

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0825

Date of Decision: 5 July 2018

Complaint

The customer complains that obstructions in the sewer caused flooding at her property. She had to move out for a period as it was uninhabitable and she was unable to use her kitchen or bathroom until repairs had been carried out. She had previously reported blockages to the company but it refused to properly investigate or take ownership of these. The company only agreed to undertake repairs when she produced evidence of a blockage on the sewer line; however, it then delayed with carrying out repair works. The company initially accepted liability and agreed to pay the costs of repairs to her house and the associated costs she incurred yet then reneged on its promise. It has been the most stressful period of her life, particularly as she had a young baby at the time.

Defence

The company denies that the flood incident that caused damage to the customer's property was foul water or related to obstructions or defects found in the sewers or on the sewer line. Whilst it has always accepted the customer's claim that she was told that it would cover her costs incurred, such advice was incorrect and given by its member of staff who did not have the relevant technical knowledge and before the facts were clear. Due to this error, it agreed to work with the customer and pay the costs of the repairs to her property. However, it denies liability for the balance of the amount claimed on the basis that leakage was from private internal clean water plumbing. The company did not make any settlement offer (beyond the £3860.00 already offered).

Findings

The company did not properly or thoroughly investigate the customer's reports of blockage in 2016. I accept that the obstructions and defects to its sewers and the sewer lines it later addressed, were related to the flooding event that occurred. On balance, if the company had carried out such work earlier, I am satisfied it would have avoided or reduced the risk of flooding and damage to the customer's property. This is evidence of the company failing to provide its services to a reasonably expected standard. The company initially indicated it would fully cover the customer's costs incurred associated with the incident but later advised it would be unable to cover the amounts, in full. This is further evidence of the company failing to provide its services to standard reasonably

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expected. The company is responsible to pay the customer's reasonable costs incurred as a result of the flooding incident and compensation for the stress and inconvenience caused. The total compensation that should be paid to the customer is £6747.99

Outcome

The company shall pay the customer compensation of £6747.99

The customer must reply by 2 August 2018 to accept or reject this decision.

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of dealing with the company, and then the repairs, caused her severe mental anguish over an 18-month period. She believes that the company seriously failed all customer charters on treating customers fairly, not only in its handling of this matter but in its cavalier treatment of her.

- The customer seeks compensation from the company for the repair work needed to her property to address: the damage caused; the expenses she incurred staying in a hotel when her house was inhabitable; the days she had to take off work to deal with this situation and meet with the company and independent contractors; and, an amount for the “needless and unwarranted and prolonged suffering and mental anguish” caused. The customer asserts that there was a period of about three weeks where she had no kitchen because all of her electrics had to be switched off so they could properly dry - she could not cook in the kitchen and had to pay for numerous taxis and constantly drive back and forth from her parents (ferrying her daughter) because her house was inhabitable, especially for a young baby. She claims:
 - £3800.00 for repair work (invoice provided);
 - £238.00 for hotel stay (receipt provided);
 - £649.99 for repairs to her bath after flooding damaged the pump (receipt provided);
 - £3420.00 for 10 lost days earnings (payslip provided);
 - £2000.00 for the distress and inconvenience and time spent pursuing a resolution.

Total £10,107.99 (the customer has reduced her total claim to £10,000.00, in accordance with maximum limit permitted under Scheme Rule 6.4)

- The customer in her Reply responds in detail to the points raised in the Defence (discussed below). She also reiterates aspects of the claim including that she had to carry out private investigations, due to the company’s insistence that the issue was due to a private plumbing/drain issue, until these showed proof that the cause was an obstruction on its sewers. It was only then did the company commit to completing repairs. The customer refutes the company’s suggestion that it cleared blockages as gestures of goodwill. She asserts the blockages found were in its sewers and related to root ingress and that is why the company cleared them.

The company’s response is that:

- It agrees to pay the customer £3860.00 for the repair work to her property “as a gesture” but disputes the balance of the customer’s £10,000.00 claim (plus interest) on the basis that the damage was caused by leakage from private internal clean water plumbing, for which it has no responsibility.

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- The company accepts that it should have denied the claim in a timelier manner and that its Customer Representative may have initially led the customer to believe that it would put things right; however, it has no record of this. The company submits that any such mis-advice was provided before the facts of the issue were clear. Furthermore, the member of staff who mis-advised the customer did not have the technical knowledge to make this judgement. In recognition of its error, it offered the customer £3860.00 to cover the costs of her building work.
- Prior to the flooding incident, it had attended on a number of occasions to check the sewer. On 23 August 2016 and 4 October 2016 it found the sewer to be free flowing and operational. On 11 October 2016, it cleared a blockage from the private section of the sewer. On 24 March 2017 it also cleared a toilet blockage, as a goodwill gesture. On each occasion the issue was not related to, or caused by, its assets. It attended the day after the incident; however, it found, again, the sewer to be free flowing and fully operational. If the cause of the damage to the ceiling and the kitchen was due to a sewer surcharge there would have been wastewater present and isolating the clean water supply would have had no effect. Similarly, had there been an obstruction in its sewer, it would not have been resolved without its attendance.
- On 24 October 2016, the customer advised that a brick had been found in the sewer. It then began investigating. The company accepts that there were delays in completing work to the sewer; however, there is no evidence to suggest that the issues inside the customer's property were caused by the defects and brick found in the sewer. Indeed, for the time that the brick remained in the sewer the customer experienced no further flooding inside her bathroom.
- It refutes that the ceiling collapse caused by a leak in the customer's bathroom was due to a sewage surcharge. Its Field Operative Specialist ('FOS') advised that the flooding occurred approximately 12 feet above the ground but its foul water sewer is approximately 1.5 meters deep below ground so it would not expect flooding to have occurred at that height, even if the sewer was in a state of surcharge. Its FOS suggests the leak occurred as a result of faulty internal fittings. Further, the company submits that the brick found in the sewer was present due to a fence post having been erected.
- The company also points to evidence in the customer's AXA report stating that a plumber attended to check if there was a leak in the internal stack pipe and there was not. The company asserts if the waste was backing up and causing the toilet to overflow you would expect to find the internal stack backed up with waste. If the kitchen and bathroom had a shared stack, the company asks why did the kitchen not flood as well from its external manholes. If there are separate stacks at the customer's property, it would expect the customer to have advised that

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the bath had filled up and overflowed. Despite it requesting more details from the customer on how the flooding occurred, this has never been provided.

- The company also states the customer's daily water usage increased between July 2015 and July 2016 and dropped between July 2016 and February 2018. This is therefore supportive of its view that the damage related to an internal clear water leak rather than wastewater.
- The company also highlight a comment made by CCW that the damage could possibly be a longstanding leak.
- The company therefore denies liability for the full amount of the claim.

- **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 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.
2. The dispute concerns a claim for compensation for the costs associated with damage caused to the customer's property (collapsed ceiling, damage to the kitchen and whirlpool bath), as a result of flooding from her bathroom. The company denies liability for the full claim on the basis that flooding was not from its assets but due to a private plumbing issue. However, the company accepts its Customer Representative agreed to cover the costs associated with the incident, and

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therefore it has agreed to pay for the customer's repair work totalling £3680.00 as a goodwill gesture. The customer asserts that all the independent plumbing and drainage professionals said the source of the sewerage flooding was blockages in the drains, causing an upsurge to her property. She therefore requests that the company cover all the costs associated with the incident, due to its failure to properly investigate or take ownership of the blockages she reported prior to the flooding, and because it agreed to pay these costs.

3. The customer has provided the information she received from the company as a result of her Subject Access Request and I acknowledge receipt of the CCW bundle, which includes the customer's AXA and British Gas reports, the company's timeline, job notes and evidence from its FOS and insurers [], as well as parties' communications including with CCW.
4. I find that, legally, a water company is responsible for the repair and maintenance of its assets so that the area is effectually drained; however, it is not responsible for damage from flooding if the cause is outside of 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 to avoid or reduce the risk of flooding.
5. In the customer's case, I note that her property is connected to a shared sewer, the repair and maintenance of which is therefore the company's responsibility. It is clear that the customer reported overflowing sewerage from her toilet and bathroom/blocked external drain on several occasions throughout 2016, prior to the leak incident occurring on 20 October 2016. The first report to the company was in February 2016. The company attended in response to the customer's reports of suspected blockages but told the customer the issue was do to with her private plumbing as when it checked the manhole, the sewer was found to be free flowing and operational. It did clear a blockage found on 11 October 2016; however, the company asserts that this was on a private section of the sewer and that it undertook this work as a gesture. When the company attended on 21 October 2016 after the flooding event, it checked the (front) sewer and maintained it was free flowing. The customer subsequently advised the company on 24 October 2016 that a CCTV survey, carried out by independent drainage experts Dyno-Rod, showed that a brick was the cause of the blockage (on the line connected to the sewer at the rear of the customer's property). The company confirms in the Defence, that at this point it

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began its investigations. I find that when it attended on 24 October 2016, the company confirmed the sewage was draining slowly and it agreed to remove the brick. It subsequently attempted to conduct its own CCTV survey but was unable to immediately complete this due to an obstruction however later carried this out successfully. I find that it also subsequently identified defects to the sewer as well as two bricks in the sewer line at the rear of the customer's property. I can see that between February 2017 and July 2017, the company undertook repair works to the sewer including: replacing seven meters of sewer at the front of the property; repairing defects to the front and rear sewers; re-rounding the sewer pipes; re-lining the sewers; and, removing the bricks (in July 2017). On 9 September 2017, it confirmed that the rear sewer was free-flowing and operational. During this timeframe, the customer reported an internal toilet blockage in March 2017 and the company submits that it cleared this, as a goodwill gesture. The customer reported no further incidents.

6. Having reviewed all of the evidence, whilst the job notes show the company checked the manhole at the front of the property each time the customer reported leaks in her bathroom in the months leading up to the flooding event, I find they do not indicate the company investigated any of the sewer lines for defects or blockages. I find its internal note/email of 26 November 2016, confirms this. There is also no evidence that the company investigated the manholes at the side or rear of the customer's property or the shared sewer line at the rear. Neither did it carry out any CCTV surveys or "rod" the sewer lines; such action (in relation to both the front and rear sewer lines) was only undertaken by the company after the flooding incident and after the customer produced evidence of a (Dyno-Rod) CCTV survey that suggested that a brick stuck in the rear shared drain was the cause. Due to the customer's repeated reports of blockages, I consider it reasonable to expect the company to have checked all manholes and sewer lines that connected to the customer's property, to ensure they were not the source of the issues being encountered and before concluding the issues stemmed from private plumbing issues; according to the customer the company had "insisted right from the start" that it was a private drain issue. I find that the evidence supports her submission. I am satisfied this shows that the company failed to sufficiently or thoroughly investigate its sewer network when blockages were reported by the customer in the months leading up to the flooding incident. I am satisfied this is evidence of the company failing to provide its services to a reasonably expected standard.

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7. The company accepts that it delayed in carrying out repair works. It is clear that, after being provided with CCTV evidence of the blockage on 24 October 2016, it began its own investigations; however, it took several more months before it commenced repairs and at least nine months to complete these works, including removing the bricks. I am also mindful of the company's job note dated 9 December 2016 that refers to a sewer collapse, repairs to which were raised in February 2016. The note dated 18 January 2017 also refers to two sewer collapses. I find this suggests that the sewers were in a worse condition than the company believed in 2016 and, whilst some repairs had been identified months before the customer's flooding incident in February 2016, more substantial repairs were identified as a result of its investigations that followed the incident. Therefore, due to the company's delay in carrying out necessary works, I am satisfied that this constitutes evidence of it failing to provide its services to a reasonably expected standard.
8. As to whether the company's delay in carrying such repair works to its sewer network resulted in the flooding event at the customer's property, the company does not accept this. It submits that there is no connection between the work it carried out including the removal of the bricks found on the sewer line at the rear of the customer's property and the flooding incident encountered. In its Defence the company raises points to undermine the claim that the flood and resulting damage derived from its assets and to support its stated position that the customer's flood stemmed from a private plumbing issue. In her Reply, the customer has responded to the points raised by the company. I will consider the parties' respective submissions below.
9. Firstly, I have reviewed the AXA and British Gas engineer reports supplied in the CCW bundle, I find these state that no issues with the customer's private plumbing could be found either in the bathroom or at the manhole under the laminated floor in the rear bedroom. Further, they document a blocked drain was found causing water to back up and that sewage was backing up into the bath. They also suggest that the obstruction in the sewer was the cause, and in one it clearly states the drainage issue is still present and cannot be resolved until the company attend to clear. I find this evidence supports the customer's position rather than the company's.
10. Apart from the company pointing to the results of its checks of the manholes in 2016 (already discussed above) as evidence to support its position, it submits that it is unlikely that effluent from its sewers 1.5 metres below ground would reach the height of the customer's first floor bathroom, even if the sewer was in a state of surcharge. It has produced a letter from its FOS

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that states the same. Whilst I acknowledge its FOS states it may be unlikely, the customer has highlighted that its FOS has not stated that it is impossible and suggests the flooding event is proof of this. Further, I acknowledge that the letter from the company's insurers reiterates that the company is not liable as it believes that any escapes from the customer's bathroom are due to a private plumbing issue. However, as the customer's reports have been carried out by independent sources, are more detailed and are based on contemporaneous site visits, on balance, I find them to be more persuasive than those from the company. The company submits that there is a lack of evidence that the water leak was foul water as oppose to clean water. The customer is adamant that the leak was foul water and confirms that as well as effluent from her toilet, her bath had also filled up and overflowed with foul water. She seeks to rely on the photographic evidence she supplied. I acknowledge receipt of these photos in the CCW pack. However, as I am unable to determine the type of water from this evidence, it is inconclusive and I am unable to make any determination on this issue based on this evidence alone. Nonetheless, I am mindful that its Customer Representative visited the customer shortly after the event and there is no evidence of the company specifically questioning this at the time.

11. In response to the company's suggestion that the customer has not provided enough details of the flooding despite it asking for details, the customer strongly refutes this stating she provided all of the information, as and when requested by the company. I note that in its letter to the customer dated 28 November 2016, the company asked the customer to provide details of the flooding and ceiling collapse, as well as receipts, in order to progress her claim. I can see that in its further letter of 28 December 2016, the company acknowledges that the customer had called to discuss the details of the flooding and ceiling collapse, as requested. Further, having reviewed the company's written communications to the customer from November 2016 onwards, I find they mainly relate to the progress of the repairs being carried out and respond to her complaint regarding the delays with repairs and progressing her claim; it apologises for the delay to these works and for being unable to progress her claim until such works have been resolved. I cannot see any evidence of the company requesting specific evidence (not already mentioned above) or any suggestion of the customer failing to provide evidence sought. Therefore, in light of the evidence and on the balance of probabilities, I am satisfied that the customer provided all the evidence requested to the best of her ability, at the time.

12. In response to the company's assertion that the bricks found in the sewer line were due to a new fence having been erected, the customer strongly disputes that any new fence was erected and explains that only fence panels were installed (a year earlier) into existing concrete fence posts.

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In regards to the company's assertion that the customer's water usage is supportive of its position that she had a private water leak, I find that the fluctuations in water usage shown are minimal and as they cover a one-year timeframe it is difficult to see any correlation between these and the flooding incident. The customer also points out that following the incident, after returning to her property, she was instructed not to use her upstairs toilet, bath and sink following the incident until the company had completed repairs, which would have affected usage. I find that the evidence is supportive the customer's submission that she was told not to use her upstairs bathroom by the company whilst it carried out repairs. The company refers to a comment made by a CCW Representative that damage could possibly be due to a longstanding leak. I accept this but it is clear from the CCW bundle that the CCW considered both this possibility and the possibility that the leak did derive from the company's assets, making no definitive ruling on this specific point.

13. In light of my above findings, I find that the independent reports produced are more supportive of the customer's position as they indicate that there were no issues with the internal plumbing at the property and that the cause was related to an obstruction in the sewer. I find that the company has not been able to provide persuasive independent or substantive evidence to support its position that the flooding occurred due to faulty internal plumbing. Therefore, in light of this and other circumstances discussed above that I find to be more consistent with the claim, on balance, I accept that effluent from the sewers over spilled from the customer's toilet and bath, as claimed, rather than it being a clean water leak from elsewhere in her bathroom. Based on a balance of the available evidence, I am also satisfied that the flooding incident and defects to the company's sewer network, particularly the rear sewer and sewer line, are related and that if the substantial repairs carried out by the company in 2017, had been done sooner, they would have avoided or reduced the risk of flooding. Prior to the incident, I have found the company did not thoroughly investigate all of the sewers and sewer lines, although it had identified that repairs were required due to root ingress/a collapse (it is unclear if this was to the side or front sewer). I am also mindful of the customer's assertion that she has not encountered any further issues since the company completed the repair work to the sewer. Therefore, in light of my above finding to the effect that the flooding was caused by factors within the company's control, and because the company originally agreed to cover the customer's costs associated with the incident, I find that it is responsible for the customer's reasonable costs incurred to address the damage caused to the property and costs associated with the incident. The company agrees to

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pay £3860.00 to cover the cost of the customer's repair work. Therefore I will consider below the other amounts claimed:

- £238.00 for two nights' stay in a hotel (receipt provided) – on a balance of the evidence I accept that the customer was unable to occupy her house in the immediate aftermath of the incident as it was uninhabitable. I therefore find the cost of a two-night hotel stay at this time, is reasonable and foreseeable.
- £649.99 for repairs to the Jacuzzi pump under (whirlpool) bath damaged by the flooding (receipt provided) – I accept from the evidence that the pump to the customer's bath was damaged by flooding and that she incurred the repair cost claimed and therefore that the company is liable for this cost.
- £3420.00 for 10 days lost earnings (payslip provided) – whilst on balance I accept that the customer had to take time off work to facilitate the company's visits over approximately 18 months, the customer's payslip does not establish that she suffered the loss claimed. Moreover, the customer submits that she used up 10 days' annual leave therefore it is clear that whilst she used up annual leave being at home to accommodate visits, as there was no direct loss of income, I do not accept the company is liable for this amount. However, I will take into account the inconvenience of the company's visits over such an extended period of time, when considering the customer's claim for compensation below.
- £2000.00 in compensation for distress and inconvenience caused and time spent pursuing a resolution – in light of the serious damage caused to the customer's property, the extent of inconvenience suffered by the customer as a result of this damage, the company's delay in completing repairs, the inconvenience caused by its visits over a prolonged timeframe, and due to its change of position on paying the customer's costs, I find that the amount of compensation claimed is fair and reasonable. This is particularly as I find no evidence of the company paying the customer any amount of compensation in relation to the dispute to date (although it has offered to pay £3860.00).

14. Therefore, I find that the company shall pay the customer a total amount of £6747.99 in compensation. The customer has indicated in her WATRS application that she seeks interest on the sums claimed. However, in accordance with WATRS Scheme Rule 6.7, interest is only payable by the company where the dispute relates to an incorrectly levied charge. As such, I find that a payment for interest is not applicable in this case.

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Outcome

The company shall pay the customer compensation of £6747.99.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 2 August 2018 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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