

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X355

Date of Final Decision: 8 March 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer has experienced a series of flooding incidents and flooding incidents are known to have occurred since 2016 at his home. This is due to backfeed from the company's sewer into his manhole in periods of heavy rainfall. The customer says that he was promised the installation of a non-return valve (NRV) and he reconfigured his surface water drainage in order to qualify. The company then found some tree roots that had not previously been discovered despite investigations over 2 ½ years and has told the customer that following repair and lining the sewer, he cannot have an NRV. The customer does not believe that this will provide protection. He asks for a direction that the company shall install the NRV or a guarantee that he will experience no further flooding and compensation.

#### Response

The company says that it has been in a continual process of assessment as to whether an NRV should be fitted. It found that the most recent flooding was caused by debris resulting from tree roots. On 25 October 2022, the company advised the customer that his property does not yet meet the suitability assessment criteria and NRVs are not a solution to flooding caused by blockages or pipe restrictions. The customer was advised that the company would continue to assess his property for the suitability of an NRV to be fitted.

#### Findings

I do not have jurisdiction to make the direction the customer wants, because this involves capital expenditure and is thus overseen by Ofwat. However, over a period of approximately 2 to 2 ½ years, the customer has participated in a process of investigation including previous CCTV surveys, meetings, discussions, etc. The documentation indicates that the company considered an NRV to be the correct protection and the customer was told that, subject to establishing priority, this would be installed. The current position is that the company has not given priority to the customer's case. It has not made clear whether or not this is because of tree roots, nor whether the company says that these could have caused previous incidents of flooding. It is not clear that the company now thinks that NRV is the correct solution. The customer has been given a false hope, caused to make alteration to his drainage at cost to himself, and participated in a lengthy decision-making process. He is now left in a state

of uncertainty as to whether the company will take further action, whether an NRV will ever be installed or whether he will experience further very distressing flooding that he believes is a risk to health and an environmental hazard. I find that the company has not provided its customer services to the standard that would reasonably be expected and redress is fair and reasonable.

### Outcome

The company needs to take the following further action:

1. Apologise to the customer for the time taken to arrive at the current position.
2. If the company considers that tree roots may have caused previous flooding incidents, the apology should also include an explanation for why these had not previously been detected, including giving information about the difference between the most recent and previous downstream surveys.
3. Pay compensation of £450.00

# ADJUDICATOR'S FINAL DECISION

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## Case Outline

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

- The customer has been in contact with the company for 2 ½ years about sewage flooding. The company initially said that the sewage flooding was not its responsibility. It later discovered that it is its responsibility. It discussed installing a non-return valve (NRV) as a solution. However, it later said that an NRV was not possible. It identified tree roots as the cause of flooding. It cleared the roots and installed a liner, but the customer does not see this as a permanent fix. The customer is unhappy that it took the company over two years to identify tree roots as the cause and wants the company to install the NRV as discussed. It now argues that "the cost vs benefit does not meet [the] flooding alleviation investment criteria. An NRV would not be the solution to the recent flooding occurrences as they were due to root restrictions within the pipework."
- The customer points out that its email of 23 August 2022 states that only one event is recorded in its system whereas more than 8 events have occurred before (and confirmed by "XX") (company Area supervisor). The customer says that he is not confident about the company's recording and processes. He contrasts the email dated 29 September 2022 that stated that the NRV would be fitted to his property to avoid further flooding. The company email stated, "notes from the engineers which gave the go ahead for the NRV to be fitted to your foul water sewer". Fixing NRV was the company's solution based on 18-month analysis. The customer challenges the change in position that occurred in one month only.
- He points out that the company had carried out civil works in its main sewer system based on an email dated 11 February 2022 and confirmed that there would not be any further flooding incidents at his property. More flooding events happened after this confirmation.
- The customer argues that the company has not addressed and responded in any email on the environmental pollution caused after every incident. There was no treatment nor any mitigation plans putting the school children's health at risk.
- The customer argues that merely paying Guaranteed Service standard payments does not address the issue. There are collateral damages such as health risk issues, anxiety and distress, time and effort and property damage. The customer complains that the company has subjected

the customer to this while not implementing the solution that was agreed by its own engineers on 29 July 2022.

- The customer would like the company to install the promised NRV or to provide an assurance that his property will not in future experience any flooding. In his response to my Preliminary Decision and in response to its reasoning, the customer has also asked for compensation for distress and inconvenience.

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

- The customer called the company on 26 June 2021 to advise of external flooding at his property. When the company attended there was no flooding on arrival. The customer showed photos of flooding and asked for a Non-Return Valve (NRV) to be fitted. His view was that the backfeed to his property is from the public sewer and an NRV needs to be fitted in the manhole on the footpath.
- The company carried out investigations at the customer's property and advised him of the possibility of the installation of an NRV are based on the flood risk calculated, which in turn is based on the severity and frequency of flooding incidents.
- The investigations found obstructions in the sewer caused by debris in the line and the fitting of an NRV would not be a sufficient resolution. The company removed the obstructions in the sewer.
- Following a further flooding event on 3 June 2022, the company carried out a full CCTV survey and confirmed that there were no further defects in the shared sewer. A dye test confirmed that the roof drains and foul stack are connected to the same pipe and connected to the main foul sewer on the road, meaning that rainwater is present in the system. With this set up it was explained that an NRV would cause even larger scale flooding.
- On 23 August 2022 the company advised the customer that due to only one external flooding being recorded it is unlikely that the company would be able to promote an NRV.
- On 6 September 2022, the company advised the customer that the NRV would be added to its programme and his property would be assessed for mitigation in line with the company's processes and would be installed, potentially, within 10 months, although this could change depending on review.
- On 5 October 2022 and 7 October 2022, the customer called the company to report external floodings. These were caused by a blockage on a pipe localised to his manhole and not hydraulic overload, unlike previous occurrences. It was identified that there were roots in the sewer causing a partial restriction to the sewer capacity.
- On 25 October 2022, the company advised the customer that his property does not yet meet the suitability assessment criteria and NRV's are not a solution to flooding caused by blockages or

pipe restrictions. The customer was advised that the company would continue to assess his property for the suitability of an NRV to be fitted.

- The company is unable to give the customer an assurance that his property will not suffer any future sewage flooding as it is not responsible for or able to control what the public put down the sewer and which may cause blockages.

### 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.

I have also considered the comments made on my Preliminary Decision by the customer even if I have not commented specifically on these. No comment has been made by the company.

### How was this decision reached?

1. The customer complains that his property is affected during periods of heavy rainfall by back flow of sewage from the company's sewer, which enters into a private drain in his property and floods during periods of heavy rain. This is said by the customer to cause between 80 and 120 m<sup>2</sup> flooding. It affects the customer's garden (and affecting his children) and an adjacent open area which is used for children's play and by dog walkers and for other sporting activities. The customer says that this has occurred on at least six occasions. Five were acknowledged by a senior representative of the company, namely one **XX** an e-mail dated 7 October 2021. The dates of these incidents were acknowledged to be 13 July 2016, 25 February 2017, 16 March 2017, 25 October 2020, 26 June 2021. The customer has submitted photographs and a video showing the

extent of the flooding, which was considerable. Several photographs show that this would also have been offensive waste.

2. I am mindful that the customer alleges that the company has unreasonably changed its position on the actions that it is prepared to take to protect the customer's property. I therefore consider first the relevant events and what the customer could reasonably have understood from the company's actions and correspondence.
3. Initially, the company stated in August 2021 that the issue was merely a problem affecting the customer's private drain. The customer disputed this. He was in contact with the company and discussions had taken place about repeated flooding. The company had agreed following an inspection on 3 September 2022 that the sewer was clear and operating normally and the company had also agreed that it would undertake some further modelling to understand the sewer's performance and assess feasibility of mitigation. The company has submitted documentation that shows that the following also occurred:

- 28 September 2021 – A survey of the customer's property was carried out on 28 September 2022 for that purpose.
- 7 October 2021 – in addition to acknowledging that its records held flooding incidents of the dated stated above, the company said:

*Following our visit, I have now requested the models to be updated with the results of the level readings. As mentioned, capital schemes, including the possibility of installation of an NRV are promoted based on flood risk calculated based on severity and frequency of flooding incidents.*

- The customer responded, pointing out that there was a buffer tank between the mains connection and his manhole and therefore suggested that the NRV option should be reviewed and considered at the earliest opportunity.
- 10 November 2021 – the customer was informed that CCTV surveys had been requested.
- 1 December /2021 – the customer emailed the company with a complaint that even after repeated reminders, the company had not fixed the sewage water back feed issue which he stated that he had complained about many times previously. He said that on that day his

property was suffering from that issue and that his pictures (which he supplied) showed that this covered the outside of the entirety of his property.

- 3 December 2021 – the customer asked to escalate the issue, and this was acknowledged on the same day. The customer then called the company to discuss his complaint and the company said that an NRV would not be a sufficient solution. The call notes say:

Crew found an obstruction in the pipe on 12917003 but no FOW has been completed to remove this. Latest flooding incident is caused by blockage. Talked to the customer and explained why an NRV isn't a sufficient resolution when there are some defects in the line.

- 9 December 2021 – **XX(XX)** (the contractor) called the customer to update him on the date when works would be carried out. There was a discussion of an NRV.
- 10 December 2021 – the customer called the company requesting an update. He said if the work was not to be done quickly, he wanted an NRV.
- 14 December 2021 – the company called the customer to advise that it was awaiting date for CCTV surveying and on the same day **XX** called the customer to advise him that the CCTV survey had been carried out and the footage was to be reviewed.
- 16 December 2021 – **XX** called the customer to let him know that an obstruction in the sewer pipe had been found and that it would be necessary to remove this.
- 23 December 2021 – **XX** called the customer to provide an update.
- 7 January 2022 – **XX** called the customer to update him.
- 18 January 2022 – **XX** called the customer to update him on the works.
- 3 February 2022 – **XX** called the customer to advise him that the work would be undertaken on the following Monday and then later **XX** advised the customer further about the date of the works, which were completed before 14 February 2022.

4. The company had said to the customer on 11 February 2022:

*I can confirm that the road closure is related to the civil works we are undertaking to ensure that no further flooding incidents will occur at your property. Once these are completed we will continue to monitor the network's performance during rainfall events to assess if any further interventions are needed.*

While I note that the company uses the word “ensure” in this communication, its second sentence explains that the company could not be certain that no further works would be required. I find that, although the company’s explanation could have been clearer, on balance this would not be reasonably understood as a promise by the company of no further flooding and I therefore do not take this email as indicative that the company had confirmed that the repair would fix the issue, in contrast to the customer’s belief as expressed on 3 June 2022.

5. The customer was contacted on 23 January 2022 by way of response at Stage 1 of the company’s complaint process and was informed that the repair had been completed.

6. On 3 June 2022, a further incident occurred. The customer asked the company to install the NRV. He said:

*a. This is happening for the past 5 years (XX has records for this) with repeated intervals and every time I have requested to fit a non return valve from the system onto my property.*

*b. There is a dedicated manhole outside my property at which the NRV can be fitted to your system by XX*

*c. Due to the repeated incidents, I would like to register any health issues to me and my family occurring due to this influx of sewage water into my property. XX will be liable for this.*

*d. XX did the survey last time and confirmed that the repair will fix this issue. As this has not been the case, I request XX to install the NRV at my property as soon as possible.*

*e. Arrange the compensation to be deducted from the sewage/ water bill in discussion.*

*Every time it takes a day or two for XX cleaning team to arrive and clean the sewage spill without any disinfectant. I need to take all necessary measures including disinfectants, replacement of affected garden equipment and items such as paving stones, pebbles to keep my family safe.*

7. On 4 June 2022, the customer informed the company that he had been told by the waste engineer (presumably from XX) that he needed an NRV. The following then occurred:



- 7 June 2022 – the company emailed the customer to acknowledge his complaint.
- 8 June 2022 – the customer called the company for an update on his complaint and wanting to know what would be done to fix the issue.
- 9 June 2022 – the company emailed the customer to advise of next steps and investigations. This email stated:

*I understand that, as we have previously discussed, you would like an NRV installed at your property and to ensure that this indeed is the right step we will need to do some further investigative work, specifically:*

*1., I have asked the attending crew to return and carry out a full CCTV survey on the sewer mains to ensure that the previous repair is not defective, and this isn't causing further incidents at your property.*

*2., If no defects are found we can concur that this is indeed hydraulic overload and we will start assessment of the feasibility of an NRV installation. Firstly, we will need to ensure that the foul and surface water sewers are separated at your property, as if these are combined and an NRV is put in place, this will shut the valve during rain and if rainwater from roof, etc. keeps draining into a combined foul and surface water sewer flooding would even more frequently occur with an NRV in place. To assess this our Network Technicians would need to carry out some routine dye tests at your property. I will let you know if we need to do this with a proposed date of attendance.*

*3., If it is found that the two sewers are indeed separated we will need to do some further modelling to ensure that runoff from nearby fields, etc isn't infiltrating the foul sewer at your property, as again if this should occur with an NRV in place it would cause more adverse effects and flooding would likely occur even more frequently.*

- 10 June 2022 – the customer called the company chasing an update on works to be done and on the same day the company confirmed details and the customer emailed the company stating that a full CCTV crew would return to the property to look at the mains sewer and check the previous repair. The email said:

*if no defects are found we can concur this is indeed a hydraulic overload issue, and we will start assessment of the feasibility of a NRV installation.*

The customer was also warned that the foul and surface water drainage arrangements would need to be separate at the customer's property and that dye tests would need to be undertaken. The customer confirmed this with additional comments.

- 22 June 2022 – the customer called the company to chase the works.
- 23 June 2022 – the customer emailed the company to confirm the visit from the survey team. He said that a camera survey had been carried out within the property up to the manhole outside and it is all clear and that the manhole is serving only his property. He said that without any blockage identified, hydraulic pressure was causing this recurring issue, and that the NRV was needed. He explained also that the survey team had continued the survey further downstream to make sure that all was clear.
- 30 June 2022 – the customer called the company requesting an update on the NRV being fitted.

8. On 1 July 2022, the company said:

*I have reviewed the footage and agree with the attending crew's conclusion that there are no further defects in the shared sewer that could have contributed to the flooding. This means that this is now a confirmed hydraulic flooding incident and we will move onto the next steps mentioned in my previous letter, to ensure that installing an NRV would indeed be a feasible resolution of the ongoing flooding issues.*

*These are:*

*1. Firstly, we will need to ensure the foul and surface water sewers are separated at your property. If these are combined and a NRV is put in place, this will shut the valve during rain and if rainwater from the roof keeps draining into a combined sewer line, flooding would frequently occur with an NRV in place, causing future complications. To assess this our network technicians would need to carry out some routine dye tests at your property. I will inform you if we need to do this with a proposed date for attendance.*

*2. Further modelling to ensure the runoff from nearby fields etc, isn't infiltrating the foul sewer at your property.*

*I have now raised a job for our Network Technicians to carry out the aforementioned checks and one of my colleagues from our scheduling team will be in touch with a proposed attendance date.*

I find that this constituted confirmation by the company that the problem was one of hydraulic flooding and that the other considerations were those relating to surface drainage, adjacent run-off. I find that the customer was led to believe that this would mean that if these issues could be resolved, he would be eligible for an NRV and that this would be the solution to the recurrent problem.

9. The following then occurred:

- 1 July 2022 – the customer emailed the company acknowledging the above email and providing further comments on next steps. The company also gave a further explanation by annotating the customer's email.
- 7 July /2022 – the customer called the company wanting an update.
- 11 July /2022 – the customer emailed the company thanking it for the dye test and asking for the NRV. He commented that the outcome of the test we observed is positive to install the NRV to prevent this recurrent back feed from the system.
- 13 July 2022 – the company emailed the customer advising on the outcome of the dye test and to advise that the company was unable to fit on the current system an NRV as the roof drains and foul stacks were connected to the same pipe which is connected onto the main foul sewer. The company said that he should:

*reconfigure the private drains so that the roof drains are separated and connected either to the storm sewer or onto a soakaway. Because these works are required on a single serving private drain that is still within the property boundary we aren't able to do these works ourselves as these drains are the homeowner's responsibility to maintain.*

The customer also called the company to discuss this.

- 15 July 2022 – the company emailed the customer to advise that his concerns had been escalated and requesting a call for him to be updated.
- 19 July /2022 – the company emailed the customer replying at stage 1 of the complaints procedure confirming its stance. The customer then called the company advising that he

wanted to escalate his complaint to stage 2. He also asked for a call from the waste team. He did not believe that consideration of his complaint had been complete and was dissatisfied that different information had been supplied to the company and the customer by those carrying out the dye tests.

- 21 July 2022 – the company called the customer asking about the NRV and on the same day emailed the customer acknowledging his further complaint and giving a timescale for a response.
- 26 July 2022 – the company called the customer to advise that a further dye test should be carried out to ensure that the drains have been separated.
- 26 July 2022 – the customer called the company for an update.

10. The company sent the customer an email dated 29 July 2022 following the departure of **XX** the company. The email stated:

*Following our phone call at 1pm today we discussed the notes from the engineers which gave the go ahead for the NRV(non-return valve) to be fitted to your foul water sewer.*

*I mentioned that this is on hold for a moment as **XX** has left the company, I'm in the process of chasing up the next person who can arrange a visit for you, as this all happened on short notice I will call you back mid-week to give you an update.*

The customer says about this email that it reflects that the company had committed to installing the non-return valve. I find that this overstates the impact of the content. I find that it confirms that the engineers had said that the company could usefully install an NRV and that any NRV was conditional, but it does not confirm that the company had decided that it should commit its resources to prioritizing this issue above other matters that the company might also have to address. The impact of the email was clear in one sense: as at 29 July 2022, the project was on hold.

11. The following exchanges then occurred:

- 1 August 2022 – the customer called the company to speak to his caseworker. On the same day, the customer asked the company to provide the company with information

about other occasions of flooding and provided a questionnaire. The company said that completing the questionnaire would:

*... enable me to increase the risk benefit of fitting an NRV. I should be able to move the NRV installation up onto a priority work list which is driven by risk ( number of previous events) X severity ( internal, external flooding )*  
*Once received we'll validate the additional data against rainfall and update your properties incident data.*

This, I find, gave a clear indication to the customer that he would be likely to receive a NRV and be moved up the priority list due to previous incidents.

- 4 August 2022 – the company told the customer that it would have a meeting soon. On the same day, the customer responded to the company that it should already have the requested information but would reply. He asked again for the NRV to be fitted. The company replied to thank the customer.
- 17 August 2022 – the company told the customer that the NRV team could not provide a timescale but the issue was with the NRV team. The customer responded to say that he wanted a plan of action. He asked for the contact details of the NRV team. The company contacted the customer by telephone and “told him we'll will find out a rough idea of what is going to happen and when and will let him know”.
- 19 August 2022 – the customer emailed the company chasing next steps.
- 23 August 2022 – the company emailed the customer with an update and the customer again emailed asking for an update. The company said:

*I understand how stressful sewer flooding is for you. My intention is to protect your property with the NRV however there are several steps we need to go through first. Thank you for returning the flooding questionnaire.*

*The next step is to add these incidents to our company Hydraulic Flood Risk register. Once we've completed this it should increase the priority of getting a NRV fitted. Currently we only have one external flooding recorded which is currently unlikely to promote an NRV.*

*One of my team is working through this exercise this week.*

This, I find, gave the customer the impression that the customer would be provided with an NRV, but the timescale and priority was uncertain. It is unclear why the company only had one incident listed as in August 2021, the company was able to tell the customer of five previous incidents of flooding.

- 30 August 2022 – the customer relined his gutter and changed the fittings so that surface water did not enter the foul drain. This cost £260.00.
- 5 September 2022 – the customer again asked for a plan of action and the company said that the request is with the relevant team. The customer states that he was told that he would be provided with a plan of action by 5 September 2022, although this does not appear to have been recorded in the email exchanges.
- 6 September 2022 – the company spoke to the customer to advise that the NRV will be added to the programme and the customer was told that the NRV would be installed potentially within 10 months. The customer expressed unhappiness about this timescale and complained that the company was not taking the complaint seriously.
- 12 September 2022 – the Consumer Council for Water (CCWater) emailed the company with a referral.
- 20 September 2022 – the company emailed the customer with stage 2 response and also responded to the CCWater referral. The company said to the customer:

*I'm aware **XX** has discussed the process with you and how your property will be assessed for mitigation in line with our process. Currently, this is around 10 months and as **XX** mentioned, could change depending on review and either be bought forward or pushed back. Once we're in a position to install the NRV, the relevant team will be in touch with you.*

- 5 October 2022 – the customer emailed the company to advise of further backfeed from sewage system and again requesting an NRV. On the same day he asked for prioritization of this and repeated his request on the following day.

12. The company came out to investigate on 6 October 2022 and found the presence of tree roots downstream from the connection point with the customer's sewer although the customer stated that the problem was one of backfeed.

13. On 7 October 2022, the customer wrote:

*Again the camera check within the property came clean, while the sewage connection from the external manhole to the main sewage line indicated few roots. However the basic cause of system backfeed remains and it can be clearly seen from the pictures sent to you yesterday indicating different levels of sewage within the span of 10 - 15 minutes. If the NRV can be located at the manhole, this will prevent any further backfeeds into the property.*

*I look forward to hear from you soon based on the assessment carried out today (6-10-2022) and the incident evidence to expedite the installation of the NRV before further incidents occur.*

14. On 14 October 2022, the customer again complained of backfeed from the sewer and asked for the NRV to be fitted immediately. He also sent further chasers asking for a reply.

15. On 25 October 2022 the company advised the customer his property does not yet meet the suitability assessment criteria and NRV's are not a solution to flooding caused by blockages or pipe restrictions. The company stated the following:

*I've explained the main sewer is under capacity during more extreme rainfall events. As you will appreciate, our investment to resolve flooding issues across our operational area, which includes 97,000km of public sewers, has to be prioritised. We prioritise by taking into account whether the flooding is inside our customer's property, the impact on our customers, the frequency and severity of sewer flooding and feedback from our customers in terms of their willingness to pay, via high bills, for certain enhancements and improvements to the sewerage network. We also consider the views of our regulator, OFWAT, and our customers who are represented by the Consumer Council for Water (CCW). This approach means that we direct our resources to areas where there is the greatest impact and thus need. Our approvals board review this programme of work and prioritise this investment continually so it's really important that we have recorded each flooding event both historic and future. This approach ensures that we keep our bills low whilst balancing the needs of our customers.*

*With this in mind there are no current plans, within the current regulatory period 2020- 2025, for any flooding schemes to upsize pipes within the **XX**.*

*As you have suffered flooding on several occasions and during low rainfall we extended our*

*investigation scope across a wider area of sewer pipes which revealed tree roots that had entered the main sewer causing a partial restriction to sewer capacity. The roots have now been removed and we are to install a liner within the pipe to prevent future root ingress. Following the weekends heavy rainfall, your property did not flood which is a good indication that the main cause of the problem has been remediated and therefore flood risk is now much lower.*

*Regarding the NRV installation we regularly run a report where properties are assessed based on frequency and severity of hydraulic flooding. Currently your property has yet to meet the NRV suitability assessment criteria, however the roots may have been a major contributing factor to all historic flooding where they have compounded an under capacity sewer during lower rainfall events.*

*I also wanted to mention that NRVs are not a solution to flooding caused by blockages or pipe restrictions and are solely used to protect properties from hydraulic overloaded sewer flooding. They are also not suitable in all instances dependant on several factors which include ground and manhole levels, creating flood risk elsewhere or surface water trapped with system when No return valve closes.*

Although the customer was told that the company would continue to assess his property for the suitability of an NRV to be fitted, I find that this would have seemed to the customer to have been a significant change of position on the part of the company. The tenor of the correspondence is not that the customer's case would justify the NVR but that he might have to wait up to 10 months, rather it is that, on the basis of the evidence, his case did not qualify and there was no indication that it ever would qualify. The company gave a detailed explanation of the most recent flooding event which it stated was caused by tree roots, but also said that the recent event was "not due to hydraulic overload that has caused previous events".

16. The customer responded on 26 October 2022 pointing out how long the process had taken and asked why it was that the tree root problem had not been identified sooner and said that there had been multiple backflows. He also pointed out that the company stated on its website that it helps residents by providing or giving advice about non-return valves. He asked for a guarantee that there would be no further flooding.
17. On 21 November 2022, the company told the customer that fitting an NRV is not on its programme of work due to priorities of other customers. The customer again asked for a guarantee that his property would not become flooded again by backflow.



18. The reason given for the company's current opinion is that during low rainfall, the company had investigated a wider area of the sewer and found that tree roots had restricted the sewer capacity. The company says that it has now installed a liner and that an NRV is not a solution to this issue. The customer asks me to direct that the company should install an NRV in the manhole outside his property.

19. This, however, is not a direction that can be made under this Scheme. My reasons for this statement are that:

- a. Under the Water Industry Act 1991, sewerage companies cannot generally be found liable by the courts 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. These have been made in this case.
- a. The reason for this position is that 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 Thames Water*, ([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 their networks. The Water Industry Act 1991 was interpreted to have reserved this issue to Ofwat.
- b. 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. I am mindful that in making changes to the company's assets, the company is required to weigh up the relative merits and needs of all its customers. 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 the customer cannot succeed in relation to this aspect of her claim.
- c. This is underlined by rule 3.5 of the Water Redress Scheme Rules which states that WATRS cannot be used to adjudicate disputes that fall into one or more categories, including "any matters over which OFWAT has powers to determinate an outcome".

20. It follows from the above that the outcome that the customer specifically requests is not one that I can provide, because I cannot direct that the company shall prioritise the customer's case over those of other customers and the company has explained its priorities to the customer. Although the customer says in response to my Preliminary Decision that his request for an NRV does not involve capital expenditure, I find that he is incorrect as to this, and, in particular it is the fact that the installation of the NRV is a capital project that prevents the company from allocating this work to its prioritised work programme, whether or not the value of the expenditure is, as he suggests, a "couple of hundred pounds".

21. I can, however, address the customer service issues, including the explanations that have been given to the customer over a long period. The customer has submitted evidence that showed that he had been engaged with the company on the issue of an NRV for a period of nearly 2 ½ years before the company stated specifically in November 2021 that the customer's case did not meet its criteria for its current work programme.

22. The customer complains of:

- a. Omission to carry out a proper diagnosis or apply a permanent solution.
- b. That the company has refused him a guarantee.
- c. That it has changed its position
- d. That the customer's time has been wasted.
- e. That the customer was encouraged to carry out unnecessary works.

Omission to carry out a proper diagnosis and offer a concluded outcome.

23. As for the customer's complaint that the company has not offered a proper diagnosis, I find that the company's position is unclear. It is notable that the company accepts that some previous events at least were due to hydraulic overload, but it also suggests that the customer's current situation might be ameliorated by the clearance of the tree roots. Notably, the company does not say that this will certainly be so, and any such assertion would appear to be inconsistent with the survey that was carried out in June 2022, where no obstructions were found in the sewer notwithstanding investigation downstream. The company says that the assessment in October /

November was wider than previously, presumably implying that this could be the situation, but no clear evidence has been given for this. I am mindful that previous investigations have specifically concerned whether the cause of the flooding was hydraulic overload not blockage. I find that if tree roots had been causing an obstruction during previous investigations, an average customer would reasonably have expected these to have been found. If tree roots have grown into the sewer since previous investigations, then it would follow that the tree roots were not responsible for previous flooding incidents.

24. I find that the position of the company now is that it will wait to see whether there are further flooding incidents and may re-assess the position after this has become more apparent, but there is considerable uncertainty whether it will ever happen. This, I find, is not an irrational position on the part of the company, which must weigh up its allocation of resources in accordance with recognised priorities, which it has explained to the customer.

25. However, it follows, I find, that the customer is right that he does not now have a clear diagnosis of the problem and nor is it certain whether any further works will be done. This is a less satisfactory position than that which he had previously been led to believe would be the situation, namely that an NRV would be fitted but it could not be said when this would happen. I find that, after a process that has extended for 2 ½ years in which the company has offered assurances to him on several occasions that it was working towards the flood protection that he asks for, it is foreseeable that this conclusion is distressing and frustrating. I further find that this is all the more the case because the company has not commented in its correspondence on the customer's expressed concern about environmental pollution and the pollution caused in the neighbouring playing field. I find that an average customer would reasonably have expected that the company would have reached a conclusion based on previous incidents and current tree roots in a significantly shorter time and without raising the customer's hopes of a higher level of protection. I also find that the company's suggestion at one point that there had only been one previous incident, its likely to have caused distress.

#### Refusal of a guarantee

26. The customer complains that the company has refused him a guarantee that he will not be flooded again, but I find that an average customer would not reasonably expect the company to provide such a guarantee. Not only would the company not reasonably be able to make such a promise because it cannot guarantee that obstructions in the sewer will not arise due to others' misuse, but also the guarantee would be inconsistent with the company's decision that it will engage in continued fact-finding, following the installation of a liner.

### Change of position

27. As indicated above, I do find that the company would reasonably have been understood to have changed its position. While I find that some new evidence may have come to light (the presence of tree roots), the company cannot say definitively that these influence previous flooding incidents and it has moved from a position where the installation of an NRV would be desirable if it can be justified according to the number and frequency of incidents to a position where the company has not decided whether this is a desirable expenditure or not.

28. As indicated above, this is likely to be a cause of upset and frustration to the customer and his family, especially as his engagement with the proposed investigation of the problem has been substantial and a source of inconvenience over an extended period of 2 ½ years in which the customer has been asking for an update on when the valve would be installed and / or a decision made. I further find that, taking into account the distress and inconvenience that any incident of flood can cause to customers, it is likely that the company's current position will leave him without peace of mind and in fear of occurrences of heavy rainfall for a considerable time into the future, even if the company is correct that no further incidents of flooding will occur.

### Wasted time

29. The customer says that over this 2 ½ year period, he has spent more than 150 hours of professional time to justify the case to the company, respond to its emails, report to the company's call centre, follow up, has engaged and supervised the camera scan, facilitated surveys within the property, assisted and supervised the dye test, as well as arranged for clean-up works and undertaken disinfection of his garden.

### Unnecessary works

30. It is clear from the documentation referred to above that, in order to qualify for the installation of an NRV, the customer has undertaken expenditure because he has reconfigured the surface water drainage at his house so that this does not flow into the sewer. I am mindful that whereas modern houses would be constructed so that surface water run-off would lead to a soakaway, older properties that were lawfully constructed such that run-off from roofs fed into the sewers are not required to be modified.

31. At the request of the company and specifically in order to qualify for the provision of an NRV the customer has reconfigured the drainage arrangements of his home at a cost to him of £260.00.

32. The customer also makes reference to the cost to him of cleaning and disinfection, but I find that this would have been necessary in any event.

### Conclusion

33. It follows from the above that I cannot make the direction that the customer wants, but I can direct an apology to the customer for the time taken to arrive at the current position and, if the company considers that tree roots may have caused previous flooding incidents, an apology and explanation for why these had not previously been detected. This should give information about the difference between the most recent and previous downstream surveys.

34. I was not initially asked to direct compensation for inconvenience and distress. For the reasons given above, I would have been willing to make such an award but this would have been a relatively modest amount in accordance with the WATRS Guide to Compensation for Inconvenience and Distress – the principal matter for which compensation was to be given not being that caused by flooding (which as explained above I cannot award) but that appropriate to the distress and inconvenience occasioned by the company's change of mind. I indicated at the Preliminary stage that I did not find the matter exceptional and therefore I did not under the Scheme rules, have jurisdiction to award compensation that had not been asked for.

35. The customer has now asked for compensation. He says:

*a. XX caused me and my family XX throughout the whole process generated by XX and XX owned assets onto my property, which could be due to tree roots or hydraulic or both. XX has made me to spend money to rearrange my internal sewer as part of their analysis to provide NRV as solution which is not abided. I had to spend 150 hours of my professional time in pursuing this redressal since 2020. Hence, I request you to provide me with monetary compensation from XX for the extreme distress caused.*

36. I do not find a request for an increase in the remedy to be a matter of new complaint, and therefore it is within rule 5.5.3 of the Scheme rules. I find that the customer is entitled to make this change to his stance. Rule 5.5.4 of the Scheme rules states that I have:

*the discretion to take such comments (and additional evidence) into account. The adjudicator has the power to make any amendments he or she considers appropriate to the*

*Preliminary Decision before finalising it as the Decision.*

37. Rule 6.1 of the Scheme rules says:

*The adjudicator will base final determinations on what is fair and reasonable, having regard to relevant information provided in the dispute by both the customer and the company, good industry practice, relevant industry codes of practice and the law. Where, in the opinion of the adjudicator, the company has failed to act reasonably and fairly the adjudicator may make an award in respect of non-financial losses.*

38. Taking the above into account, I find that this should be assessed in accordance with the WATRS Guide to Compensation for Inconvenience and Distress. As I had not indicated in my Preliminary Decision that an amount of compensation would be directed, I gave the company on 28 February 2023 an opportunity to comment on this proposal but no comments have been received.

39. Having regard to the period for which the customer had been led to believe that an NRV would be installed at some point, the works that he undertook in reliance on this, the level of distress caused by each flooding incident as explained in correspondence to the company, the omission to comment on his expressed concern about the environmental impact of the floods and the fear and uncertainty that is consequential on the company's decision (all of which are aggravating factors that make a mere change of position more serious), I find that the level of inconvenience and distress falls towards the top of Tier 2. I find that that the company should pay compensation to the customer in the sum of £450.00.

40. The customer has alluded in his response to my Preliminary Decision to various other outcomes that he would wish for, but these are not within my powers and I do not direct these.

#### **Outcome**

The company needs to:

**[www.WATRS.org](http://www.WATRS.org) | [info@watrs.org](mailto:info@watrs.org)**

1. Apologise to the customer for the time taken to arrive at the current position.
2. If the company considers that tree roots may have caused previous flooding incidents, the apology should also include an explanation for why these had

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- 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.

## Claire Andrews

**Claire Andrews**, Barrister, FCI Arb.

**Adjudicator**