

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X646

Date of Final Decision: 19 November 2021

Party Details.

Customer:

Company:

Complaint

The customer says the company has refused to install a non-return valve which would prevent wastewater flooding his property. He wants the company to install this, apologise for not doing so previously and pay him and his wife £2500.00 each in compensation for distress and inconvenience.

Response

The company says only the Secretary of State or Ofwat can determine if it has met its duties in maintaining its sewers. It denies breaching its statutory obligations and denies negligence. It will only take flood mitigation measures in the most serious cases, where customers are flooded two or more times within five years, which is not the case here.

Findings

The customer has not proven the company failed to provide its services to the standard to be reasonably expected.

Outcome

The company does not need to take any further action.

The customer must reply by 17 December 2021 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X646

Date of Final Decision: 19 November 2021

Case Outline

The customer's complaint is that:

- In December 2020 his property was flooded with wastewater due to a blow back from the company's sewage pipe.
- This had occurred previously, in 2013.
- The company could have prevented this from happening and could prevent recurrence by fitting a non-return valve, however it has repeatedly refused to do so.
- He seeks that the company fit a non-return valve, apologise for not doing so previously and pay £2500.00 compensation for distress and inconvenience to both himself and his wife.
- In further comments, the customer says his property has been flooded again just recently. He therefore expects the company to take mitigation measures.

The company's response is that:

- With reference to the Water Industry Act 1991 and Marcic v Thames Water plc [2003] UKHL 66, only the Secretary of State or Ofwat have the power to determine if the company has met its duties to maintain its sewers. Therefore, WATRS is not the appropriate forum for this complaint.
- In the alternative, it denies it has failed to exercise its statutory duty or that it has been negligent.
- Where a customer suffers internal / external sewage flooding because of exceptional weather, the company does not have to make a Guaranteed Service Standard (GSS) payment. The company, however, will assist with providing guidance and some help to clean up externally.
- Any cause of action the customer may have in respect of the flooding incident on 23 July 2013 is statute barred by the Limitation Act 1980.
- On 23 December 2020 the customer reported external sewer flooding at his property. The cause of the flooding was noted to be the result of the river Ouse having overflowed and burst its banks which had overwhelmed the sewer.
- On 7 January 2021 the company cleaned and disinfected the customer's gravel driveway.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The company has undertaken CCTV surveys of the sewer which was found to be free from defects and performing as it should be.
- As the cause of the external flooding was a result of extensive flooding from the river Ouse, under section 2.2 of the Guidance Note for Weather Related Exemptions under the GSS, the company is exempt from making a GSS payment to the customer.
- The company's policy is to introduce flooding mitigation to customers who suffer internal or external flooding within a frequency of two events within 5 years or greater.
- As the customer has suffered two incidents of flooding occurring 7 years apart, the customer is not eligible for flooding mitigation (which includes a non-return valve).
- The company assisted the customer with external cleaning following the incidents and it follows that no compensation is payable.

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 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. From the customer's perspective, the company's asset has caused damage to his property and he wants the company to take action to resolve this. However, under this adjudication I must first

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

find some failing by the company before I can consider whether it must provide any remedy to the customer.

2. The company has referred to statute and case law which makes clear that WATRS has no role in determining whether the company has met its regulatory obligations in respect of servicing and maintaining its sewers. That is a role for the Secretary of State or Ofwat. I accept the company's position in this regard.
3. However, the customer has not suggested the company has failed to maintain its sewers properly or that this is the reason for the flooding. Rather he argues the company could install a non-return valve to prevent the occurrence of flooding to his property yet it has unreasonably failed to do so.
4. I must therefore consider whether the company has failed to provide its services to the standard to be reasonably expected in this regard.
5. The company has provided a copy of its records following the customer's report of flooding. These records show that the River Ouse had burst its banks near to the customer's property and drains had overflowed causing sewerage to creep into the property boundary and up to the doors of the property.
6. The company has also provided an extract from its system to evidence its policy, which is to take flood mitigation measures, such as installing a non-return valve, where a customer suffers two flooding events or more within five years.
7. The customer has suffered two flooding events over 7 years and so does not qualify for flood mitigation measures under the company's policy. It follows that the company's refusal to install a non-return valve is in line with its policy. I have not seen any evidence that suggests the company is otherwise obliged to take this action.
8. I appreciate the customer has been significantly impacted by sewer flooding at his property however he has not shown that the company is obliged to take the mitigation measures he seeks, in the circumstances of this case. The customer has not proven the company has failed to provide its services to the standard to be reasonably expected. Therefore, his claim is unable to succeed.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

9. For the sake of completeness, I note the customer has recently reported sewer flooding to the company and believes he may now qualify for flood mitigation measures. However, I cannot comment on new matters as they arise in accordance with rule 5.5.3 of the WATRS Scheme rules.
10. In comments on a draft of this decision the customer highlighted two inaccuracies which I have now corrected. These were: a reference to the incorrect water company and a reference to two instead of five years at paragraph 6 above. While unfortunate oversights on my part these corrections do not affect my findings.
11. I acknowledge the customer is upset that I have not directed the company take flooding mitigation measures. However, I cannot direct the company to take any action unless I first find a failing proven.
12. The customer considers I have accepted the company's evidence at face value at paragraph 5 above. However I have merely reported what the company's records say here. I have not commented on whether the customer has contrary evidence of the extent of the flooding because that is not relevant. I recognise the customer has provided information and evidence regarding the impact to his property. However, it is not necessary or appropriate for me to comment on the impact to him where I have not first found a failing by the company.
13. The customer is unhappy that at paragraph 6 above I referred to the company's explanation that its policy is limited due to funding limits and says he has provided information to the contrary. However, this has no bearing on my decision. The company is entitled to have a policy and it has acted in line with that policy. I have therefore removed the reference to funding limits as this is not relevant to my decision.
14. I acknowledge the customer has reported further sewer flooding however it is not my role to comment upon or decide on new matters or complaints as they arise. I have no authority to do so.
15. The customer also referred to appendices which he believed I had overlooked. I had not seen a number of files referred and so asked the customer to resend these. As these were not provided by the deadline I have been unable to take these into account.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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 17 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.
-



Justine Mensa-Bonsu LLB (Hons) PgDL (BVC)

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.