

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X346

Date of Decision: 28/04/2021

Party Details

Customer: The Customer

Company: X Company

Customer's Representative: The Representative

Complaint

The customer's property suffered an internal flooding incident on 6 June 2017. This caused damage to the property. The incident was during a period of heavy rain and the company's sewer was not able to deal with the surface water run-off. This was found to be due to a blockage in the company's sewer caused by the intrusion of tree roots.

A flooding incident relating to the same sewer occurred in the previous year during a period of heavy rain. On that occasion, there was no internal flooding.

The customer considers the flooding incident to be the responsibility of the company. The customer seeks recovery of costs in respect of repairs to damage and associated work arising from the flooding. The customer claims a total of £3,378.39.

Response

The company acknowledges that there was a flooding incident on 6 June 2017. The company confirmed that there was external flooding from a manhole. The company established the presence of tree roots in the sewer which had caused a blockage. The tree roots were removed and the sewer was repaired on 15 June 2017.

The company acknowledges that it received a report of sewage seeping from a manhole on 6 February 2016. It says it arrived on site approximately two and a half hours after the report. The company says no flooding was observed and water levels in the manhole were falling. The company denies there was any link between the incidents on 6 February 2016 and 6 June 2017.

The company says that it reacted promptly to the incident on 6 June

2017 and rectified the problem. It does not consider that it had been negligent and denies that it has any liability for damage caused.

The company rejects the customer's claim.

Findings

A flooding incident occurred on 6 June 2017 at the customer's property.

The company responded to the incident in a reasonable period of time and cleared the blockage. The company acted reasonably in dealing with the problem.

There is insufficient evidence to link the incident on 6 June 2017 to the incident on 6 February 2016. There is therefore no evidence that the company was negligent. The company is not liable for damage. The customer's claim for costs associated with repairs fails.

The customer is eligible for a payment under the Guaranteed Standards Scheme in respect of internal flooding. No such payment has been made.

Outcome

The company needs to take the following further actions:

Make a Guaranteed Standards Scheme payment to the customer in respect of the internal flooding resulting from a blockage in the company's sewer. The payment shall be equal to the annual charge for sewerage services, subject to a maximum of £1000.00 and a minimum of £150.00.

The customer must reply by 26/05/2021 to accept or reject this decision.

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Date of Decision: 28/04/2021

Case Outline

The customer's complaint is that:

• A flooding incident occurred during a period of heavy rain in June 2017. It resulted in internal damage to properties in the customer's building. The flooding was due to a blockage in the company's sewer. • The company advised they were not liable as they had no prior knowledge of any problem with the sewer. The customer disputes this and has provided information about a previous call out in February 2016. • The company has said that the previous incident was due to heavy rainfall and there were no other contributing factors for the incident in 2016. • The company has referred the customer to his own insurers. The customer considers that the flooding is due to a failure by the company to maintain its sewers. He says that claiming on insurance will increase premiums. The customer considers the company should pay for repairs. • The customer seeks compensation in the amount of £3,378.39 to cover the cost of work associated with the repairs to damage. • The customer has made some comments on my preliminary decision. I have addressed these at the end of this decision.

The company's response is that:

• The company attended a flooding incident at the premises on 6 June 2017 following a report from a resident. A blockage was discovered that the company was unable to fully clear. A repair was completed on 15 June 2017 when roots were removed from the sewer. • The company had received a call to the same location in February 2016 as a manhole cover had lifted. The company says that no issues were found with the sewer at that time. It says that flooding on that occasion had been due to heavy rainfall. The company says that the system was found to be draining when it attended the call. It says no flooding was found when it attended. • The company denies any liability for damage arising from the flooding incident on 6 June 2017. It considers that it attended each incident and carried out necessary repair work without any delay. The company considered that there was no negligence on its part in relation to the flooding incidents. • The company regards the costs of repairs as a matter for the customer's own insurers. The company is not prepared to reimburse the customer for any costs incurred.

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.

How was this decision reached?

1. On 6 June 2017, there was heavy rainfall in the area around the customer's property. The customer says that the company's sewer could not cope with the level of rainfall. Water pressure built up within the systems and backed up in the rain water downpipes serving the customer's property. The property suffered a flooding incident as a result. The customer says that water reached the top of a downpipe and hit the roof flashing causing water to enter the property via a service duct. This caused internal damage.
2. The customer notes that there had been a flooding incident in February 2016. He says that the company was aware of a problem with the sewer following that incident. The customer considers that damage caused is a result of a failure on the part of the company and seeks recovery of the cost of repairs and associated work. The amount claimed is £3,378.39.
3. The matter to be determined is whether or not the company has any liability in respect of damage caused to property as a result of the flooding incident that occurred on 6 June 2017.
4. Section 94 of the Water Industry Act 1991 (the "Act") imposes a general duty on sewerage undertakers to provide and maintain sewers to ensure that areas are effectively drained. Determining the standard of maintenance required under the Act is a matter for OFWAT and is outside the scope of WATRS. Due to the extensive systems under their control, sewerage undertakers are permitted to adopt a reactive approach to repair and maintenance. This acknowledges the fact that sewerage undertakers unconditionally adopted private sewers in 2011, irrespective of condition or knowledge of locations. If the company had breached its statutory duties under the Act, this would be outside the scope of WATRS and

would be for OFWAT to investigate.

5. The flooding incident that resulted in damage to property occurred on 6 June 2017. The company says that it attended the incident the same day but was unable to fully clear the blockage. The company says that following further visits it established that roots had entered its sewer system. The company reports that these roots were removed on 15 June 2017.

6. I find the company's response to the incident on 6 June 2017 to be reasonable. It attended the incident the same day and rectified the problem within a reasonable time period. As referred to earlier, companies are permitted to adopt a reactive approach to maintenance and repairs. The matter to be considered is whether or not the company was, or should have been aware, of a problem with the sewer prior to the incident on 6 June 2017.

7. The customer has referred to an earlier flooding incident that occurred in February 2016. The customer's position is that the company was aware there was a problem with the sewer due to that earlier flooding incident. It is noted that the report on this incident was made by the owner of a different property. However, the incident reported related to the same sewer system.

8. The company says that it attended a call to the location in February 2016. The company says that when its team arrived on site, any flooding had subsided. It says that the water level in the catchpit was falling but the manhole had become dislodged, indicating there had been some overflow. The company re-seated the manhole. It considered the issue to be due to hydraulic overflow as a result of weather conditions. The company says that it took no further action as there was no flooding to property.

9. The company says that there was no recorded flooding to the customer's property in 2016, other than a small amount of highway flooding across a footpath which it says could have affected the customer's lawn. The company says that if further evidence was available it would consider a payment under the Guaranteed Standards Scheme (GSS).

10. The company considers that there is no link between the incidents in 2016 and 2017. The company notes that it had no reports of further flooding incidents between the two dates.

11. I have examined the details provided by the company of each incident. The photographs of the drain following the 6 June 2017 incident show significant intrusion of roots into the drain. From the relative sizes and the density of the roots visible, it is reasonable to conclude that the root intrusion had been taking place for

some time. It is possible, although not certain, that roots were present in the sewer during the February 2016 incident.

12. The company has said that when it attended the incident in February 2016, there was no flooding. However, it acknowledged there had been an issue as the manhole cover had been displaced. The company also acknowledged in its email to the Consumer Council for Water (CCW) sent 14 August 2018 that it usually carries out a CCTV survey when a flooding incident is reported. The company says that its notes for the job do not suggest a survey was carried out. The company has noted that the water level was falling and says there was no indication of any other issue. The company says that no investigation was carried out at the time as the sewer was functioning as expected. The company states that the February 2016 incident was entirely different to the incident in June 2017.

13. The company has not provided any evidence to support its position that the 2016 and 2017 incidents are not related. It acknowledges that no investigation was carried out in 2016, even though it has also said that it would usually conduct a CCTV survey. As referred to earlier, I concluded that it is likely the root intrusion had been occurring for some time. However, I am unable to conclude from the evidence available that a root intrusion was the cause of, or a contributory factor to, the 2016 incident.

14. Had the company investigated in 2016 and established any presence of roots or other blockage, it would have been reasonable for the company to clear the drains at the time. For the company to be found to be negligent, a number of factors would need to be examined. This would include, among other things, consideration of the standard of maintenance required. It would also need to be determined whether the company's actions in 2016 were reasonable or whether further investigation was warranted. As outlined above, this is not within the scope of a WATRS adjudication.

15. The customer claims the sum of £3,378.39 in respect of repairs and associated work resulting from damage due to flooding. For the company to be liable, it would need to be shown that the company had been negligent. Negligence has not been demonstrated and I am unable to make any award in respect of damage. I therefore make no direction on this matter.

16. I am, however, able to consider the company's performance under the GSS.

17. The GSS requires that, in the event of effluent entering a customer's land or property, the company must make a payment to the customer. A GSS payment in respect of external flooding is equal to 50% of the customer's annual sewerage charge, subject to a minimum of £75.00 and a maximum of £500.00. In respect of

GSS payments in relation to external flooding, the customer must claim the payment within three months of the incident.

18. In the event of effluent entering a customer's building, the GSS requires the company to make an automatic payment to the customer. A GSS payment in respect of internal flooding is equal to the customer's annual sewerage charge, subject to a minimum of £150.00 and a maximum of £1,000.00.

19. There are exceptions to the above GSS payments. These include flooding that is the result of exceptional weather conditions. OFWAT deem that rainfall events with a storm return period greater than 1 in 20 years are classed as severe weather. Flooding due to severe weather would be regarded as meeting the exception for exceptional weather conditions. Although the company and customer have referred to a period of heavy rain, there is no evidence that rainfall could be regarded as severe weather. I find that the exception for extreme weather does not apply in this case.

20. The company acknowledges in its response that when it attended the customer's property on 6 June 2017 there was external flooding. The customer was therefore eligible for a GSS payment for external flooding. On 14 July 2017, the customer wrote to the company in relation to the incident. The communication referred to the manhole lifting and properties being affected by the flooding. It also referred to addressing the matter of costs incurred. Whilst the customer's communication did not specifically refer to a claim for a GSS payment, the company was aware of the customer's intention to seek compensation. I find it would have been reasonable for the company to consider the customer's communication to include a claim for a GSS payment.

21. A further exception to a GSS payment for flooding is if entry of effluent was caused by a defect, inadequacy or blockage in the customer's drains or sewers. The customer says that the internal flooding was from the rain water system serving the building. However, the customer says this resulted from rain water pipes backing up following the blockage in the company's sewer.

22. I note that the customer's email to CCW sent 28 June 2019 refers to an email to the company sent 16 January 2018 with the results of a test creating flood conditions on the roof. Whilst no copy of this report is included, the email notes that the test resulted in no water penetration to the building. The conclusion was that water ingress had been from a rain water down pipe.

23. On the balance of probabilities, I find the likely position to be that the internal flooding was a result of the blocked sewer. I have seen no evidence that suggests there was a problem with the customer's systems. I conclude the cause was not

therefore a defect, inadequacy or blockage in the customer's systems.

24. I am satisfied that the flooding incident on 6 June 2017 meets the criteria for a GSS payment due to internal flooding. Since this is a single incident, it is not appropriate that there should be a GSS payment for both external and internal flooding. I therefore direct the company to make a GSS payment for internal flooding to the customer.

25. No copy of a bill has been provided with the documents. I am therefore unable to determine the level of GSS payment that should be made. The company shall assess this according to the GSS requirements. Payment shall be equivalent to the customer's annual sewerage charge, subject to a maximum of £1,000.00 and a minimum of £150.00.

26. I have also considered the company's performance in respect of other aspects of the GSS. Under the GSS, a company is required to respond to written complaints from customers within ten working days. Where a company fails to provide a substantive reply to a customer's written complaint within the required period, the company must make an automatic payment to the customer.

27. The customer's letter dated 22 May 2018 refers to the lack of response from the company. I have reviewed the chronology of events set out in the customer's email to CCW sent 28 June 2019. This indicates a period from 4 January 2018 to 19 April 2018 where the customer was chasing the company for a response. The earliest reference to a response is 19 April 2018. However, whilst the customer had been chasing a response, this appears to be in relation to the existing issue. I therefore find no GSS payment is due.

28. The customer has made some comments on my preliminary decision. I have addressed these comments below.

29. The customer refers to further incidents of flooding between the reported incidents in 2016 and 2017. The company has not admitted to any other flooding incidents and the customer is not able to provide any supporting evidence relating to those incidents. I noted earlier that it was possible, but not certain, roots were present during the 2016 incident. Further flooding incidents between 2016 and 2017 would suggest it was more likely that root intrusion had already taken place when the 2016 incident was reported. However, without evidence of further flooding, I am unable to reconsider my earlier conclusion. In the event that roots could be shown to have been present in 2016, it may be possible to show that the company had been negligent in failing to investigate at the time. This would, as noted earlier, be outside the scope of this adjudication.

30. Having considered the comments made by the customer, I make no changes to

my decision.

31. The customer has provided a typical bill for water and sewerage charges. It is noted that this appears to be a bill for one residential property in the building. For clarity, the GSS payment in respect of internal flooding as directed above shall be calculated from the annual sewerage charges for the entire building and not only an individual flat.

Outcome

1. The company needs to take the following further actions:

Make a GSS payment to the customer in respect of the internal flooding resulting from a blockage in the company's sewer. The payment shall be equal to the annual charge for sewerage services, subject to a maximum of £1000.00 and a minimum of £150.00.

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.

- 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.

Ian Raine
Adjudicator