

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X698

Date of Final Decision: 10 December 2021

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to accept responsibility for a sewer flooding incident at his property and to pay compensation for the damage caused. The customer says that following a period of heavy rain a manhole asset belonging to the company overflowed and caused internal damage to his property. 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 pay him compensation in the amount of £10,000.00.

Response

The company denies any liability to the customer for the flooding event. It says it has responded to all his communications and explained that it is not legally liable to him for sewer flooding damage unless it can be shown it was negligent in its asset maintenance, and this it denies. The company contends the flooding was caused by overload of the network due to very heavy rainfall and thus it is not liable to pay compensation for flood damage inside the customer's property. The company has made a payment of £160.00 to the customer that it regards as being in full and final settlement of his claim.

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 flooding events 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.

Outcome

The company does not need to take further action.

The customer must reply by 12 January 2022 to accept or reject this 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 12 August 2020 he experienced flooding at his property.
- The flooding was caused by high water pressure running through the company's sewer pipes located underneath his property.
- The flooding physically damaged all rooms throughout the ground floor of the property and also caused loss and damage to contents, personal possessions, etc.
- Subsequently, he contacted his home insurer, that provide building only cover, and it agreed to fund the extensive building remedial works that necessitated him and his family relocating for a period of eight months.
- He contacted the company to complain that foul water from its sewerage network had flooded and severely damaged his property and he acknowledges that the company attended the property to investigate on 19 February 2021 and 28 March 2021.
- He acknowledges that on 12 August 2020 his local area was subject to very heavy rainfall which may have over stressed the capacity of the sewerage network, but he believes that the company is morally responsible to prevent excess water flowing into peoples' homes. He notes the company's statement that its investigations did not identify any blockages or other issues with the sewerage network at his property.
- He is disappointed that the company does not accept any legal or moral responsibility and does not agree to pay him compensation for the damaged house contents that were not insured.
- Believing the company had not properly addressed his concerns he, on 15 April 2021, escalated his complaint to CCWater who took up the dispute with the company on his

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behalf. The records show that CCWater contacted the company and requested more detailed information from it and to review the customer service provided.

- On 09 July 2021, CCWater advised him that it had received a formal response from the company explaining in reasonable detail the position it has adopted. The company had confirmed that the flooding to the customer's property resulted from very heavy rainfall 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.
- He confirms that he continued correspondence with CCWater but that on 20 July 2021 it advised him that it could not take any further action to have the company change its position and was therefore closing his complaint.
- He remains dissatisfied with the response of the company and has, on 27 October 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to pay him compensation in the amount of £10,000.00.

The company's response is that:

- It provided its Response to the claim in its submission dated 16 November 2021.
- It acknowledges that the customer has experienced sewer flooding at his property on 12 August 2020.
- It notes that the local area was subject to a 1 in 145 year storm on 12 August 2020 and the amount of rainfall caused the public sewer network to be overwhelmed. The company says there is no method available to prevent overloading of the network due to exceptional weather conditions.
- It responded promptly after it became aware of the flooding and attended the property on the following day. It installed a non-return valve into the pipe as a method of trying to prevent any further flooding to the customer's house.
- Legally the company is not liable to the customer in negligence and is not obliged to pay compensation to flood victims as a result of the network being overwhelmed by heavy rainfall. The company says such compensation is an issue for the customer and his insurers.

- The customer has accepted a gesture of goodwill offer of £160.00 made on 10 June 2021. The company says it considers this to be in full and final settlement of the matter.
- In summary, it confirms that it has no responsibility for the sewer flooding incident caused by exceptional weather conditions and thus declines to pay the compensation requested by the customer.

The customer's comments on the company's response are that:

- On 21 November 2021, the customer submitted comments on the company's Response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer says that the company has not substantiated with evidence that the rainstorm was a 1 in 145-year event. The customer questions why the company has installed a non-return valve in the system and thus believes it is because it is aware that its network is inadequate.

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 a sewer flooding incident at his property and pay compensation for the damage caused.
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. I note that the company has referenced in its Response that its responsibilities for the sewer network in its area are regulated by the statutory scheme laid down in The Water Industry Act 1991.
4. I have read the Act, in particular Section 94 of the Act, and I am satisfied that the company has correctly understood its responsibilities.
5. It seems to me that the parties agree that the flooding of the property occurred after a period of heavy rainfall.
6. The company states that the storm on 12 August 2020 was a 1 in 145 year occurrence and whilst I agree with the customer's contention that the company has not supported this position with evidence, I am satisfied that the evidence overall confirms a period of very heavy rainfall prior to the flooding.
7. I can see that the day after the flood event the company visited the property and undertook investigations and found that the public sewer network was running clear with no obstructions visible.
8. Based on the evidence submitted, I am satisfied that hydraulic overload was the cause of the sewer flooding event at the customer's property.
9. For clarity, I record that hydraulic overload is when the capacity of a sewer is insufficient for the volume of wastewater flowing through it¹. This is particularly the case when sewers become inundated with rainwater and why the customer has stated the flooding occurred after a period of heavy rainfall.

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

10. 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 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.²

11. The company has explained in detail the actions it has taken, and the responses made to each of the customer's communications since the flooding event.
12. 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 that its sewers were undamaged and functioning to a reasonable level.
13. Overall, I am satisfied, based on the evidence provided, 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. Additionally, I am satisfied that the evidence provided does not establish on a balance of probabilities that the company has been responsible for the flooding event.
15. In his application to the WATRS Scheme the customer requests that the company be directed to pay him the sum of £10,000.00 in compensation, primarily to cover the costs of uninsured contents damage plus stress and inconvenience.
16. As I have found that the company was not responsible for the flood event then it follows that I further find that compensation is not appropriate. I shall not direct the company to pay compensation to the customer.
17. Overall, I am not satisfied that the evidence submitted has established that the company has not supplied its services to a reasonable level.

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

18. My conclusion on the main issues is that the evidence does not show that the company has not failed to provide its services to the standard to be reasonably expected by the average person.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 26 November 2021.
- The customer has, on 02 December 2021, submitted comments on the Preliminary Decision.
- The customer repeats his position that the installation of a valve after the flooding event indicates that the company should have installed it earlier such as to prevent flooding.
- Having read the comment 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 12 January 2022 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.



Peter R Sansom
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Adjudicator

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