

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X574

Date of Final Decision: 16 October 2021

Party Details

Customer:

Company:

Complaint

The customer's claim arises from several incidents of sewage flooding in the basement of her property, which the customer considers the company was slow to respond to. The customer asks for £2,500 compensation for distress and inconvenience.

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 flooding. 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. 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 as well as making additional goodwill payments, 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 15 November 2021 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X574

Date of Final Decision: 16 October 2021

Case Outline

The customer's complaint is that:

- The customer's claim arises from many sewage flooding incidents she has suffered to the basement of her property, starting in September 2020.
- She says that the company took too long to deal with the problem, and that it was wrong not to treat her complaint as urgent despite her many attempts to contact them.
- Its efforts at pumping out the sewerage flooding were insufficient, in particular because the contractors sometimes missed days because they refused to park on the pavement or in a cycle lane.
- The customer says that the contractors sometimes did and sometimes did not park on the pavement, suggesting that there was no real danger. She notes that the pavement was more than big enough to take the tanker and the contractor could have put barriers around it for the pedestrians so as not to endanger them.
- The company was also bad at communicating with her and her neighbours, and sent letters to the wrong address.
- In addition, she says that the company's contractors provided an unsatisfactory service, for example by bringing a hose of the wrong length and failing to bring the necessary keys when they arrived to pump out the flooding.
- She complains that the contractor did not turn up when it promised to pump out the flooding, and she had to pay for a private contractor. The company said that it would reimburse this but in the end, it included the reimbursement in what it called a goodwill payment.
- The customer also explains that the company resisted making payments under its customer guarantee scheme although these were eventually made.
- The customer does not consider that the payments that the company has made are sufficient, and asks for compensation for inconvenience of £2,500. She says that she has spent hours pumping water by herself, despite being aged 63 and being due an operation on her hand which made the process very painful, and that her building has suffered damage as a result of the flooding.

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The company's response is that:

- The company contests the customer's claim.
- It says that following the case of *Marcic v Thames Water*, a water company cannot be held responsible for sewer flooding unless it has been negligent. In this case, the company argues that it has not been negligent.
- It says that it regularly attended the neighbouring property and the customer's property to pump out the flooding and conducted surveys to determine the cause of the problem, which was a collapsed sewer.
- It then attempted to clear the debris but realised that further excavations would be needed, which it carried out.
- It says that it was reasonable for its contractors to refuse to park on the pavement or over a cycle lane, which would have been illegal and dangerous, and that it therefore arranged for them to park at a nearby garage.
- It explains that there were further access issues caused when the garage locked its gates and because of a locked structure that had been installed over the manhole by a neighbour, but argues that it responded diligently to these problems.
- The company accepts that there were delays in repairing its sewer but says that this was because it was waiting for the Local Authority to grant a permit for the work.
- It says that it has apologised to the customer for the delays, made all applicable CGS payments and also made goodwill payments. It does not consider that it is liable for the £2,500 claimed by the customer.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. 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

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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. In the period starting from September 2020, the customer started to experience sewerage flooding in the basement of her property. It is therefore necessary to consider the company's responsibility for the public sewers under its control.
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

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[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 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 payments to a customer that has suffered sewage flooding under its guaranteed standards scheme, but is not otherwise 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 company has made payments in respect of the incidents of flooding that she suffered under the company's guaranteed standards scheme, as well as goodwill payments, so the question is whether the company can be held liable for any further payments.
7. 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 - it must have been exhausting to deal with given that it required her to pump out her basement herself by hand, and must have caused damage to her property. She will only be able to make a claim if she can show some negligence by the company in its operational or maintenance response.
8. From the papers before me, it appears that the company had been dealing with internal flooding caused by sewer blockages at a neighbour of the customer since May 2020. It cleared out the blockage which had been caused by fat and rags put in the sewer by users, and also found that there was a collapsed sewer. Despite attempts to address this, there were several further floods in the following months, and in September 2020 the customer

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herself called the company to report imminent sewer flooding at her property. Following this, the company was called out on numerous occasions because of flooding at the customer's property. The customer says that the company is wrong to say that the flooding was caused by sewer abuse, as she says that her tenants did not put fat and rags into the drains. However, whomever was responsible for the blockages, I find that the company cannot be held responsible for the flooding itself, as it cannot control what users put into the sewers, and it is entitled to take a reactive approach to sewer maintenance.

9. The company's contractors attended regularly to pump out the flooding. However, they faced problems due to the location of the property, which was on a busy road with a cycle track that was located on a red route. While the customer argues that the company's contractors sometimes parked on the pavement, so they should not have refused to do so on other occasions, I do not consider that it is reasonable to expect the company's contractors to park illegally, particularly if they had health and safety concerns about parking on a pavement or on a cycle track. I find that the contractor was entitled to exercise its discretion as to whether it was safe to park, and if it did not find a safe parking space, it was reasonable for the contractor not to attend to carry out a pump-out at that time.
10. The contractor also faced problems with access, including that the manhole was covered by a structure that was locked. In addition, although the contractors eventually got permission to park at a nearby garage, this itself was locked at some points. Although I understand the customer's frustration at this, from the papers I do not think that the company, or the contractor, can be said to have been negligent in the way in which it dealt with these obstructions.
11. The customer also complains about occasions on which she called the company but they did not attend, because they had other call-outs that were of a higher priority. Once again, while I understand that this must have been frustrating to the customer, I find that the company has a degree of discretion as to how it manages the call-outs it receives. The customer cannot expect that the company will always be able to attend immediately, given that it might have other incidents to deal with.
12. Finally, I note that the company itself admits that the repair of the sewer took some time. I understand that the repair works were only carried out in October and November of 2020. However, the company says that this was because there were delays in obtaining

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permission from the Local Authority to carry out the necessary works. Although the customer believes that the company should have been more diligent in getting the necessary permissions, I do not see any evidence in the papers that they were negligent in the way they went about obtaining permission, and the company cannot be held responsible for the delays of a third party, the Local Authority.

13. In her comments on the Preliminary Decision, the customer stressed that she considered that the company should be held liable for the flooding because they had every opportunity to deal with the blocked and collapsed sewer before it became such a big problem and they did not do so. She also said that she considered that the company's response to the flooding was negligent, because the company took too long to arrive at her property after the flooding was reported. They also sometimes arrived with the wrong equipment (pipes that were too short) and without the necessary keys to access the structure over the manhole or the neighbouring area where they could park their trucks. The company also took too long to arrange for the repair of the sewer.
14. However, as set out above, I find that the company cannot be held liable for the flooding itself, and as an adjudicator under the Scheme I cannot consider the reasonableness of the steps that the company takes to deal with the maintenance of their sewer network. Regarding the company's reaction once the flooding occurred, I note that the company did organise regular pump-outs although they sometimes faced logistical issues, or issues with other priority events occurring elsewhere, which meant that they did not arrive as quickly as the customer might have liked. I do not consider that there is sufficient material in the papers before me for me to conclude that their response was negligent.
15. While there may have been some delays and inefficiencies by the company in dealing with the customer's complaints, the company has paid the customer her entitlements under its customer guarantee scheme, as well as goodwill payments of £538.00 plus £200.00 (which I accept were also intended to cover the costs incurred by the customer in calling out a private contractor to do a pump out when the company's contractors were not available). I find that these payments are adequate compensation for the inconvenience suffered as a result of any customer service failings by the company (and I emphasise once again that the company cannot be held liable for the flooding or the inconvenience, damage and other consequences that it caused).

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16. I therefore find that there are no grounds to award any further remedy to the customer. The customer's claim therefore does not succeed.

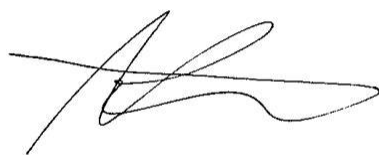
Outcome

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 by 15 November 2021 to accept or reject this 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.



Natasha Peter FCI Arb, Barrister, England & Wales

Adjudicator

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