

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X606

Date of Decision: 18 November 2021

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding its refusal to accept responsibility for numerous sewer flooding incidents at his property. The customer says that following periods of heavy rain manhole assets belonging to the company overflow and cause both external and internal damage to his property. The customer says that the company refused his requests to fit a non-return valve in the sewer or to replace his garden lawn with synthetic material. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to take ownership of the flooding problem.

#### Response

The company denies any liability to the customer for the flooding events. It says it has responded to all his flooding complaints and undertaken ongoing investigations and survey actions. The company contends the flooding is caused by hydraulic overload and thus it is not liable to the customer unless he can prove negligence in its maintenance of the sewage network, and this it denies. The company has not made any offer of settlement to the customer.

#### Preliminary Findings

The claim does not succeed. I find that the evidence does not support on a balance of probabilities that the company has been negligent in its maintenance of its assets. Additionally, I find that under current legislation the company is not responsible for previous flooding events nor for any future floods resulting from severe weather conditions. I find that the evidence shows that the company has not failed to provide its services to a reasonable level and has not failed to manage the account to the level to be reasonably expected by the average person.

#### Preliminary Outcome

The company does not need to take further action.

The customer must reply by 16 December 2021 to accept or reject this decision

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**ADJUDICATOR'S DECISION**  
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**Case Outline**

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

- He has experienced an ongoing dispute with the company concerning issues with wastewater and sewerage services. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- On 24 August 2020 he experienced flooding at his property.
- After complaining to the company, it attended his property on the next day and completed a clean-up process.
- The company investigated the reason for the flooding and advised him that it was caused by hydraulic overload.
- On 29 August 2020 he requested that the company fit a non-return valve to the sewer pipe outside his home. The customer says the company refused.
- On 19 September 2020 he requested the company pay to have his lawned garden replaced with an artificial lawn because the garden has been ruined by flooding on several occasions since 2016. The customer says the company refused his request.
- Believing the company had not properly addressed his concerns he, on or around 23 November 2020, escalated his complaint to CCWater who took up the dispute with the company on his behalf. The records show that CCWater contacted the company on 19 February 2021 and requested more detailed information from it and to review the customer service provided.
- On 05 March 2021, CCWater advised him that it had received a formal response from the company answering in reasonable detail the questions posed to it. The company had confirmed that the periodic flooding to the customer's property resulted from hydraulic overload and that it was not responsible for such flooding unless it could be shown that it had been negligent in its management of its assets. CCWater also advised

him that the company stated its intention to continue to monitor the situation on an ongoing basis.

- The company continued monitoring and surveying activities throughout the summer, but this did not prevent him suffering flooding on two further occasions in July 2021. He also confirms that he continued correspondence with both the company and CCWater throughout the following months.
- A meeting was held on 19 August 2021 attended by himself, his Housing Association, and the company. However, the responsibility for preventing further flooding was not established.
- Eventually, and continuing to be dissatisfied with the response of the company he has, on 06 September 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to establish if it has responsibility to prevent future flooding at his property.

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

- It provided its response to the claim in its submission dated 14 October 2021.
- It acknowledges that the customer has experienced flooding at his property since 2016.
- It has attended the customer's property on numerous occasions to undertake clean-ups and investigations. It notes the cause of the flooding is because of hydraulic overload.
- It records that as part of its ongoing investigations it has identified a privately owned storm water drain at the rear of the customer's property.
- The third-party owner of the storm water drain subsequently undertook maintenance work on 18 August 2021, including the removal of tree roots. The company notes that since the maintenance work was completed the customer has not reported any further flooding despite recent heavy rainfall.
- It confirms that it complies with its responsibilities under The Water industry Act 1991 in respect of providing and improving public sewers and that its compliance can only be enforced by OFWAT and not by individuals, such as the customer in this case.

- It further says that it is not responsible for flooding from sewers unless it can be proven that it acted negligently. It notes that in its Response/defence it has detailed its ongoing involvement in responding to each and every report of flooding in the customer's local area since 2016 and its ongoing commitment to monitoring the customer's situation is evidence that it has not in any way been negligent.
- It acknowledges that it rejected the customer's claim to have his lawn replaced with an artificial surface. It believes that technically the flooding situation would be made worse by replacing a grassed area containing natural drainage capability with a synthetic surface meaning that rainwater could not drain away naturally but would flow into the sewer network and make the overall situation worse.
- In summary it confirms that it has no responsibility for the sewer flooding incidents and it contends that the private sewer in the customer's garden may well have been responsible for the flooding he has experienced.

### 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 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 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.

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## How was this decision reached?

1. The dispute relates to the customer's dissatisfaction that the company has refused to take responsibility for repeated sewer flooding incidents at his property.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The customer, in his application to WATRS, has requested the following remedy:-

*Ownership to be found on this issue which has been ongoing for a significant period of time.*

4. The company has understood, and I agree, that the customer is seeking confirmation as to the level of responsibility the company takes in regard to the ongoing sewer flooding that negatively affects his property.
5. I note that the company has stated in its response that its responsibilities for the sewer network in its area are regulated by Section 94 of The Water Industry Act 1991.
6. I have read Section 94 of the Act, and I am satisfied that the company has correctly understood its responsibilities.
7. The company states that hydraulic overload is the cause of the sewer flooding events at the customer's property.
8. Hydraulic overload is when the capacity of a sewer is insufficient for the volume of wastewater flowing through it<sup>1</sup>. This is particularly the case when sewers become inundated with rainwater and why the customer has stated the flooding occurs after periods of heavy rainfall.
9. The company has stated that it, along with all other water utility companies, are not liable for damage caused by hydraulic overload resulting from severe weather conditions unless it can be proved that the company was negligent in its maintenance of its assets.

*Legally, we can't stop connections to our sewers once planning permission has been granted. Therefore, we have no real control of the volume of water*

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<sup>1</sup> As defined by UK Government Select Committee on Public Accounts, 30<sup>th</sup> Report, Responsibilities for preventing sewer flooding.

*entering our sewers or what customers may discharge into them. For this reason, we're not liable unless the flooding is caused by our neglect.<sup>2</sup>*

10. The company has explained in detail the actions it has taken, and the responses made to each of the customer's flooding complaints since 2016.
11. I am satisfied from my reading of the company's submission that it has taken the customer's complaints seriously and has made reasonable efforts to investigate the causes and to ensure by means of survey's, CCTV surveys, and acoustic surveys that its sewers were undamaged and functioning to a reasonable level.
12. I can see from the evidence that the company has also offered clean up assistance after flooding events and has made reasonable efforts to liaise with involved third parties – including the Housing Association responsible for the customer's property.
13. Overall, I am satisfied that the company has not been negligent in the maintenance of its assets nor in its response to the customer's complaints of flooding.
14. It is outside my jurisdiction under the Rules of the WATRS Scheme to make any direction as to the entity responsible for preventing future flooding at the customer's property.
15. However, I am satisfied that my jurisdiction extends to deciding that the evidence provided does not establish on a balance of probabilities that the company has been responsible for the flooding events and is not responsible for preventing future events caused by severe weather conditions.
16. Overall, I am not satisfied that the evidence submitted has established that the company has not supplied its services to a reasonable level.
17. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person.

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<sup>2</sup>“What to do if your property is flooded by sewage”; Issued by South-West Water, 2016.

## The Preliminary Decision

- The Preliminary Decision was issued to the parties on 17 November 2021.
- The customer has submitted comments on the Preliminary Decision, also on 17 November 2021.
- The customer reiterated his previous position and added that he refutes the company's understanding that the third-party action to remove tree roots from a private sewer has solved his flooding problems. The customer notes that he was subject to flooding again on 20 and 21 October 2021.
- The customer states that he does not accept the company's explanation that the flooding is caused by hydraulic overload. The customer does not submit any substantiation to support his position.
- On 18 November 2021, the company confirmed receiving the Preliminary Decision but did not submit any comments.
- Having read the comments of the customer I am satisfied that no amendments are required to the Preliminary Decision.

### **Outcome**

The company does not need to take further action.

## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 16 December 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.



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## **Adjudicator**

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