

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X449

Date of Decision: 14/07/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer's claim arises from several incidents of sewage flooding on her property. The customer asks for approximately £3,000 compensation for the damage and distress caused.

#### Response

The company contests the customer's claim. It does not believe that it should be held liable for the flooding if it was not negligent, and argues that it has been diligent in the way it handled the customer's complaints. It denies that it is liable to pay compensation to the customer.

#### Findings

I find that the company cannot be held liable for sewage flooding unless it has been negligent in its operational or maintenance response to the flooding. Having carefully considered the papers, I can see no indication that the company's response to the flooding incidents was negligent. The company's only responsibility in these circumstances is to pay the customer the compensation which is set out in its Guaranteed Standards Scheme. It has done this, and I therefore find that there are no grounds to award any further remedy to the customer.

#### Outcome

The company does not need to take any further action.

The customer must reply by 11/08/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X449

**Date of Decision:** 14/07/2021

## Case Outline

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

The customer's claim arises from more than 9 sewage flooding incidents she has suffered since moving into her home in May 2016. She says that prior to moving into her home she had no history of flooding at her previous addresses, so the company is wrong to suggest that the flooding had been contributed to by her living habits. The customer states that the company had previously installed a non-return valve ("NRV") at her property prior to her occupancy. This became faulty due to a lack of maintenance by the company, although the company subsequently remedied this some months later and installed further NRVs in November 2016 and June 2019. The customer accepts that she has received 9 GSS payments since May 2016, plus a payment to cover her damage expenses. However, she says that the flooding has caused her considerable additional expense, including for the replacement of her flooring and for the additional costs that she has had to pay for insurance following a claim that she made on her insurance after a flooding incident. The customer also says that the flooding has caused her great distress and that the response from the company has left her feeling upset and anxious. She has previously made a WATRS claim and in November 2019 the company was ordered to pay her £150. The company has offered a goodwill payment of £50, and it subsequently offered to refund the customer's wastewater charges during the period she was affected (approximately £200). However the customer does not consider that this is sufficient. She asks for compensation in the region of £3,000.

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

The company contests the customer's claim. The company accepts that the customer has suffered flooding at her property since May 2016 and says that this is due to hydraulic overload in her area. The customer is connected to the trunk main which flows into the redacted treatment works, which becomes overloaded in times of heavy rain. Upgrading the main would be expensive, and although the company is investing over £100m over the next 5 years in reducing flooding risk, they need to prioritise the works they carry out based on an assessment of flooding frequency and consequence. The company considered short term mitigation measures to alleviate the problems at the customer's property while a longer term scheme was investigated. The company says that a NRV was installed at the customer's property in November 2016 and a second NRV in June 2019. It also advised the customer not to place heavy items on

the manhole cover in her garden as this was causing the flooding to occur internally rather than externally. In mid-July, the company then started works to redirect the drainage from the customer's property, which were completed on 8 August 2020. The customer has not experienced any flooding incidents since these works were completed. The company further notes that the customer took her complaint to WATRS for issues she had experienced up to October 2019 and received an award of £150, which the company has paid. The company therefore considers that issues prior to this date cannot be dealt with in the current complaint. Since that date, the customer reported flooding incidents on 20 December 2019, 16 February 2020 and 18 June 2020. On each occasion, the company attended the property and made the required GSS payment. The company states that it has offered a £50 goodwill payment, but the customer has refused this. It does not consider that it is liable for the £3,000 claimed by the customer, and it notes that the customer has not provided evidence for or a breakdown of this sum.

### **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. 1. As a preliminary point, I note that the customer has previously made a complaint to WATRS about issues with the company in relation to flooding of her home up to October 2019. Under Rule 3.5 of the WATRS Rules 2020, the WATRS Scheme cannot be used to adjudicate any matter that has previously been the subject of a valid application under the WATRS Scheme. I am therefore not able to consider the customer's claim insofar as it relates to matters before October 2019. However, I can consider complaints that relate to new matters (for example, further flooding events) that occurred after October 2019.

2. In the period after October 2019, the customer reported three incidents of sewage flooding at her home. She considers that the company should pay her compensation for the damage that has been caused. The company accepts that the flooding at the customer's property was caused by hydraulic overloading of the public sewers. It is therefore necessary to consider the company's responsibility for the public sewers under its control.

3. 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.

4. 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 regulator, which can serve an enforcement notice on a sewage undertaker in appropriate circumstances. A consumer can only bring proceedings in cases where a sewerage undertaker has failed to comply with an enforcement notice. In this case, the customer referred her complaint to Ofwat which conducted an investigation, but I do not understand that any enforcement notice was served.

5. As explained by the House of Lords in the case of REDACTED

"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".

6. The company is therefore entitled to take a "reactive" approach to problems with sewage flooding, and to determine how to prioritise the works that are needed to improve and upgrade the sewerage system in its area. As a result, the company

cannot be held liable just because there has been a sewage flood from public sewers in its network. The company can only be held liable if it has been negligent in the way it provided maintenance or operational services once the flood had happened, or if it has otherwise failed to provide a proper service to the customer. Otherwise, the company is liable to make GSS payments to a customer that has suffered sewage flooding, but is not otherwise liable to pay for the damage cause or the inconvenience suffered as a result of the flooding.

7. In this case, I find that the customer suffered three incidents of sewage flooding, on 20 December 2019, 16 February 2020 and 18 June 2020. The customer accepts that the company has made GSS payments in respect of these incidents, so the question is whether the company can be held liable for any further payments.

8. For the reasons set out above, I do not consider that the customer is entitled to make a claim simply because the flooding occurred, even though the flooding must understandably have been very distressing to her and must have caused damage to her furnishings and flooring. She will only be able to make a claim if she can show some negligence by the company in its operational or maintenance response.

9. From the papers before me, it appears that the company attended the customer's property on each occasion for a cleanup and investigation. I note that when the first flood happened on 20 December 2020, the company initially told the customer that it would attend within four hours, but it did not in fact attend until the next day. The company explained that this was because the crew that was due to attend was diverted to deal with a serious environmental pollution incident impacting the watercourse in Henley in Arden. The company apologised to the customer but said that this was beyond its control. I find that company's delay in attending was due to exceptional circumstances, and was therefore not a service failing on the part of the company.

10. During this period, the company was also considering appropriate mitigation measures that could be put in place while the larger strategic decisions about upgrading the sewerage network were being taken. The company had installed two NRVs in the customer's property, in November 2016 and June 2019; however, the company accepts that these were not functioning as it had hoped. The company therefore took the decision to divert the customer's sewage drainage to another sewer. The company explains that the works were delayed due to the Covid-19 crisis, but they started in July 2020 and were completed on 8 August 2020. The customer has not suffered any flooding since these works were completed.

11. I consider that these works are likely to fall outside of the scope of the

"operational" or "maintenance" works which I am entitled to consider under the Scheme. However, even if I am wrong about this, on the papers before me, it does not appear that the company was unduly slow in completing the works. The company has explained that the works were delayed by Covid-19 related restrictions, and by the need to obtain permission to access the relevant land from the Council and from a charity that owned the land. The customer has not made any specific allegations about any delays that she considers to be unreasonable, and I consider that the points made by the company are valid reasons why the work was not able to be completed earlier. I therefore do not find that there is any liability on the part of the company for these works. I note that the papers appear to suggest that the works have been successful and the customer is happy with the results.

12. Finally, I note that the breakdown of the £3,000 claimed by the customer which appears in the CCW papers appears to include payments for repairs to flooring and other damage for flooding that took place before October 2019 (or in any event, because no dates are given, I cannot be sure that the payments all relate to the period after October 2019). It also appears to cover damage that is caused by the flooding itself, rather than by the company's delay in carrying out the diversion works when it realised that the NRVs were not functioning as expected. For both these reasons, I do not consider that these amounts can be awarded in any event.

13. I therefore find that there are no grounds to award any 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**