

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1185

Date of Decision: 16 January 2019

#### Complaint

The customer submits that he has repeatedly contacted the company in order that a serious sewage issue is resolved; he has experienced flooding from the sewage drain in his rear garden resulting in waste engulfing his garden, rendering the area a health hazard. He disputes the company's explanation given that the flooding incidents are hydraulic as the rainwater drain in his garden has never flooded. He requests that the company correct the fault that causes sewage to flow into his garden and pay him £1700.00 to replace £2000.00 worth of damaged astro turf and garden plants, taking into account the £300.00 already received from the company.

#### Defence

The company submits the flooding incidents experienced by the customer have been due to hydraulic overloading of the sewers. This is related to heavy rainfall; however, case studies it has carried out in response to widespread sewer floodings in the customer's area indicate that the root cause is due to the number of properties that have incorrectly connected private surface drains to the foul water sewers. These connections are thought to have been made before building regulations were in place. To correct this is a multimillion pound project therefore there is no quick fix; although it is currently considering flood alleviation schemes for the [ ] area as a resolution. Whilst funding for this and implementation of a scheme involves other responsible agencies, it aims to begin installing sustainable urban drainage solutions in the [ ] area in the period 2020 to 2025. With regards to the customer's claim for £1,700.00 for damage caused by the sewer flooding, it disputes liability as this has not occurred due to any negligence on its part.

#### Findings

The company investigated the sewer flooding events at the customer's property but found no blockages or defects in the customer's sewer. It has shown that the customer lives in an area where sewers are prone to flooding at times of heavy rainfall as a result of incapacity in the sewer network. The company has investigated this issue and found that this is largely due to misconnections where, historically, properties' private surface water drains have been incorrectly connected to the foul water sewers. The company has demonstrated that it has considered flood alleviation schemes and, although

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none have been implemented due to the company not finding them cost beneficial, it has now committed to begin installing sustainable urban drainage solutions in the [ ] area in the period 2020 to 2025. It has also added the customer's property to its risk register for regular reviews in the meantime. Therefore I am satisfied that the company has provided its services to a reasonably expected standard and it is not required take any additional corrective action to address the issue. The company has paid the customer compensation for four flooding incidents in line with its Customer Guarantee Scheme and the company is not liable to pay the customer any additional amount for damage as there is no evidence of negligence on its part. I find that two of the company's responses submitted to the customer during the dispute period were inadequate; this is evidence of a service shortfall, which the company agrees to pay the customer £50.00 for, in recognition of this.

#### Outcome

The company is not required take any additional corrective action to address the issue (above that which it has already committed to); however, it shall pay the customer £50.00 in compensation.

**The customer must reply by 13 February 2019 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1185

Date of Decision: 16 January 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- He has repeatedly contacted the company (and [ ]) in order to resolve a serious sewage issue. His property: [ ] [ ], ('the Property') is a small detached house located opposite a park and was built approximately twelve years ago. He has been the owner for the past three years. The garden is at the rear where two drains are located. The rainwater drain has never caused an issue but the sewage drain is a constant health hazard. During his residence he has experienced the following issue on multiple occasions:
  - The sewage drain is prone to leakage that results in faeces, toilet tissue and soiled water consuming his garden, which he considers renders his garden a health hazard. He states that the discharge is an environmental disaster and something that is unacceptable. He details he is now at the stage where he dreads the thought of a hint of rain, fearing he will be subject to a further onslaught of a disgusting discharge from the drain.
- The company has attended but failed to rectify the situation; it claims it is a hydraulic issue. Clearly this cannot be as the rainwater drain is never an issue, only the sewage drain.
- The customer seeks that the company correct the fault that causes sewage to flow into his garden and pay him £1700.00 to replace damaged astro turf and garden plants (the cost of this is £2000.00 minus the amount of £300.00, which he has already received from the company).

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### The company's response is that:

- The company acknowledges that since he moved into the Property three years ago, the customer has reported four flooding incidents on: 31 July 2017, 11 August 2017, 5 June 2018 and 31 July 2018.
- The customer lives in an area where sewers are prone to flooding at times of heavy rainfall as a result of incapacity of the sewer network. The company has undertaken investigations to determine the cause and found that this is largely due to misconnections: this is where, historically, properties' private surface water drains have been incorrectly connected to the foul water sewers.
- It has carried out case studies to see if it is cost beneficial for a flood alleviation scheme to be put in place, but so far this has not been feasible.
- In its 2005 Trunk Sewer Study, the cost benefit method required the unit price per flooded property to be below £250,000.00 (for the highest band), which could not be achieved with the proposed solution.
- In its 2011 Cluster Study, this solution was costed and again it was not cost beneficial. The cost benefit criteria were different in 2010-2015 than that in 2005-2010. Based on the new solution identified a revised unit price per flooded property was calculated and it was circa 15% higher in value than that identified in the previous study. Furthermore, the unit cost cap for this period was circa £150,000.00 per property (a reduction from the previous period). Each cluster was considered individually. None of the clusters were found to be cost beneficial.
- Its 2015 public facing Catchment Strategy has been published on its website at:  
[https://www.\[ \] aboutus/investing-in-our-network/sewerage-catchment-studies/2018-catchment-plans/ravensbourne-catchment-plan.pdf](https://www.[ ] aboutus/investing-in-our-network/sewerage-catchment-studies/2018-catchment-plans/ravensbourne-catchment-plan.pdf)
- The catchment plan recognises that the root cause of the flooding is a large amount of surface water incorrectly connected into the foul sewer system. This action was done historically and was not carried out by it.
- As part of its business plan submission to OFWAT, it has a programme of Surface Water Management work. The objective is to install sustainable urban drainage solutions to disconnect sixty-five hectares of surface water from its sewer system. It will start the implementation of the [ ] Catchment Strategy using this funding. However, it does not expect to be able to deliver the entire twenty hectares required for the [ ] Catchment in the period 2020-2025 due to the complexities of having to find the locations where work is required. It has information on the location of some connections and will use its Surface Water Management funding to address these.

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- In line with its Customer Guarantee Scheme ('CGS'), it has made a £300.00 payment to the customer for the four external sewer flooding incidents in 2017 and in 2018. This payment was made as goodwill on the basis that the customer may not have known that for a payment to be made it must be claimed within three months of the incident, as it does not bill the customer (who is billed by [            ]).
- It has also offered the customer a further £50.00 goodwill in recognition of the fact that its communication with him could have been better.
- There is no obligation under the Water Industry Act (the Act') for it to pay for damage caused by sewer surcharge unless it has acted negligently. As above, there is no negligence on its part in relation to the sewer flooding incidents as they were due to hydraulic overloading.

### **The customer's Reply**

- The customer asserts that funds should be made available to correct what is clearly a health hazard. He should not be expected to live in a house that is subject to flooding in the garden when it rains. He reiterates that his rainwater drain is not affected and he was led to believe that sewage and rainwater should never meet and so he disputes the explanation given by the company on this basis.

### **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.

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## How was this decision reached?

1. The customer's claim concerns repeated sewer flooding in his garden (since 2017) and the failure of the company to resolve the issue causing the floods.
2. It is undisputed between the parties that the customer has experienced at least four incidents of sewage flooding in the garden of the Property since 2017. From the 'Chain of Events' included in the company's Defence, I accept that the company attended the Property on 22 August 2018 to meet with the customer and investigate the issue. In its responses to the customer dated 30 August 2018, 24 September 2018 and 5 October 2018, I find that the company confirmed that having assessed the drainage configuration, the lay of the land, manhole depths and condition of pipework running through the Property, it found the escapes from the foul water chamber in his garden occurs in heavy rainfall and not as a result of any blockages (including by fat, oil and grease) or defects within the sewer network. This was based on two camera surveys undertaken on 25 June 2018 and 22 August 2018. It detailed that the foul water running through the customer's Property also takes rainwater from the Victorian houses upstream in the catchment area of [ ] and this would account for the extra flow of water coming through when it rains. The company explained why the installation of a Non-return Valve (NRV) would not be feasible; as to seal and bolt down the manhole chamber would cause the flows to be pushed back towards the Property, potentially causing internal flooding. It also stated in its responses that due to no funding available, it could not address the problem immediately.
3. Having reviewed the evidence in the Consumer Council for Water (CCW) bundle submitted in support, in its further response of 23 October 2018, issued following the customer escalating his complaint to CCW, the company reiterated the flooding incidents he had experienced were all due to hydraulic overloading of the sewers during rainfall. The company also confirmed it was looking into solutions and that it has agreed to place his case on its risk register so that his situation is reviewed every six to twelve months (this was also a means of applying funding for works, but it stated this was is not guaranteed). The customer was not satisfied with this response or its subsequent responses dated 2 and 7 November 2018 (which I note repeat sections of its previous 23 October 2018 response). I find that in response to the subsequent CCW referral on behalf of the customer dated 8 November 2018, the company issued a further response on 22 November 2018 in which it advised it had considered the following flood alleviation schemes: Trunk Sewer Study (in 2005); Cluster Study (in 2011); and Catchment study (2015 to 2017). However, it stated that, due to these options not being cost beneficial, it

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has not been able to proceed with these. It did, however, reiterate that the studies had indicated that misconnections are widespread throughout the [ ] catchment; some of them have been uniquely identified but others are understood based on observed flows into the foul water sewers (FWS). In its response, the company explained that it does aim to remove twenty hectares of impermeable area that is currently misconnected into the FWS in the [ ] catchment that it believes will reduce the likelihood of flooding for the future. It stated that to achieve this it intends to install sustainable urban drainage solutions to disconnect (overall) sixty-five hectares of surface water from its sewer system. It advised it has submitted a business plan to OFWAT in regards to this programme of Surface Water Management Work; however, although it expects to start delivering this programme in the next five-year period from 2020 to 2025, it does not expect to deliver the entire twenty hectares during this timeframe.

4. I find that in its Defence the company has provided a weblink to its document titled 'Our Catchment Plan' (pursuant to its Catchment study) and having reviewed this, I find that it contains detailed information as to the causes of sewer flooding in the customer's area. I find that this information is consistent with the explanations for the sewer flooding, as provided by the company in its responses to the customer. I find that the document confirms that misconnections, whereby homes and businesses are discharging into the wrong sewer, are contributing to the sewer flooding issues currently being experienced by its customers in the [ ] catchment area that I am satisfied the customer's Property resides in. Other stated reasons are heavier and more intense rainfall, population growth, high-density urban development and paving-over of gardens (creating a large combined watertight area). I note its aim to target misconnected properties is included in the document as one of the activities (long-term) it will be implementing to address the flooding issues.
5. I acknowledge that the flooding incidents described by the customer would have caused significant upset and inconvenience and understandably the customer has concerns regarding the health and safety implications of these floodings into his garden. However, I find that the company has evidenced that sewer flooding in his area is a known issue and that, during the past few years, it has undertaken extensive investigations into the causes and possible solutions to address the issue. Whilst it is clear that flood alleviation schemes considered in the past have not yet been implemented, due the company assessing them not to be cost beneficial (as set out in its above submissions), it is has detailed its aim to target properties with misconnections in the twenty hectares of the [ ] catchment and install sustainable urban drainage

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solutions to remove surface water from its sewage system (works to begin in the period 2020 to 2025) on the basis that this action will mitigate the risk of the sewer system overflowing during periods of heavy rainfall. This is included in its published literature. Therefore, I consider this stated intended action, in conjunction with it adding the customer's Property to its risk register so his situation is regularly reviewed, is evidence of the company taking action to address the issue complained of. I am satisfied that the company has explained why it is inappropriate to install an NRV to the customer's sewage drain and also explained that there is no damage to the sewer or blockages within the sewer. I can also see that in its responses, the company has confirmed it provides a clean up service and that in the event of a flooding incident the customer should continue calling its Customer Contact Centre on telephone number 0800 316 9800 so the incident can be correctly recorded and as well as assistance provided. In light of the above findings, I am satisfied that the company has provided its services to a reasonably expected standard in relation to the customer's reports of sewer flooding.

6. I acknowledge that in its response dated 22 November 2017, the company offered the customer £50.00 in compensation in recognition of: "the fact that our communication with him could have been better". In light of its responses to the customer dated 2 and 7 November 2018, I accept the company's submissions as these communications are largely a repeat of its previous response to the customer dated 23 October 2018, despite the customer raising new points. I note this amount has not been paid to the customer as he declined its offer, therefore, in the circumstance, I find it fair to direct that the company pay this amount to the customer.
7. In relation to the company's liability to pay for damage caused by sewer flooding, in light of the Act, I accept that there is no requirement for the company to pay for damage caused by sewer flooding at customers' properties unless it has acted negligently. However, I acknowledge that under the Guaranteed Service Standards, adopted by the company in its own CGS, it pays compensation for sewer floodings and accordingly, the company has paid the customer £300.00 for four (external) floodings (£75.00 per incident). I acknowledge from the evidence that on 12 November 2018 the customer reported a further incident, which he advised had happened the day before. Therefore, the customer may be entitled to a further payment; however, the company has stated the customer is required to apply for this compensation within three months of the date of the flooding, for it to consider his entitlement to compensation. I find this aspect of its response reasonable.

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8. As above, the company is only legally required to pay for damage caused by sewer escapes where it has acted negligently. In the customer's case, based on the evidence provided, I accept the accuracy of the company's explanation that the floodings are hydraulic i.e. they have occurred due to the sewer network overflowing when it rains. Further, I accept that the main root cause is misconnections causing extra surface water in the sewer system which makes the sewers more susceptible to flooding when rainwater also enters the sewer system at times of heavy rainfall. The company has stated it did not carry out this work and that these misconnections are thought to have been made before building regulations were in place. On balance, I accept that this is a situation the company has inherited, however, whilst I consider that it is responsible along with other agencies to address both the current issues and future risks, the company has also evidence that the costs of such works or any other flood alleviation scheme runs into millions and therefore far exceeds the maximum amount that can be awarded under WATRS.
9. Therefore, due to the costs of such works exceeding WATRS and because, as mentioned above, other agencies and third parties (for example OFWAT and the Environmental Agency), would also be involved in implementation of a flood alleviation scheme, I find that the remedy requested for the company to correct the issue causing the floodings, falls outside of the scope of WATRS on this basis. Furthermore, as the company has explained why it is not appropriate to install an NRV to the customer's sewage drain and it found no damage or blockages to the sewer at the customer's property, it is unclear as to what, if any, short-term work it can undertake to reduce the risk of flooding (pending its proposed install of sustainable urban drainage solutions in the customer's area). As such, I am unable to make any direction for the company to correct the problem, as sought.
10. Furthermore, due to a lack of evidence showing that the company has acted negligently, I am unable to award the customer compensation of £1700.00 requested to cover the cost of replacing damaged astro turf and plants (the cost being £2000.00 minus the £300.00 he has received from the company). I also mindful that the customer has not submitted any evidence to show that he has incurred this cost; therefore, this claim would be unable to succeed for this reason. In any event, overall, I do not find any failure and so the claim does not succeed.

#### **Outcome**

The company is not required take any additional corrective action to address the issue (above that which it has already committed to) however it shall pay the customer £50.00 in compensation.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13 February 2019 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.

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

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