

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X792

Date of Final Decision: 23 March 2022

Party Details

Customer:

Company:

Complaint

In July 2021, the customer's property was flooded with sewage water which caused damage to the customer's front door and flooring, and caused the customer to be physically unwell. The company did not clean-up after the flood and provided generally poor service throughout, which caused stress and inconvenience, and refused to pay the Customer Guarantee Scheme (CGS) payment for sewer flooding and rejected her claim for compensation. The customer wants the company to pay her £500.00 in compensation for the damage to her property and the stress and inconvenience suffered, and £1,000.00 for the company's negligence and failure to apply its CGS policy. The customer also wants the company to provide an apology, and install a non-return valve (NRV) to prevent future flooding.

Response

The claims for compensation and a CGS payment for flooding are outside of the scope of WATRS and, therefore, cannot be adjudicated upon. In any event, a water company will only be liable for damage caused by flooding if it has been negligent. As the cause of the flooding was hydraulic overload, not negligence, the company cannot be held responsible for any damage to the customer's property or distress and inconvenience caused by it, and is exempt from making a CGS payment. The company cannot fit a NRV as it would increase the risk of flooding at other properties and, as the customer did not report the flooding until a week after it happened, the company was unable to offer a clean-up service. Therefore, all liability is denied.

The company has not made an offer of settlement.

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Findings

The evidence shows that the flooding was most likely caused by adverse weather conditions, and I find no evidence to show that the company acted negligently and this caused damage to the customer's property. Furthermore, the evidence confirms that the company is exempt from providing a CGS payment in the circumstances, the customer's property is unsuitable for a NRV, and by the time the flood was reported a clean-up was unnecessary. 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 customer's claims cannot succeed.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- In July 2021, after heavy rainfall, her property was flooded with sewer water. The flooding caused damage to her front door and flooring, the smell was unbearable, and she was physically unwell for five days as a consequence of it.
- The company failed to provide a clean-up service and the delays and poor service caused stress and inconvenience. She made repeated telephone calls to the company and the company failed to ring back when it promised to do so.
- The company has refused to install an NRV to prevent this happening again, even though this was suggested by an engineer.
- The company has refused to pay the CGS payment for sewer flooding, and says it does not have to do so as the flooding was caused by the extreme weather conditions. However, she suggests that the flooding may have been caused by the company's negligence as huge fat deposits have been allowed to build up in the company's sewers.
- She asked the company for compensation but its insurer rejected the claim.
- She would like the company to pay her £500.00 in compensation for the damage to her property and the stress and inconvenience she has suffered, and £1,000.00 for the company's failure to apply its own CGS policy. She would also like the company to install a NRV to prevent future flooding and provide an apology for not cleaning the property immediately after the event, and for the delays, negligence and failed promises.

The company's response is that:

- On 12 July 2021, much of London and the South East were affected by heavy rainfall and flash flooding.
- On 19 July 2021, it received a call from the customer who reported a strong sewage smell in her home and said there were lots of flies outside.

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- On 22 July 2021, its contractors attended and noted that its sewer was clear and free flowing and the odour and flies were no longer present. During this visit, the customer advised that her home had flooded on 12 July 2021 and she was concerned it might happen again.
- On 23 July 2021, it received another call from the customer and she asked for a NRV to be fitted to the drainage system to prevent future flooding. An appointment was arranged with one of its network engineers to discuss her request.
- On 2 August 2021, the engineer met with the customer and explained that a NRV would not be suitable due to the number of other properties/flats in the building that all drain through the same manhole, but suggested that the customer could employ a plumber to fit her own NRV on the private section of pipework that only serves her property if she wished. It was also suggested that she could purchase a floodgate to be fitted on her door to prevent possible flooding in the future.
- In August 2021, the customer confirmed that she wanted to claim compensation for damage caused to her home and the agent who took the call filled out a claim form for the customer and sent it on to the Claims Team for review. The customer was later informed that her claim had been passed to its insurer.
- On 15 November 2021, its insurer wrote to the customer and explained that they had denied the claim and, following this, it sent a detailed letter explaining the events of 12 July 2021, what it is doing to prevent future flooding events, and why the customer is not entitled to a regulatory sewer flooding payment under the terms of its CGS.
- The customer has received the statutory payments she is entitled to under the terms of its CGS for not responding to her letters within the regulated timescale of ten working days.
- The customer's complaint is about four matters and they will be addressed in turn.
- The claim for compensation for damage to the customer's home and distress and inconvenience cannot be adjudicated on by WATRS, as it falls outside of the scope of the scheme.
- All sewerage undertakers in the UK are obligated to comply with the Water Industry Act 1991. Section 94 of the Act places a general duty on sewerage undertakers to provide, improve and extend a system of public sewers and to cleanse and maintain those sewers so that the area is and continues to be effectually drained. This duty is only enforceable by Ofwat, the Water Industry Regulator, using Section 18 of the Water Industry Act 1991. Therefore, WATRS cannot adjudicate on whether the statutory duties have been breached and this type of dispute falls outside the scope of the WATRS as per rules 3.4 and 3.5 of the WATRS Scheme Rules.
- In any event, even if the matter could be adjudicated on, it could not succeed as it is only responsible for damage caused by sewer flooding if it has acted negligently. This means that if

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sewer flooding is caused by exceptionally heavy rainfall which overloads the capacity of the sewer (hydraulic overload) and causes the sewer to overflow, it cannot be held liable.

- If it becomes aware of an issue with its sewage network, it must repair its assets to negate or reduce the risk of sewer flooding and to ensure that an area continues to be effectually drained. However, it fulfilled this obligation by attending the customer's property on 22 July 2021 and checking that the sewer was clear and free flowing. Also, no other reports of flooding had previously been made.
- Therefore, it has met its statutory obligations and has not acted negligently, so it cannot be liable.
- The customer's claim for a CGS payment for sewer flooding also falls outside of the scope of WATRS. This is because rule 3.5 states that WATRS cannot adjudicate on matters that Ofwat, the Water Industry Regulator, has the power to investigate. Its CGS is an enhanced version of Ofwat's Guaranteed Standards Scheme (GSS). The GSS standards are set in law under The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 and all water and wastewater companies in the UK must comply with these regulations and they can only be enforced by Ofwat.
- In any event, all CGS payments for sewer flooding resulting from the adverse weather event of 12 July 2021 were suspended due to the unprecedented amount of rainfall that fell. Under the terms of the CGS, there are exceptions to the requirement to make a payment for internal and external sewer flooding, and one of these exceptions is exceptional weather conditions. As the flooding event of 12 July 2021 was caused solely by the amount of rainfall, even if this element of the claim was something that WATRS could adjudicate upon, no payment would be due to the customer.
- The customer also wants it to fit a NRV in the manhole at the front of her home to prevent the backflow of wastewater from the main sewer. It has explained that it cannot do this at properties with shared drainage like the customer's due to the risk of flooding other properties.
- In any event, the flooding incident on 12 July 2021 at the customer's property has never been recorded on its Sewer Flooding History Database (SFHD). This is because the customer did not report the flooding on 12 July 2021 and it did not attend at the time to confirm that flooding had occurred. Also, it sent the customer two Sewer Flooding Questionnaire Forms but it has never received a completed form back. Therefore, as there has never been a flooding incident officially recorded at the property, a NRV would never be considered anyway.
- The customer states that it failed to provide a clean-up of the property immediately after the flooding event. As explained, the customer did not report the flooding incident on the date it happened and it was not until seven days later, on 19 July 2021, that it first heard from her.

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When it attended on 22 July 2021, as shown in the photographs provided in evidence, no clean-up was necessary.

- In view of the above, it denies all liability.

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. The company states 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 flooding caused by exceptionally high rainfall and capacity issues in the sewer network system, as this does not indicate that it has been negligent in the carrying out of statutory duties.
2. I accept that this is correct because in the cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] it was decided 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, when undertaking these statutory obligations, done this negligently.

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3. This means that a customer's claim to WATRS in relation to flooding can only succeed if the customer is able to show, on the balance of probabilities, that the company acted negligently when carrying out these duties, and a claim based solely on the argument that the customer has suffered damage as a result of the company's performance of or breach of its statutory duties cannot succeed.
4. This also means that as an adjudicator operating under the 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 because it has not been inspecting its sewers regularly enough, this raises regulatory considerations (as it is a regulatory requirement to inspect sewers regularly). This would mean that, in accordance with the decisions in the cases cited above, 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. To explain this further, if the argument is that the company was aware of a blockage in its sewer that had caused flooding but did nothing to clear it, and the blockage then caused flooding at the customer's property, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
7. The evidence provided shows that the customer believes that the company has failed to maintain its sewers to prevent floods and has allowed huge fat deposits to accumulate in them. However, I am unable to consider whether the company has failed to maintain its sewers as this raises 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.

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8. However, I am able to adjudicate on the customer's suggestion that the company's failure to remove fat deposits from the sewer, which it knew existed, may have caused the flooding, as this amounts to an allegation of standard negligence.
9. However, having reviewed the evidence provided by the parties, including the links to weather reports provided by the company, I find that the flooding at the customer's property was most likely caused by the extreme adverse weather conditions on 12 July 2021, and I do not find any evidence to justify a conclusion that the flooding was caused by the presence of fat deposits, or that the company acted negligently and that this resulted in the damage to the customer's property.
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 in this respect and, while I appreciate that the customer will be disappointed by my decision, the customer's claim for compensation for damage to her property and distress and inconvenience suffered as a result of the flooding cannot succeed.
11. I note the comments the company has made about the customer's claim for a CGS payment being out of scope. However, as the customer's claim is that the company has failed to apply its own policy and make an award under it, and is not about the fairness of the policy itself, I find that I am able to consider the claim.
12. Having reviewed the evidence, I accept that the company is exempt from making CGS payments for internal and external flooding when the cause of flooding is outside of the control of the company and is a result of extreme weather conditions. Therefore, I do not find that the company's failure to provide a CGS payment amounts to a failing to provide its service to the expected standard, and the customer's claim in this respect cannot succeed either.
13. The company states that the customer's shared drain is unsuitable for a NRV because it would increase the risk of flooding in other properties. Having reviewed the evidence provided by the company, including the remarks made by the network engineer that met with the customer on 2 August 2021 to discuss this issue, and the explanation of the company's decision not to fit a NRA contained in the letter sent to the customer on 3 February 2022, I accept this is the case and I do not find that the company's refusal to fit a NRV amounts to a service failing.

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14. Finally, the customer states that the company failed to provide a clean-up service. I accept that the company offers a clean-up service in some circumstances even where the flooding has not been caused by the company's negligence, however, as the evidence demonstrates that the customer did not report the flooding until a week after it occurred, and the photographs provided by the company show that there was no sign of flooding when it attended, I accept that it was too late for the company to offer this service. In view of this, I do not find that the company failed to meet the expected standard in this regard.

15. As I do not find that the company has failed to provide its service to the standard reasonably expected by the average person, while I understand that the customer will be most disappointed by my decision, the customer's claims cannot 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 6 April 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.

K S Wilks

Katharine Wilks

Adjudicator

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