

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X848

Date of Final Decision: 18 April 2022

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer, a pensioner, complains that he experienced internal flooding what has contaminated the soil under part of his property. He says that the company could have prevented this following an incident in 2018 and that this instance of flooding could have been caused by a failure of a pump at the pumping station or was due to a blockage in defective pipework. He asks for a contribution towards the £12,000.00 uninsured cost of replacing the subsoil. He also complains about the suitability of the measures taken by the company to protect against future floods.

Response

The company says that it is not liable for this claim which should be made on a customer's household insurance. The company is not liable to make payment because the customer was not in a financial position to include insurance against flooding. It has investigated the cause of the flood and has taken measures intended to stop this from happening again but has no further financial responsibility for damage.

Findings

I find that even though the customer is financially vulnerable, it does not follow that the company is liable to contribute to the cost of replacing the soil under the customer's home. The allocation of priorities and resources are outside the scope of the WATRS Scheme and I find that the evidence does not support a finding that the company failed to supply its services to the standard that would be reasonably expected. On balance, the evidence does not show that the flood was caused by something that happened at the pumping station or by pipework "not being properly dimensioned or kept up" and the company is willing to remedy problems caused by its flood protection measures.

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Outcome

The company does not need to take further action.

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Case Outline

The customer's complaint is that:

- The customer had internal flooding in August 2020 resulting in damage. The customer is unhappy that whilst the company has undertaken a clean-up outside his house it has not provided any help with the internal damage (polluted soil under floorboards).
- The customer disagrees that the flooding was caused by hydraulic overload and states he was told by an on-site contractor that he would call the company to switch the pumping station on again. Within 10 minutes of this the water was gone (like removing a bath plug). The customer believes that a switch may have tripped and says that the company is covering up this situation.
- The customer has house insurance but can't get flooding insurance because it's too expensive as he lives so close to the river
- The customer, who is a pensioner and vulnerable, wants the company to de-contaminate his front lounge. Half of his front lounge (28ft long) is concreted, and half has a suspended floor. The soil underneath the cavity section was polluted because sewage came through the airbricks. The soil needs digging and underlay/laminate replacing. The customer is elderly and says that this is not healthy to be breathing in.
- The customer has been quoted £12,000.00 for the work and has sent a copy to the company. The customer cannot afford the full cost of this work himself

The company's response is that:

- The customer first contacted the company to report flooding on 16 August 2020. This had been caused by an extreme weather event, causing hydraulic overload of the public sewerage network. In this instance it was far above the design levels of the network. Public sewerage network systems are designed to withstand a certain level of rainfall, a 1 in 30-year storm. Extreme weather events are not something the company or any waste provider would be deemed liable for.
- The company attended the customer's property on 29 April 2021 to conduct a survey for flood mitigation. The company has since installed a flood gate to the front of the customer's home to stop the highway flooding into the property, diverted guttering from a neighbouring property to

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join onto number 11, installed a drain to the rear of the property in front of the patio door, as this area was deemed high risk and inserted two non-return valves into the sewer network to prevent backflow of water. Works were completed on 5 July 2021. These works, including works to a neighbouring property, totalled a cost of £7,337.50.

- The company is also aware that the customer has diverted the outside patio area into a shower extension with a brick being left out of the construction deliberately as a drainage route. The water from the garden/patio area would enter the house through this missing brick. In a large rainfall event, as per the reported flooding, the drain inside the extension would be unlikely to take this flow from the outside area. As there was little to no threshold between this extension and the main ground floor, the risk of the entire ground floor flooding was excessively high. This type of construction, missing a brick at ground level, would not pass Building Regulations. The company has now rectified this by installing patio drainage for the customer.
- The customer states that he was told that the flooding was impacted by a failure in the pumping station. The company has investigated, and it is unaware of any issues with the pumping station around the time of the event. The council were on site with a jet vac, tankering the water away from the properties. The customer has no evidence to support his assertion that the pumping station was at fault rather than the extreme weather event. As with all cases of hydraulic overload, once the rain stops the system will slowly return to normal and the water will subside. The pumping station was working as it should and the company is not liable for the flooding at the customer's property.
- As per the company's policy, the customer would need to claim on home insurance in respect of repairs to the inside of his property. The customer does not have flooding insurance, but this is something the company is not able to assist with. The company is not expert in the removal of contaminated belongings which is why it will only provide a basic clean-up. Whilst the company sympathises with the customer because he did not have flood insurance, it is not something the company should be expected to cover as it has to be fair and consistent across its customer base.

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

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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 confirm that in reaching my Final Decision, I have also taken into account the customer's comments on my Preliminary Decision dated 5 April 2022.

How was this decision reached?

1. I am mindful that, as the Consumer Council for Water (CCWater) points out, the customer is vulnerable because as a pensioner, he has limited financial resources. I take this into account in reaching my decision below. Nonetheless, I am also mindful that a company will not be liable to make contributions to customers' adverse circumstances unless the company has also failed to meet the expectations of an average customer notionally placed in the customer's situation, including taking into account his vulnerability.
2. I turn first to the general position relating to flooding from sewers. I remind the parties that my powers under this Scheme are limited. My reasons for this statement are that:
 - a. Under the Water Industry Act 1991, sewerage companies are not generally liable for the escape of the contents of public sewers in the absence of negligence. 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 the network. The reason for this decision was that overview of the company's decision-making in this area was found to be, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts.
 - b. I am mindful that in making changes to or maintaining 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 because Ofwat and companies have access to an industry overview which a court, confined to the evidence in a particular case, does not.
 - c. 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 or maintenance. It does not have access to information that would enable it to undertake such a review.
 - d. Additionally, I draw attention to rule 3.5 of the Water Redress Scheme Rules (2022 edition) which states that WATRS cannot be used to adjudicate disputes which fall into one or

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more categories, including “any matters over which Ofwat has powers to determinate an outcome”. Accordingly, in accordance with the WATRS Scheme Rules, any claims that flooding was caused by a strategic decision of the company cannot be reviewed by an adjudicator.

3. However, I note that in this case, the customer, who experienced internal flooding at his home, did not initially say that this was caused by a strategic decision, and he does not challenge the company’s overall approach, which is to construct its network to withstand a 1 in 30-year storm event. He has, however, challenged the company as to why it did not carry out protective work when his property was placed on the “at risk” register following flooding in 2018 and he says in response to my Preliminary Decision that the pipework providing drainage from his home was “not ... properly dimensioned or kept up”. I find, however, that the company investigated the flooding and decided to take no action at the time but to monitor the position by placing the property on its “at risk” register. This decision, I find, cannot be the subject of a decision by me because it relates to the allocation of priorities and resources which for the reasons given above, fall outside the scope of this Scheme.
4. At the time that I issued my Preliminary Decision, the customer’s principal concern appeared to be his belief that the flooding at his home happened because a switch had tripped or been turned off at the pumping station and this caused the sewer to overflow. This, he said, was an incident of poor operations or carelessness and, therefore, he argued, was within the scope of the Scheme. He says that the company and not he should be liable to pay the cost of remediation. The company says that no issue arose at the pumping station.
5. I considered the customer’s evidence about this with some care. The customer says that during the flooding he went to the front of the property and saw a privately employed tanker driver parked at the bottom of (REDACTED) opposite the (REDACTED) pumping station. He says that the tanker driver said that he had been on the phone to the company and that it had stated that it would turn the pump back on at the pumping station. By the time he had walked back for a few minutes, the water was starting to go down and within 10 minutes all the water had drained away from the back of the house even though it was raining heavily. The customer therefore said that the explanation for this flooding was a pumping station failure. In his response to my Preliminary Decision, however, the customer said that he:

merely offer[s] this as a possibility to the cause after having a conversation with the private tanker and pump operator parked in (REDACTED) but with The Company’s drain not being properly dimensioned or kept up

The customer also relies on the fact that work was done by the company to prevent further flooding as an indication that poor pipework was the cause of the flood.

6. The company on the other hand says that water drains quickly when the cause of the flood is removed, for example by improvement in the weather or removal of a blockage, and also the council was present with a tanker evacuating the flood water. It also states that it has

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investigated whether there was an incident at the pumping station and as nothing has been found it does not agree with the customer's explanation.

7. I find that it is probable that if there had been an incident or error at the pumping station, this would have been recorded in some way. The company says that it has carried out an investigation and confirms that there is no confirmation of any pump having been disconnected or switched off on the night in question. I am mindful that the company's employees would have no obvious reason to cover up a failure of the pumps if there had been a mechanical failure. It may be that if an employee had accidentally turned off the pump, he might feel a reason to deny this, but there is no evidence that this is what happened. I have to record that there is also a level of uncertainty about the reliability of the information given to the customer by the tanker driver. This information has not been backed up by any documentary evidence and it appears that the driver was not an employee of the company. There is thus no reason to believe that the driver was in a position to know what had happened in the pumping station or to have authority to instruct the pumping station to restart a pump. I find, therefore, that it does not follow from the fact that the tanker driver stated that he would take certain action that he was empowered to do this or that the account that he gave to the customer was, in all the circumstances, accurate. Accordingly, while I understand the customer's concerns about what he was told, I do not find that the evidence supports that the company's actions had caused the flood or that the company is concealing what really happened. This is all the more the case, I find, because this was not the first occasion of flooding. The customer has stated that a less serious flood occurred in 2018 which is consistent, I find, with the property being subject to flooding when the sewers become too full.
8. As indicated above, it does not follow from the fact that the company has undertaken repair or improvement works after the flood in August 2020 that this points to liability on the part of the company for flood damage and nor, as also explained, can I find that the company should have allocated its resources to make repairs or changed the pipework to a larger size before the flood affected the customer.
9. It follows from the above that I am not, on the basis of the evidence, persuaded that the company has failed to provide its services to the expected standard because of something that happened at the pumping station and nor do I have jurisdiction to oversee the company's decisions on its allocation of resources.
10. I find that the company would reasonably have been expected, however, to investigate the flooding and see whether further action should be taken to prevent recurrence. I am satisfied that the company has done this, as set out in its response to the application.
11. I note that the customer challenges the efficacy of some of the actions taken by the company to prevent future floods. He says that the guttering that now runs across the back of his house from number 15 is too shallow to deal with the amount of water and debris that drains off number 15. The company's contractors had to be called out after the first medium rain fall as water and debris was cascading over the top of the gutter into the customer's small yard. The

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company carried out some additional work, but the customer still has a problem with water and debris off number 15. If he had known this he would not have agreed to the gutter change and he believes that the system needs to be upgraded. He also complains that, whilst carrying out work to the drains in the restaurant car park, the company's contractors damaged the customer's guttering and down spout. The customer says that he has reported this twice but is still waiting for this to be done.

12. As for the gate, the customer says that the gate that was first suggested was only a metre in height. Due to work carried out some time ago by the Highways Agency his house now has a step down of some 6in which would have meant a gate of 33in to replace a joint gate of 6ft. The customer's neighbour has so far had to call the company a number of times due to problems caused by this gate and three times they have carried out repairs and it is still insufficient.
13. The customer also says that only one non-return valve benefits his property.
14. If the customer is experiencing additional problems, I find that an average customer would reasonably expect that the company would review the impact of the work that has been done to prevent recurrence. In its letter of 17 January 2022 to CCWater, the company has indicated that it is willing to book a site visit with the customer and to discuss the problems experienced by him as a consequence of the remediation work and take action where appropriate. On 23 February 2022, the company asked the customer to suggest some dates.
15. It follows from the above that, even though I accept that the experience of contaminated water under the floor was unpleasant and unwelcome, it does not follow that the company is liable for this and I find that in all the circumstances of this case, the company has not failed to provide its services to the expected standard.
16. It follows that I find that the customer is not able to succeed in his claim for a remedy.

Outcome

The company does not need to take further action.

What happens next?

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

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- 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

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