

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0853

Date of Decision: 17 September 2018

#### Complaint

The customer submits that he has experienced seven incidents of internal flooding since 2012. He asked for a Non Return Valve ("NRV") to be fitted, but the company repeatedly declined to do so. However, the company has now stated that it will be fitting an NRV. The customer requests an explanation as to why the company would not fit an NRV previously. The customer also requests £10,000.00 as compensation for the diminution in value of his property and £2,500.00 for distress and inconvenience.

#### Defence

The company submits that only six incidents of flooding that have been reported to it by the customer since 2012. The incidents occurred during periods of excessive rainfall, which overloaded the sewerage system. This caused surcharging to the system, which caused flooding to the customer's property. Mitigation in the form of NRVs were not offered previously as the flooding events experienced had occurred during periods of excessive rainfall. The customer declined other mitigation as he perceived it would impact any possible future sale of the property. However, since the introduction of its mitigation programme it does now consider offering mitigation to customers who have experienced flooding due to exceptional weather events. The customer's property still remains at risk of self-flooding even with the NRVs in place. The customer has declined to connect a downspout located on his property to the private surface water drainage network within his property boundary. There also continues to be issues with third party assets, which are major contributory factors in relation to overland flooding. No offer of settlement was made.

#### Findings

In light of the evidence submitted by the company, the company has not clearly shown that the flooding prior to 11 June 2016 occurred during periods of excessive rainfall, and therefore, in turn, has not shown that it was correct to not offer NRVs to the customer in the past. The company therefore failed to provide its services to the customer to the standard to be reasonably expected in this regard. However, no evidence has been submitted that shows that the company's failure to install NRVs was the cause or sole cause of flooding incidents at the property. Further, the company is not responsible for the maintenance of third party assets. The customer also has an obligation to mitigate his losses. The customer has not shown it is reasonable to decline to

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connect the downspout located on his property to the private surface water drainage network within his property boundary, or to decline the installation of anti-flood air bricks and an anti-flood door. These factors must all be taken into account.

**Outcome**

The company needs to take the following further action:

I direct that the company pay the customer the sum of £150.00 in compensation.

The customer must reply by 15 October 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0853

Date of Decision: 17 September 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- He has experienced seven incidents of internal flooding since 2012.
- He asked for a Non Return Valve ("NRV") to be fitted but the company repeatedly declined to do so. However, the company have now stated that it will be fitting an NRV.
- He acknowledges that he was offered anti-flood air bricks but declined these.
- The company has never given him a payment of £1,000.00 it claims that it has, but has made a Guaranteed Standards Scheme ("GSS") payment for each incident.
- The customer requests an explanation as to why the company would not fit an NRV previously. The customer also requests £10,000.00 as compensation of the depreciation in the value of his property and £2,500.00 for distress and inconvenience.

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

- Its database only shows that the customer reported six incidents of flooding to it since 2012.
- The incidents occurred during periods of excessive rainfall, which overloaded the sewerage system. This caused surcharging to the system, which resulted in flooding to the customer's property.
- Hydraulic flooding occurs when the amount of water entering the public sewer system during storm conditions is greater than the sewer system is designed to deal with, and generally this is not something it can mitigate against.

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- It has recorded four internal hydraulic events at a time of heavy rainfall and severe weather events. There were two other flooding events reported; one was recorded as private as when it visited flooding was not evident, and the other one was recorded as a partial blockage/restriction within the network due to silt.
- Prior to its 18 January 2018 mitigation survey, in 2016 it had previously offered to install anti-flood airbricks to protect the customer's property but he declined this offer. The reason for the customer's refusal is that he believed that should he wish to sell the property in the future the presence of anti-flood air bricks would emphasise the flood risk and devalue the property.
- Further mitigation in the form of NRVs were not offered prior to the 2018 survey as the flooding events experienced had occurred during periods of heavy rainfall and were therefore deemed to be due to storm conditions.
- However, since the introduction of its mitigation programme it has developed the way it deals with customers who have experienced internal flooding. In an effort to reduce the possibility of repeated flooding events, it does now consider offering mitigation to customers who have experienced flooding due to exceptional weather events.
- Following the mitigation survey in January 2018, on 26 March 2018 it fitted two NRVs for the customer.
- However, the customer's property still remains at risk of self-flooding even with the NRVs in place, as once the sewers surcharge and the NRVs close, the private drains within the property boundary would be unable to discharge freely to the sewer.
- There also continues to be issues with third party assets that are major contributory factors in relation to overland flooding.
- Whilst carrying out post flooding investigations in 2012, it identified that a private surface water outfall draining the [ ] area is permanently under water. It advised the Environment Agency of its findings at the time and has subsequently regularly highlighted this to [ ] Borough Council. It believes that the issue with this private outfall restricts the drainage of surface water within this area, which in turn can impact the combined public sewer network. The local surface water drain discharges into a culverted watercourse that then discharges to an open watercourse downstream. However, this cannot do so freely due to the outfall being restricted by the presence of silt and vegetation. Maintenance of the culvert and watercourse is the responsibility of a number of third parties. It is unable to undertake work on these assets.
- In addition, the chambers housing the NRVs and the surface level of the garden are significantly lower than the adjacent carriageway level, which indicates that any surcharge from the sewer or culverted watercourse would result in external flooding to the customer's property before the

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carriageway would flood. Upon review, a number of the highway gullies in the vicinity of the property, which do not fall under its responsibility, were found to be full of debris and possibly blocked. It will continue to raise the issues concerned with those bodies responsible for the maintenance/repair of third party assets.

- At the time of the 2018 mitigation survey it repeated its offer to install anti-flood air bricks and also offered to install an anti-flood door, but the customer declined both these options.
- When it has visited previously it also identified a private down-spout that discharges surface water directly onto a pathway running within the customer's property boundary. It has advised the customer that surface water run-off from the spout will contribute to the flooding problem and may cause settlement to that area. It has explained that the downspout should be connected to the private surface water drainage network within his property boundary; however, the customer does not believe this is necessary.
- The flooding experienced by the customer was not caused by negligence on its part and unless negligence has been identified on its part, it is not generally liable to pay any compensation.
- It has made the necessary payments under the GSS, and has previously sent the customer a goodwill payment of £1,000.00 by cheque, which was cashed on 26 October 2016. Property diminution claims are specialist in nature and the customer would need to obtain a report to establish if this was the case. However, again it does not believe that it is legally liable for the flooding events that have occurred at the customer's property.

### 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.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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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 accept the company's submission that it is not generally liable for sewer flooding unless the flooding was caused by its negligence.
2. I consider that the issue of "negligence" is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle; however, I consider that I remain able to consider the dispute by considering whether or not the company failed to provide its services to the standard to be reasonably expected.

### ***Flooding incidents***

3. The customer submits that he has experienced seven incidents of internal flooding since 2012. The customer has not given specific dates of these incidents or submitted evidence to show that, importantly, all seven incidents were reported to the company. The company has submitted evidence of its database, which confirms its submission that six incidents have been reported to it. In the absence of any evidence showing otherwise, I will proceed on the basis of the information provided in the company's database.
4. The company's database shows that the customer reported internal and/or external flooding on or around: 28 August 2012; 24 September 2012; 9 September 2013; 27 December 2015; 11 June 2016; and, 22 November 2017.

### ***NRVs and excessive rainfall***

5. The company submits that the flooding incidents experienced by the customer occurred during periods of excessive rainfall, which overloaded the sewerage system. The flooding was due to hydraulic inadequacy, which is outside its control. The company further submits that NRVs were not offered previously to customers who have experienced flooding during extreme weather, and so, as such, NRVs were not offered to the customer in the past.

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6. The company has submitted evidence of the weather at the time of the incidents. However, I am not satisfied that the evidence clearly supports the company's submissions.
7. I note the weblinks to news outlets and Wikipedia submitted by the company that report weather conditions for the county generally and the UK at the time of the incidents. The company has also submitted a table of rainfall data. This data is for rainfall in closer proximity to the customer's home as it states that the data relates to an area up to one kilometer radius from the customer's property.
8. The company's evidence shows the rainfall and the storm incidence rating per year as:
  - 28 August 2012 – 1 in 1
  - 24 September 2012 – 1 in 9.19
  - 9 September 2013 – 1 in 5.44
  - 27 December 2015 – 1 in 3.89
  - 11 June 2016 – 1 in 397.24
  - 22 November 2017 – 1 in 11.26
9. The company does not clearly states what qualifies as exceptional weather. I am mindful that in correspondence to the Consumer Council for Water ("CCW"), the company indicates that "normal design standards" are a 1 in 30 year storm. However, I am conscious that only the 11 June 2016 weather exceeds this amount.
10. Importantly, I am also particularly mindful, as also highlighted by the customer, that in the company's account notes only the incidents on 11 June 2016 and 22 November 2017 are described as due to "hydraulic exceptionally severe weather". The account notes also state that, although the storm data for 22 November 2017 recorded a 1 in 7.97, a local rain gauge recorded a 1 in 64 year rainfall event. The company does not provide any explanation about these discrepancies.
11. Therefore, having carefully considered the parties submissions and the evidence submitted to support these submissions, I am not satisfied that the company has clearly shown that the flooding prior to 11 June 2016 occurred during periods of excessive rainfall, and therefore, in turn, has not shown that it was correct not to offer NRVs to the customer in the past. As a result,

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I am not satisfied that the company has shown that it provided its services to the customer to the standard to be reasonably expected by the average person in this regard.

### ***Other or contributing factors***

12. However, notwithstanding the above, no evidence has been submitted to this adjudication to show that the company's failure to install NRVs was the cause or sole cause of flooding incidents at the property.

13. I note the company's submissions about the culvert and open watercourses. I also note the company's submissions about the condition of the highway drains gullies. The company has also submitted in evidence a photograph of the property and carriageway to support its submissions that, because of the topography of the property, any surcharge would naturally run off the highway onto the customer's property. I accept the company's submissions that it is not responsible for the maintenance of third party assets.

14. In addition, the customer has an obligation to mitigate his losses. It is not in dispute that the customer has declined to connect a downspout located on his property to the private surface water drainage network within his property boundary. I note the customer's comments that the downspout only serves a small conservatory. However, no evidence has been submitted to show that the downspout does not contribute to the flooding problem at all. The customer was also offered anti-flood air bricks and an anti-flood door to protect against internal flooding, but the customer declined both these options. The customer has not shown, for the purposes of this adjudication, that it was reasonable to do so.

15. I must take all these factors into account in my findings for redress below.

### ***Redress***

16. In respect of the customer's request that the company provide an explanation as to why it would not fit an NRV previously. The company has explained its position in its Defence to WATRS. I do not find that a further direction in this regard is appropriate or necessary.

17. The customer also requests £10,000.00 as compensation of diminution in value of his property and £2,500.00 for distress and inconvenience.

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18. As discussed above, there is no evidence to show that the company's failure to install NRVs was the cause, either sole or partial, of the flooding incidents. The customer has not provided substantive evidence to support his claim for diminution. In addition, I find that the courts would be the more appropriate forum to resolve such an issue, in accordance to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. Consequently, the customer's request for £10,000.00 as compensation for the diminution in value of his property cannot succeed.

19. In respect of the customer's request for £2,500.00, in light of my findings above that the company failed to provide its services to the customer to the standard to be reasonably expected in relation to the offer of an NRV, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience caused. However, I find that the amount claimed by the customer is disproportionate to the failing shown. As discussed above, there is no evidence to show that the company's failure to install NRVs were the cause of the flooding incidents. In addition, I take into account the customer's obligation to mitigate his loss in respect of the alternative solutions offered. I am also mindful that the company has also submitted evidence to support its submission that the customer agreed to accept a goodwill payment of £1,000.00 in 2016. A copy of a Third Party Discharge Form has been submitted in evidence and supports this. The company submits that a number 988[] was issued and cashed on 26 October 2016. The customer does not refute this in his comments. Having carefully considered the evidence provided, I consider the additional sum of £150.00 to be a fair and reasonable level of compensation. No evidence has been submitted to this adjudication to support a larger sum of compensation. I therefore direct that the company pay the customer the sum of £150.00 in compensation.

#### **Outcome**

The company needs to take the following further action(s):

I direct that the company pay the customer the sum of £150.00 in compensation.

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

- This adjudication decision is final and cannot be appealed or amended.

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- The customer must reply by 15 October 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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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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