

made.

Outcome

The company needs to pay £250.00 to the customer.

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 X838

Date of Final Decision: 22 June 2022

Case Outline

The customer's complaint is that:

- The customer complains that she has experienced significant flooding that has led to illness, stress and anxiety for her and for her partner as well as caused his ill-health.
- Most recent events started on 4 October 2020. The customer says that the pumping station at REDACTED is not robust enough for handling excess water during heavy rainfall. She says that she has been told that this would be upgraded but no changes have been made despite several building developments within the area which has increased the problem.
- The customer also complains that the company has not assisted the customer to clear up and the contamination has been so bad that she and her partner had to live upstairs and in due course move out of the property while the cleanup was undertaken. When a further instance of flooding occurred, she and her partner were unable to return.
- The customer is very concerned about the potential for the problem recurring and the effect this may have on selling her house in future and also concerned for the environmental situation.
- The company initially was planning to install an NRV however after checks of its sewer networks, it said that it would be unable to install any NRV's at this location due to the high risk of self-flooding.
- The customer asks for:
 1. Legal guarantees that the problem will be fixed. If not that the company shall accept liability against all (future) costs.
 2. A guarantee that these assurances must be in place for as long as the house stands and is transferable to future owners.
 3. Substantial financial compensation for stress, emotional and physical duress and inconvenience, travel costs, insurance premium increase of £100.00 per month and general upheaval of day-to-day living. The customer asks for compensation of £2,500.00.

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.

was clear, free flowing and defect free and no follow-on work was required. This was later confirmed on review by the company.

The company also replaced the pump at 5(\$7(' , with a spare pump ordered to be placed on site.

- k. In the meantime, the customer and her partner continued to express their concerns to the company, including writing to the CEO of the company and to the Environment Agency and involving their MP.
- l. In November / December 2020, the CCIS and a Field Operations Specialist for the area met the customer's partner at their home. The company agreed that it would discuss the case with an external contractor called REDACTED which specialises in the sewerage industry and performs surveys to determine if any possible mitigation from sewer flooding can be installed at a property or company-owned asset.
- m. The company were liaising with REDACTED in January 2021 but by March 2021, a REDACTED report had still not been approved internally. Meanwhile, the customer and her partner continued to ask the company for progress reports. noted that nothing had been done about a manhole in her neighbour's garden which she believed to be leaking sewage and stated that her household insurance had increased by £42 per month as a consequence of the flooding incident. She said that she was still living away from home because the clean-up was not complete.
- n. In February 2021, the company applied a £20.00 credit for a failed callback and said that it would consider replacing some paving stones that had been affected by the flooding.
- o. On 1 April 2021, REDACTED confirmed that it would report, and the customer was notified.
- p. On 30 April 2021, a further incident of flooding occurred. This was first notified to the company by a neighbour and the company discovered that a rising main had burst downstream. A field operations surveyor attended the area and 35 tankers were in the area pumping out the sewer network to manage the sewer flows and prevent further flooding. Also, customer liaison representatives and the company's regional wastewater customer manager attended to meet customers and the company instructed its insurers, who sent loss adjustors to meet affected residents.
- q. On 13 May 2021 a surveyor from REDACTED attended the customer's home although the customer's partner complained that this was unsatisfactory because REDACTED had only been commissioned to look on their property, which she said was quite useless as the houses either side and the pipe outside the property also needed to be surveyed.

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.

- r. On 21 May 2021 the customer sent an email addressed to the Regional Wastewater Customer Manager, REDACTED. This complained that increased insurance premiums were £100.00 per month and the value of her house had gone down. The customer explained that she had intended to move back to her home on 11 May 2021, but this had been prevented by the recent escape of sewage. The customer complained that:

At every stage of this process we have battled to get information or support from REDACTED which I find totally unacceptable. Our local MP and Councillor have been involved and have taken up our case but we still seem no nearer to a solution that guarantees us peace of mind and upholds the price of our house and likelihood of being to sell it when the time comes. When you consider the current pandemic and the uncertainty, worry and frankly health issues having our house flooded twice with sewage I cannot but emphasise enough the toll it has taken on us both. We have contacted several people within REDACTED over time, not least the Chief Executive who did not afford us the courtesy of a reply. Not only that, I understand that you visited both sets of our neighbours on Friday 14th May to update them regarding the situation but did not consider contacting us who have been the most heavily affected. I did give you my email address when I met you on the 30th April.

In summary we are absolutely devastated by events, it has made a massive impact on our lives, friends and families are appalled that we have had to endure nearly 9 months of upheaval, uncertainty, worry and health implications.

The customer wanted:

- 1. Your response regarding legal guarantees that the problem will be fixed. If not, that REDACTED accept liability against all (future) costs.*
- 2. A guarantee that these assurances must be in place for as long as the house stands and is transferable to future owners.*
- 3. Failing this REDACTED purchases our property.*
- 4. Substantial financial compensation for stress, emotional and physical duress and inconvenience, travel costs, insurance premium increase of £100.00 per month and general upheaval of our day to day living.*

A reminder about this was sent on 8 June 2021.

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.

- s. The company sent the customer a letter informing her it had credited her account with £150.00 under the terms of our CGS for the flooding incident on 30 April 2021 and on 10 June 2021 a Senior Case Manager from the CEO's Office wrote in response to her recent emails. The company confirmed that the legal assurances she requested would be handled as part of her claim for damages which had proactively been sent to insurers. The email also explained that their Case Manager who had been liaising with them since the previous flooding incident, would continue to do so.
- t. The company credited the customer's account with £30.00 under the terms of its Guaranteed Service Standards scheme for not responding to her email received on 21 May 2021 within ten working days (£20.00), this credit included a penalty payment for not making the £20.00 payment due (£10.00) within a further ten working days.
- u. On 23 June 2021 the company sent a copy of the REDACTED report. The email stated that flood resistant doors and SMART airbricks had been recommended as possible mitigation against internal flooding to their home and that REDACTED would contact them separately to gain their agreement for the work taking place.
- v. On 1 July 2021, the customer wrote again about the flood mitigation measures, the date when the customer and her partner should take up residence again in their home and the customer's request for guarantees and a goodwill payment.
- w. On 12 July 2021 a credit of £20.00 was made to the customer's water services account for not responding to her email of 14 June 2021 within ten working days.
- x. On 19 July 2021 £7,000.00 was sent to the customer by the company's solicitors, Clyde & Co.
- y. On 23 July 2021 a further £20.00 was credited to the for not responding to the customer's email of 1 July 2021 within ten working days.
- z. Certain attempts were made unsuccessfully to contact the customer on 30 July and in early August 2021 and an email was sent on 4 August 2021 referring to a £7000.00 "goodwill gesture" and said that no further offers would be made.
- aa. The customer emailed the company and stated among other matters:

As expected we are very unhappy with REDACTED's response. Not only that but the mention of a goodwill payment of £7000 is in fact designed to pay for our next 3 months rental at our temporary accommodation along with storage fees for our salvaged goods and utility bills. So we find that terminology offensive.

The customer stated that a complaint would be made, and she informed the company that she had suffered from mental health issues and depression which had in the past caused her to be hospitalised. She said that she had been more ill during

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 previous year as a consequence of the stress caused by the flooding at her home.

bb. On 20 August 2021 the customer's partner and the company discussed REDACTED confirmed that they would be installing the SMART air bricks on 24 August 2021 the company was also told that an order had been placed with REDACTED for the doors that they had chosen. The customer's partner also wanted the following issues raised:

- 1) *Asked for the front and rear garden to be renovated. Next door neighbour had theirs done – their loss adjustor hasn't heard anything back from our loss adjustor on the matter.*
- 2) *Neighbour noted flooding coming from the downstairs toilet on 13/08 – previously, REDACTED that there have been no such incidents recorded.*
- 3) *Customer would like an NRV installed at this point.*

cc. On 24 August 2021, REDACTED installed SMART air bricks at the customer's home.

dd. On 15 September 2021 the company agreed to review the possibility of fitting a non-return valve (NRV) in his privately owned manhole.

ee. On 8/9 November 2021 REDACTED installed flood resistant doors at the customer's home.

ff. On 17 November 2021 the company's contractors sent the customer a letter stating that cleaning of the sewer in their road would occur on 17 December 2021. The company explains that its sewer cleaning was initiated as part of a planned maintenance programme to ensure that the sewer is always fully operational.

gg. On 26 November 2021 the company advised a suitability assessment was still under review for the possibility of installing a NRV to their private drainage. This remained the case by 3 December 2021 when the company still did not have an answer to whether an NRV could be fitted. The customer complained that this had been fitted to benefit the neighbours, but that they were being singled out because the company was undertaking a survey. The company explained that the reason for the survey was that the steps it took could not merely push the problem elsewhere.

hh. On 22 December 2021, the customer was told that:

“after through checks of our sewer networks our field teams confirmed we'd be unable to install any NRV's at this location due to the high risk of self-flooding. I fully understand this wasn't the outcome you were expecting but we're unable to alter our decision on this matter.”

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.

This letter also said that damage claims would need to be made on the customer's insurers.

- ii. The customer responded indicating that she did not find this acceptable and stating that in a meeting with the area manager on 17 December 2021, she had indicated that further protection measures would be taken. The customer stated:

NRV cannot be fitted but it still leaves us vulnerable. The issue has never been the sewers. The issue has always been mechanical and human failures that happen at the pumping station at REDACTED. These arc flat out all the time.

There is no redundancy for failure of any of the pumps. In addition, there are additional loads placed on these pumps from new homes in the area. Any failure of the pumps and the inevitable back up of sewage always end up at our premises. This is fundamental to what happens to us and why we are totally dismayed by it all.

- jj. The company responded stating:

Please be assured, in addition, we've organised a comprehensive plan to manage the flows at the SPS should we experience a future burst on the rising main again which would require tankering.

The SPS is regularly checked and maintained to make sure it is fully operational, it is also monitored through our control centre 24 hours a day, every day, should there be any issues this flags at the monitoring centre.

The sewers in their vicinity are on planned maintenance, the occupiers of the property, should it be sold will get a letter advising them of when we will complete the clean, and ask if the occupiers are out when we attend to clingfilm their toilets as a precautionary measure, this is called a blow back letter.

There is a new BB number which is REDACTED.

3. Against this background, I first consider the company's objection to my jurisdiction. I find that the company is correct that a substantial part of the customer's claim falls outside my jurisdiction and my powers under this Scheme are limited. Although I have sympathy for the customer's position, and I have considered the documentation supplied to me with care, I find that under the Water Industry Act 1991, sewerage companies are not generally liable for the escape of the contents of public sewers in the absence of negligence. Instead, when escapes of sewage occur, companies are required to make guaranteed payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.

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.

4. This is because, under the Water Industry Act 1991, decisions relating to the provision and maintenance of a sewerage network are matters that are overseen by Ofwat. In a case that concerned repeated escapes of sewage called *Marcic v REDACTED*, ([2003] UKHL 66) the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving or maintaining its network which involves the balancing of priorities and resources when faced with the competing interests of very many customers. The reason for this decision was that overview of the company's decision-making in this area was found to be, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts.
5. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. This is because its function is to resolve individual disputes between customers and companies, not to undertake a strategic review, such as would be necessary when considering competing interests for investment. This is a matter that Ofwat may be well placed to undertake, but an adjudicator is not. I therefore find that adjudicators under this Scheme have no power to direct that companies should provide capital funding for strategic works and nor can the company be held liable to compensate customers for escapes of sewage from its network.
6. Additionally, I draw attention to rule 3.5 of the Water Redress Scheme Rules (2020 edition) which states that WATRS cannot be used to adjudicate disputes which fall into one or more categories, including "any matters over which OFWAT has powers to determine an outcome".
7. It follows from the above that the customer's complaint that the company has taken no action in relation to the pumping station at REDACTED(which, she says has insufficient capacity to protect her property and additional loads have been placed on its pumps from new homes in the area) is not a complaint that can adjudicated under this Scheme. This is a complaint that the company has not made upgrades to the pumping station, which would have involved capital investment and therefore is a strategic decision.
8. It also follows, I find, that the customer's claim for (1) legal guarantees that the problem will be fixed. If not that the company shall accept liability against all (future) costs and (2) a guarantee that these assurances must be in place for as long as the house stands and is

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.

transferable to future owners cannot succeed. To give a guarantee of no floods would be to impose a liability where there is no generalised liability and I find that an average customer would not expect that the company would favour the interests of this customer to the exclusion of other customers who might also be competing for funding allocations (including those also affected by incidents of flooding, especially when heavy rains occur).

9. On the other hand, I can consider the way in which the company has addressed the customer's complaints about this issue. I find that there are aspects of the company's customer service that fall short of the standards that an average customer would reasonably expect. I find that these are as follows:
 - a. As is apparent from the timeline set out above, the customer first raised a complaint about this matter on 4 October 2020. While she did not initially make the claims that she has made in this adjudication until May 2021, from the outset the customer made clear that she had suffered from repeated flooding, and she wanted assistance from the company. The company did not arrive at a concluded resolution until very early January 2022 when the company explained to the customer in writing all the measures that were being put in place in its network to protect her property.
 - b. In the intervening period, the customer was left in a state of uncertainty about what, precisely would be done and when. It was not originally suggested to the customer that a REDACTED report could be obtained to assist, and from the point when it was suggested to the customer to the point when the last step was taken (the flood protection doors) took nearly one year, as can be seen from the timeline above. It may be said that the installation of the protection measures was also delayed because of the need for an extensive clean-up following an escape of sewage from the rising main in April 2021, it is notable that the company has in its defence accepted liability for this issue. Any delay to the completion of the REDACTED proposals therefore resulted from an event for which the company and not the customer was liable.
 - c. At one point it was thought that the customer might benefit from an NRV and the customer was told that there would be a survey. There is no evidence, however, that the customer was told why this might be necessary, which led to the customer believing that she was being treated differently from her neighbour for no good reason.

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.

- d. The investigation of the NRV took from 20 August 2021 to 22 December 2021 when it was refused. This was a period of more than four months.
 - e. Although the company paid for the clean up of the second flooding event and for the customer to be relocated until the completion of the REDACTED works, there is no evidence that the payment of £7,000.00 included compensation for inconvenience and distress resulting from the delays set out above.
 - f. It is, moreover, notable on a smaller scale, that from 4 October 2020 no assistance was provided to the customer to clean and disinfect until 12 October 2020. The company has already admitted to a third party that this was too long, but there is no evidence that the company has made any goodwill gesture to the customer in respect of this delay.
 - g. Finally, as explained above by the company a large number of payments have been made to the customer for failures to respond to communications within its guaranteed period. While each of these may have been compensated under the CGS scheme, the number of times that this occurred is likely to have cause additional consternation and distress.
10. While I find that there is no evidence linking the customer's illness or her partner's to the flooding that had driven them out of their home for a considerable period and nor is there evidence that the company knew until it was too late that the customer was vulnerable by reason of mental illness, I also find that it was foreseeable that an average customer would, as time went on without resolution of her concerns, become increasingly worried and distressed, particularly as she said that during this time, her insurance costs had risen and the value of her house had fallen.
11. I find that an average customer would reasonably have expected that the company would take speedy measures to reassure the customer and to take measures as soon as possible that would enable her to know what the company would and would not do and how this would benefit her.

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.

12. Thus, although I recognise that the customer has already received substantial compensation for other aspects of this history, I find that she is entitled to some compensation that addresses the matters set out above. This is different from compensation for the flooding itself, which I find was covered in the CGS payments, However, I also find that a claim for £2,500.00 is disproportionate.

13. I find that a fair and reasonable sum, reflecting the lengthy period between the initial flood and the final explanation that steps had been taken in the pumping station and that explanations of the company's remedial actions could be given to future purchasers, as well as the number and types of delay that I have found above to fall below reasonable expectations, is a further payment of £250.00.

14. I do not find that the company is liable for further payments by way of travel costs, insurance premium increase of £100.00 per month and general upheaval of day-to-day living, because these are costs related to the flooding itself, for which I find, as indicated above, that either the company is not liable or these costs have been included in the £7000.00 temporary relocation payments that the customer has already received.

Outcome

The company needs to pay £250.00 to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.

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.

- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.
-

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

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.