

# **WATRS**

## **Water Redress Scheme**

### **ADJUDICATOR'S DECISION SUMMARY**

**Adjudication Reference: WAT/ /0588**

**Date of Decision: 25 October 2017**

#### **Complaint**

The customer submits that her business and domestic premises were subject to an internal sewage leak due to a sewerage flooding from a public sewer. The customer submits that the company is liable to pay her compensation for the damage caused to her property as a result of the flooding. The company has failed to pay her any of the amounts agreed and it has delayed with dealing with her case. She requests compensation of £3383.00 and an apology from the company.

#### **Defence**

The company submits that the customer's property was internally flooded due to factors beyond its control; a build-up of fats, oil and grease in its sewer network. Therefore it is not liable for any resulting damage caused to the customer. However, it has paid the customer £1034.00 in compensation which it agreed was due to her; this amount includes Guaranteed Service Standards payments for both the flooding and as a result its delays in dealing with her claim and in providing the GSS payment, as well as £210.00 for the cost of cleaning up after the flooding.

#### **Findings**

The company was aware of the risk of sewerage leaks as a result of the build-up of fats, oils and grease and tree root ingress on the sewer however there is a lack of evidence that it took sufficient measures to mitigate the risk of flooding as a result of these issues. It also delayed in handling the customer's claim and has failed to prove it has made payment to the customer for the amounts agreed. These are failures on the part of the company to provide its services to the standard to be reasonably expected by the average person.

#### **Outcome**

The company is required to pay the customer £1540.00 in compensation and provide a written apology.

**The customer must reply by 22 November 2017 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0588

Date of Decision: 25 October 2017

## Party Details

Customer: [REDACTED]

Company: [REDACTED]

## Case Outline

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

- On 24 January 2017, her business and domestic premises were subject to an internal sewerage leak caused by sewerage flooding from a public sewer. The flooding manifested through her drain covers, entering her premises and flooding the cellar areas.
- Whilst the company responded quickly by clearing the blockage, it has failed to demonstrate that it properly maintained a section of public sewer. She refutes its claim that the cause of flooding was as a result of fat, oil and grease (FOG) blockages, and the company has not explained why Planned Preventative Maintenance (PPM) was in place for the length of sewer. The previous owner of her premises asserts that blockages in the past were caused by tree root ingress.
- The length of time taken by the company to reply to her correspondence has been unacceptable; it delayed with taking ownership and providing a response. To date, she has not received the payments promised.
- In her reply the customer reiterates that the company has been negligent in this matter and that the cause of flooding was not as a result of FOG.
- She also asserts that there has been a lack of clarity from the company as to why, what and when PMM was carried out on the relevant length of public sewer. She also highlights the company's on-site activities with obstacles and failures encountered in trying to camera and jet the sewer. She asserts that this casts doubt as to its claim that the sewer was, previous to the flooding, fit for purpose and properly maintained.
- The customer requests that the company provide an apology and pay compensation of £3833.00 for her losses incurred.

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**The company's response is that:**

- [REDACTED] ('the company') asserts that the customer suffered sewer flooding to her property in January 2017, which subsequently impacted on various items within her salon.
- On 2 February 2017 she requested reimbursement of £3833.00. It followed the normal process for operational issues affecting a customer's property and provided the customer with the details of its wholesalers, [REDACTED]'s insurance company, [REDACTED](PHH).
- It received a complaint from the customer on 20 April 2017. PHH was due to provide an outcome to the claim by 17 May 2017 however this was not provided on time as PHH were awaiting CCTV evidence from [REDACTED](XYZ). It kept the customer updated through phone calls and emails.
- PHH decline the claim on 15 June 2017 however it challenged the decision with XYZ, as it believed the customer had incurred costs as a result of the flooding. XYZ agreed to pay £1004.00 as a gesture of goodwill which factored in the cost of the clean up of the sewage including materials and the delay in paying the sewerage compensation.
- It forwarded the customer's subsequent letter of 20 July 2017 to XYZ for it to reply to the outstanding points raised by the customer. XYZ replied on 18 August 2017, however it received a further complaint from the customer dated 22 August 2017, which it forwarded to XYZ. It was told by XYZ to inform the customer that the amount detailed on the letter dated 18 August 2017 was the full and final settlement.
- The company has submitted the below response from XYZ (responsible for operational issues affecting the property):
- As the claim concerns a flood at the customer's property, it falls outside the remit of WATRS (Rule 3.5) as OFWAT has the power to take action in matters of this type via an Enforcement Order.
- After carrying out its investigation, it was identified that the flooding was caused by a blockage in the sewer due to a build up of FOG. Whilst the CCTV survey showed defects within the sewer pipe work which it accepts it will address, these would have caused the build-up of FOGs.
- XYZ 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. It asserts that sewerage companies are generally not liable for sewer flooding when caused by factors beyond their control, although they could be held liable if the flooding was caused by their negligence.

- As the cause of the sewage flooding in the customer's case, was FOG, it denies it has been negligent and therefore it is not responsible for the subsequent damage from the flood that occurred.
- It admits a PPM was in place for the section of sewer however contends that it kept to the program and that the cause of the flood was FOG.
- It admits that the customer should have received an automatic Guaranteed Standards Scheme (GSS) payment for an internal sewer flood incident and as the customer was being billed by the company, it should have given the credit to the company to pass on to the customer within 20 working days of the incident. This is a one-off failure and on 15 March 2017, it made a payment to the company for the customer's annual sewerage charge in the sum of £468.00.
- As of 17 July 2017, it released further sums to the company to pass to the customer comprising:
  - £306.00 representing the late penalty payment, increased to 4-months' worth of sewerage charges as a goodwill gesture;
  - £150.00 for time spent by the Customer cleaning up the incident as a goodwill gesture, and
  - £60.00 for expenditure on cleaning materials as a goodwill gesture.
- It cannot comment on whether the customer has received these amounts as it has no access to the company's billing.
- It accepts that the CCTV survey it carried out following the flooding showing a crack on the sewer pipe, however, this is not connected to the flood, which was an event it had no control over and for which it is not liable. It suggests the customer make a claim on her private insurance for the effects of the flooding.

### **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 acknowledge that the company is the retailer and XYZ the wholesaler for the region in which the property is located. The company contends that aspects of the dispute relate to a wholesale issue for which XYZ is responsible and on this basis, I have been provided with a second 'defence' from XYZ. I remind the parties that whilst I will take into account all supporting documentation received including from the company's wholesalers, there is no provision under the Scheme Rules to add another company or party to the dispute. The customer operates a business known as ■■■ at the premises known as ■■■ (the Property). Therefore the customer is a 'non-household' customer and I find that the claim is against the company only. I shall proceed with my decision on this basis.
2. The company submits that the dispute falls outside the scope pursuant to section 3.5 of the Scheme Rules as OFWAT has the power to take action in matters of this type via an Enforcement Order. I do not uphold the objection raised as whilst OFWAT do have general enforcement powers to secure compliance where companies have failed to meet their obligations, having reviewed the case papers, I am satisfied that the subject matter of the dispute concerns waste water/sewerage services and therefore it falls within the scope of WATRS as set out at 3.1 of the Scheme Rules. I shall proceed with my decision on this basis.
3. The basis of the claim is that the company has been negligent by failing to properly maintain a length of sewer to a reasonable standard and as a result the Property was subject to foul flooding. The customer maintains that the company is therefore responsible for the subsequent damage to her Property as a result of the flood. I remind the parties that any claims of negligence fall outside the scope of WATRS, however, I am able 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 at the Property on 24 January 2017, as well as the customer service issues raised by the customer surrounding this issue.

4. In relation to the flooding, 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 Act. However, I accept the company's assertion that generally, it would not be responsible for any damage from flooding if the cause is outside its control i.e. third party actions, including the disposal of fats, oil and grease into the network, 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 am mindful that its ability to carry out any major or structural sewer improvements is a complicated financial matter which has to be agreed, in advance, with other agencies including OFWAT.
5. In the customer's case, there is a dispute between the parties as to the cause of the flooding in question. The company maintains it was due to a FOG blockage whereas the customer refutes this claim. The customer suggests that the blockage was due to tree root ingress which she says the previous owner of the Property told her was the cause of previous sewerage flooding. The customer also highlights the issues encountered by the company when attempting to investigate the sewers following the flooding. In regards to its investigations carried out following the flooding, the company confirms that due to scale on the interior of the sewer, it suffered a series of aborted CCTV surveys but confirms that it was able to complete the survey on 7 June 2017. The company submits the pipe was in good order and the CCTV showed some cracks to the sewer, which it states it will repair. In light of the company's detailed explanation provided in the defence, on balance, I accept the accuracy of the above submissions and its assertion that such defects would not have caused the blockage which then caused the back-up through the customer's drains.
6. I find that in support of its stated position, the company has provided a job note dated 24 January 2017 from the technician who attended the location of the flooding. I acknowledge this states that the blockage was "full of FOG". However, it is evident from the company's defence that there was a known risk of flooding due to blockages to the sewer caused by tree root ingress and a build-up of FOG. The company confirmed this in its letter to the customer dated 18 August 2017 and also advised that it had placed the section of sewer on its PPM in an effort to mitigate any potential risk of this occurring. I note the company had identified this risk on 15 August 2015 and the PPM included six monthly jettings of the sewer. I note that the last scheduled PPM was in September 2016. Whilst the company submits it kept to its program of

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works, it has not provided any evidence, such as a record or job note, to show this. Whilst blockages stemming from FOG are as a result of factors outside of its control as they involve actions by third parties, it is clear that the company had identified that the section of sewage pipe was prone to both FOG and tree root ingress and therefore I consider it was obliged to put appropriate measures put in place to prevent an identified risk of future flooding due to these issues. Based on all of the evidence, I am not satisfied that the company has proven that it took sufficient measures to deal with the known issues and mitigate the flood risk. I am satisfied that this amounts to a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.

7. The customer submits that the company delayed in dealing with her claim for compensation, delayed in responding to her complaint and delayed in paying her GSS payments. The company admits there were failings in this respect. Having reviewed the evidence, I accept that the company delayed in identifying that the customer was due a GSS payment for the internal flooding. I find that in acknowledgement of this failure the company agreed a payment of £306.00 representing the late penalty payment, increased to 4-months' worth of sewerage charges as a goodwill gesture (agreed on 17 July 2017). It also agreed that the customer was due a £468.00 GSS payment for the internal flooding based on the customer's annual sewerage charge (agreed on 15 March 2017). I find that there was also a delay by the company in acknowledging the customer's claim of 2 February 2017 as it failed to provide this within the 10 day GSS time frame. It agreed to a £20.00 payment for this delay (agreed on 21 July 2017). Based on the evidence I am satisfied that the compensation payments agreed by the company, at the time, were reasonable and appropriate.
  
8. However, I am mindful that the customer, throughout her submissions, is adamant that she has not received these funds from the company, despite providing it with her bank account details. The company submits it paid the customer the amount of £1004.00 on 21 July 2017 (a £468.00 GSS payment and a £306.00 late penalty as well as a further sum of £210.00 which the company agreed to pay the customer for cleaning materials and time spent by her cleaning up the incident plus £20.00 for the delay in responding to her claim of 2 February 2017) and £30.00 on 9 October 2017 (GSS and late payment - as per Appendix 26 of the company's defence). In the absence of any evidence from the company, such as banking or financial records to show that the amounts agreed have been paid to the customer, I accept the customer's assertion that she has not received any compensation in respect to the above

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amounts agreed. I find that the non-payment of the sums agreed is further evidence of the company failing provide its services to the customer to the standard to be reasonably expected by the average person.

9. In light of the proven failure by the company to the effect that it did not take sufficient measures to avoid the flooding, I find that it is responsible for any proven damage caused to the Property as a result of the flooding and I will therefore consider the customer's compensation claim for £3383.00. This amount comprises £675.00 for time spent cleaning up the flooding; £60.00 for cleaning materials; £130.00 for the cancellation of 5 clients on the morning of 25 January; £300.00 for replacement vinyl kitchen floor covering; £2560.00 for damaged education materials in the cellar; and £108.00 for the bill from private jetting company.
10. In relation to the customer's claims of £675.00 for time spent cleaning up the flooding (3 people from 10:00 pm on 24 January to 1 pm on 25 January at £15.00 per person per hour) and £60.00 for cleaning materials, I note that the company agreed to pay £210.00 for the cost of cleaning materials and the time spent to complete the clean up. The customer has not provided any evidence in support of her claim. Further, I accept the company's assertion that if the customer had contacted it in the first instance these costs would have been avoided, as the company would have undertaken the cleaning itself. Therefore I find that the amount already agreed of £210.00 based on the cost the company would have incurred to clean the effects of the flooding, is fair and reasonable.
11. I find that the customer has not provided any substantive evidence in support of the remainder of the items claimed for, save for a list of the books that were damaged in the cellar (amounting to £2560.00). Due to the absence of any evidence showing the cost of the books either when purchased or the cost to replace them (as new or second hand) and in the absence of further details such as the age of the books, I find that the customer has not substantiated her claim in full. In the circumstance, I find that the company shall pay the customer 10% of this claim. I am satisfied that this amount is reasonable and reflects the above issues including the likely depreciation in value of such items. Therefore I direct that the company pay the customer £256.00 in compensation on this basis.

12. In regards to the company's failure to pay the customer the amounts already agreed (£1034.00), as I consider the company's actions in this regard would have had negative financial repercussions for the customer, particularly as the initial flooding incident occurred approximately 9 months ago, I consider it fair and appropriate for the company to pay the customer additional compensation of £250.00 for the inevitable stress and inconvenience caused to her. I am satisfied this amounts reflect the seriousness of the issue and length of the delay. Therefore I direct that the company pay the customer £1284.00 accordingly.

13. In light of the company's failures, I find that the customer's request for an apology is justified and accordingly I direct that the company provide a written apology to the customer.

#### **Outcome**

The company is required to pay the customer £1540.00 in compensation and provide a written apology.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 November 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), MCIArb**

**Adjudicator**