

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X275

Date of Final Decision: 30 January 2023

#### Party Details

Customer:

Company:

#### Complaint

The customer complains that following construction of the £2.4 million REDACTED, REDACTED is flooding in the same way and his property in REDACTED is also threatened. The customer does not believe that the Scheme is sufficient or is not working correctly. Although there have been 27 floods, which he has reported to the company, the company has not been prepared to take action. The customer wants the company to be directed to (1) accept that such frequent instances of "hydraulic overload" proves that the system capability is inadequate; (2) undertake a full theoretical reassessment of the design of the system, ideally in conjunction with external hydraulic engineering specialists, (3) develop a full understanding of the anomaly regarding the surcharging at the REDACTED junction even when the system is free-flowing further downstream, (4) develop a full understanding of the cause of the attenuation imbalance that results in surcharging from the REDACTED hydrovalve chamber during the more severe incidents and consider rebalancing the attenuation by removing the hydrovalve from the REDACTED tank, relying only on natural attenuation, and/or by adding further attenuation upstream by means of a box-culvert tank section under REDACTED, and (5) implement further remedial measures to prevent recurrence of these repeated flooding incidents.

#### Response

The company says that, notwithstanding the decisions of In-house adjudicators, this application is not within the scope of the Scheme. The company says that it has agreed to take various remedial steps in a letter dated 14 December 2022 and offers the consumer a goodwill payment of £300.00

#### Findings

I find, as did the Inhouse Adjudicator, that customer service issues are within the scope of this Scheme. I have no jurisdiction to direct that the company should undertake work that would involve capital expenditure or allocate priorities or resources to the customer's complaints. The company has not provided its customer services to the standard that would reasonably be expected because it did not focus on the customer's concerns that the flooding was occurring

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repeatedly during heavy rainfall, it followed an unexpected (the customer says “anomalous”) pattern, the system was not being regularly maintained, that despite a large investment in 2008, there was something “very wrong”, a point first made on 7 February 2014, and that the company was not providing information to the customer about its own findings and actions (for example in respect of maintenance and its findings following maintenance work). This did not meet the standards of customer service that would reasonably be expected. The company has now acknowledged that the reports of flooding should have been escalated internally so that data collection could have commenced. The company has stated that it intends to take certain steps in its letter of 14 December 2022. I find that in addition to these, compensation for inconvenience and distress should be paid. Especially as the customer has had to correspond with the company for approximately a decade, a fair and reasonable sum is £550.00.

### Outcome

In addition to the remedial steps that the company has agreed to undertake in its letter of 14 December 2022, the company shall pay the customer £550.00 for inconvenience and distress. If a credit can be made to the customer’s account (whether by way of internal arrangement with REDACTED or otherwise), the payment may be credited to that account. In other circumstances, this must be paid to the customer by cheque.

## ADJUDICATOR’S FINAL DECISION

**Adjudication Reference: WAT X275**

**Date of Final Decision: 30 January 2023**

### Case Outline

#### **The customer’s complaint is that:**

- The customer complains of a long history of surface water flooding incidents in the REDACTED and REDACTED area of REDACTED. He lives at REDACTED.
- The customer explains that in 2008, the company implemented £2.4 million REDACTED Flood Alleviation Scheme (REDACTED). This diverted a tributary sewer that joined the REDATED sewer upstream of the flood-prone area via a relief sewer that bypasses the flooding area and rejoins the original sewer further downstream. The relief sewer incorporates two online attenuation tanks with hydrovalves and a third tank section was added to the original sewer, upstream of the flooding area. This project has failed to deliver its promised performance, resulting in REDACTED being flooded a further 27 times since completion of the project, with water surcharging from the system in the same place as before project implementation. In four

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of the most serious incidents, REDACTED has also been flooded due to water surcharging from the second hydrovalve chamber in the relief sewer. These flooding incidents, mostly resulting from thunderstorm rainfall, continue to threaten properties in REDACTED (particularly basement flats) and in REDACTED (including the customer's home).

- Despite undertaking a series of investigations in response to reports of this continued flooding, the company has not undertaken any theoretical re-evaluation of the design of the surface water sewer system. Instead, the investigations undertaken in 2012, 2016 and 2019/20/21, plus a further investigation in 2021/22 following involvement of the Consumer Council for Water (CCWater), have consisted solely of inspecting the sewer system for defects or blockages and having found none, concluding that the repeated problems are due to “hydraulic overload”. The company does not accept that, if the hydraulic capacity of a system is overloaded so frequently, the capacity is inadequate. Frequent hydraulic overload is not “too much rain” – it is “not enough sewer”.
- In concentrating on defects and / or blockages, the company has also failed to acknowledge the reports that, once the storm peaks have passed and the overload diminishes, the system is able to clear the accumulated floodwater quickly, suggesting that there is nothing impeding it performing up to its maximum capacity. That maximum capacity, however, cannot handle storm peaks.
- In all of these investigations, the company has not explored or understood two anomalies that have been repeatedly reported to them. First is that the flooding of REDACTED always begins with surcharging from the system at the junction with REDACTED, even though often water can still freely enter the system just a few metres downstream. The second anomaly is an imbalance in the attenuation provided by the two attenuation tanks in the relief sewer, resulting, during the more extreme flooding events, in surcharging from the tank under REDACTED. It is this surcharging that is the most direct threat to the customer's property.
- In addition, the company's responses have been characterised by false claims. The 2019/20/21 investigation was terminated abruptly with the false claim that the company had only two incidents on record. (That abrupt termination led to the involvement of the CCWater). There were false claims in the company's responses to CCWater. The company wrongly claimed that the project had consisted of pipe upsizing and incorporation of off-line attenuation. Those options had been considered separately in the design phase, but both were dismissed in favour of the solution as described above. They also claimed that, during the latest investigation, they had removed 31,210 tons of silt from the attenuation tanks. That is a total nonsense – even if 100% full of silt, the tanks would need to be over 20km in length to

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accommodate that amount, whereas they are in fact each around 100M in length. Despite having these errors pointed out to them, the company has repeated both false claims verbatim in a further response to CCWater dated 24 March 2022.

- A recent further “nonsense claim” is that the customer’s property is vulnerable to flooding because the camber of the road slopes towards it. However, the hydrovalve chamber that surcharges and threatens the property is at the bottom of that camber so the slope is irrelevant. Even if that supposed vulnerability were true, it is not an excuse for not taking action.
- The customer wants the company to be directed to:
  1. Accept that such frequent instances of “hydraulic overload” proves that the system capability is inadequate.
  2. Undertake a full theoretical reassessment of the design of the system, ideally in conjunction with external hydraulic engineering specialists such as Halcrow, who designed the 2008 project, in order to understand why the project has not delivered the promised performance, to assess the system’s capacity limitations and to identify further remedial options.
  3. Develop a full understanding of the anomaly regarding the surcharging at the REDACTED/REDACTED junction even when the system is free-flowing further downstream. (A possible factor in this anomaly is a revelation from the 2019/20/21 investigation that surface water drainage in REDACTED is not served by a REDACTED sewer, so there is potentially unquantified third-party input to the system at that point.)
  4. Develop a full understanding of the cause of the attenuation imbalance that results in surcharging from the REDACTED hydrovalve chamber during the more severe incidents. Consider rebalancing the attenuation by removing the hydrovalve from the REDACTED tank, relying only on natural attenuation, and/or by adding further attenuation upstream by means of a box-culvert tank section under REDACTED, as per the first iteration of REDACTED 2008 design.
  5. Implement further remedial measures to prevent recurrence of these repeated flooding incidents. Ideally, such measures to include the option considered but dismissed for the 2008 project, namely upsizing of the sewer pipework throughout the whole system, which is the solution most likely to result in a reliable long-term resolution of the problem.

**The company’s response is that:**

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- The customer's complaint is not a matter that falls within WATRS jurisdiction as it concerns matters arising under section 94 of the Water Industry Act 1991, for which the relevant decision-maker is Ofwat not the courts. The company does not agree with the determination of the In-House Adjudicator in respect of the complaint because the objectives of the complaint are focused on structural changes to the existing flooding defences and the customer acknowledges that on each occasion when he has reported flooding, the company has attended and investigated. The company refers to the decision in *REDATED v REDACTED* and to the Scheme Rules. It says that due to the vast size and nature of the company's wastewater/surface water network, a reactive system of maintenance is a reasonable approach for wastewater companies to take. However, where there is a known issue, a company should repair its assets to mitigate or avoid the risk of further flooding.
- The company says that there is no current agreed budget for the works that the customer is requesting, even if WATRS had jurisdiction to direct works to be undertaken, which it does not. The company explains that any possible investment will not be considered until the next Asset Management Plan (AMP) period of 2025/30 as the budget in the current AMP has all been assigned elsewhere. There is also no guarantee that funding will be approved. It all depends on the priority that is attached to the flooding situation in the customer's area after reviewing all of the data captured on the company's systems. The company comments that highway and external private property flooding from surface water sewers is less of a priority than internal private property flooding and flooding from foul water sewers.
- The company also comments that to undertake a full theoretical reassessment would involve a cost of £25,000.00 to £30,000.00, which is outside WATRS' jurisdiction. In respect of the two aspects of the customer's claim in which he asks the company to develop a better understanding of the working of the current system, the company says that this requires the collection of data that it does not currently have, although better data is hoped for after replacement of the depth monitors (below). In terms of any redesign and moving the point of control, then again, it would need to undertake a full catchment study to understand the impact this might have on the downstream network. This is not something WATRS can award due to the costs involved.
- Although the company no longer has access to its older records, it does not challenge the customer's description of the history. It says that of the many reactive surveys of the surface water sewer network in the customer's area that the company has completed, it has never found any defects and the sewer is operating as it should be. The company apologises for

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stating that it had removed 31,000 tons of silt from the chambers and sewers which was a decimal point error. This should have read 31 tons.

- The company does not agree that the company has failed to provide good customer service and, in any event, the company has made a goodwill offer of £300.00 and in its letter of 14 December 2022, the company has set out its intentions for the future and invited the customer to withdraw his application from WATRS. The intentions include:
  - Agreement that the company will undertake a long process of data gathering. The company is meeting with the customer's Local Authority in 2023 and will be asking for collaboration to understand the assets that they are responsible for, with a view to surveying and determining their condition and likely overall flow contribution into our surface water network.
  - Installation of better modern depth loggers and monitoring and recording the performance of the hydrobrake tanks and pipework of the network in real time. The original design had depth loggers installed at the hydrobrake chambers. These were a very early design type and the technology and systems have changed considerably since then. Different units are connected to the control room using new smart waste computer platforms. The new loggers will inform the company when the system needs further cleaning but will also help to understand the hydraulic performance with key data during future rainfall events. The company says that allowing a greater flow to pass downstream might well improve the situation locally, but it could pass the flooding on downstream and generate problems elsewhere.
  - Escalation within the right teams to ensure that the 27 flooding incidents are recorded on the correct database (REDACTED) as it is this database that is used for possible asset interventions.
  - Evaluation of where the customer's concerns sit within the region-wide prioritisation of flooding cases. As part of this a sewer flooding questionnaire will be delivered locally.
  - Introduction of a new six-monthly planned maintenance programme starting at the earliest in June 2023 (due to depletion of the existing budget)
  - Arranging for REDACTED to discuss replacement of the customer's flood barriers with automatic flood doors.
- The company has also explained the operation of the REDACTED process and offered compensation of £300.00 comprising £270.00 - which equates to £10.00 per flooding incident reported to the Customer Relations Team but not forwarded to the Sewer Flooding Team to record on the REDACTED and £30.00 - for misinformation provided about the amount of silt

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recently removed from the surface water sewer. The company states that it has not paid this sum in case a WATRS adjudicator wishes to award a different figure.

### 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.

The company noted my Preliminary Decision but made no other comments. The customer has commented on my Preliminary Decision and I have taken those comments into account.

### How was this decision reached?

1. The dispute in this case concerns the company's handling of persistent overflows from the company's assets near the customer's house. It is part of the background to this case that a project was undertaken by the company in 2008 to reduce the incidences of flooding from its sewers, but this has not prevented flooding from occurring during heavy rainfall. The customer says that there have been 27 incidences of flooding since the project was completed and says that the correct characterisation of this is that there is not too much rain, but too little sewerage. He says that in some instances the water that has not entered the sewer has caused internal flooding although the company classifies the problem as flooding to the highway. The customer complains also about certain responses that have been made to the Consumer Council for Water (CCWater) about this situation, which he says indicates a lack of understanding of the situation.

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2. The company has raised a number of objections to this application to WATRS. These have been dealt with by the Inhouse Adjudicators and I have read their decisions. The company's primary concern has been that the customer's complaint concerns the company's non-compliance with section 94 of the Water Industry Act 1991 and that Scheme Rules 3.4 and 3.5 preclude me from reaching a decision. This point has been upheld in part by the Inhouse Adjudication team, although to the extent that it has not been upheld, the company renews the points made, because it says that the remedies that the customer asks for are all of a nature involving the setting of priorities and the expenditure of capital monies, which are outside the scope of the Scheme.
3. I find that this continuing concern engages in particular rule 3.5 of the WATRS Scheme Rules. This provides that the Scheme cannot be used for matters over which Ofwat has powers to determine an outcome and nor can it be used to determine any disputes relating to the fairness of contract terms and/or commercial practices.
4. I am mindful that under the Water Industry Act 1991, sewerage companies cannot generally be held by courts to be liable for the escape of the contents of public sewers in the absence of negligence. I find this to be the case whether the sewers are foul sewers or surface water sewers. This is because, under the Act, overview of decisions relating to the provision and maintenance of a sewerage network in accordance with the company's statutory duties is reserved to Ofwat and customers may complain to this regulator but not to the courts. This was confirmed in a legal case heard in the House of Lords, then the UK's most senior court (*REDACTED v REDACTED*) involving repeated flooding of a customer's property by foul sewage.
5. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. It follows that I cannot direct the company to take strategic decisions, such as whether further investment is necessary, because the utilisation of resources and the setting of priorities is reserved to the company, subject to the overview of Ofwat. I neither have the information that would be necessary to reach a decision on these matters nor the legal authority to carry out that exercise. This Scheme is involved only with the resolution of individual disputes between companies and customers, not with decisions that may affect many hundreds or thousands of the company's customers. Rule 3.5 of the Scheme Rules in particular underlines my limited jurisdiction.
6. I do find, however, that I have power to consider whether the company has in this individual case, acted in a way that an average customer would reasonably expect, which includes whether the

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company has correctly applied its own policies, acted with an expected level of customer care, responded to customer concerns and reached its conclusions in a way that is reasonable. These are matters that fall within the scope of this Scheme and are not, or not only, the responsibility of Ofwat.

7. My findings are therefore consistent with the decision of the Inhouse Adjudicators that there are matters that have been raised by the customer that WATRS is empowered to consider. The customer has made several allegations that the company has failed to liaise with him appropriately in its consideration of its system and has not taken into account “anomalies”, namely that the flooding of REDACTED which always begins with surcharging from the system and that there is an imbalance in attenuation provided by the two attenuation tanks in the relief sewer, resulting in surcharging from the tank under REDACTED and that the company has reported the situation incorrectly to CCWater and failed to take into account that there have been incidents of internal flooding. These raise potential customer service issues within the scope of the Scheme.
8. It follows from the above nonetheless that of the remedies requested by the customer, I have no jurisdiction in particular to direct that the company should:

- 2. Undertake a full theoretical reassessment of the design of the system, ideally in conjunction with external hydraulic engineering specialists such as REDACTED, who designed the 2008 project, in order to understand why the project has not delivered the promised performance, to assess the system’s capacity limitations and to identify further remedial options.*

- 3. Undertake a full theoretical reassessment of the design of the system, ideally in conjunction with external hydraulic engineering specialists such as REDACTED, who designed the 2008 project, in order to understand why the project has not delivered the promised performance, to assess the system’s capacity limitations and to identify further remedial options.*

- 5. Implement further remedial measures to prevent recurrence of these repeated flooding incidents.*

9. I also cannot, to the extent that this requires prioritisation and allocation of the company’s resources, direct that the company should “develop a full understanding” of certain matters associated with the operation of the existing system, but I can consider whether the company has

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taken the steps that would reasonably be expected in order to respond to and to consider the concerns raised by the customer and to liaise with the customer about these.

10. As for the customer's request that the company should accept that "such frequent instances of hydraulic overload" proves that the system capability is inadequate, I find that the company agrees that the system has not been able to cope swiftly with the volume of water and that flooding has occurred, but as stated above, it is for the company or for Ofwat to consider the extent and priority of protection against very heavy rainfall and these are not criteria that I can apply. In response to the question raised by the customer following receipt of my Preliminary Decision as to whether this would also include expenditure on detailed theoretical studies concerning the operation of a part of its network, I am quite satisfied that I also cannot direct this because the decision to undertake any such study would form part of the company's strategic planning. It follows from this that I again have no power to direct that the company should take action in this regard, save in respect of customer services.
11. It therefore follows that I cannot direct any of the remedies that the customer requests, but, as indicated above, his complaints about the performance of the company are wider than might be suggested by the targeted remedies that he has requested.
12. The wider aspect of the customer's claim has, in part, been recognised by the company in its letter of 14 December 2022 which commenced:

*...that said, if it is compensation that you're seeking I'm willing to negotiate this with you because my review has led me to conclude that our customer relations team should have done more to escalate your concerns which would ultimately have begun the process of studying not only the flood alleviation project implemented IN2008 but also with a view to potentially reviewing what, if any, further improvements can be made.*

13. The company has explained that the offer of compensation made in its response to this claim has not been paid because it is a matter that the adjudicator may wish to review. The customer has confirmed in response that his application was for something to be done rather than to be given financial compensation but he has said that the sum of £300.00 by way of a goodwill gesture was "derisory". While I accept that financial compensation was not the customer's goal, I do not take the customer's response to the company's offer to be a refusal to accept compensation for

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inconvenience and distress, and I have therefore considered below what the fair and reasonable level of compensation should be.

14. I turn to the customer's complaints which he has set out in a narrative way, including providing information about the history. The customer has submitted information about the period before the introduction of the REDACTED Scheme, but I find that these concerns were largely brought to an end 14 years ago with the introduction of the new system and I have not commented specifically on these save to record that the customer appears to have played a role up to 2008 on behalf of his neighbours in liaising with the company on matters of flooding.
15. The company has not challenged the history given by the customer, and the customer has acknowledged that the company has responded to correspondence by means of telephone calls that are not set out in his account. Even if partially incomplete, however, this shows repeated and extensive communications over more than a decade concerning the question of flooding in REDACTED and the immediate environment at REDACTED and other roads. In connection with considering whether the customer is entitled to any additional remedies to those stated in the company's response, I have taken into account the pattern of correspondence between the parties, summarised as follows:
  - a. Following the introduction of the REDACTED, there was an incident in 2010 but no other incident until 2012. From 2012, a series of incidents affecting REDACTED occurred.
  - b. In July 2012, there were a series of thunderstorms two of which resulted in "torrential rainfall and hailstorms". The customer informed the company that the relief sewer was insufficiently capacious and the original REDACTED sewer was overwhelmed and caused extensive flooding along the length of REDACTED from REDACTED to the eastern entrance of REDACTED. The customer asked about the performance of the hydrobrake - including whether monitoring had given information and whether it had been inspected and checked.
  - c. The company responded on 24 July 2012 saying that a specialist team needed to be consulted but the company would revert. In a subsequent telephone call the customer was told that this was a one in 127-year event.

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- d. On 20 August 2012, a further incident occurred which the customer reported to the company. He suggested that the hydrobrake chamber was nearly full. The customer in 2014 said that this report was followed by “a lengthy dialogue between myself and REDACTED of your Customer Relations team and a programme of follow-up work”.
- e. On 7 February 2014, a further incident occurred as a consequence of a water main burst. The customer said that there was something “very wrong” with the system because in REDACTED there appeared to be no flow into the drainage system but no surcharging from gullies at lower level. The customer confirmed that the REDACTED project had “definitely solved a lot of problems” but not all. The customer again asked about the information provided by the monitoring devices.
- f. On 11 March 2014 the customer emailed the company about a telephone call that he had received. He complained that the staff member had been uninformed, that he had received a negative response to his complaint and had been fobbed-off when he complained that the system was not working.
- g. On 2 September 2014, the customer contacted the company again, explaining that there had been two recent incidents. He said that his understanding was that the bore of REDACTED surface water sewer between the REDACTED and REDACTED junctions is smaller the section downstream of REDACTED. He suggested that this was the bottleneck that triggered the continuing problems. The company responded on 16 September 2014 stating that it would attend and investigate whether there was further blockage.
- h. On 19 September 2014, the customer complained that the downstream end of REDACTED had flooded following a thunderstorm just after 0100 that produced 7.1mm of rain between 0100 and 0115. A further 1.7mm of light rain then fell in the period up to 0200. The documents make reference to a proposed line clean, which was promised by the company at that stage.
- i. On 8 October 2014, the customer complained that the per-hour rainfall figure from his weather station showed 4.6mm but most of that fell in a five-minute period. As a result, REDACTED was again flooded across its full width around the junctions with REDACTED and REDACTED.

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- j. Two further incidents were reported on 9 October 2014. The customer set out an account of what had happened.
- k. On 26 August 2015, the customer reported two incidents.
  - i. On 13 August 2015 he thought that 6.7mm of water had fallen mostly within 15 minutes and caused flooding.
  - ii. On 24 August, the customer complained that in heavy rainfall he arrived home and quickly deployed a driveway barrier and the Flood Ark defences that the company had supplied for his house as an interim solution pending implementation of the Flood Alleviation project. The customer said that within minutes, some 20-25 cm of flood water had collected at the eastern end of REDACTED, some surcharging from the tank sewer or hydrobrake chamber and some washing round from REDACTED. His barrier had prevented any significant amount of that water from entering his property (at REDACTED) and it had been fortunate that he had arrived home in time to erect it. He confirmed that flooding at the front of his house had therefore been limited to water that could not enter his rainwater gullies. He said that the flow of accumulated water into his neighbour's property (REDACTED) was limited by his substantial wooden gates but his front garden and driveway were still flooded, with water entering his garage and lapping about 8 cm up the walls of his house. He said that at least one of the basement flats in REDACTED (REDACTED) had been seriously flooded during the incident.

The customer agreed that in respect of both occurrences, once the rainfall had ceased, the water cleared away very quickly. The customer asked why at the lower level, downstream, part of the system does not flood and said that "there are major problems with the original system under REDACTED and the relief system installed in 2008". He asked whether the line clean had been carried out. He also said that one of the matters that had come to light in 2012 was that, on completion of the project in 2008, there was an omission, in that the hydrobrakes in the system (one under REDACTED and one immediately outside his house in REDACTED) had not been placed on a maintenance schedule. As a result, they were then inspected and checked in the autumn of 2012 but were not checked again. The customer set out his understanding that the hydrobrake manufacturer's recommendation is that they should be checked every six months. He thought that only one check in nearly seven years seemed "woefully short" of that target. He asked for comments.

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- l. A further incident of flooding occurred on 26 August 2015.
  
- m. In June 2016, the company agreed to come round to inspect on 4 July 2016, but before that could happen, the customer reported regular lesser incidents where the original system became overloaded, leading to flooding in REDACTED, most recently on 15 June and 17 June 2016. On the first of these, following 3.6mm of rain in around 20 minutes, the south side of the road was flooded, with water surcharging from the gullies around the REDACTED junction and not being able to re-enter the system via the multiple gullies at REDACTED. The second incident was more severe, following 11.3 mm of rain over a 40-minute period, leading to flooding across the full width of REDACTED, with water spilling into REDACTED. The customer again said that the puzzling aspect of these flooding incidents is that there is rarely any surcharging or flooding where the sewer drops to a significantly lower level in REDACTED / REDACTED. He again asked whether there had been any maintenance of the hydrobrake chamber since 2012.
  
- n. Another incident on 25 June 2016 was reported on 26 June 2016.
  
- o. A further incident was reported on 2 July 2016.
  
- p. On 16 September 2016, the customer reported a further incident on the previous day and expressed thanks that “REDACTED” was trying to get the maintenance of the hydrobrake chamber arranged. The customer said that there remained the issue of continued “inadequate and at times totally bizarre performance of the original parts of the system”, principally the surface water sewer under REDACTED.
  
- q. A further incident was reported on 21 July 2019. The customer complained that he had been promised annual maintenance of the hydrobrake chambers but nothing had occurred since 2016 when “REDACTED” had arranged for this. He asked why annual maintenance did not happen. His email was acknowledged on 23 July 2019 and a further conversation took place between the customer and “REDACTED” of the company.
  
- r. On 12 August 2019, the customer reported incidents on 9 and 12 August 2021. The customer referred to the number of previous incidents and their effects and asked for a revisit to the hydraulic modelling that had previously been carried out by REDACTED.

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- s. The company replied on 2 September 2019 stating that they would carry out an inspection and take photographs and maintenance work on the hydrobrakes had been planned for 20 September 2019. The company said that flooding to the highway is not as high a priority as flooding to a customer's internal or external property and that it would be unlikely that they would recommission REDACTED to revisit the hydraulic modelling.
- t. The customer replied on 9 September 2019 pointing out that the company had agreed that the pattern of flooding was bizarre and re-affirming that there had been incidents of internal flooding at some properties, to which he had referred, in February 2014 and August 2015. He asked for a response to his points, asked about the outcome of the maintenance work and requested re-opening of his case.
- u. On 23 September 2019, the company explained:

*Under regular conditions, water passes through the Hydro-Brake unrestricted and continues downstream at normal levels. At times of high flow e.g. during a rainstorm, the structure's internal geometry harnesses the natural energy of the flow by creating a vortex effect. This holds back the water, releasing it at a controlled rate to prevent flooding further down the line. It uses the existing drainage system as a temporary holding tank during these periods. During prolonged or heavy downpours, it may give the impression the drainage upstream is not flowing but this is perfectly normal. Therefore, the manholes that are further down the hill don't flood due to the design of the hydrobrake.*

*The job to maintain the hydro brake has now been rescheduled for today, once this has been completed we'll be able to determine whether this is the cause of all the issues which have been happening. We're still currently waiting for a date to come out and investigate our surface water sewers, please be assured i've escalated this today. I'll update you once we've attended to maintain the hydrobrake and once we've completed the investigations on the surface water sewer, this'll be no later than 8 October 2019.*

The company did not comment on his point that internal flooding can occur in consequence of the overflow and did not say whether a planned maintenance programme would be implemented, other than a maintenance visit that day.

- v. The customer replied on 25 September 2019 challenging the design of the system. He said:

*However, I cannot agree with your conclusion that the operation of the hydrobrake explains the apparent lack of flow in the upstream section and the absence of surcharging from the manholes further downstream. The apparent cessation of flow does not occur on the upstream section of the new relief sewer where the flow is controlled by the hydrobrakes: it occurs on the original sewer under REDACTED, which has no hydrobrakes. I still maintain that it is totally illogical for that section in REDACTED to surcharge whereas at the lower level in REDACTED / REDACTED there is no surcharging, even though the sewer in REDACTED and further downstream is carrying the combined flow of the original sewer and the hydrobrake outlet from the new sewer (the two systems recombine in REDACTED just beyond the junction with REDACTED).*

- w. The customer then reported further incidents on 1 and 17 October 2019 which he, at the request of the company, described in detail. He asked about a sump / soakaway under the verge that he could request REDACTED to clean as part of work to be done in their gullies.
- x. A further incident was reported by the customer on 24 October 2019.
- y. On 19 November 2019, the customer reported that a team of workmen carrying out the line clean had found a build-up of rubble in the catch-pit of the manhole chamber at the junction with REDACTED.
- z. On 30 April 2020, the company reported that the radius of the bend in the sewer on the junction of REDACTED was working appropriately. The company reported that the cause of the flooding was hydraulic overload.
- aa. On 5 May 2020, the customer responded stating why he did not agree and indicated that he had been told that the Flood Alleviation project would accommodate 1 in 30-year events and yet there had been over 20 flooding events. He asked for a further investigation.
- bb. On 16 August 2020, the customer reported a further event.
- cc. On 27 August 2020, the company wrote:

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*Following the email, you've sent I've spoken to REDACTED, the Network Engineer who attended your property on 31 January 2020, to discuss the issues which have been occurring. He's advised he is going to speak with our Field Operations Specialist to see if there is anything further, we can do going forward to alleviate the hydraulic flooding you've been experiencing. I've requested that our asset management team review the hydro brake system, which was installed in 2008, to see whether anything further can be done as I understand that the flooding doesn't happen at the lowest point. I've asked if we can do anything about this or for an understanding of why this happens.*

A further response was promised.

dd. On 22 January 2021, the company wrote that it could find no problems in the system and repeated its view that the explanation was hydraulic overload. The company then explained further about hydraulic overload and said:

*I understand you had previously requested the hydro brake project revisited to determine if this could be contributing towards any issues due to the recent flooding occurring where this was installed. Our Field Operation Specialist has reviewed this in great detail and has confirmed the hydro brake is working as it is designed. Under normal weather conditions, water passes through the Hydro-Brake unrestricted and continues downstream (with the flow) at normal levels. At times of high flow, for example during a rainstorm, the system is designed to hold back the water and release it at a controlled rate to prevent it from overflowing. I also understand you have flood defences placed at the front of your property which will also prevent flooding from entering your property.*

ee. The customer then responded on 26 January 2021 stating that he was not happy that the case was being closed. He said among other matters that the capacity of the system was insufficient and that:

*The other unanswered question is why we have seen instances of such surcharging from the hydrobrake under REDACTED when the flow into that tank section has already been restricted by the upstream hydrobrake under REDACTED. The only additional flow into the system after that upstream hydrobrake is from a handful of gullies at the lower end of REDACTED, the three gullies in REDACTED and the surface water private sewer that serves the seven houses in REDACTED. Could it be that the level of flow restrictions applied by the two hydrobrakes need rebalancing?*

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ff. The company replied saying that it had only received two reports of flooding on 17 and 24 October 2019, which the customer then challenged. A further response was sent by the senior case manager stating that these were the only two flooding incidents in 2019 and that other incidents had been reported before 2008. The customer then responded to this on 19 February and 16 March 2021 but did not receive a further response.

gg. Following referral to CCWater, these issues were raised again with CCWater and the number of incidents is now accepted by the company. Although the company says that the customer had been asked to report to REDACTED, the customer denied that he had reported in any way other than had been advised. In any event, the company has now acknowledged that the customer's reports of incidents and concerns should have been escalated internally so that they appeared on the REDACTED.

hh. In November / December 2021, the company cleaned the silt from the tanks and sewers, which it says may have contributed to the problem.

16. Taking into account the above history, I find that it demonstrates that although the company responded to the customer's correspondence and when requested investigated the presence of blockages in the sewer, it did not direct its responses to the main focus of the customer's concerns. On a number of occasions, the company explained to the customer the operation of the hydrobrake chambers but did not address his concerns on matters about the operation of the system as a whole. Those that I find went largely unaddressed and not treated as significant were namely that:

a. The flooding, albeit during heavy rainfall, was occurring repeatedly. The company has now agreed that a 1 in 30-year event, which the customer says was the benchmark of performance for the system, meant that the chance of flooding would be reduced to 3.33% but it has not stated whether it considers that the system is meeting that target.

b. The flooding followed an unexpected (the customer says "anomalous") pattern. Although the company appears to accept that there is narrowing of the sewer pipes downstream which protects the areas downstream, it has not responded to the customer's concerns that the system is operating anomalously and therefore not as designed.

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- c. The system was not being maintained. The correspondence seems to indicate that the customer was told that there was a regular maintenance schedule that was then not put in place. The correspondence suggests that the customer was not told what the arrangements or outcomes of the maintenance programme might have been,
- d. Despite a large investment in 2008, the customer has said there was something “very wrong”, a point first made on 7 February 2014, but over the following eight years, the company has not clearly stated its opinion as to whether the system was working to the promised level of efficiency or not. This was particularly a matter of concern in respect of the “anomalies” to which the customer made reference.
- e. The company was not providing information to the customer about its own findings and actions (for example in respect of maintenance and its findings following maintenance work).
- f. The company has stated that a reason for not prioritising this flooding is that there is no internal flooding, The customer has given information about internal flooding and has pointed out the risk to a number of basement flats. Recently the company has commented that it has received no complaints about flooding from the customer’s neighbours, but it did not acknowledge or comment on the customer’s point.

The fact, now acknowledged, that the customer relations team did not escalate the reports of flooding to the REDACTED so that in 2019 the relevant section of the company was under the impression that there had only been two incidents of flooding whereas at that point there had been more than 20, is indicative of a lack of attention by the company’s customer relations staff or an assumption that the repeated complaints did not merit further consideration, despite significant previous capital expenditure by the company to achieve a different outcome. I find that this was not the standard of customer service that would reasonably be expected and the omission was serious.

17. The company has acknowledged that a consequence of this omission was that relevant data about the incidents over the last ten years has not been collated or analysed by the company and this will now take a long time to do. The customer has commented again on this delay in response to my Preliminary Decision. I also find that it has meant that, whereas the company could have been considering the reasons for the performance of the REDACTED Scheme in light of evidence

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that it may not have been providing the intended level of protection, the customer has felt himself obliged to act as spokesperson for his neighbourhood and to raise conjectures about the performance of the system. Because issues have not been addressed in any formal way, the customer has felt obliged to make the same points repeatedly to the company over nearly ten years. I find that this was a serious level of inconvenience.

18. The company has now indicated that it will take a number of steps to address this problem. These steps do not involve large scale expenditure but do address the customer's concerns that the company has not correctly informed itself and that there remains a possibility of flooding to his property. I note that the customer says in response to my Preliminary Decision that if the company had correctly collated the data, it may well have moved to the type of theoretical investigations that the customer proposed in his WATRS application, with such investigations perhaps funded from operational budgets, as per as the repeated physical inspections of the system looking for non-existent defects or blockages. I find, however, that this suggestion is speculative, bearing in mind the more limited approach now taken by the company.

19. I have taken into account the customer's concerns that the company's proposals for practical action are insufficient, have in part been promised previously and not undertaken and that they could have been done before. In response to my Preliminary Decision, the customer has reinforced the views he expressed previously that there is a parallel with what had happened prior to 2008. Taking into account, however, that I have no jurisdiction to direct strategic actions or decision-making, I do find that the proposals now address the worry that there may be something "very wrong" that needs to be investigated and that further protection may be needed for the customer's property. These proposals are for:

- a. Data gathering over an extended period and including information provided by modern depth loggers.
- b. Installation of better modern depth loggers.
- c. Monitoring and recording of the performance of the hydrobrake tanks and pipework of the network in real time.
- d. Escalation within the right teams to ensure that the 27 flooding incidents are recorded on the REDACTED.

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- e. Evaluation of where the customer's concerns sit within the region-wide prioritisation of flooding cases.
  - f. Introduction of a new six-monthly planned maintenance programme starting at the earliest in June 2023 (due to depletion of the existing budget)
  - g. Arranging for REDACTED to discuss replacement of the customer's flood barriers with automatic flood doors. (Documentation on the online dispute resolution system indicate that this has already been initiated though is pending this decision).
20. While these fall short of the outcome that the customer would hope for, I find that they are actions that would reasonably be expected by an average customer in response to customer service complaints about the operation of the system. In particular, they are steps that will provide additional protection for the customer's home and enable investigation and understanding of what, precisely, is happening. I do not find that it would be fair and reasonable currently to direct further practical action.
21. I do find that the amount of the goodwill gesture needs to be reconsidered, however. I am mindful that rule 6.6 of the Scheme Rules allows me, in exceptional circumstances, but subject always to the overall maximum limits, to award more compensation than has been claimed by the customer. I find that these are exceptional circumstances, partly because of the duration of the complaint and the background to this claim but also because the company has made a financial offer in its response to the claim and envisaged that this would be reviewed. I find that in circumstances where I consider that financial compensation would be fair and reasonable in principle, it would not be fair if I did not review the amount of the company's offer.
22. As to this, I find that although an amount has been attributed to the omissions of the company in escalating the reports of flooding and for making an inaccurate statement about the amount of silt removed, compensation been approached on the basis of the company's failure to meet an expected service standard. I find that the company has not addressed the impact on the customer of this. I make clear that I do not refer here to incidents of flooding but the continued need to report these and engage in correspondence with members of the company's staff who have not then taken necessary steps to ensure that the complaints were handled in a way that made these part of the company's decision-making mechanisms. This, I find goes beyond a mere failure to meet

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service standards and has exposed the customer to very considerable inconvenience over a very long period.

23. I turn to the WATS Guide to Compensation for Inconvenience and Distress. I find that these issues fall towards the boundary of Tiers 2 and 3. Taking into account my findings, referred to above, that the omissions to pass on information happened on a large number of occasions over a protracted period, that there were numerous reports of flooding and correspondence about the likely reasons for this, that the flooding in question potentially affected not only the customer but other nearby properties, and each incident would have caused distress and further inconvenience to the customer is reporting this to the company, and that, on balance of probabilities, the complaint was not taken sufficiently seriously and there has been insufficient investigation until the company's letter of 14 December 2022, after the customer had approached CCWater, I find that this complaint should fall within Tier 3.

24. I have noted the comments made by the customer in response to my Preliminary Decision but I have not in this Final Decision changed the level of compensation that I find to be appropriate. I find that in addition to the remedial steps that it agreed to undertake in its letter of 14 December 2022, it is fair and reasonable to direct that the company shall pay the customer the sum of £550.00. The customer points out that he does not have a direct account for wastewater as this is collected for the company by SES Water. As this is the case, I do not direct that the company should credit the customer's account with the sum of £550.00 unless this can be arranged by internal agreement with REDACTED or otherwise. If such agreement cannot be made, the company must pay this amount to the customer by cheque.

#### **Outcome**

In addition to the remedial steps that the company has agreed to undertake in its letter of 14 December 2022, the company shall pay the customer £550.00 for inconvenience and distress. If a credit can be made to the customer's account (whether by way of internal arrangement with REDACTED or otherwise), the payment may be credited to that account. In other circumstances, this must be paid to the customer by cheque.

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## 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.
- 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

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