

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X102

Date of Decision: 22 September 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding sewage flooding events at her dwelling that have been ongoing for several years and the company has not solved the causes. The customer is also unhappy with the clean-up undertaken by the company following flooding to her garden in July 2021. The customer says 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 take action to prevent future flooding, refund the costs of a private cleaning company, pay compensation for stress and inconvenience, pay a promised goodwill gesture, and issue an apology.

Response

The company states that it is in compliance with its obligations under the Water Industry Act 1991 in respect of its sewerage network. The company also says that it is not liable for damage caused by sewage flooding, but has now satisfied all five of the remedies sought by the customer in her application to the WATRS Scheme.

Findings

I find that the evidence shows that the company has, to a reasonable level, satisfied the five remedies sought by the customer in her WATRS application. I am also satisfied that the evidence establishes that the company cannot guarantee that there will be no future flooding events at the customer's property. I find that the evidence shows that the company has provided its services to a reasonable level 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 20 October 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- She 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.
- She had been experiencing sewage flooding at her property on numerous occasions since February 2021 and had ongoing contact with the company, but it took no action.
- A manhole located in the road adjacent to the property appeared to be an integral part of the problem.
- On 25 July 2021 another flooding event occurred and caused effluent to be deposited in the garden, on the driveway, and internally underneath floorboards.
- It took her seven hours to reach the company and it did not send a clean-up crew until twenty-four hours after the event.
- The company clean-up crew did an unsatisfactory job, and she was compelled to pay for a private company to complete the cleaning of the property.
- Following the event of 25 July 2021, the company asphalted over the manhole, and the customer believes that this is an erroneous action that will only exacerbate the problem.
- She believes the company has broken its own code of conduct and appears to be taking no steps to solve the ongoing flooding problem.
- Believing the company had not properly addressed her concerns she, on 28 September 2021, escalated her complaint to CCWater who took up the dispute with the company on her behalf.
- The records show that on 13 December 2021 CCWater contacted the company and submitted a Pre-Investigation letter requesting its explanation of events and to check the level of customer service it provided.
- An exchange of communications between the three stakeholders was ongoing for several months, and on 10 May 2022 CCWater advised her that it believed the company had issued its

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final position on the dispute when stating that the sewerage flooding was caused by hydraulic overload and abuse of the system by placing of obstacles in the pipework.

- CCWater 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 26 July 2022, referred the matter to the WATRS Scheme where she requests that the company be directed to fix the sewage system to prevent further flooding events, refund clean-up costs in the amount of £1,440.00, pay compensation in an unspecified amount for distress and inconvenience, pay a promised goodwill gesture, and issue an apology.

The company's response is that:

- It provided its response to the WATRS claim in its submission dated 22 August 2022.
- It is obliged to comply with the Water Industry Act 1991 in respect of sewerage assets, and this compliance can only be regulated by OFWAT.
- It is not responsible for sewage flooding or the flooding itself when the causes are outside of its control.
- The company is not liable for damage caused by sewer flooding unless it can be established that the company had acted negligently.
- Its records show that there have been three sewage flooding events at the customer's property since she took up occupation.
- Very heavy rainfall was recorded on 25 July 2021 resulting in 511 reported floodings, of which 155 were external floodings similar to the customers.
- It acknowledges that in February 2021 it identified that tarmac had been deposited in the system downstream of the customer's property, but it had not cleared the debris prior to July 2021 when the heavy rainfall occurred.
- It confirms that it contacted the customer on 03 and 05 August 2022 upon receiving notification of her claim to the WATRS Scheme and confirmed that it would settle her claim in full.
- It confirms that on 10 August 2022 it made the following payments to the customer in the total amount of £2,520.00: -

£1,440.00 for refund of costs of private cleaning company.

£830.00 compensation for distress and inconvenience.

£250.00 as a gesture of goodwill.

- It notes that it also apologised to the customer as per her request in her WATRS application.
- It also advised the customer that it could not comply with her request to have it prevent future flooding events as often these were caused by factors outside of its control. The company says it offered to meet with the customer to explain in detail the causes of sewage flooding.
- In summary, it believes it has satisfied all the remedies requested by the customer in her WATRS application.

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

- On 24 August 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 reiterates her belief that had the company removed the tarmac in the sewer in February 2021 when it became aware of its presence then the flooding of her property in July 2021 would not have occurred. The customer further believes that the company behaves in a reactive and not proactive manner.

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.

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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 prevented sewage flooding events occurring at her property and it also failed to perform an adequate clean up after a severe flooding event in July 2021 necessitating that she retain a private cleaning company. The company contends that it has complied with its obligations under the Water Industry Act 1991 in regard to the sewerage network but states it has settled all remedies claimed by the customer in her WATRS application.
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. In the customer's application to the WATRS Scheme she has requested five separate remedies,
 - The company to prevent future flooding events.
 - Refund of costs paid to private cleaning contractor following flooding on 25 July 2021.
 - Compensation for distress and inconvenience.
 - Payment of a promised goodwill gesture that has not been received.
 - To receive an apology from the company.
4. I can see that the company, by its e-mail to the customer dated 03 August 2022, confirmed that following its receipt of the WATRS notification it intended to resolve the claim in full.
5. In its subsequent e-mail dated of 05 August 2022 it confirmed that it proposed to make the following payments:-
 - £1,440.00 to refund costs paid to private cleaning contractor.
 - £830.00 compensation for distress and inconvenience.
 - £250.00 as per the promised goodwill gesture.
6. I note that the company confirms making the payments on 10 August 2022.
7. I can also see that the company stated in writing its apology for the service provided and the inconvenience suffered in its Defence document and in both its e-mails of 03 and 05 August 2022.

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8. In respect of the customer's request to have the company be directed to "*do their job and fix the sewage system to prevent flooding to happen in the future*" I note that the company stated its position that it cannot guarantee that the customer's property will never again experience flooding.
9. Thus, I am satisfied that the company's proposal for resolving the claim cannot be construed as a settlement offer in terms of Rule 5.2.1. of the Scheme Rules insomuch as the company is not providing all the remedies requested by the customer.
10. However, I find that the company has fully explained in its defence document that flooding is mostly caused by hydraulic overload and the presence of debris and rubbish placed in the pipework by third parties.
11. Under the Water Industry Act 1991 the company has no liability for sewer flooding or its effects. I am satisfied that the prevention of third parties placing rubbish in the sewer system is an element outside of the company's control.
12. I am satisfied that the company has fully refunded the costs incurred by the customer in respect of retaining a private cleaning company.
13. I am also satisfied that the company has paid the goodwill gesture previously promised and has added £50.00 to the original amount of £200.00 because of late payment thereof.
14. The customer requested an unspecified amount in compensation for distress and inconvenience, and I find the amount of £830.00 as paid by the company to be fair and reasonable. The company has set out in detail the make-up of the amount and I confirm that had the company not made this payment and I had been minded to award a payment I would have categorised the amount at Tier 2 level according to the *WATRS Guide to Compensation for Inconvenience and Distress* and directed a lower amount than that actually paid.
15. I find that the evidence establishes that the company has reasonably satisfied the five remedies sought by the customer in her claim to the WATRS Scheme.
16. 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 insomuch that it has accepted the customer's complaints and provided reasonable compensation to her.
17. I shall not direct the company to take any further action.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 13 September 2022.
- The customer has, on 19 September 2022, responded to the Preliminary Decision.
- The customer states that she has no additional comments to add to her previous submissions.
- The company has, on 20 September 2022, responded to the Preliminary Decision.
- The company states it has no further evidence to submit and relies on its Defence submission.
- The parties have not submitted any new evidence and thus I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the responses 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 20 October 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.

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Adjudicator

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