

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0553

Date of Decision: 15 August 2017

Complaint

The customer claims that his property (which is tenanted) has been the subject of repeated flooding. The company has not ascertained the root cause of the flooding events and has taken insufficient remedial action because it has not constructed additional sewerage in T Street. He has been paid no compensation for the events which occurred and suspects that the company has paid GSS compensation to the tenants.

Defence

The company has investigated and responded to the incidents of flooding. It has placed the customer's vicinity on a register for consideration of capital expenditure and it has made payments under the GSS to the account holder. It has not been negligent and therefore the issue falls to be considered by Ofwat and not by WATRS.

Findings

The customer has not established that the company failed to reach the standard to be reasonably expected of it. The company has responded appropriately to each incident of flooding of sewage and has not been negligent. Whether or not the company should undertake capital expenditure is a matter for the company to assess according to its priorities and any challenge to this strategic decision can be made only to Ofwat. There is no evidence that the company has not made GSS payments to the account holder.

Outcome

The company does not need to take any further action.

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.

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Party Details

Customer: [REDACTED]

Company: [REDACTED]

Case Outline

The customer's complaint is that:

- The customer complains that his property has been the subject of repeated flooding.
- On 15 March 2013 his tenant was dispossessed for three weeks as a consequence of this.
- On 27 July 2013 his premises were again flooded. He was told that this was due to "a blown storm drain" at 20 T Street.
- On 9 August 2013 his property was flooded again and the sewer was cleansed by the company.
- Thereafter for two years there was no further flood but on 1 October 2015 there was a further flood which rendered the property uninhabitable for 11 weeks. The company sealed the cover over the drain and the customer installed a perforated pipe and tanked the retaining wall to reduce the flood risk. He did this at his own expense.
- Nonetheless, in June 2016 the garden was flooded and then there was a further flood on 13 September 2016.
- The customer says that the actions taken by the company did not address the root cause and his wife and he have suffered a loss of rental income from the property and have incurred costs in taking remedial steps. He says that the Consumer Council for Water (CCWater) has told him that the company made Guarantee Service Scheme (GSS)

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payments of £150.00 and £95.00 with additional penalty payments of £20.00, but the customer has not received these. He suspects that the payments were made to the tenant.

- The customer wants the company to recognise that the capacity of the storm drains is insufficient and seeks directions that the company shall:
 1. Either:
 - (1) lay new larger pipes in T Street or
 - (2) lay a new sewer in T Street.
 2. Apologise;
 3. Pay compensation of £8996.00 and interest.

The company's response is that:

- It was unaware of flooding on 15 March 2013 and it was not notified of it.
- From 28 July 2017, the company responded appropriately to all incidents and investigated and took remedial action where required. It kept the customer informed and responded to his complaint.
- The question of the capacity of the storm drains is a matter of strategic significance and, in the absence of negligence, falls within the supervision of Ofwat and outside the WATRS scheme.
- The incidents of sewer flooding reported to the company have been caused by operational issues with the sewer network. Remedial work took place to rectify these issues. In addition, further work to the manhole which was the source of the sewer flooding has been carried out to eliminate any further flooding from this location.
- Payments made under the Guaranteed Services Scheme were to the account holder, who is the person eligible under that scheme.

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.

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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?

Customer

1. Although the property in question is tenanted, the company has not suggested that the customer is not eligible to use the WATRS scheme. The company does explain, however, that its Guaranteed Services Scheme (GSS) payments were made to the account holder, which, at the material time was the tenant. Nonetheless, I accept that in a broader sense, by supplying services to the tenant, the company is also supplying its present and future services to the landlord, notwithstanding that it is for the tenant, at any one time, to pay for these. I therefore accept that the customer is a person to whom the company supplies its services.

History of the complaint

2. By reference to the information supplied by the customer and the company, as well as that submitted from the files of CCWater, I find the facts to have been as follows:
 - i. On 15 March 2013, the customer experienced flooding at the property, which caused the customer's tenant to have to leave the property. The tenant remained away for 3 weeks. The company states that it was unaware of this incident and in his comments in reply to the company's defence, the customer has not challenged this. The record of the telephone call from the letting agent on 28 July 2013 is also consistent with her informing the company for the first time of the previous incident. I find that the company was unaware of this incident until July 2013.
 - ii. On 28 July 2013, the company was told by the customer's letting agents of a flood which had occurred on the preceding day and it was asked to investigate. According to the customer, this led to the property being unoccupied for a further 17 weeks. On 16 August 2013, the investigating crew found a buried manhole in the garden of a neighbouring property which had been joined to the sewer by a construction company at the wrong level and with a concrete plinth causing back-

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up in the sewer. On 5 to 7 August 2013, the company attended to clear the cement/grout.

- iii. The customer states that, notwithstanding this, a further flood occurred on 9 August 2013. The company makes no reference to this in its records, however, a further CCTV and cleanse was nonetheless authorised by way of follow-up to the work already done work. Attempts to carry out this cleansing activity on 12 September 2013 identified that a much larger section of sewer had been affected by silt than initial investigations had indicated and cleansing was problematic. Further work was then carried out to cleanse a further 155 metres of the sewer. This work was treated as urgent and was completed on 22 November 2013 when the sewer was left running freely. Thereafter, there were no incidents for a further two years.
- iv. On 7 October 2015 the company was notified of a flooding incident at the property on 1 October 2015. This led to the property being vacated for a further 11 weeks. The customer says that this was confirmed by the company to have been due to hydraulic overload. A crew from the company attended with loss adjusters. The company says that whilst there was no evidence of internal flooding, it confirmed that there was external flooding to the property. Those external areas were washed down. The customer, on the other hand, says that the house was affected internally. The company, however, appears to have investigated this at the time and in the absence of photographic or other detailed evidence of internal damage from the customer, I find that only external flooding occurred.
- v. A CCTV survey of the sewer in T Street was completed on 17 November 2015. No structural defects with the sewer were found but there was evidence of silt in the sewer and water was being retained. The sewer was cleansed to remove the silt on 17 November 2015. The customer also instructed an independent drainage expert. His report dated 29 October 2015 refers to the source of the problem arising in the garden of a neighbouring property, 20 T Street. The expert reported:

There have been reports of a manhole cover having being lifted by water in the rear garden of number 20 T Street but omits the fact that there is a chamber with a manhole cover in the rear garden of number 20 T Street. In August 2013, the Fire Brigade sourced the cause of flooding to this manhole, the cover of which had been lifted by the force of the water. In November

2013, Severn Trent Water cleared the surface water sewer which was partially blocked downstream with mortar/concrete. I called at number 20 T Street and spoke to the resident ■■■, he confirmed that there is a heavy duty manhole cover in his garden and that it has regularly had flood water coming from it, although he could not remember seeing it flooding recently, he also said that as it is lower than his house it does not affect him and he does not go out in the rain to check on it. He gave me permission to take a look. The cover is a very old grey iron cover that has rusted to the frame. It was immediately clear that this chamber has flooded as the bedding mortar for the frame has long gone and there is evidence water escaping from between the frame and the chamber wall.

- vi. In response to these concerns about the condition of the manhole cover and chamber in the garden of 20 T Street, a sealed manhole cover and frame was installed on 11 November 2015. The customer also installed a perforated pipe and tanked retaining wall along the boundary of the property.
- vii. On 13 June 2016 further flooding was reported. The customer describes this as severe, although the internal areas were not affected. The company says that further investigations on the surface water sewer running along T Street were conducted. A CCTV survey and sewer cleanse was carried out on 26 June 2016. A section of sewer in J Street was found to contain tree roots. A specialist contractor was used to carry out a precision root cut. The root cut was completed on 19 and 20 July 2016.
- viii. A CCTV survey of the remaining section of the sewer was completed on 28 July 2016. The sewer was in good condition, but a further root ball was found which prevented further investigation. The contractor was asked to return to complete further precision root cutting work. The work was completed on Saturday 20 August 2016. The customer, with the assistance of the independent expert raised the question of the capacity of the sewer in T Street.
- ix. On 30 August 2016 a further CCTV survey was carried out to confirm there were no other issues with the sewer. The customer complained that a neighbour had experienced a flooding issue on 13 or 14 September 2016. Further work took place on 16 September 2016 to install a pipe through the manhole in the garden of 20 T Street intended to prevent any further flooding from that manhole but by this stage, the company acknowledged that in cases of severe rainfall, the sewer might be unable to cope.

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- x. The company emailed the customer on 22 September 2016 advising on the work carried out and also indicating that there remained a risk of flooding. The email stated:

I cannot propose any scheme to enlarge the sewers on T Street. As has been explained previously, this would be an Asset Creation matter. What I can do is add your properties to the Flood Risk register as this will prioritise any future works. However, the downside of this is that when it comes to selling the properties, if this is ever intended, then this is something that I believe you have to make a statutory declaration of.

With regards to a flow survey. Yes, I have had one done by our contractors. This has indicated that there is still a risk of flooding but from a different manhole away from the properties. This is something that we will mitigate by the works we have undertaken.

On 23 September 2016, the company wrote:

However, as I have stated before, it appears that we are in a Catch 22 position. The more that individual reports of flooding come into us and are verified as hydraulic, the greater the priority in resolving them. We have a fixed pot of money and with that we will clear the highest priority issues. To escalate things even further for resolution, properties are placed on the flood risk register. This, I believe, is what all sewerage undertakers in the country do.

- xi. After no further contact from the customer, the company sent an email on 13 December 2016, closing the complaint. A comprehensive response was also sent on 30 December 2016.

3. The issue for determination in this adjudication is whether the company has failed to supply its services to the standard that would be reasonably expected of it. In considering that question, it is material to consider the way in which the courts would address the scope of the company's responsibility to take action where there has been an escape of sewage, including a recurring escape. In particular, although the company has a general duty under section 94(1) of the Water Industry Act 1991 to provide, improve and extend its sewers and to cleanse and maintain them, a decision of the House of Lords in *Marcic v Thames Water* [2003] UKHL 66 was that in the light of the general duty under section 94(1) of the Act, the obligations in specific cases cannot be determined in the courts in circumstances where there is no negligence (negligence in this context meaning having reasonable regard and care for the interests of persons generally and

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not merely the customer). Instead, there is a statutory regime enforceable by OFWAT under section 18 of the Water Industry Act 1991. The WATRS scheme rules stipulate that the adjudication process is not for use in the case of matters which fall to be decided by OFWAT. It follows that in the absence of a finding of negligence, it is not permissible for redress to be given under the WATRS scheme merely because there is a defect in the sewerage.

4. I have considered whether the operational response of the company was negligent in its conduct towards the customer, even though it did not foresee or forestall the various operational problems which adversely affected the customer, whose property is, as identified in the independent report, susceptible to flooding due to surface drainage.
5. I find that the company did conscientiously attend the customer's garden when he complained and did carry out investigations in consequence of those complaints. These included in 2013, investigation of the sewer and manholes which ran through the rear gardens of T Street. These investigations required the permission of the householders affected. I find that these investigations were, on each occasion, consistent with the type of investigations that would be expected in the circumstances affecting the customer and I find that it is reasonable for the company to have investigated each incident as it arose and to look for a proximate cause for the events. I find that there is no reason to conclude that any such investigation was carried out other than with reasonable care and skill and with careful regard to the need to eliminate flooding incidents. On each occasion, a primary cause of the flood was found and action taken. I also take into account that the customer has, in his reply to the company's defence stated:

I have no issues in respect of STW's reaction to reach reported incident of flooding nevertheless STW has never satisfactorily ruled out the issue of hydraulic overloaded to the satisfaction of myself, or more importantly, the drainage consultant whom I engage. Although a copy of STW's hydraulic model for the vicinity was requested (my email to carry on 24 November 2015 and Drainage Services email 17 June 2016, this was never provided.

It follows, therefore, that I find in respect of its investigation and response to individual incidents that the company was not negligent and did not fail to supply its services to the standard that can reasonably be expected of it.

6. As for the customer's complaint that the company has not adequately assessed or made provision for occasions of hydraulic overload, this contention needs to be treated with caution. I find that a company can reasonably be expected to investigate and decide upon the functionality of its network, but it does not follow that the company can be directed to make provision in any

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individual case. The company is required to consider its priorities and resources in a manner which affects all its customers. This is reflected in the emails from the company to the customer on 22 and 23 September 2016: the company indicated that it was willing to put the sewerage in the vicinity of the customer's property on the register of those at risk of flooding but could not authorise the expenditure on strategic changes merely because that risk existed. As the company explained, it was under an obligation to consider any such change in the context of other priorities. I find that in approaching the matter in this way, the company has provided its services consistently with the standards that would reasonably be expected of it. As indicated above, challenges to the decision on priorities of the company can only be made by reference to Ofwat. Although the customer has requested, therefore, that the company should make further provision by way of additional pipes or an additional sewer in T Street, I have no jurisdiction to make such direction, even if such a direction could be justified.

7. As to whether the company has sufficiently investigated, I find that the company has, on each occasion of flooding, found that there has been an operational reason for the flood which has most recently occurred and has taken such steps as it can reasonably to mitigate this problem. I find that there is no reason to find that the company has not accurately assessed the risk in question. It has acknowledged that the risk exists and it has obtained a report from [REDACTED] (referred to in the company's email of 22 September 2016) as to the extent of that risk. I find that the company is not obliged to supply the customer with copies of its internal considerations and reports and therefore, notwithstanding the customer's request for provision of the company's hydraulic model for the vicinity, it was not obliged to supply the customer with a copy of the report by [REDACTED]. Overall, I find that the customer has not shown that the company failed to supply its services to the level that would reasonably be expected of it.
8. It follows, therefore, that I find that that the customer is limited to his right to receive compensation under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008, which provides for compensation to be paid for leaks external to the customer's house. The company states that it has made payments to the account holder and the customer has put forward no evidence in his comments in reply to the company's defence which indicates that it was inappropriate to do so or that, if payments were made to the tenant, that it did not occur.
9. It follows that, notwithstanding that I recognise that the customer is experiencing economic inconvenience and his tenant is experiencing considerable domestic discomfort in consequence

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of the flooding risk, I find that the customer has not shown that the company has failed to supply its services to the standard that would reasonably be expected of it and, therefore, has not shown that he is entitled to further redress.

Outcome

The company does not need 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.



Claire Andrews, Barrister, FCI Arb

Adjudicator

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