannot guarantee that the works will be completed. The customer remained unhappy as she was still of the view that a final solution should be put in place as soon as possible and commenced the WATRS adjudication process.

10. Concerning whether to prevent further flooding, the company should promptly install a long-term solution. The customer states that she has had numerous flooding incidents since moving into the property. However, whilst I appreciate the customer's position, as shown by the timeline set out in the company's response documents, before the customer's complaint in 2020 the customer had only one reported flooding incident in 2017. In that and the following instances, it was found

that the root cause of the flooding was due to hydraulic overload, which is when the capacity of a sewer is insufficient for the volume of wastewater flowing through it. I note the customer's comments that the previous occupants of the property had also been experiencing flooding since June 2000, however, without evidence I cannot determine whether this previous flooding has any bearing on the customer's flooding.

11. Under section 94 of the Water Industry Act 1991, the company in the absence of negligence, is not liable for the escape of public sewers' contents. On careful review of all the evidence, I find that I am satisfied with the company's position that it has undertaken investigations into the cause of the flooding and where appropriate has taken action such as refurbishing various manholes, undertaking levelling and camera surveys and repairing sewers when necessary to reduce the risk of flooding.

12. After careful analysis of the correspondence and evidence, I cannot find any indication the company has been negligent concerning the sewers surrounding the customer's property. Surveys were undertaken by the company that shows the sewers had no significant defects and were operating freely. As demonstrated by the evidence, the company investigated the cause of the flooding on each occasion, and it took appropriate action if cleaning or repairs were required.

13. I note that the customer has requested £10,285.00 to cover additional clean-up charges. However, as above, I cannot find any indication the company has been negligent. Therefore, I find that the company is not liable for the customer's costs for clean-up. Furthermore, despite not being responsible, the company has made various goodwill payments to the customer to cover clean-up costs and damage to her property. The customer's insurance would usually cover these costs.

14. The evidence shows that the company has also investigated various scenarios to reduce the risk of flooding and has installed flood defences to protect the customer's garden. Whilst this does not eliminate the risk of future flooding, it does reduce the risk. Whilst I appreciate the customer's position regarding funding for a long-term solution, I find that it was reasonable for the company to balance the flooding events and risks at the customer's property against all the other company's operational risks that are awaiting resolution.

15. Concerning the above, I am of the view that the company did investigate the flooding as best it could and acted appropriately according to the results of its investigations. I find there are no grounds to conclude that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the investigation of the source of the flooding at the customer's property and completing a long-term solution. Accordingly, this

aspect of the customer's claim fails.

16. The company has certain obligations in respect of its customer services. The company admits within its correspondence that some errors and delays incurred when investigating the cause of some of the flooding incidents and responding to the customer. The evidence shows that, where appropriate, the company has made goodwill and Guaranteed Standards Scheme payments totalling £6,551.22. In some instances, I note that Guaranteed Standards Scheme payments were made when they should have been classed as goodwill payments. However, I find no loss to the customer as to how the payments were classified. After careful review of all the correspondence provided in evidence, I am satisfied that the company's various payments were fair and reasonable in the circumstances to cover the various flooding incidents, the complaint and any distress or inconvenience to the customer. I am therefore satisfied there have been no failings concerning customer service, which the customer has not been already adequately compensated.

17. I note the customer has submitted comments on the Proposed Decision. I can confirm that I have not asked the company to promptly put in place a long-term solution, the quoted text has to be read in conjunction with the rest of the sentence and the paragraph it sits in. I also note the various comments concerning the customer's health and that inaccurate information has been presented by the company. However, on review, I find these issues do not alter my finding that there is no indication that the company has been negligent.

18. In light of the above, I am satisfied that the company did not fail to provide its services to the customer to the standard to be reasonably expected, concerning identifying any defects with the sewer and installing a long-term solution to the flooding. Concerning customer service, I find no other failings for which the customer has not been already adequately compensated. As a result, the customer's claim does not succeed.

## 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.
- 

**Mark Ledger**  
**Adjudicator**