

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0580

Date of Decision: 28 September 2017

#### Complaint

The customer submits that the company's actions and omissions caused sewage flooding in his mother's property. The customer also submits that the company provided a poor level of customer service during and following the flooding incident.

#### Defence

The company disputes any liability for the sewer flooding. However, it submits that it acknowledges that the customer received an unsatisfactory level of customer service at times and apologises for this.

#### Findings

The company has not shown that it adequately maintained the sewer prior to the June 2016 flooding and it bears no responsibility at all for the blockage. The company also provided some poor customer service on a number of occasions after it became aware of the flooding in the customer's property, and in the period after the flood and prior to the customer bringing the matter to WATRS.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum total of £1,100.00 in compensation.

The customer must reply by 26 October 2017 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 28 September 2017

## Party Details

Customer: ██████████

Customer's Representative: ██████████

Company: ██████████

## Case Outline

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

- His elderly mother is 88 years old and has a heart condition. She lives alone. At around 4:30pm on Thursday 23 June 2016, following very heavy rainfall, raw sewage flooded the property internally and externally from the ground floor toilet. Fortunately, his mother was being visited by her youngest daughter and two adult grandchildren on the evening in question. The flooding continued for several hours until the external waste pipe was broken away from the house by his niece as a desperate attempt to stop the sewage from continuing to flood the house.
- Several attempts were made to contact the company using its 24 hours Customer Service Team number on the day the flooding began and the next morning.
- His mother's insurance company arranged a specialist company to attend the property and remove contaminated items. The company also cleaned the property internally and externally. The flooding caused damage to walls, carpets and flooring. It took 6 months for the property to be fully repaired and returned to its normal state.
- Further, the company provided a poor level of service in terms of its communications. His mother was not informed of the cause of the flood when this was discovered. Nor was she informed of the work that had been done to address this. He had to chase for responses to correspondence and only after the intervention of the Consumer Council for Water ("CCW") was a full response received.

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- The customer requests that the company provide a service, specifically, “ **████** to improve upon and provide an efficient 24 hour customer service response for its customers when faced with a sewage outage/flooding into their homes. **████████** to improve their initial customer liaison and communication (verbal and written), when dealing with their customers who have suffered sewage flooding/outage into their homes.”
- The customer also requests an unspecified amount of compensation for “1. Failure to respond in a timely and adequate manner for an emergency. 2. Failure to ensure main sewer was clear of obstructions following work done. 3. Failure to disclose cause of obstruction to local residents affected by sewer block. 4. Inadequate communication to local residents during investigation.”
- In addition, the customer also requests compensation in the sum of £600.00 to cover insurance policy excesses.

**The company’s response is that:**

- On 23 June 2016 when the incident occurred, due to the sheer number of calls being received it was not able to respond as quickly as it would have liked. The next day when the customer’s daughter called, it immediately attended, cleaned and disinfected the affected areas and left the customer to contact her buildings insurance company to make a claim for any losses.
- Sewerage undertakers have no strict liability for sewer flooding unless negligence can be proven. In this instance, it put in place a sewer flooding alleviation scheme in 2014 and, at some point in time, a third party placed a concrete block in the sewer causing a blockage. It could not have predicted or prevented this from happening and therefore cannot be held liable for the blockage or subsequent damage caused.
- It disputes some of the customer’s version of events. Its timeline and evidence provides details of all contacts between the parties. However, it does acknowledge that it did at times provide a poor level of customer service.
- It has offered an overall payment of £320.00 in acknowledgement of any broken promises, time taken and any incorrect information given. It cannot have foreseen that sewer flooding was going to occur or that the number of telephone calls to its Contact Centre on 23 June 2016 was going to be at the very high level experienced. Therefore it does not believe that a payment should be made specifically for this. It has no liability for sewer flooding and there has been no negligence on its part; it is therefore unable to pay any insurance excesses.

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## 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 acknowledge the customer's submissions about other local residents. However, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any complaints or requests for redress in relation to third parties cannot be considered.
2. I must also remind the parties that under s.5.4.3 of the WATRS Rules, comments may only be on points raised in the company's response and must not introduce any new matters or any new evidence. Any such new matters or new evidence must be disregarded by the adjudicator.
3. Further, I remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his/her case on the balance of the evidence.
4. The customer has made a number of submissions about the parties' communications. The customer has not provided full and substantive evidence of these communications such as for example bills showing dates and times of calls and contemporaneous notes of the calls. The company disputes some of the customer's version of events. The company has submitted timed and dated contemporaneous logs of the parties' communications. I am also mindful that in his

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Reply to the Defence, the customer does not address or rebut the examples given by the company in its Defence of discrepancies between the two parties' versions of events. I am also mindful that the evidence suggests that the customer was not himself present during most of the parties' interactions. Having carefully considered all of the evidence submitted, I am therefore inclined, on a balance of probabilities, to attach more weight to the company's account of the parties' communications.

#### *Liability for flooding*

5. I accept the company's submission that under the Water Industry Act 1991 it has no strict liability for sewer flooding unless negligence can be proven.
6. The company submits that the blockage was caused by a concrete block placed in its network by an unknown source; solids built up behind this leading to a blockage and subsequent flooding. I accept the Flood Investigation report submitted by the company as evidence to support its submission.
7. The customer submits that the concrete block was negligently left behind in the sewer during/following the installation works for the ██████ Alleviation Scheme (CRAS), a local flood alleviation scheme. I note the customer's submissions. However, the customer has not submitted any substantive evidence to support his submissions. I am also mindful that the CRAS works took place in 2014 and had the company itself left concrete in the sewer a flood would likely have occurred within a far shorter timeframe than the 24-month period that it took for this incident to occur.
8. However, notwithstanding the above, having carefully reviewed the evidence submitted, I am not satisfied that the company has clearly shown, if at all, that it adequately maintained the sewer prior to the June 2016 flooding. The company submits that following its investigations into the flooding, it has now introduced a bi-annual cleaning of the sewer. I am mindful of the customer's concern that the company has only now introduced the maintenance programme.
9. I am also particularly mindful of the findings in the company's own Flood Investigation report which states *"from looking at historical records, it is clear the main sewer down ██████ has a history of requiring cleaning. Figure 7 below, shows the section downstream of the blockage*

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*found also showing evidence of being heavily surcharged for a sustained period, shown by the deposits left on the side walls of the sewer.”*

10. Bearing in mind the report's finding that the sewer has a history of requiring cleaning, no clear evidence of the maintenance work done on the sewer prior to the June 2016 flooding has been submitted. Having carefully considered the matter, and in the absence of any substantive evidence from the company showing otherwise, I am not satisfied that the company has not shown that it adequately maintained the sewer prior to the June 2016 flooding, and it bears no responsibility at all for the blockage.
11. I am therefore not satisfied that the company has shown that it provided its services to the customer to the standard to be reasonably expected in relation to the flood in June 2016.

#### *Customer service*

12. The company does not dispute the customer's submission that it took a number of attempts to get through to the company's 24 hours Customer Service Team on 23 June 2016. The company states that the heavy rainfall on the day was graded as a 1 in 28 year rainfall event, and that due to the number of calls being received, the customer had difficulty reaching its team. Having carefully considered the matter, bearing in mind the circumstances, I am inclined to accept the company's submission that it did not fail to provide its services to the customer to the standard to be reasonably expected by the average person due to the significant and unprecedented rainfall which occurred that day.
13. However, I note that once the customer did get through to its Customer Service Team the company concedes that although it advised the customer that it would attend within 8 hours it failed to do so. No evidence has been submitted to show that the company contacted the customer to inform her that it could not attend as stated. The evidence shows that it was only after the customer had to contact the company again the follow morning that the company attended the property. I find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard.
14. Further, there is also no evidence to show what advice or information about what to do whilst waiting for the contractor, if any, was given to the customer during the call on 23 June 2016. I note that the company has submitted in evidence a page from its website which clearly sets out

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information about what to do if a property is being flooded by a public sewer. However, there is no evidence to show that this information was given to the customer on 23 June 2016 to assist her. I am therefore inclined to accept the customer's submission that the company also failed to provide its services to the standard to be reasonably expected in this regard.

15. The evidence confirms the company's submission that its contractors attended the property on 24 June 2016 and washed down and disinfected all the affected areas. The customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard.

16. It is not in dispute that although the company was aware of the cause of the blockage following a CCTV camera survey on 2 September 2016 and addressed this issue immediately, there was a significant internal delay in passing this information onto its Customer Services Team. As a consequence of which, despite a number of requests as early as July 2016, the customer was only informed of the cause and the rectification work done in correspondence dated 21 April 2017; some seven and a half months later. I find that the company also failed to provide its services to the standard to be reasonably expected in this regard.

17. Finally, the company also concedes that it failed to provide a substantive response to the customer's letter dated 19 December 2016 which was received on 13 January 2017. The company also admits that it delayed in paying the Customer Guarantee Scheme ("CGS") payment required for this failure to provide a substantive response; delayed in paying the associated late payment penalty; and delayed in paying the required CGS payment for internal sewer flooding and the associated late payment penalty for that too. I find that the company also failed to provide its services to the standard to be reasonably expected in these regards.

### *Redress*

18. The customer requests that the company provide a service, specifically, "*██████ to improve upon and provide an efficient 24 hour customer service response for its customers when faced with a sewage outage/flooding into their homes. ████████ to improve their initial customer liaison and communication (verbal and written), when dealing with their customers who have suffered sewage flooding/outage into their homes.*" As discussed above, although I note that it took the customer a number of attempts to reach the company; due to the significant and unprecedented

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rainfall which occurred that day, I am not satisfied that the customer has shown that the company failed to provide its services to the customer to the standard to be reasonably expected. However, once the customer did get through to the company and in the period after the flood and prior to bringing the matter to WATRS, I am not satisfied that the company provided a reasonable level of customer service on occasions as set out above. I have therefore found failings in this regards. However, I find that any specific action that needs to be taken by the company to improve its customer services in light of the failings highlighted is an internal business matter for the company alone to determine. It falls outside my remit to direct any action in this regard.

19. The customer also requests an unspecified amount of compensation for *“1. Failure to respond in a timely and adequate manner for an emergency. 2. Failure to ensure main sewer was clear of obstructions following work done. 3. Failure to disclose cause of obstruction to local residents affected by sewer block. 4. Inadequate communication to local residents during investigation.* I have found that the company failed to respond adequately once the customer did get through to its Customer Services Team on 23 June 2016; failed to show that it adequately maintained the sewer prior to the June 2016 flooding; delayed in disclosing the cause of the flooding to the customer despite requests; and provided some other poor customer service in the period after the flood and prior to bringing the matter to WATRS. Bearing in mind the customer’s age and ill health and the fact that this matter has been ongoing for a significant period of time, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience suffered. Having carefully considered the evidence provided, I consider the sum of £500.00 to be a fair and reasonable level of compensation. The customer has not provided any evidence to justify a larger sum of compensation. I therefore direct that the company pay the customer the sum of £500.00 in compensation.

20. The customer also requests compensation in the sum of £600.00 to cover insurance policy excesses. The customer has submitted evidence from The Co-operative dated 4 August 2016 and 5 December 2016 respectively to support his submission. In light of my findings above, that the company has not shown that it adequately maintained the sewer prior to the June 2016 flooding and bears no responsibility at all for the blockage, I find that it is fair and reasonable in the circumstances for the company to reimburse the customer the sum of £600.00.

21. Accordingly, I direct the company to pay the customer the sum total of £1,100.00 in compensation.

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### Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum total of £1,100.00 in compensation.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 26 October 2017 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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