

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X942

Date of Decision: 04 July 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding it ceasing to cooperate with her and the local flood forum group in respect of finding a solution to local area sewerage flooding. The customer says that a previous claim to CCWater was closed in 2019 after the company confirmed it would continue to work towards finding a solution to the flooding. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore she has brought the claim to the WATRS Scheme and asks that the company be directed to provide a solution to minimise or prevent foul flooding in the local area when it rains.

#### Response

The company states that it refutes the customer's contention that it has ceased to cooperate with her. It notes that it attends flood forum group meetings and fully liaises with all other stakeholders in seeking a long-term solution. The company also records that it is in full compliance with its obligations under the Water Industry Act 1991 in respect of its sewage network. The company did not make any formal offer of settlement to the customer and says the remedy she seeks cannot be provided.

#### Findings

I find that the evidence does not support the customer's claim. I am not satisfied that the evidence shows any negligence on the part of the company in not having developed a long-term plan to deal with foul water flooding in the customer's neighbourhood. The company is not the only stakeholder in the ongoing investigations, and I see that the appropriate local authority has the main responsibility. I find that the evidence shows that the company has provided its services to a reasonable level since 2019 and has managed the customer's 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 01 August 2022 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.*

**www.WATRS.org | info@watrs.org**

**ADJUDICATOR'S DECISION**  
**Adjudication Reference: WAT-X942**  
**Date of Decision: 04 July 2022**

**Case Outline**

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

- She has experienced an ongoing dispute with the company concerning issues with wastewater and sewerage services on her account. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- She has been experiencing sewage flooding over many years since 2000, including a serious flooding event in June 2016.
- She has been in continuous contact with the company but in July 2019 she referred her ongoing problem to CCWater.
- CCWater requested the company provide information regarding a long-term solution to alleviate flooding in the customer's neighbourhood.
- A detailed response was received from the company and copied to CCWater on 10 September 2019 in which it noted that REDACTED had taken leadership of the flooding problems in the area. The company confirmed it was fully co-operating with the Council and investigations were ongoing alongside the company reviewing its post-flood clean-up procedures.
- On 12 September 2019 CCWater confirmed that it was satisfied with the company response and was closing her complaint.
- On 24 January 2022 she contacted CCWater and requested that her complaint be re-opened, saying that the company is not providing pro-active support and is requiring proof of flooding incidents before it can act. The customer also noted that there has been no improvement to the local sewerage network undertaken by the company.
- The records show that CCWater contacted the company on 21 February 2022 requesting updated information and details of the customer service provided. The company responded with a detailed response on 15 March 2022 stating that it has only a single reported case of flooding in the customer's area since 2019 and this was recorded on 01 November 2021.

- CCWater advised her on 20 March 2022 that it believed the company had issued its final position on the dispute and therefore it concluded that it could not take any further measures to have the company change its position and was thus closing her case.
- Continuing to be dissatisfied with the response of the company she has, on 09 May 2022, referred the matter to the WATRS Scheme where she requests that the company be directed to provide a solution to minimise or prevent foul flooding in the local area (when it rains).

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

- It provided its response to the claim in its submission dated 19 May 2022.
- It confirms the serious flooding incident in the customer's neighbourhood in 2016.
- The 2016 flood was caused by hydraulic overload resulting from exceptional rainfall exacerbated by residential properties incorrectly having their storm water flow into the foul sewer system.
- The foul water system is neither designed nor sized to accommodate storm water.
- It retained third-party expert engineers to carry out a flood mitigation survey that showed that mitigation could not be offered.
- It has a duty under the Water Industry Act 1991 to provide, improve, and extend the public sewer network and this duty is enforced by Ofwat. The company is satisfied that it complies with this duty.
- It notes that it is not liable when a flood event is resulting from causes outside of its control and this includes hydraulic flooding after heavy rain.
- It refutes the customer's allegation that it has ceased to assist and cooperate with her since CCWater closed her complaint in 2019. It cites as an example the fact that it regularly attends flood forum meetings organised by the customer, and it has recently issued a *Drainage & Wastewater Management Plan*.
- It states that it continues to work with partner stakeholders in the local area and it encourages the customer to formally report each and every occurrence of flooding such that a full database can be built up. It notes that only one incident of flooding has been reported since 2019.
- The remedy sought by the customer in her claim through WATRS cannot be achieved quickly and the company has a responsibility to make capital investment decisions in a careful manner.

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

- On 19 May 2022, 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 states that she believes the company's Response is disappointing. The customer believes the company should cease to charge for wastewater services until such time it remedies the flooding problem.

## **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.

## **How was this decision reached?**

1. The dispute relates to the customer's dissatisfaction that the company has not continued to cooperate with her and local residents in respect of flood mitigation measures since a previous CCWater complaint was closed in 2019. The company contends that it continues to liaison with all local stakeholders and states that it fulfils its obligations under the Water Industry Act 1991 in regard to the sewerage network.
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.

*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.*

**www.WATRS.org | info@watrs.org**

3. In the case of *Marcic v Thames Water plc* [2003] UKHL 66, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
4. In the words of the court, “*The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise.*”
5. The Court of Appeal subsequently reiterated in *Dobson v Thames Water Utilities* [2009] EWCA Civ 28, that the “Marcic principle” applies broadly to exclude claims based on a water company’s performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
6. The consequence of the House of Lords’ ruling in *Marcic v Thames Water plc*, then, as interpreted by the Court of Appeal in *Dobson v Thames Water Utilities*, is that the customer’s claim can only succeed if the company has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company’s operation of its business would not suffice.
7. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence.
8. In the present case, I do not find that the evidence establishes that the company acted negligently, and I do not see that the customer has alleged negligence on the part of the company.
9. The customer has argued that the evidence indicates that the company has ceased to cooperate both with her and the local flood forum group and has not provided a solution to prevent foul water flooding throughout the neighbourhood.
10. The company believes, and I concur, that the customer is alleging that it is not meeting its statutory obligations as set down in the Water Industry Act 1991, Section 94.
11. However, as explained above, any question of the company’s performance of its statutory obligations must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.
12. As a result, the customer’s claims for the company to take action to resolve the flooding at her property, and in her neighbourhood generally, cannot succeed.
13. 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.

*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 Preliminary Decision

- The Preliminary Decision was issued to the parties on 20 June 2022.
- The customer has, also on 20 June 2022, submitted comments on the Preliminary Decision.
- The customer reiterates her belief that she is continuing to pay for a service that is not adequately dealing with the sewage flooding problem.
- The company responded to the Preliminary Decision on 27 June 2022 but did not submit any additional remarks.
- Having read the response of the parties I am satisfied that no amendments are required to the Preliminary 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 01 August 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.

---

*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.*

**www.WATRS.org | info@watrs.org**



Peter R Sansom  
MSc (Law); FCI Arb; FA Arb;  
Member, London Court of International Arbitration.  
Member, CI Arb Business Arbitration Panel.  
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.  
Member, CEDR Arbitration Panel.  
Member, CEDR Adjudication Panel.

## 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.*

**www.WATRS.org | info@watrs.org**