

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0549

Date of Decision: 15 August 2017

Complaint

The customer submits that the company carried out work to divert the outpipe to its sewer mains which stopped the surface water collecting in the places it usually collected in. The customer claims that the company only carried out this work after he reported that the outpipe was not working in May 2015. The customer asserts that had the company carried out this work prior to December 2013 by doing a risk assessment of the area, it would have prevented the flooding of his street and home which occurred in December 2013. The company has denied knowing anything about the pipe diversion work. The company is responsible for the damage caused by the flooding. The customer requests that the company admits liability.

Defence

The company submits that the customer's street and property flooded during a period of exceptionally prolonged and heavy rainfall and excessive flooding of the River [REDACTED], which overloaded the sewerage system in the customer's area. Following the flood it undertook a CCTV survey of the system which was clear and showed no faults. The work it carried out in May 2015 was a repair to a damaged highway drainage pipe and was not in any way connected to the flood, which was an event it had no control over and for which it is not liable.

Findings

There is a lack of substantive evidence that the work carried out by the company to its pipework in May 2015 was connected to the flood event or that if it had been carried out prior to December 2013, it would have prevented the customer's street or property becoming flooded and damaged. Therefore no failure on the part of the company to provide its services to the standard to be reasonably expected by the average person has been established.

Outcome

The company is not required to take any further action.

The customer must reply by 13 September 2017 to accept or reject this decision.

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that more likely than not, the surface water from the drains in his street, discharge down the [REDACTED] outfall and now into the company's main sewer (previously running out the end of the outfall, into stream). Where the pipe has now been diverted away from the outfall into [REDACTED] stream, it allows for surface water to discharge away without flowing back into the two streets. Had the company made a risk assessment of the outfall years ago, the pipe would have been diverted and the surface water would never have been in his street in December 2013, which went on to flood his house. The company is liable for the surface water in his street through its negligence. The company attended *Flood Action Group* meetings following the flood however it failed to mention the drains out falling into [REDACTED] stream which is connected to the River [REDACTED], via a Weir.

- The customer requests that the company admit liability for causing surface water to flood? his street on 24 December 2014. He states that he is not requesting any level of compensation (as he will organise this directly with the company via his solicitor, once it has admitted liability).

The company's response is that:

- The company asserts that the customer's request for WATRS to make a determination on liability alone (he has stated he is seeking compensation of £1,000,000 through other means), is not within the powers of the adjudicator, as set out at rule 4.3.2. Further, the dispute raised is both vexatious and frivolous by reason of the nature of the dispute raised, the volume and sometimes abusive nature of the customer's correspondence.
- The dispute concerns a flood at RST Street and DEF Road, [REDACTED], which occurred on 24 December 2013. This was caused by exceptional weather conditions; prolonged and unusually heavy rainfall and excessive flooding of the River [REDACTED]. The basis of the claim is that it has been negligent in failing to provide sufficient and/or functioning surface water drainage in the vicinity of his property and is therefore responsible for the subsequent damage from the flood that occurred.
- The customer lives approximately 200 meters from the River [REDACTED] in a low-lying area which is subject to historic flooding. Prior to the flood, the system in this area had been placed on a maintenance plan which allowed for monitoring on an annual basis. Flooding did not only occur to RST Street and DEF Road, as claimed, it was widespread. The company denies the claim.
- Following the flood, it undertook a CCTV survey of the system which was clear and showed no faults. Its response to the flooding was undertaken to provide support to the community. NCC and the Environment Agency ('EA') dealt with the primary effects of the flood. It attended *Flood Action Group* meetings which took place monthly and were also attended by the EA, [REDACTED] and [REDACTED] Borough Council and NCC Highways Department.

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- It accepts that under the Water Industry Act 1991 ('the Act') it has an obligation to provide water and sewerage services and to ensure the area is and continues to be effectively drained and to make provision for the emptying of these sewers. Whilst sewerage companies are generally not liable for sewer flooding when caused by factors beyond their control, they could be held liable if the flooding was caused by their negligence. The primary financial protections or redress for householders for flooding from sewers therefore remains private insurance. In recognition of the lack of legal liability for foul flooding in the absence of negligence it operates a Guaranteed Standards Scheme ('GSS') which provides compensation for customers for flooding however payments are not payable where the flooding has been caused by circumstances beyond its control including exceptional weather conditions.
- It admits works were undertaken on River [REDACTED] on 26 May 2015 however they were as a result of a damaged highway drainage pipe and was not in any way connected to the flood. The damaged highway pipe was connected to its manhole number 8521 to allow the highway drainage to discharge in its small section of pipe before it discharged into the river. Notwithstanding that the cause of the flood was exceptional weather, due to the influx of time between the flood and the works it subsequently undertook, it would be highly unlikely and difficult to determine whether the damaged pipe was the cause of the flood some two years previous.
- The drainage system for RST Street and DEF Road or the works completed on 26 May 2015, are irrelevant in considering its liability for the flood as it was an event it had no control over and for which it is not liable.

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.

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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.
2. I acknowledge the company's submission that the remedy sought is not within the powers of the adjudicator, as set out at rule 4.3.2. However, having reviewed the case papers, I am satisfied that the subject matter of the dispute concerns waste water/sewerage services and therefore falls within the scope of WATRS as set out at rule 3.1 of the scheme rules. I shall therefore proceed to consider if the company has failed to provide its services to the standard that would reasonably be expected of it, in relation to a flood which occurred on 24 December 2013, as detailed below.
3. For the sake of clarification, I do not find that the company has established that the customer is pursuing the complaint with the intention of causing it inconvenience, harassment or expense or that the complaint has no serious purpose or value. As such, I do not accept the company's submission that the claim is vexatious and frivolous.
4. The dispute relates to a (surface water) flood at RST Street and DEF Road, ('the flood'), which occurred on 24 December 2013. The customer acknowledges that there was heavy rainfall but asserts that had the company diverted its outpipe to its main sewer, as it subsequently did in May 2015, this would have avoided the flooding to his street and property. The company does not accept responsibility for the flooding and asserts it occurred as a result of events outside of its control namely exceptional weather resulting in surface water run off and overloaded sewers.

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5. 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 ('The Act'). However, I accept that generally, the company is not responsible for any damage from flooding if the cause is outside its control, unless it 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. However, I also accept the company's assertion that its ability to carry out any major or structural sewer improvements is a complicated financial matter which have to be agreed, in advance, with other agencies including Ofwat.
6. In the customer's case, I accept that due to severe rainfall on or around 24 December 2013, this overloaded the sewerage system in the customer's area (and caused the River Medway to burst its banks) which led to flooding in his street and internal flooding at his property (10 RST Street). It is evident that the flooding caused substantial damage, as evidenced by the photographs and video submitted by the customer.
7. The customer asserts that the work the company carried out in May 2015 to divert the outpipe into the company's main sewer (away from the outfall into █████ stream) allowed for surface water to discharge away without flowing back into the two streets. He submits that since the outfall pipe has been diverted, there has been no surface water collecting in the places which previously had surface water, as it now discharges down the outfall and into the company's main sewer (previously running out the end of the outfall, into █████ stream). Therefore, I find that the crux of the customer's complaint lies in his allegation that the company is responsible for the flood damage due to its failure to rectify this issue (diverting the outpipe to its main sewer) sooner, which would have prevented the flood.
8. The company admits that it undertook works on River █████ on 26 May 2015, however it asserts that the works were as a result of a damaged highway drainage pipe and were not in any way connected to the flood. The company submits that the damaged highway pipe was connected to its manhole number 8521 to allow the highway drainage to discharge in its small section of pipe before it discharged into the river.

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9. Having reviewed the case papers, I am unable to find any substantive evidence which supports the customer's assertion that the work carried out by the company on 26 May 2015 consisted of diverting the outpipe to its main sewer, as oppose to fixing a damaged highway drain, as alleged by the company. Moreover, I have not been provided with any evidence that the work carried out on 26 May 2015 was linked to the flood event on 24 December 2013.
10. Even if it had been established that the work undertaken in May 2015 could have prevented the flooding to the customer's street and property, had it been carried out sooner, the company would only be responsible if it had known, or ought to have known, that such would have avoided or reduced the risk of flooding.
11. Additionally, in the absence of any substantive evidence that the company's failure to divert the outpipe was the sole cause of the system overload, any such failure on the part of the company to divert the outpipe to its main sewer sooner, could only be a contributory factor, as I accept that the primary reason for the flooding was the exceptional weather experienced, which, under the WIA, the company is not responsible for.
12. Furthermore, in light of the evidence supplied at Appendices JH1 to JH5 of the Defence, I accept that the customer resides in a low-lying area near the River █████, which is subject to historic flooding. I also accept that the flood was widespread on 24 December 2015 and that other roads were flooded in the area. I note that prior to the flood, the system in this area had been placed on a maintenance plan which allowed for the area to be monitored by the company on an annual basis and that agencies including NCC and the EA sought to minimise the extent of the flooding beforehand and also helped to deal with the aftermath of the flooding.
13. Therefore, in light of my above observations, I find a lack of substantive evidence showing that the cause of the flood was as a result of a defective sewer system which the company knew about or ought to have known about prior to the flood. As such, I find no evidence of the company failing to provide its service to the standard to be reasonably expected by the average person.
14. In considering the claim raised, I have found insufficient evidence which establishes any failure on the part of the company to provide its services to the standard to be reasonably expected by

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the average person, therefore it follows that the company is not liable for the remedy sought by the customer. As a consequence, the claim cannot succeed.

Outcome

The company is not required to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13 September 2017 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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