

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X270

Date of Decision: 11/06/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer's claim arises from two incidents of sewage flooding on his property. The customer believes that the company should have carried out remedial works after the first flooding incident, and that if it had done so, the second incident could have been avoided. The customer argues that under the Water Industry Act 1991, the company has a duty to cleanse and maintain its sewers, and that the company has breached this duty. The customer therefore asks for an apology as well as compensation for the damage and distress caused.

#### Response

The company contests the customer's claim. It argues that it has followed its policies and all legal requirements in dealing with sewage incidents. It notes that the first flooding event occurred during a period of exceptionally severe rainfall, so in accordance with its usual procedure it only carried out a local camera survey. Following the second incident it carried out further surveys and remedial works. The company says that it is extremely sorry for the upset and inconvenience these incidents have caused the customer but denies that it is liable to pay compensation to the customer.

#### Findings

I find that the customer is not entitled to pursue a claim that the company has breached its duties under section 94 of the Water Industry Act 1991. The evidence does not show that the company was negligent, or that there were any failings in the service that it provided the customer. Although the company only carried out a limited investigation after the first flooding incident, this was justified by the company's policy that it would only carry out a local camera investigation in cases where the flooding was a result of an extreme weather event. The company's only

responsibility in these circumstances is to pay the customer the compensation which is set out in its Guaranteed Standards Scheme and Customer Commitment Scheme, which it has done. It has also apologised for the upset and inconvenience that the flooding caused to the customer. I therefore find that there are no grounds to award any further remedy to the customer.

 Outcom

The company does not need to take any further action.

The customer must reply by 09/07/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X270

**Date of Decision:** 11/06/2021

## Case Outline

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

The customer's claim arises from two flooding incidents during which sewage entered his home. The first happened in the early hours of the morning of 11 August 2020. The customer contacted the company which stated that it would attend the customer's home the following day. The customer could not wait that long, so he and his family and friends cleaned up the sewage. The company attended the next day and cleared a build-up of silt inside a manhole, which they believed contributed to the flooding. The second flooding event happened on 17 August 2020. The company attended the next day and found a further build-up of silt, which they removed. On 23 August 2020 the company visited the property again and found a defect in the sewerage system which they excavated and repaired on 25 August 2020. The customer notes that he is a vulnerable customer due to the health conditions of himself and his wife. He is unhappy that the company did not carry out any remedial work when it visited his property after the first flooding incident. He believes that if the repair works carried out after the second flooding incident had been done earlier, the second flooding incident would not have happened. The customer argues that under the Water Industry Act 1991, the company is supposed to cleanse and maintain sewers and lateral drains which belong to them and to ensure that the area is and continues to be effectively drained. The customer considers that the company has breached this duty. The customer therefore asks for an apology from the company, as well as compensation for the distress and inconvenience he has suffered.

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

The company contests the customer's claim. The company explains that its statutory obligations regarding the upkeep of the sewerage network are set out in section 94 of the Water Industry Act 1991. These duties are only enforceable by enforcement order under section 18 of the Act, which means that a customer cannot bring proceedings for inadequate drainage unless there is an enforcement order which has been made and with which the company has failed to comply. In practice, the company has inherited a network of sewers which may at times be inadequate, and the courts have held that it is reasonable for a water company in these circumstances to adopt a reactive system of maintenance. The company refers to the cases of Peter Marcic v Thames Water Utilities Ltd and Hanifa Dobson and others v Thames Water Utilities Ltd in support of this argument. The company says that the flooding incidents at the customer's property

happened during periods of exceptionally high rainfall. The company therefore argues that they were not the result of any negligence on its part. The company also says that the first flooding incident on 11 August 2020, which was from the surface water gully in front of the customer's property, happened during rainfall which would be expected to occur less often than once in a hundred years. The company's policy in these circumstances is only to carry out a local camera survey to check that there are no blockages in the network. It surveyed the front gully and found some silt, which it removed. Although there was no evidence of flooding from the rear gully, the company also surveyed this and confirmed that there were no blockages. A second flooding incident then took place on 17 August 2020, from the private foul gully at the rear of the customer's property. The company carried out a more extensive survey on 23 August 2020 which identified a tree root restriction, which the company cleared, as well as installing patch lines to prevent tree roots from entering the sewers in future. The company also identified a structural defect in the sewers outside the boundary of the customer's property. Although the company does not believe that this defect caused the flooding, it nevertheless repaired the defect on 25 September 2020. The company says that it has made payments to the customer under its Guaranteed Standards Scheme (GSS) and Customer Commitment Scheme (CCS) - 2 x £254.60 under the GSS, plus 2 x £100.00 under the CCS. The company also made a further payment of £20.00 in recognition of the fact that one of the payments was made late. The company has therefore paid a total of £729.20 to the customer. The company does not believe that there have been any failures in the service it provided that would justify further payments. The company says that it is extremely sorry for the upset and inconvenience these incidents have caused the customer but denies that it is liable to pay compensation to 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.

## How was this decision reached?

1. The customer says that the company should be held liable for two incidents of sewage flooding on his property.
2. The customer is correct to state that the company has a duty, under section 94 of the Water Industry Act 1991, to "provide, improve and extend such a system of public sewers... and so to cleanse and maintain those sewers... as to ensure that that area is and continues to be effectually drained". The company therefore has an ongoing obligation to maintain and upgrade its sewers.
3. However, it is important to note that this duty cannot be enforced by an individual consumer. The duty can only be enforced by Ofwat, the water industry regulator, which can serve an enforcement notice on a sewerage undertaker in appropriate circumstances (which has not happened in this case). A consumer can only bring proceedings in cases where a sewerage undertaker has failed to comply with an enforcement notice.
4. As explained in the case of *Marcic v Thames Water Utilities Ltd* [2003] UKHL 66, para 35:

"Since sewerage undertakers have no control over the volume of water entering their sewerage systems it would be surprising if Parliament intended that whenever sewer flooding occurs, every householder whose property has been affected can sue the appointed sewerage undertaker for an order that the company build more sewers or pay damages. On the contrary, it is abundantly clear that one important purpose of the enforcement scheme in the 1991 Act is that individual householders should not be able to launch proceedings in respect of failure to build sufficient sewers. When flooding occurs the first enforcement step under the statute is that the Director [Ofwat], as the regulator of the industry, will consider whether to make an enforcement order. He will look at the position of an individual householder but in the context of the wider considerations spelled out in the statute. Individual householders may bring proceedings in respect of inadequate drainage only when the undertaker has failed to comply with an enforcement order made by the Secretary of State or the Director".

This case also confirms that sewerage undertakers are able to take a reactive approach to the repair and maintenance of sewers.

5. In this case, the company explains that the first flooding event was as a result of a storm that is only likely to happen once every 1380 years. The company's policy is that where flooding is a result of a 1 in 100 year or more storm event, it will only

investigate for blockages using a camera. In this case, the company did carry out such an investigation and cleared the silting that it discovered as a result.

6. After the second flooding event, the company carried out further investigations and cleared a tree-root obstruction that it discovered. In addition, it repaired a structural defect - although it does not consider that this defect was a cause of the flooding.

7. For the reasons set out above, the mere fact that flooding occurred from sewers owned by the company is not sufficient to allow the customer to bring a claim against the company.

8. I also find that the customer has not established that the company was negligent, or that there were any failings in the service that it provided the customer. Although the company only carried out a limited investigation after the first flooding incident, this was justified by the company's policy that it would only carry out a local camera investigation in cases where the flooding was a result of an extreme weather event. The company was entitled to adopt this "reactive" approach to maintaining its sewers. When the second flooding event occurred, the company investigated further - but this does not mean that the approach it took to the first flooding event was unreasonable or negligent.

9. The company's only responsibility in these circumstances is to pay the customer the compensation which is set out in its Guaranteed Standards Scheme and Customer Commitment Scheme, which it has done. It has also apologised for the upset and inconvenience that the flooding caused to the customer.

10. In his comments on the Preliminary Decision, the customer adds that he is unhappy that although he and his wife are vulnerable clients due to their serious health issues, the company did not offer any help to clean up their home after either of the floods, even though the flood contained sewer silt and human faeces. I note from the papers before me that the customer did indeed clean up, with the help of family and friends, after the floods. However, the company attended his home the day after each of the floods and was prepared to clean up - it was just that the customer had already finished the cleanup before they arrived. I therefore do not think that the company was in breach of any obligation to assist with the clean up.

11. The customer, in his comments on the Preliminary Decision, also complains about the company's response to the second flood, saying that they tried to deny that the second flood existed and blocked his complaint at every opportunity. However, although the company asked the customer for photographs of the second flood, the customer was able to provide these and the company accepted

them. I do not understand that the company denied the existence of the flood. In addition, as explained above, the company accepted that it was liable to make payments under its Guaranteed Standards Scheme and Customer Commitment Scheme. It was not liable for anything further, and I do not consider that it was unreasonable to explain this to the customer. I therefore do not consider that the company behaved inappropriately in this respect.

12. I therefore find that there are no grounds to award any further remedy to the customer. The customer's claim therefore 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.

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**Natasha Peter**

**Adjudicator**