

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X557

Date of Decision: 24/09/2021

Party Details

Customer: The Customers

Company: The Company

Complaint

The customers have been reporting sewage flooding since 2015, but it has been ongoing for over twenty years. The front of the customers' property was damaged by the repeated flooding and it cost over £7,500.00 to have it repaired. The company said the customers could reclaim some of their costs, but then told them to claim off their home insurance policy instead; however, the customers' home insurers have said that they are not eligible to claim. Therefore, the customers want the company to reimburse the £7,500.00 they spent on repairing their flood-damaged garden.

Response

A water company will only be liable for damage caused by flooding if it has been negligent. As the cause of the flooding was sewer misuse, hydraulic overload and the low position of the property, not negligence, the company cannot be held responsible for the damage to the customers' garden.

The company has not made an offer of settlement.

Findings

I find that the flooding outside the customers' property was most likely caused by adverse weather conditions, sewer misuse and the natural lay of the land, and I do not find any evidence to justify a conclusion that the company acted negligently and that this resulted in the damage to the customers' garden. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer and the customers' claim cannot succeed.

Outcome

The company does not need to take any further action.

The customer must reply by 22/10/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X557

Date of Decision: 24/09/2021

Case Outline

The customer's complaint is that:

• They have been experiencing issues with overflowing sewerage since they moved into the property in 2015, but it has been on-going for over twenty years. • They presumed the first incident was a one-off but, in 2018, the issues escalated when the road was flooded with sewage. The contaminated water was running down the road opposite their property, bubbling up out of the clean water gullies and grassy banks, and was so deep that water was thrown up into their garden when traffic drove along the road and this contaminated the grass, shrubs and flowers, and pooled on their path. • The company attended but said it was not responsible and advised them to contact (REDACTED) County Council Highways Division. They contacted the Council and the Highways Manager attended with his team. After carrying out an inspection, the Highways Manager contacted the company to report that they had found blocked sewers and the contaminated water was overflowing into the clean water drains and bubbling into the street. As the Council are not licensed to remove human waste, it was the responsibility of the company to clean out the gullies and remove the blockage. • They have been given various reasons and excuses for the issues over the years. The company advised that on several occasions over the years it had put cameras along the road but had not seen any issues; however, after a formal complaint was raised, the company said that the Council had covered a manhole in tarmac and it could not be located, and it had found tree roots which had been removed and the drains had been repaired. The company also advised that additional gullies had been installed by the Council, however, when they approached the Highways Manager about this, he said this was not correct. The company then told CCW that it had found a block of wood in the sewer and this had been removed. • During the issues they had in September 2018, they were advised that the company would arrange for an Environmental Officer to come and investigate further, however no-one came out. • In the company's response, it continually says that the flooding in 2018 (although it mistakenly says 2019) was caused by surface rain water or flood water due to an extreme storm event; however, the "storm event" was not extreme at all, it was just heavy rainfall. • The front of their property was damaged by the repeated flooding; sewage water contaminated well established shrubs and conifers, the wall at the front was eroded and fell down twice, stagnant pooling water eroded the footpath, the soil was permanently boggy and wet, and the garden began to sink. As a result, they had to have the garden raised, replanted, the wall removed and replaced, and the

pathways raised and re-laid, at a cost of over £7,500.00. • The company instructed them to reclaim some of their costs and they were sent a claim pack. They completed the claim form and returned it, only to be advised that they should actually claim off their home insurance policy instead. However, their insurers have said that as the flooding was outside their property boundary and caused by a third party, they cannot make a claim. • They have provided a detailed diary with photographs showing the amount of flooding and the number of times they have contacted the company. • If their concerns had been properly investigated and repairs had been carried out in a timely fashion, the expensive repair work could have been avoided. • In view of the above, they want the company to reimburse the £7,500.00 they spent on repairing the garden.

The company's response is that:

• The customers have reported flooding outside their property on a number of occasions since 2018. The flooding usually appears in the highway following heavy or prolonged periods of rain that are classified as extreme weather events (hydraulic overload). • In the years before the flooding was reported, the local council installed additional highway gullies outside the property in an attempt to prevent pooling. This shows that the area was known for issues with surface water, as well as naturally occurring water. It is not responsible for surface water or highway run-off as this is managed by the local council. • Each time flooding was reported, it investigated and found that the network was working as it should, although on two occasions a blockage was found within the public sewer network. It removed tree roots and a brick, and the flooding in 2018 was caused by a wooden plank restricting flows in the public network by 70%. It took a week of work, including overnight cleansing of the public network, to remove the block of wood and restore full flows in the sewer. • It cannot be held legally liable for any damage caused by sewer flooding unless it has been negligent. It therefore follows that it cannot be held responsible for problems caused by people putting unsuitable items in the public sewer network or for exceptionally high rainfall and capacity issues in the sewer network system. • In the leading case of *Peter Marcic v Thames Water (2003)*, the House of Lords ruled that sewerage undertakers have no control over the volume of water entering their sewerage systems and cannot be held liable for damage caused by flooding unless they have been negligent. • In recognition of the lack of redress for foul flooding in the absence of negligence, the Water Supply and Sewerage Service (Customer Service Standards) Regulations 2008 provides a statutory right of compensation for customers affected by sewage flooding; a customer can claim under the Guarantee Standards Scheme (GSS) and may be entitled to a payment that is equal to 100% of their annual sewerage charges. In this case, it has not needed to make a GSS payment as the customers' property has not been internally or externally flooded. • In addition, the position of the customers' property and the camber of the road means that surface and rain water naturally pools outside the property. • In law, a person who buys a property in lower-level land has to accept

natural land drainage water from adjacent land at a higher level. This can be from spring water, ground water or surface water and, therefore, it cannot be held responsible for the damage caused by splashed water as the owners accepted responsibility of natural land drainage when they purchased the property. • In view of the above, it cannot be held responsible for the damage to the customers' garden and denies responsibility to reimburse the cost of reinstating the garden.

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 company states that in the case of *Marcic v Thames Water* (2003), the House of Lords ruled that sewerage undertakers cannot be held liable for damage caused by flooding unless they have been negligent, and that this means that it cannot be held responsible for problems caused by people putting unsuitable items in the public sewer network or for exceptionally high rainfall and capacity issues in the sewer network system.
2. I accept that this is correct and the Court of Appeal affirmed this position in the case of *Dobson v Thames Water Utilities* [2009], when it said that claims based on a water company's performance of its statutory obligations must be considered by Ofwat, the industry regulator, except where it is claimed that the company has performed its statutory obligations negligently.
3. This means that a customer's claim can only succeed if the customer is able to show on the balance of probabilities that the company acted negligently, and a claim based solely on the argument that the customer has suffered damage as a

result of the company's performance or breach of its statutory duties cannot succeed.

4. This also means that as an adjudicator operating under WATRS, I do not have the authority to consider whether the company has breached its statutory duty to maintain its sewers to ensure that an area is effectually drained, as such matters must be addressed to Ofwat, the industry regulator, and I can only adjudicate on matters where the customer alleges that the company has acted negligently.

5. Further, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called 'standard negligence'. To explain this further, if the argument is that the company has been negligent in not inspecting its sewers more regularly, this raises regulatory considerations and so, in accordance with the decision in *Marcic v Thames Water* [2003], such claims must be addressed to Ofwat and cannot be resolved through WATRS.

6. On the other hand, if the claim is that flooding was reported and the company negligently failed to notice or remedy a problem, this raises a question of standard negligence, and so can be resolved through WATRS.

7. The evidence provided shows that the customers have raised several issues during their complaint. One of the issues raised is that the company's sewers are old and not fit for purpose, and this has caused problems elsewhere in the local area. However, I am unable to consider these comments as they raise a question of the company's performance of its statutory obligations, which, as explained above, must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.

8. However, I am able to adjudicate on the issues raised relating to the company's failure to act more quickly in investigating the cause of the flooding as this amounts to an allegation of standard negligence.

9. However, having reviewed the evidence provided by the parties, I find that the flooding outside the customers' property was most likely caused by adverse weather conditions, sewer misuse and the natural lay of the land, and I do not find any evidence to justify a conclusion that the company acted negligently and that this caused the damage to the customers' garden.

10. As a result, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer and, while I appreciate that the customers will be disappointed by my decision, the customers' claim for reimbursement of the costs they incurred in reinstating their garden cannot succeed.

11. Following the preliminary decision, the customer provided me with some further comments. While I appreciate that neither the evidence provided by the company or my decision answers all the questions the customer has with regard to when and how the company undertook work on the sewers, without evidence of negligence on the company's part, my decision remains unchanged.

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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Kate Wilks
Adjudicator