

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0673

Date of Decision: 30th May 2018

#### Complaint

The customers submit that their property experienced sewerage flooding on the 5<sup>th</sup> February 2017. The customers assert that this was caused by a fault in a back-up generator in the company's Pumping Station. They assert that this occurred due to the failure of the company to properly maintain the generator. They seek action to mitigate future flood risk to their home and compensation of £2,500.00 for stress and inconvenience caused by this issue. It is accepted by the customers that the company had made payments for all the repairs and other ancillary costs such as temporary accommodation. The payment already made by the company to the customers totals £21,247.60.

#### Defence

The company denies any liability for the sewerage flooding. It states it has paid monies to the customers out of goodwill. It does not believe that the customers' claim for stress and inconvenience is substantiated. It has investigated mitigating action against future flooding but finds none is appropriate. The company submits that it has already paid £21,247.60 for building works, flooring, gravel, a storage box, temporary accommodation, electricity, time spent sourcing contractors and a family meal. No further offer of settlement has been made.

#### Findings

The fact of the flooding occurring, and the physical damage caused by the flooding, on the 5<sup>th</sup> February 2017, is uncontested and agreed by both parties. The customers have shown that the company is liable for the maintenance of the generator in the Pumping Station, the operational failure of which caused the sewerage flooding to occur on the customers' property. The company has failed to evidence its claim that it adequately maintained the generator and that there was no negligence on its part. Therefore, I find that the company has failed in its provision of services to the customers to a standard to be reasonably expected.

#### Outcome

The company needs to take the following further action:

Pay compensation of £2,000.00 to the customers.

The customer must reply by 27th June 2018 to accept or reject this decision.

# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0673

Date of Decision: 30th May 2018

## Party Details

Customers:[ ].

Company:[ ].

## Case Outline

### **The customers' complaint is that:**

- On the 5<sup>th</sup> February 2017, sewerage from other properties flooded into the downstairs part of their home.
- They state that the flood of sewerage came through the doors and floors.
- The customers claim that this made the ground floor of their house uninhabitable.
- The customers state that Mrs Brown was in the late stages of pregnancy at this time and that she, her husband and her three children were greatly inconvenienced by the incident and its subsequent effects on their living arrangements.
- The customers claim that the cause of the sewerage flooding was the negligence of the company. Particularly, that the company failed in its maintenance of a generator at the pumping station, which did not "kick in" during an electricity power cut.
- The customers state that they have already received payments from the company for the costs to repair the damage to their house, as well as for other ancillary costs such as time spent sourcing contractors and temporary accommodation.
- The customers seek a further payment of £2,500.00 for stress and inconvenience.
- The customers also seek action from the company to mitigate further potential flooding.

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

- The company denies liability.

- It states it has paid £21,488.21 to make good damages to the customers' home and other costs such as temporary accommodation, time spent sourcing contractors and a family meal. It maintains that this was a goodwill gesture and should not be seen as an acceptance of liability.
- It states that it has facilitated an engineering survey to ascertain flood risk to the customers' property and investigate possible mitigating action. This work was conducted by [ ] Limited, an engineering company. However, the report indicated that there was no suitable action that could be taken and that a "flip valve" as suggested by the customer might even make flooding more likely.
- It states it has made upgrades to the Abby Pumping Station.
- The company submits that on the day of the flooding there had been an electric power failure, which was the responsibility of the power company. It states that the generator in the pumping station, which was supposed to be the backup power, failed to kick in as "a clip had come loose."
- The company claims it has an adequate system of maintenance of which it keeps a record in a log book at the pumping station. It claims that the log book shows that the generator was checked and found to be working properly on the 22<sup>nd</sup> January 2018. The company claims that the maintenance check follows a "29 point plan".
- The company claims that its insurance assessor would state that there was no liability attaching to the company.
- The company states that it has already made adequate payments to the customers as follows; £10,963.04 for building works, £7,066.96 for replacement flooring, £114.99 for replacement gravel, £29.95 for a replacement storage box, £257.21 for electricity used, £2,217.60 for temporary accommodation, £447.85 for time spent sourcing contractors and materials, and £150 for a family meal.
- It believes the present claim for £2,500.00 to be unsubstantiated.

### 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 customers to the standard to be reasonably expected by the average person.
2. Whether or not the customers have 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. The fact that on the 5<sup>th</sup> February 2017 there was a flood of sewerage into the customers' home, which was caused by a failure of the company's generator at the Abby Pumping Station, is uncontested. The contention between the parties lies in the matter of liability and whether or not the customers have shown that they suffered stress and inconvenience as a result of the flooding.
2. The company states in its defence that it has already paid the customers £21,488.71. The customers' application states that a total payment of £12,204.15 has been paid. However, I am conscious this does not seem to be the complete amount paid by the company, and as the customers do not contest the company's figure in their comments to the defence I shall take the figure of £21,488.71 as being the accurate figure for the monies paid by the company.
3. Regarding liability: I refer to the Water Industry Act 1991 ("the Act") under which the company has no strict liability for sewerage flooding unless negligence is proven, and upon which the company relies in its defence. The sewerage flooding on the 5<sup>th</sup> February 2017 to the customers' property was caused by a failure in the company's infrastructure, particularly a generator owned by the company. This is not disputed. I therefore intend to turn to the company's defence in relation to the issue of liability. Taking into consideration the agreed and undisputed facts I find that the customer has done enough to show that there is a case to be answered by the company, namely that the escape from the sewer was due to a failure to maintain the sewer. I note that S94 of the Act provides that a company has a duty to cleanse and maintain sewers to ensure that they remain operational. In light of this, I find that the company needs to rebut the customers' claim and, to do so, demonstrate that it has met its obligations to maintain the sewer and in this case specifically the backup generator.
4. The generator at the pumping station is intended to be a back-up source of power in the event of an electrical power failure from the mains source. On the 5<sup>th</sup> February 2017, the generator failed to work. The company states in its defence that the reason the generator did not work is that "a clip had come loose." The company has provided no evidence regarding the clip or what caused it to come loose.

5. The company has referred to its assessor's report. However, it has not provided a copy of the report as evidence in the case. In its defence the company states: "We sought advice from Cunningham Lindsey to guide us through the Brown's claim but ultimately we stood them down and paid each invoice Mr and Mrs Brown submitted without question.". I do not dispute that there is a report but as I have not had sight of it and in light of the fact that the loss assessor was stood down, it may be that the report was not a full and final report.
6. The company also submitted that: "As we have advised Mr & Mrs Brown previously, had they claimed from their home insurance, which should have been the case, their insurance company would not have been able claim from ours, because we had no liability and so while the insurance company may have covered the cost, their insurance premiums would have risen and as such they have had a good result in this instance." I find this to be an unsupported submission and, while I accept that this is the view of the company, I cannot conclude that it is factually correct as the customer did not make a claim on their insurance. The company refers to the loss assessor report but, as noted in paragraph 5, the loss assessor's report has not been submitted as evidence and I cannot therefore consider it in full.
7. The company has referred to a log book at the pumping station that detailed the maintenance to the generator including records of checks carried out at the pumping station. The company states that there is an entry on the 22<sup>nd</sup> January 2017 showing that the pumping station was checked and that no problems were identified on this date. Given the accepted cause of the escape from the pumping station was a failure of the backup generator I consider any documentation that supports the submissions by the company that they discharged their duty to maintain the pumping station to be evidentially significant. However, the company has not provided the log book or copies of the entries specifically pertaining to the backup generator.
8. Further, the company also refers to a "29 point plan" that forms the basis of its checking system during maintenance procedure. Again, the company has not provided a copy of the plan to support its submissions. . I accept that the company has submitted that they maintained the system but I find that they have not substantiated their submissions when they may otherwise have done so. Given the basis of the claim made against the company, I am satisfied it should have been evident to the company that any documentation that supports its submissions that it correctly maintained the pumping station equipment is significant.
9. There is no indication in the company's defence as to whether or not the generator was checked on the 22<sup>nd</sup> January 2017. I note that had the company provided the pump station log book this

could have been of assistance. The company submitted that the generator was checked quarterly at the time of the incident. It has not detailed how it undertook its checks or the date of the last check before the incident on the 5<sup>th</sup> February 2017. The company have not provided any information about the condition of the generator at the last inspection or made any note of the status of the component clip that caused the failure of the backup generator.

10. The company states that it has upgraded the pumping station since the incident. The customer maintains that the fact that the company has had to undertake this work is in itself evidence of the inadequacy of the previous system. The company states it has introduced a new pump and changed its back up arrangements. Further, the company states that it has increased the maintenance checks of the generator to monthly. I take into account that it is reasonable to assume that the company has increased its level of checks on the generator as it considered that this was a more suitable maintenance program. In the absence of any evidence regarding the previous maintenance regime, and with no further explanation as to why the company has increased the checks to monthly visits, I am persuaded by the argument that this indicates that the maintenance program in place on the 5<sup>th</sup> February 2017 was not sufficient.
11. On balance, I find that the company has not sufficiently demonstrated that it operated an adequate system of maintenance at the Abby Pumping Station generator before the incident on 5<sup>th</sup> February 2017. I find that the company owed its customers a duty to operate an adequate system of maintenance and that, in failing to do so, it did not provide its services to a standard reasonably expected by the average person. As a result of this failure, I am satisfied that the customers would have experienced a degree of stress and inconvenience and are entitled to an amount of compensation.
12. Customer Service. Another issue raised by the customers is that they believe that the company has prolonged their stress and inconvenience by refusing to agree to a payment earlier in the process. The company states that this is not true and that it has followed its standard protocol. I am minded that the company had the right to go through proper procedure and to defend its position if it did not wish to agree to a settlement. The requirement that a complaint must go through a mitigation process is a legal requirement and the company has no power over this. There is no evidence before me to suggest that the company unduly prolonged the process. I do not find that this claim is substantiated and I do not find that the company failed in its services to the customer in this regard.
13. Remedies: In this case, the customers seek an amount of £2,500.00 for stress and inconvenience. The customers submit that Mrs Brown was in the late stages of pregnancy with

her fourth child at the time of the sewerage flooding. They also state that the alternative accommodation provided by the company was unsuitable for the family. The family experienced logistical challenges due to the fact that their three children had to travel to different schools some distance from the temporary accommodation in [ ]. The customers state they opted to move back into the upstairs of their damaged house and relied on family members to support them by providing eating and other facilities. No exact timeframe for these events is submitted in evidence. From the payment evidence submitted in the company's defence there is information on the payments made by the company to cover the cost of building work. As these appear to be final payments I shall assume that the house repairs were completed by the time of the last payment of monies for repair work. On the 2<sup>nd</sup> May 2017 £10,963.04 was paid by the company for "building works" and on the 9<sup>th</sup> May 2017 £7,066.96 was paid by the company for "replacement flooring". On the evidence, therefore, it would appear that the house was returned to a satisfactory state of repair and fit for habitation by the 9<sup>th</sup> of May 2017 at the latest. (I note that there is a payment made on the 2<sup>nd</sup> August 2017, but this is for ancillary costs rather than substantive building work). Taking this into account, I calculate that the period of disruption to the customers' living arrangements began on the 5<sup>th</sup> February 2017 and ended on the 9<sup>th</sup> May 2017. The company has stated in its defence: "While we understand how upsetting and disruptive a sewer flooding can be, particularly at a time when Mrs Brown was pregnant, it must be considered that we have gone over and above in this case, as ultimately we had no liability."

14. I am mindful that damages awarded for stress and inconvenience are not to be regarded as a punishment for companies, but rather as an acknowledgement to customers of adverse circumstances that they have suffered to some degree. The stress and inconvenience does not have to be proved by the customer in the same way as other damages, that is by way of physical evidence. Based on the evidence provided, I am satisfied that the customers' lives were significantly impacted by the sewerage flooding and the subsequent consequences thereof. I therefore find that it is fair and reasonable to direct that a payment of £2000.00 be made in compensation. This payment is, I believe, an appropriate reflection of the adverse circumstances that the customers were forced to endure with their family. In making this award, I have considered the customers' asserted personal circumstances. I have also taken into account the payments already made by the company.

15. The customers have also asked for a particular action to be carried out by the company. They request that the company provide some mitigation within the network to alleviate the flood risk. The company has detailed its improvements to the Abby Pumping Station. These appear to be substantial. The company has also provided a WERM report. However, I note that due to an error over the location of the sewers in that report (and taking into account the improvement

works already completed) it is now not clear whether or not the requested FLIP device is suitable. In the circumstances, as the request and evidence provided lack certainty and are not specific, I am not satisfied that this particular claim for redress is appropriate. Accordingly, I do not make any direction for the company to carry out the requested mitigation action.

#### **Outcome**

The company needs to take the following further actions:

Pay compensation of £2,000.00 to the customer.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27th June 2018 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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*Johanna Higgins*

Johanna Higgins, Barrister, ACI Arb.

**Adjudicator**