

WATRS

Water Redress Scheme

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DECISION

by A. Jennings-Mitchell BA (Hons), DipLaw, PgDip (Legal Practice), MCIArb

An adjudicator appointed by WATRS

under the Water Redress Scheme

Decision date: 13 January 2016

Adjudication Reference: WAT/ [REDACTED]/0035

Between [REDACTED]¹ and [REDACTED]²

- The claim is made by the customer, [REDACTED] against a water and sewerage company, [REDACTED]
 - The claim dated 13 December 2015 ('the Claim') is for the company to:
 - take the action: reroute the manholes and pipes outside the customer's property; have a third party professionally assess whether: the floodings have caused damage to the customer's property; if the bacteria and viruses released have damaged his garden or affected his or his family's health or; if the disinfectant used or the waste water is the cause of several pine trees dying in the customer's garden. The customer asserts that only then can he assess if the £500.00 offered is reasonable compensation.
 - Pay him compensation (unspecified amount). The customer asserts that the company is responsible for any loss in value of his property due to its failure to maintain the sewers and for any other issues caused by the floodings e.g. health, structure of property, subsidence.
 - The position of the company is explained in its 8 December 2015 defence ('the Defence') which has been disputed by the customer in his undated reply.
 - The customer's claim concerns incidents of external flooding at his property and the company's response to the problems.
 - The company's position is that it denies liability to the customer.
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Decision

1. The claim succeeds in part.

¹ Customer's address for correspondence: [REDACTED]

² Company's address for correspondence: [REDACTED]

2. I direct that the company pay the customer total compensation of £994.24 (the company is entitled to cancel the original uncashed cheque issued for £254.55 or deduct any amount already paid to the customer from the above compensation amount).

Main issues

3. I consider that the main issues in this adjudication are:
 - a. Whether the company has failed to provide its services to the standard to be reasonably expected.
 - b. Whether the reasons given by the customer are sufficient to justify the remedies sought.

Background information

4. In order to succeed in a claim against the company the customer must prove 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 proved, the company will not be liable.
5. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

6. The customer submits that he and his wife have experienced flooding in his garden where dirty water has erupted from the manholes in his garden. Further when the company was performing some maintenance by cleaning the pipes at his property, it caused his kitchen sink to erupt a fountain of dirty water requiring a professional clean up. The customer asserts that the company has listed three garden flooding events however they recall more than three incidents. The company has blamed the floodings on blockages of fat that was not their responsibility. The company has cleaned/disinfected the garden and then implemented a maintenance plan with periodic cleansing of the pipes. So far the flooding episodes have stopped. However from discussion with the company he understands that pipes are around 20 cm in diameter and that even a nappy can clog them. The customer asserts that he is not satisfied with the company's response to the flooding incidents. The customer requests that the company take action to stop the flooding including rerouting the manholes outside of his property as the company has stated they cannot be bolted down. The customer also requests that a third party professionally

assess the damage caused to his property, garden, plants and trees and also assess if the sewage emissions have affected his and his family's health and pay reasonable compensation based on the findings.

7. The company asserts that its records show that the customer has reported three flooding incidents. The first was on 5 September 2013 where the customer called to report there was waste water leaking out of the manhole at the front of his property. The second was on 24 May 2014 when the customer called to report that his garden was flooding and the last was on 1 September 2014 where the customer called and advised that the manhole at the back of his garden was overflowing. It fully investigated each flooding incident and found that the first occasion was caused by a blockage on its sewers and the second two by a build-up of fat and grease after checking the neighbouring pumping station. It completed a full clean up on each occasion and deep cleaned the sewers and wet walls within the neighbouring pumping station to remove fat, grease and scale. It has also provided a leaflet to residents in the area to educate them on the issue and also provided them with a fat trap to dispose their fat into. It has also implemented a maintenance plan meaning that every six months it checks the sewer to make sure it is flowing freely and that there is no build-up of fat and grease, if there is the sewer is thoroughly cleaned. So far, since implementing the system there have been no further incidents of blockages or flooding at the customer's home. The company admits that unfortunately during the cleaning of the sewer in December 2014, due to a build-up of pressure, the customer's kitchen sink was internally flooded by waste being pushed up through his sink; this is known as a "blowback" and cannot always be foreseen. It arranged for a clean-up crew to attend who cleaned up and disinfected the kitchen.
8. The company submits that it is not liable for sewer flooding caused by factors outside of its control such as third parties discharging unsuitable materials into the sewer network but it will respond accordingly. However under the terms of its Customer Guarantee Scheme (CGS), customers who are flooded externally and meet specific criteria are entitled to a payment (in addition to any insurance payment that the customer may be entitled to). It is industry wide and is designed to compensate customers for associated inconvenience. It is not an admission of liability. In this instance the customer met the criteria on two occasions however, as a goodwill gesture it paid him for the third flooding incident that did not meet the criteria and in total a cheque for £254.55 was forwarded however so far the customer has refused the payment. In addition it has identified that the customer did not receive a CGS payment in recognition of the internal flooding therefore it has arranged for a further £289.69 to be made to him. This includes £169.69 CGS payment in recognition of the internal flooding, a £20.00 automatic late penalty payment, plus an additional £100.00 as a goodwill gesture for the extended delay in making this payment. The company denies that the floodings will reduce the value of the customer's property however asserts it would not be liable for any such reduction.

Adjudicator's findings and reasons

9. I find that:

- a. The issue in dispute concerns incidents of internal and external flooding at the customer's property: [REDACTED] ('the Property'), as a result of sewage escapes.
- b. It is agreed between the parties that the customer has experienced instances of external flooding and one instance of internal flooding at the Property since 2013. I acknowledge the customer's submission that he and his wife can recall more than the three instances of external flooding recorded by the company however the customer has not provided any details of the alleged additional incidents. In light of this and as the company has produced records which document and support its claim of only three occasions, I am not satisfied that any more than three incidents of external flooding occurred at the customer's Property.
- c. I acknowledge that under the Water Industry Act 1991 sewerage companies' liability for sewer flooding is limited to instances where flooding has been caused by negligence. However in respect to internal flooding from sewers, under regulation 11 of the Guaranteed Standard of Service ('GSS') customers who are flooded internally and meet specific criteria are entitled to a payment from the sewerage company. Further, in respect to external flooding from sewers, under regulation 12 of the GSS, customers who are flooded externally and meet specific criteria, are also entitled to a payment.
- d. The company submits that its investigations found that the (external) sewage emissions were caused by blockages on its network due to third parties discharging unsuitable materials into the sewer system. In light of the job notes (Appendices 1 to 3 of the Defence), I accept the company's explanation for the cause of the emissions. Whilst I accept that the sewer flooding was caused by factors outside of the company's direct control, I find that the company is responsible for any blockages found on its network and for clearing these as well as cleaning up the affected areas following an emission caused by a blockage. Therefore I consider that the sewage emissions, which the company accept occurred on the customer's Property, constitute evidence that the company failed to provide its services to the standard to be reasonably expected.
- e. I note that blockages found on the company's network caused by third parties discharging unsuitable materials into the sewer network, is not a stated exception to the customer's entitlement to compensation under the GSS, therefore I find that the company is responsible for making GSS payments to the customer in respect of such incidents.

- f. In regards to clearing the blockages, the company has provided details of its action taken to rectify the blockages and of the clean up undertaken in relation to the sewage emissions in the customer's garden. I find that appendices 1 to 3 of the Defence support the company's submissions and in the absence of any statement or evidence from the customer to the contrary, on balance I accept that the company promptly and adequately cleared the blockage on each occasion and that it fully cleaned the affected areas. Therefore I am satisfied that the company provided its services to the standard to be reasonably expected in this regard.
- g. In relation to the customer's entitlement to GSS payments, the company submits it sent the customer a cheque for £254.55 in respect to the three external flooding incidents in accordance with its CGS however that so far the customer has refused to accept the payment as the cheque has not been cashed. In the absence of any evidence of the customer refuting the company's submissions, I accept the accuracy of the company's submission. Therefore I am satisfied that the company provided its services to the standard to be reasonably expected in this regard.
- h. In relation to the internal flooding of the customer's kitchen sink in December 2014, the company explained this was due to a build-up of pressure known as a "blowback" which occurred during the cleaning of the sewer following the third incident of external flooding, causing waste to be pushed up through his sink. The company submits that it arranged for a clean-up crew to attend who cleaned up and disinfected the kitchen. Based on the evidence and in the absence of any statement or evidence from the customer to the contrary, on balance I accept that the company fully cleaned the affected area. Therefore I am satisfied that the company provided its services to the standard to be reasonably expected in this regard. However I am mindful of the customer's submission that it took several hours before the mess was cleaned up by the company. Based on the evidence and on the balance of probabilities, I am not satisfied that the company cleaned the affected area sufficiently promptly and therefore I consider this to be evidence of the company failing to provide its services to the standard to be reasonably expected.
- i. I note the customer's submission in correspondence dated 19 April 2015 that the company offered him compensation of £500.00, however there is a lack of evidence that the company paid this amount to the customer. Further I am mindful that although the internal flooding incident occurred in December 2014, there is a lack of evidence that the company made any GSS/CGS payment to the customer in respect to the internal emission. I note that the company acknowledges this omission in the Defence. Therefore I am satisfied that the delay by the company in making the payment to the customer

constitutes poor customer service which I consider to be evidence of the company failing to provide its services to the standard to be reasonably expected.

- j. I acknowledge that the customer is not satisfied with the action taken so far by the company to address the reoccurring sewage emissions. As mentioned above I am satisfied that the company has responded to each complaint of reported flooding by cleaning up the affected areas and by carrying out investigations as to the causes. This includes installing cameras in the sewer, checking the pumping station and removing fat, grease and scale and implementing a maintenance plan whereby the sewer is examined every six months to make sure it is flowing freely and that there is not a build-up of fat and grease. In addition the company asserts it has provided leaflets to residents in the area advising how to dispose of their fat (attached to the Defence), and providing them with a "fat trap". Further, I acknowledge that the company's representatives met with the customer on several occasions to discuss the issues. Whilst it is evident from the parties' correspondence that the company has refused the customer's requests to "bolt-down" his three manholes or reroute manholes and pipes outside his property to mitigate/eliminate the risk of future flooding at his property, I am satisfied that the company has fully explained its reasons for its decisions in its letter to the customer dated 11 June 2015. I find that in its letter the company concludes that: bolting down the manholes could result in worse flooding and; it would only consider rerouting if the flooding was severe both externally and internally and caused by hydraulic overload. I am also mindful that the customer admits that the maintenance plan has been effective in as much as no flooding has occurred since its implementation by the company in early 2015.
- k. I acknowledge the customer's submission that the company had been neglectful in its prior maintenance of the sewers. The company denies this claim and explains that the neighbouring sewage pumping station was upgraded a few years ago. In the absence of any statement or evidence from the customer to the contrary, and as the customer has not provided any substantive evidence to support his submission that the company has failed to maintain its sewers, I am not satisfied that any service failure by the company has been proven in this respect.
- l. I acknowledge the customer's submissions detailing his concern that the sewage emissions and disinfectant used by the company during the clean ups following the floodings have damaged his plants, trees and the health of himself and his family. The company in the Defence has fully responded to the customer's concerns raised and also provided Control of Substances Hazardous to Health ('COSHH') evidence to support its submission that the disinfectant used in both the internal and external clean ups is not considered harmful to the environment. In light of the assurances provided by the

company I am satisfied it has reasonably responded to the customer's concern and I am not satisfied that any service failure has been proven in this respect.

- m. In regards to the customer's submission that the pipes are no more than 20 cm wide meaning a nappy can clog them, I am satisfied that the company has explained that the pipes are designed solely for waste and toilet paper to pass through and not nappies, sanitary wear, wipes, oil, grease food or any other object placed in them. Further it has explained why it does not deem the upgrading of its foul water system necessary at this time. As I am satisfied that the company has reasonably responded to the customer's concern, I am not satisfied that any service failure by the company has been proven in this respect.
- n. Therefore, in light of my above observations I am satisfied that the company has taken reasonable action to address the issue and also that it has fully responded to the customer's concerns raised in a timely and reasonable manner.
- o. However, based on my findings above, I am satisfied that the company has failed to provide its services to the standard to be reasonably expected to the effect that the customer encountered both external and internal flooding at his Property and that the company delayed in making a GSS/CGS payment to the customer in respect to the internal flooding and did not complete the clean-up of the affected area sufficiently promptly.
- p. In his Claim the customer reiterates his request for the company to reroute manholes and pipes outside of his property. I find that this remedy is outside the remit of WATRS. I find that whilst it is reasonable to expect the company to take action to address any reports or complaints made by the customer concerning sewage escapes, I find it is for the company to decide with third parties such as Ofwat whether the costs of works to mitigate the flooding risk in the customer's case is warranted. Therefore this aspect of the claim cannot succeed on this basis.
- q. The customer requests that a third party assess the damage caused to his Property (trees and plants) and assess any effect the flooding may have had on his and his family's health. However, in light of the company's assurances that there is no health risk or damage and in the absence of any evidence indicating the contrary save for the destruction of his vegetables which the company accepts, I consider that this remedy has not been justified. Therefore this aspect of the claim cannot succeed on this basis.
- r. The customer requests compensation from the company for any loss in value of his Property due to its failure to maintain the sewers and for any other issues caused by the

flooding events (health, home structure, subsidence etc). The customer has not proven that the company has failed to maintain its sewers or damaged the structure of his Property nor has he provided evidence to show any reduction in value of his Property or losses incurred. However, in light of the three admitted external flooding events, the company is liable to pay the customer GSS payments and, further, I find it fair for the company to pay the customer an additional £100.00 in relation to each incident. I have reached this view as, on the evidence, I accept the customer was caused significant stress and inconvenience, including the destruction of the vegetables growing in his garden as a result of the emissions in his garden, which I note were intended for human consumption. I acknowledge that the company sent the customer a cheque for £254.55 in accordance with the GSS and its CGS in respect to the three external flooding events however I am mindful that the company has confirmed this cheque has not been cashed by the customer. Therefore I find it fair to direct the company to reissue the customer a payment of £554.55 (£254.55 in GSS payments and £100.00 x three incidents) together with any compensation ordered below. The company is entitled to cancel the original unused cheque.

- s. In respect to the internal flooding incident in December 2014, the company acknowledges its failure to make a payment to the customer as required by the GSS and its CGS. In its Defence the company submits it has arranged for a further payment of £289.69 to be made to the customer which includes a £169.69 CGS payment in recognition of the internal flooding, a £20.00 automatic late penalty payment, plus an additional £100.00 as a goodwill gesture for the extended delay in making this payment. Whilst I consider that the proposed £100.00 gesture for the delay is sufficient, I consider that the company should pay the customer an additional amount of £150.00 which together with the GSS payment, I am satisfied is a fair amount and proportionate to the amount of stress and inconvenience suffered by the customer as a result of the internal sewage emission. Therefore I find it fair to direct that the company pay the customer £439.69 in relation to the internal flooding, the associated delay in receiving the GSS payment and for the stress and inconvenience suffered.
- t. Therefore I direct that the company pay the customer compensation in the total amount of £994.24 (the company is entitled to cancel the original uncashed cheque issued for £254.55 or deduct any amount already paid to the customer from the above compensation amount).

Conclusion

10. My conclusion on the main issues is that:

- a. There is evidence that the company has failed to provide its services to the standard to be reasonably expected.

b. The reasons given by the customer are sufficient to justify his claim in part.

11. Therefore, I conclude that the claim succeeds in part and I direct that the company pay the customer total compensation of £994.24 (the company is entitled to cancel the original uncashed cheque issued for £254.55 or deduct any amount already paid to the customer from the above compensation amount).

A handwritten signature in black ink, appearing to read 'A. Jennings-Mitchell', written in a cursive style.

A. Jennings-Mitchell, BA (Hons), DipLaw, PgDip (Legal Practice), MCI Arb
Adjudicator