

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0647

Date of Decision: 31 January 2018

Complaint

The customer submits that he has encountered external flooding at this property since 1996 and he is dissatisfied that the company has not addressed the cause of this issue. The customer requests that the company take action to deal with the hydraulic inefficiencies which would stop the flooding. He also requests that the company arrange for a Network Engineer to conduct a site visit so he and his neighbours have a better understanding of the sewers and can ask relevant questions, as promised.

Defence

The company submits that its extensive investigations including a sewer flooding mitigation survey carried out by a company called RST LTD confirm that the flooding incidents at the customer's property and in his road only occur after unprecedented and exceptional rainfall, known as hydraulic flooding. Whilst it is unable to carry out a flood alleviation scheme due to its limited funding being allocated to worse affected properties, it has taken mitigative action to help reduce the risk of flood damage to the customer's home. As it has answered all the customer's questions raised, it does not feel a Network Engineer visit is needed. It will monitor the flood situation and look to work with the local authority in the future in regards to the drainage issue at ABC Street. No offer of settlement was made.

Findings

The company has investigated the reported floods and taken sufficient mitigative steps to minimise future flood damage to the customer's home. Further, it has explained to the customer why it is unable to allocate funds to undertake any large-scale sewer improvements or a flood alleviation scheme. Therefore, the company has met its obligations and there has not been a service failure in this regard. However no visit from a Network Engineer has taken place to talk through the sewer mapping face to face with the customer, as requested and previously promised by the company. This amounts to a customer service failure and evidence of the company not providing its service to the standard reasonably expected. Further, as servicing to the customer's flood barriers was promised and has not yet been completed, I find it reasonable to direct that the company complete this work.

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Outcome

The company is required to complete the agreed servicing of flood barriers at the customer's home (if this has not already been done) and arrange for a Network Engineer to visit the customer.

The customer must reply by 28 February 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0647

Date of Decision: 31 January 2017

Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- On many occasions since moving into his property in 1996, during times of heavy rainfall, he has experienced flooding to his gardens, garage and porch. This is due to the surface water sewers being unable to cope with the volume of water.
- He first reported this to the company in 2006 and on a few other occasions since. However there were many other occasions which he did not report to the company as he felt it was not worth doing since nothing had been done.
- On 23 June 2016 the worst ever flood incident occurred and there was flooding in the early hours of the morning and again in the afternoon. The company through its flood mitigation consultants; RST LTD, had supplied airbrick covers and flood gates in 2006, however these are only any good if you are at home and are awake to put the plugs in the covers and the gates in place. The company has carried out several surveys but has failed to address the cause of the flooding despite admitting there is hydraulic overloading and inefficiencies.
- The customer requests that the company take action to deal with the hydraulic inefficiencies which should stop the flooding. He also requests that the company arrange for a Network Engineer to conduct a site visit to talk through the mapping they carried out so he and his neighbours have a better understanding of the sewers and can ask relevant questions; he submits that this has been promised by the company but has never happened.
- Further, the customer requests that the company provide a properly manned helpline; every time he has been flooded he has called the helpline, as recommended, but there has only been an answering machine.

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The company's response is that:

- The dispute concerns sewer flooding at the customer's property at 1 ABC Street, which has happened on a number of occasions since he moved into the property in 1996. Reports of floods were received from the customer on 13 June 2006, in October 2006 and November 2006 and it asked RST LTD to conduct a full survey of the flooding who confirmed that they were all due to hydraulic overload and occurred because of unprecedented and exceptional rainfall. It fully explained the RST LTD findings to the customer and provided airbrick covers and flood barriers.
- The customer's property is located in what is described as a "basin" and his property is at the lowest point which may be susceptible to flooding. His neighbours have block paved driveways and dropped pavements which it believes exacerbates the situation when heavy rainfall occurs as water cannot drain away quickly or effectively into the earth.
- The customer requires it to carry out work to alleviate future possible flooding. It has considered carrying out a flood alleviation scheme however after extensive screening and a viability assessment in 2017 to ascertain whether funding can be made available for the street, it disputes any mitigation can be carried out at this time, as flooding has only ever occurred when there has been unprecedented and extensive rainfall. In normal conditions, there has been no sewer flooding, and as such, the cost of further mitigation is not justified at this time. It wrote to the customer on 4 July 2017 explaining why it would not be in a position to carry out this mitigation work, primarily because the funds it is provided with must be used to the best effect and help those hardest hit first, particularly those who have been subjected to internal flooding during normal weather conditions.
- The company submits that additional steps it has taken include: fully investigated the reasons for the sewer floods; carried out line cleans, removing any debris as necessary; with CCTV ensured that the sewers are fully operational and with no defects; upgraded and serviced the customer's air brick covers and flood barriers in January 2018; visited the customer and discussed the issue with regards to the sewers and flooding. It has provided mapping of the sewers for the customer and answered all his questions relating to the size, conditions and nature of the flows of the sewers.
- It has explained that although there is a 90 degree bend in the sewer, changing this is likely to have very little effect at times of extreme rainfall.
- It has made all CGS payments with regards to sewer flooding and in regards to late replies to the customer's correspondence and delays in investigating incidents.

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- It has explained to the customer that it is important that he reports every incident of flooding so to enable it to monitor the situation as without proven evidence of the number of incidents, it will not be possible to gain funding for any potential mitigation to be carried out.
- The customer asked for a Network Engineer to call him and visit to discuss the drainage issue further, an appointment was raised however this was cancelled in view of the WATRS application being received and the customer was informed of this.
- In addition, it is also looking to engage with the local authority in the future. It will ask whether they would be prepared to work with it on a joint approach with regards to land and highway drainage issues which they may/may not be aware of and for which they are responsible. However, it cannot say whether they will be agreeable to working with it with regards to this and has no further information about this at this time.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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

How was this decision reached?

1. I remind the parties that adjudication is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it. Therefore whilst I am able to review the evidence presented to me to determine if the company has failed to provide its services to the standard that would reasonably be expected of it, I am unable to 'investigate' specific claims made by the customer, as sought.

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2. The dispute relates to surface water flooding at the customer's property in ABC Street. It is not in dispute that external floods have occurred on multiple occasions since the customer moved into the property in 1996. He reported incidents to the company on at least 6 occasions although he submits there were other occasions which he did not report to the company. Further, it is not in dispute that the floods have occurred following heavy rainfall which has resulting in surface water run off and overloaded sewers. The customer however is dissatisfied with the action taken by the company to address the issue and highlights that a recent flooding on 23 June 2016 was the worst incident ever and has provided photographic evidence to show the flood water surrounding his home.
3. I find that the company has a duty to maintain its sewers/drains so that the area is effectually drained in accordance with section 94(1) of the Water Industry Act 1991. However, I accept that generally, it would not be responsible for any damage from flooding if the cause is outside its control including severe rainfall, unless the company has acted negligently. I am also mindful that the courts have on many occasions determined that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for water and sewerage companies to adopt, although where there is a known issue, companies should repair their assets.
4. In the customer's case, the company has evidenced that it undertook CCTV surveys following the floods reported in 2006, the results of which found no faults or damage to the sewers. I find the RST LTD report dated 2006 supports this. I am also satisfied from the evidence that the company has investigated the cause of the more recent flooding on 23 June 2016 with the results of the CCTV survey indicating there were no faults to repair in its sewer system and confirmed the cause as hydraulic overload.
5. The company has detailed the actions it has taken to mitigate the risk of flooding affecting the customer's home including supplying flood barrier and air brick covers as recommended by RST LTD. I note RST LTD upgraded and increased the number of airbricks in January 2018. The company has also stated that a service to the floodgates was carried out however in his reply the customer has advised that whilst the airbricks were replaced, the work on the porch front door and flood gates in the garage has been surveyed but not yet completed. In light of this, I find it appropriate for the company to complete this work (if it has not already done so at the date of this decision) and I have made a direction to this effect below.

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6. The company has also carried out cleaning to the sewer outside of the customer's home, removing debris where relevant. It is evident that following the customer's complaint to the Consumer Council for Water (CCW) in May 2017, the company carried out a screening program to assess whether there was a solution to the hydraulic flooding. However, the company confirmed on 4 July 2017 that it would not be in a position to carry out a flood alleviation scheme or any mitigation works due to it being unable to allocate funds to ABC Street as there being worse affected properties and more frequent and severe cases of flooding elsewhere. I accept that the company's ability to carry major improvements to its sewer system is a complicated financial matter which often have to be agreed, in advance, with other agencies including Ofwat. Whilst the company has rejected the viability of a flood alleviation scheme in ABC Street at this time, I am satisfied that the company gave due consideration to this possibility and explained to the customer why it is unable to proceed with this.
7. The customer in his email of 3 July 2017 identified possible mitigative works the company could undertake including changing the sewer with a 90 degrees bend in it. The company in its response dated 8 August 2017 explained why it thought changing this would have very little effect at time of extreme rainfall. Further, it answered the customer's other points raised and also provided mapping of the sewers to the customer, as sought.
8. I am satisfied that the company has made payments to the customer due under its Customer Service Standards for the flooding incidents reported as well as payments for delays in replying to the customer's correspondence and for delays in conducting its investigations and updating him following the 23 June 2016 incident.
9. Therefore, whilst the company has a responsibility to investigate incidents of flooding, repair any faults in its assets and take mitigative measures, in light of my above observations, apart from the outstanding work to service the flood barriers as discussed above, I am satisfied that the company has met these obligations in the customer's case. As such I do not find that the service provided by the company fell below a reasonably expected standard.
10. Further, I am satisfied that, overall, the company has provided explanations in response to the customer's points raised in correspondence. However, the customer has complained that the

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company promised to dispatch a Network Engineer ('NE') to discuss the drainage issue with him and other residents at ABC Street but despite first requesting this in November 2016, this has not yet happened. It is clear from its letter to the customer of 1 August 2017 that the company agreed to send a NE to discuss the issue however it then subsequently told the customer no visit would take place at that time because it had answered all of his points previously. It is evident however that when asked again about a visit by the customer in December 2017, the company agreed it would raise an appointment. The company has stated in the defence that this appointment was then cancelled in view of the customer's WATRS application having been received. The company adds that it feels there is nothing further it can do to explain why mitigation cannot be considered after the extensive investigations/screening which has already been done and the information it has already provided on the sewer network to the customer. The customer in his reply has clarified that he would like the NE (who completed the mapping surveys) to physically walk and talk him through the mapping. In the circumstances I find the customer's request to discuss the mapping face to face with the company's NE is reasonable and the company's failure to adhere to its prior promise to arrange a visit by its NE, is evidence that it failed to provide its services to a reasonably expected standard in this regard.

11. The customer in his application has raised a complaint regarding the company's flooding helpline; he submits when he has called it he always gets through to a voicemail service and has requested that the company provide a "properly manned" helpline. The company has highlighted that this complaint has not previously been raised by the customer. I accept this and therefore, in accordance with the Scheme Rule, I find that this aspect falls outside of the scope of this adjudication. The company however, in its defence, has provided an apology for this and also provided details of the numbers to call and links to its website which provides customers with help when flooding has occurred. As such I will not address this point further.
12. The company has stated it will monitor the flood situation at the customer's property and in his road (on the proviso that the customer and other residents of ABC Street report all further incidents which will enable monitoring) and look at working with the local authority to tackle the drainage issues. I find that the company's stated course of action is reasonable and in accordance with its ongoing obligation to mitigate the risks of flooding in known areas which are prone to flooding and in also in line with finding a long-term solution if the flooding incidents continue.

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13. Therefore, the company has shown that it has investigated and taken sufficient and appropriate mitigative measures to reduce the risk of damage caused by external flooding at the customer's property (although completion of the service to the barriers at the customer's home is outstanding) in accordance with its obligations and also explained why it feels that a flood alleviation scheme is not justified at the current time. Therefore, it follows that the company is not liable for the remedy sought by the customer and as such the claim cannot succeed in this regard. However, in light of my above findings, it is appropriate to direct that the company complete the agreed service to the flood barriers and arrange for a NE to visit the customer as previously agreed.

Outcome

The company is required to complete the agreed servicing of flood barriers at the customer's home (if this has not already been done) and arrange for a NE to visit the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 February 2018 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



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

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