

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X462

Date of Decision: 26/07/2021

Party Details

Customer:

Company:

Complaint

The customer complains that the company promised to pay compensation for damage to his garden and certain items in the garden caused by an incident of flooding. He says that this was not the first incident but it was the most serious and the company is responsible for his loss. He also says that the company has provided poor customer service in respect of its cleansing activities and failed to undertake promised protections for the future. He claims compensation of £5,000.00 plus interest.

Response

The company says that it is not within my jurisdiction under this Scheme to determine liability for flooding from the sewer. The company has made a Guaranteed Service Scheme payment. It is not liable to compensate the customer for the damage to his garden or items on the garden. Moreover, the company says that it carried out protective work and cleansing activities in accordance with its policy and to the standard that an average customer would reasonably expect.

Findings

I do not have jurisdiction under the WATRS scheme to determine that the company is liable for damage caused by an escape of sewage other than in respect of the payment or otherwise of GSS compensation. The flooding was caused by fat, oil and debris in the sewer due to incorrect use by third parties. The customer has not proved that the company promised to compensate him for damage to his property and in the absence of that promise, I find that the company is not liable for this. There were certain ways in which the company did not meet expected standards, however. These included telling the customer that cleansing would occur on the following day when it did not occur until three days

after the flood, failing promptly to carry out cleansing with dog-friendly detergent and failing to explain to the customer that it would not install a non-return valve by the date promised (and the customer experienced further flooding). I find that the company shall pay compensation for inconvenience and distress of £120.00.



The company shall pay £120.00 to the customer.

The customer must reply by 23/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- The customer asks for £5,000.00 plus interest as compensation for his experiences and damage to his garden and belongings. He explains that he has had several sewage floods at his property, with the last one being by far the worst, causing a river of sewage across the customer's patio and forming a pond of raw sewage. He says that the blockages are in the main sewer "somewhere up the road", which the customer said has nothing to do with him.
- He says that he was promised a deep clean and replacement for damaged goods but he only received a rinse with water and the raw sewage was raked off the grass.
- He is unhappy that the company is not taking ownership but blaming the blockage on a third party. He says that the company put a camera down the sewer the week prior to try to find the problem but had already told the customer that the problem was due to that third party.
- The claim is for replacement of his garden furniture, fire pit, barbeque and relaying turf on the grassed area. He wants a deep clean of the patio and side path, replacement of his son's footballs and goals.
- The company will be fitting a non return valve to the sewer and has offered to wash the patio with pet friendly detergent - this is 6 weeks after they promised to do it the next day. The customer is still unhappy with this as he and his family had to clean the patio themselves and remove the children's goals and footballs.
- The promise of replacement for all soiled patio furnishings has not happened and he cannot allow children on the garden lawn as it is a health hazard. Children and pets cannot use the garden area as it is a health hazard.
- The customer says that the information in the final response from the company and in its submissions to WATRS are "lies".

The company's response is that:

- The company is a statutory appointed water and sewerage undertaker and is governed by the Water Industry Act 1991 (the Act). The Company has a statutory duty to provide water and/or sewerage services to every property in its area.
- Foul sewer flooding can occur because of blockages, particularly when cooking fat, wipes and other debris are put down the drain. Under S111 of the Act, it is a criminal offence to throw, empty, turn or suffer or permit to be thrown or emptied or to pass, into the public sewer any matter likely to injure the sewer or to interfere with the free flow of its contents.
- In these circumstances, the Company is not responsible for any resulting flooding issues. The company, however, will assist with providing guidance and some

help to clean up externally. • The company has a level of service that should be provided to all household customers which is set out in the company's 'Core Customer Information' document • If flooding from the public sewer affects a customer's property externally, the customer may be able to claim a payment equal to 50% of the customer's annual sewerage charges for each incident from a minimum of £75.00 up to a maximum of £500.00. • Such a claim should be submitted to the company within 3 months from the date of the incident. • Ofwat, the company's regulator, has a Guaranteed Standards Scheme (GSS) which is a summary of standards and conditions that the company is expected to meet. If the Company does not meet the expected standards, a customer is entitled to a payment as set out under the GSS. • On 26 February 2021 the customer reported external sewer flooding that had affected his garden. The Company attended the property on the same day and the sewer was jetted to clear any blockages. • The customer was informed that it would take 2 to 3 days for the clean-up team to attend. The company usually advises leaving time for any debris to dry out as this makes the clean-up process more effective. Furthermore, this allows time for the sun's UV rays to kill any bacteria. • Public Sewer Services (PSS) attended the Property on behalf of the company on 1 March 2021 and the affected area was cleaned. Water was used as the customer has dogs and PSS were unsure whether the disinfectant was pet friendly. It is not essential that disinfectant is used however a customer may request this. Photographs were taken by PSS after the initial clean up which was done to a satisfactory standard. • On 17 March 2021 the company undertook CCTV investigations downstream of the sewer. The sewer was found to be blocked with fats, oils and grease (FOG) and other debris such as wipes that had been deposited into the sewer. • Further CCTV footage was taken upstream of the sewer on 24 March 2021 and again the sewer was found to be blocked with FOG and other debris and the sewer was jetted. The customer was advised that a non-return valve would be installed in their neighbour's manhole which may reduce any further risk of flooding, although the company cannot and is not expected to guarantee that flooding will not occur in the future. • PSS subsequently sourced a pet friendly disinfectant and returned to undertake further cleaning in the customer's garden. There is no evidence to suggest that the customer has suffered internal sewer flooding as a result of any of the incidents reported. • The company acknowledged its customer failure in the delay in responding to the customer and a GSS payment of £20.00 was made on 4 May 2021. • As the customer had suffered external flooding, a refund of sewerage charges was issued in accordance with the company's procedure set out in 'Core Customer Information'. • As the company found that the blockages were due to debris and non-flushables being deposited into the public sewer, for which the company cannot be held responsible. Despite this, the company has compensated the customer for the flooding incident and customer service failure in line with the GSS. • The customer's complaints have been responded to and investigated fully in accordance with the standards of service set out under the GSS. Where the company's conduct has fallen below the required standard, the customer has been appropriately

compensated under its GSS. • Under Rule 3.5 of the Scheme, WATRS cannot dispute the fairness of the Company's internal procedures or the GSS. • There is no evidence to suggest that the customer's account and queries have not been dealt with to the standard reasonably expected and there is no evidence that the company has acted negligently, if alleged or at all.

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.

I have also taken into account the customer's submissions on my Preliminary Decision. The company has not submitted comments.

How was this decision reached?

1. I bear in mind that in the absence of negligence, although the company has the duty to maintain and repair its sewers, it cannot be held liable by a court for escapes of sewage from its assets. This is because the Water Industry Act 1991 places the jurisdiction to review the decisions of water and sewerage undertakes on Ofwat and not on the courts. This principle was declared by a key decision of the REDACTED. The reasoning in that decision also applies to adjudicators under the WATRS scheme, because WATRS is a dispute resolution process and not a regulatory process. Rule 3.5 of the Scheme rules makes clear that there is no jurisdiction for me to decide any matters over which Ofwat has powers to determine an outcome.
2. Rather, escapes of effluent from the sewers are recognised under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. There are separate provisions under the Regulations for instances of internal and

external flooding. Section 12 of the Regulations addresses external sewer flooding and states that if effluent from a sewer enters a customer's land or property (including an outbuilding) due to a failure of an undertaker's drainage system, the company shall pay the customer the lesser of 50% of the sewerage charges payable by the customer to the undertaker for that financial year or £500.00. A minimum charge of £75.00 applies.

3. The primary financial protection or redress for householders for flooding from sewers, therefore, remains private insurance.

4. Against that background, the customer has not proved that the company was negligent even though he had experienced escapes of sewage at his property and experienced blockages on previous occasions, namely 31 August 2016, 8 September 2016, 28 November 2020 and 4 February 2021.

5. He says that the company was aware of the FOG in the sewer in a week before its camera investigation and therefore, as I understand his submission, invites an inference that the company knew that this was present at the time of the flood. I do not accept that submission. I am mindful that the presence of FOG as a consequence of third parties using the company's assets for disposal of inappropriate items is a very common problem and may cause blockages and flooding. The company cannot, however, reasonably be expected to know when and where such incidents will occur and, for the reasons given above, it is for Ofwat and not for me to decide whether the company is required to prioritise its resources in order to carry out routine investigations to prevent FOG. There is no evidence that the company was aware of FOG in the sewer that would cause a flood in the customer's garden prior to the escape reported on 26 February 2021.

6. The company has submitted evidence that it has paid compensation to the customer of 50% of the customer's annual sewerage charge and has made a further payment of £20.00 under its compensation scheme for a communications error.

7. Moreover, the company says that it has, in accordance with its policy, attended the customer's property to clean up. It has submitted evidence that on the date of the blockage it attended and ensured that the sewers were running by jetting the sewers. The company has said that it advised the customer that the clean-up may happen two or three days later (and that is consistent with the speed of cleaning up operations that had happened in the previous incidents of flooding that the customer had experienced). The company has also submitted two explanations first for its delay in attending to carry out cleaning up and secondly for not initially cleaning with detergent, namely that allowing the effluent to dry is a more effective way of cleaning and secondly that the company was concerned about the impact of

its usual detergent on the customer's dogs and therefore cleaned initially with water only. I note, however, that the first of these is not fully consistent with what the company's internal records show the customer to have been told at the time. The records show that the customer was very unhappy at the delay she was told to expect and on 26 February, the company contacted the customer and his wife was informed that the company's operatives would attend on 27 February 2021 unless emergency work was required. In fact, PPS did not attend until 1 March 2021, which is a matter that I find would have been frustrating for the customer, particularly as the foul contamination was so close to her house. The company's work records show that the customer complained on 27 February 2021 that she had waiting in all day for the attendance of the clean-up crew and that they had not arrived. She was promised a call back. That did not happen on 27 February 2021 and on 28 February 2021, the customer was told that the crew would attend on the following day. The lack of clear and accurate communication with the customer as to when to expect the cleaning crew was, I find, a matter that fell below the standard that an average customer would reasonably expect.

8. However, this discrepancy does not mean that the company's explanation that it is preferable to allow the situation to dry out is not also true. As for the company's explanation that cleansing with water only is regarded by the company as a satisfactory process, there is, I find, no evidence to the contrary and it is notable that the customer had alerted the company to the presence in the house of a child and dogs. Moreover, the company indicated to the customer that it was willing to source a pet-friendly disinfectant, although it is not clear that this offer was made before 7 April 2021. In contrast, the customer says in his email to the company on 30 March 2021 that he had been told that the company would be reattending with a suitable disinfectant. I find that it is improbable that the customer is incorrect about this, especially as, from the outset, he had complained about the use of water only for the cleansing activity. I find, therefore, that there was a delay of nearly two months before a detergent was sourced and offered at the customer's property. I find that this also was a matter that fell below the standard of service that an average customer would reasonably expect. The customer refused this at that point although work was later undertaken by PSS.

9. The customer also says that raking the grass was an insufficient cleansing action and that a pile of foul waste was left in his garden. The company has reviewed this complaint by reference to the photographs taken of the cleansed area and has not upheld this concern. I bear in mind that adjudication is an evidence-based process and that it is for the customer to submit evidence in support of his complaint. I find as to the cleaning of the grass that he has not proved that the cleansing actions undertaken by PSS were substandard.

10. The customer also raised complaints in correspondence that the company did

not carry out its cleanup operations in the sewer. In particular, he refers to a further incident of flooding that occurred on 27 May 2021. In correspondence passing between the parties, he says that:

- a. The sewers were not jetted in March as he was told.
- b. Work due to be done to the sewer outside his house in August 2021 reveals that there was a fault with the sewer other than merely FOG.
- c. No no-return valve was fitted following the first incident; and
- d. Although the customer was told that the neighbours had been sent letters advising them about proper use of the sewer, this did not happen.

11. The company says that:

- a. The sewers were jetted in March but a subsequent inspection following the customer's second complaint in May revealed that FOG had potentially caused a blockage but the sewer was not blocked. Further jetting took place.
- b. The work to be done to the sewer is a patch repair to a small crack, which was not relevant to the escape of sewage.
- c. The non-return valve was fitted on 3 June 2021.
- d. The letters were hand delivered to each house marked for the attention of the occupier.

12. I find, as to these matters that:

- a. There is no reason to believe that the company did not jet the sewers as indicated. The company's contention is supported by its internal records and I find that this is therefore likely to have been done.
- b. The company has explained that different work was required to the sewer that is scheduled to take place in August 2021.
- c. The company's documents indicate that the company informed the customer by email that a non-return valve would be installed by the end of April 2021. It is clear from the information provided by both parties that this had not occurred before the next flood, which happened on 27 May 2021. There is no evidence that the customer was told that the non-return valve had not been fitted or would not be fitted until after a further escape of sewage. While I cannot find that the company's failure to fit the non-return valve in April 2021 was a failure by the company to maintain and repair the sewerage (because this is a matter for Ofwat) I do find that

the company's failure to explain, having promised the provision of a protection within a timescale, that the service could not be provided within that stated period, was a matter that fell below the standard of service that an average customer would reasonably expect.

d. The customer has submitted no clear evidence that the letters were not delivered as stated. I accept the company's submission that these may have been overlooked and I find that there would have been no need to supply such a letter to the customer.

13. It follows from the above that I find that although clean-up services to the customer were supplied in accordance with the company's stated policy, the company in three ways failed to supply its services to the expected standard. This would, I find, have led to distress and inconvenience on the part of the customer, for which I find some compensation is due.

14. I turn now to the customer's statement that the company promised that it would pay for the damage done by the sewage to his garden and to the property in it but has not done so. Although the customer says that the company promised to pay for the damage caused and at one point in his correspondence with the company, he has said that he was looking forward to an opportunity to play in court a recording of when he was told this, the customer has not, however, submitted a copy of this recording to WATRS. I note that the company's internal documentation does not contain any indication that such a promise was made to him.

15. The customer has not stated by whom or when this promise was made, nor has he put any such promise in context or supplied the relevant words. I am mindful that the company's operatives or agents may have used an expression indicating that this issue would be determined in the future but, if so, this is very far from a promise that the customer would be compensated by the company for his loss. On balance, I find that the customer is in error when he says that such a promise was made.

16. In the absence of such a promise, for the reasons given above, I find that the company would not reasonably be expected to accept liability for replacement and restoration works for which a court could not find the company to be liable.

17. It follows that I find that the company is liable only to pay compensation for inconvenience and distress caused to the customer over the period during which cleansing activities were due to be carried out and the non-return valve provided. For the avoidance of doubt, this does not include liability for the further damage (if any) caused by the flood on 27 May 2021.

18. I take into account that in respect of the flooding itself a GSS payment has

been made. I find that the further inconvenience and distress that was occasioned by the company's failure to communicate effectively with the customer, including as to the delayed fitting of the non-return valve was not in the most serious categories of loss but also it was, I find significant. I find that a fair and reasonable sum is £120.00.

19. Although the customer states in his response to my Preliminary Decision that this amount is an "absolutejoke" because of the impact of four episodes of flooding and the damage caused and his belief that he was lied to, I make clear that the award of compensation for inconvenience is not for the damage to his garden and its furniture, etc., for which, as indicated above, no compensation can be made, but for the additional inconvenience due to the service failings that I have found.

20. As the customer's claim does not concern incorrectly levied charges, I find that the customer is not entitled under the WATRS scheme rules to interest on this sum.

Outcome

1. The company shall pay £120.00 to the customer.

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.

Claire Andrews
Adjudicator