WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X487

Date of Decision: 12/08/2021

Party Details
Customer:
Company:

Complaint

The customer'sclaim arises from a flooding incident which took place at his home on 12 August 2020. The customer says that the CEO of the company had written to him in 2012 to say that following works the company was carrying out, his property would be protected from internal flooding for decades to come; however, this was unfortunately not the case. The customer claims an apology and asks for compensation to reflect the decrease in value of his property as a result of the flooding.

Response

The company contests the customer'sclaim. It does not believe that it should be held liable for the flooding. It says that the letter from its CEO was not intended as a guarantee that internal flooding would never occur, and it says that the flooding on 12 August 2020 was due to an extreme weather event. It has apologised to the customer but denies that it is liable to pay him compensation.

Findings

I find that the company cannot be held liable for flooding that is caused by insufficient capacity in the sewerage network. However, as the company appears to accept, the company'sletter of 2012 in which it said that the customer'sproperty would be protected from flooding "for decades to come" was misleading, in that the company was unable to guarantee this outcome. I find that this was a service failing on the part of the company. Although it would not be appropriate to award the customer compensation for loss of value of his property as a result of flooding, the company should pay the customer compensation for the distress and inconvenience which he has suffered by relying on the assurances provided by the company.

Outcome

If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, issue the customer with an apology and pay the customer the sum of £2,000.

The customer must reply by 10/09/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

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Case Outline

The customer's complaint is that:

The customer'sclaim arises from a flooding incident at his home on 12 August 2020. Prior to this, the customer had experienced flooding in 2007 and the company had carried out works to remedy the problem. The company'sprevious CEO had then written to the customer to say that the customer'sproperty would not be flooded for decades to come. The customer says that he relied on this letter in deciding not to sell his house. Even if the letter was badly worded, he considers that it should still have consequences for the company. He says that although the company advised him to sign up for flood alerts, these did not exist in his area. His property did in fact flood in August 2020 with serious consequences for him and his family. REDACTED. The customer acknowledges that the company is not responsible for the weather and accepts that the storm in August 2020 was exceptional; however, he feels that the company should still have some liability because of the 2012 letter, which he relied on. He also points out that although the company has said that the flood gates at his property were left open during the August 2020 flood, this is not correct. REDACTED. The flooding incident has caused the customer heartache, trouble and hardship and now, whenever it rains, he and his family are anxious about the possible consequences. The customer claims compensation for the difference between the market value of his property had there not been any flooding issue and the market value of the property with the flooding issue. He also asks for an apology from the company.

The company's response is that:

The company contests the customer'sclaim. It explains that following flooding in 2007, a flood alleviation capital scheme was completed in the customer'sarea, in conjunction with the Council. Flood mitigation was also installed at thecustomer'shome, including flood gates, a non-return valve and sealed manholes and flood barriers on the front and rear doors of the property. Although the company

accepts that its former CEO wrote to residents in 2012 and that the wording of his letter implies that customers would be provided with complete protection from flooding for decades to come, the company could not guarantee that internal flooding would never take place. The works were designed to protect against a once in 40 years weather event. However, on 12 August 2020, there was an extreme weather event which should not have taken place more than once in 150 years and this overwhelmed the sewerage system, causing flooding to the customer'sproperty. The company also believes that the customer failed to close the flood gates and did not use the flood barriers during the August 2020 storm. The company argues that it cannot be held liable for flooding that was caused, not by a lack of maintenance, but by the sewerage system being overwhelmed in storm. It cites the House of Lords decision in the case of Macic v Thames to support its argument that a water and sewerage company cannot be held liable for flooding that is caused by capacity issues with the sewerage network. The company offers its apologies to the customer, but the Defence also contains some text in red (which is presumably an internal comment) questioning whether an apology should be given. The company denies that it is liable to pay compensation.

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. The customer'scomplaint concerns a flooding incident at his home on 12 August 2020, as well as the fact that the company had written to him in 2012 assuring him that he would be protected from flooding for decades as a result of improvement works that it had carried out. I will therefore first consider the company'sgeneral responsibility for the public sewers under its control, before looking at the letter and its consequences.

2. 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 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.

4. As explained by the House of Lords 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".

5. 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 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 not liable to pay for the damage caused or the inconvenience suffered as a result of the flooding.

6. In this case, the customer accepts that the flooding was caused by an unusually severe storm that overwhelmed the sewerage network. The company cannot be

held responsible for the consequences of the storm itself, serious though they were for the customer.

7. I also deal briefly with the company'sargument that the customer himself should bear some responsibility for the flooding, because he failed to close the flood gates at his property before the storm. The customer has explained that this is not correct. He says that he did in fact close the gates, but that they were forced open by the flood waters. Given that the customer was at the property during the storm and the company was not, I find that the customer'saccount should be accepted. It seems that the company may have misinterpreted photographs which show that the floodgates were open during the storm, believing them to show that the gates were left open, when in fact the photographs were taken at a time when the gates had been closed and then forced open again during the storm.

8. I then have to consider the fact that the former CEO of the company wrote to the customer'smember of parliament on 25 September 2012, referring specifically to flooding at the customer'sproperty and describing a program of works that the company was planning to carry out. The CEO said that "these measures will protect properties in the area from internal flooding for decades to come".

9. The customer says that he relied on the letter and decided not to sell his house as a result. He says that given that his wife had been diagnosed with Alzheimer's,if he had known that the letter was incorrect, he would have made alternative arrangements. He points out that the letter did not explain that the protection was only meant to apply to floods that would occur once in every 40 years.

10. The company acknowledges that the wording of the letter does seem to refer to an absolute protection from flooding, but it says that the company could not be expected to provide this kind of a guarantee. In reality, the works, although they were substantial, were only designed to protect against once in 40 year weather events.

11. I find that the letter from the company'sCEO was indeed an assurance that the customer was entitled to rely upon. Although the letter is worded in vague terms, and it would not have been reasonable for the customer to believe that it was an absolute guarantee that flooding would never happen at his home, the letter also did not explain that the protection offered by the works was limited in the way the company describes. I find that on reading the letter, the customer was entitled to conclude that it was extremely unlikely that there would be further flooding at his home. I therefore find that it was a service failing on the part of the company to provide this kind of assurance, without properly explaining its limitations to the customer.

12. The customer says that he relied on this letter when deciding whether or not to sell his home, and I accept that the assurance from the company must have been at least one of the factors that he took into account in this decision. In fact, he did not sell his home and he and his family were, as a result, living there when the August 2020 flood occurred.

13. I do not accept the customer'sargument that, as a result of this chain of events, the company should be required to pay him the difference between the value of his home if it were protected from floods, and the value of his home given that flooding does in fact occur. The company did not cause the floods, and as explained above, they cannot be held liable for failing to further improve the sewerage network to stop flooding from happening. As a result, the company has not caused a devaluation in the customer'sproperty. I should also add that in any event, under Rule 3.5 of the Water Redress Scheme Rules (2020 edition), I am not able to consider claims for loss of property value.

14. I am, however, entitled to award the customer compensation for distress and inconvenience that has been caused by service failings on the part of the company. Given that the company'sassurances in 2012 led to the customer still being in his home when the August 2020 flood occurred, I find that it is appropriate to make an award on this basis.

15. In deciding on the amount to award, I note that under Rule 6.4 of the Water Redress Scheme Rules (2020 edition), the maximum amount I can award for non-financial loss is £2,500. I also take into account the WATRS "Guide to Compensation for Inconvenience and Distress" which sets out four tiers of compensation under this head. Tier 4 compensation, in the amount of £1,500 - £2,500, is reserved for the most serious cases, and I find that the customer'scase falls into this band. In making this finding, I take into account the fact that the 2020 flooding had a serious impact on the customer, which he describes as "life changing". He and his family were required to move out of their home and live in inadequate accommodation until the flood damage could be repaired. The event also had significant consequences for his wife, who had to move into respite care and sadly passed away without being able to see her family, and for his grandson, who suffers from diabetes and autism.

16. In his comments on the Preliminary Decision, the customer once again stressed how significant and emotionally scarring the effects of the flood were. He says that his grandaughter, who was 18 at the time, came outside with him to close the gates and put up the flood defences on the doors. However the water rose so rapidly on the road that the force of the water reopened the gates. The power then went off and his diabetic/autistic grandson, daughter and wife were trapped inside the house in darkness, with himself and his grandaughter fighting to keep the gates

closed. The customer says that he still experiences panic when it rains, as a result of the events that night. In addition, he stresses that his house is going to be very difficult to sell in consequence of the flooding.

17. There are of course many other factors that led to the customer experiencing these events, but the assurances made by the company are one of these factors. I therefore find that the company should pay the customer the sum of £2,000 to compensate for the distress and inconvenience he has suffered.

18. The customer has also asked for an apology from the company. Although the company did make an apology in its Defence, the Defence also contains what were presumably intended to be internal comments, in which the company questioned whether an apology should be made. In order that things are clear, I find that the company should issue an apology to the customer for the misleading statement contained in its 2012 letter.

Outcome

1. If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, issue the customer with an apology and pay the customer the sum of £2,000.

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.

Natasha Peter

Adjudicator