

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0915

Date of Decision: 17 September 2018

Complaint

The customer submits that his property was flooded with raw sewage in 2007 and 2016, events that caused significant distress and inconvenience as well as posing a risk to the health for the occupants of his property. The customer is dissatisfied with the works undertaken by the company to mitigate the risk of flooding re-occurring at his property, particularly in light of recent instances where the foul sewer surcharged to the point it nearly overflowed. The customer requests that the company do more to avoid or reduce the risk of the sewage flooding and he sets out specific action for the company to take, including either installing an NRV or a combined sewer overflow device.

Defence

The company submits it has responded to reports of flooding but its records show there have only been two verified floodings at the customer's property in 1999 and in 2016. Its investigations found the first was caused by a hydraulic overload and the second was due to damage, scale and debris (fat, oil and grease) in the sewer. It undertook repairs and cleaning to the sewer in 2016 and agreed to monitor the sewer every six months under its planned maintenance programme and there have been no flood events since. Its policy on sewage flooding prioritises customers who regularly experience sewer flooding and there is insufficient evidence to justify any expenditure on the sewer in the customer's case at this time. The company has not made any offer to settle.

Findings

Whilst there have been numerous incidents of the sewer surcharging and floodings to the customer's property over the past 19 years, the last flooding occurred in 2016 and the company has since carried out repairs and cleaning to the sewer. Whilst the customer has raised valid concerns about the risk of further flooding due to the sewer regularly surcharging and would like the company to take a more proactive and pre-emptive approach to avoiding the risk, the company has shown it has acted in accordance with its duties under the Water Industry Act 1991. Therefore, it is not required to take further action in relation to the sewer (notwithstanding the action it is already taking). However the company failed to record a flood incident in 2007 on its Sewer Flooding Database and it also did not offer its disinfection service to the

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customer following reported floods. This constitutes evidence of it failing to provide its services to the standard to be reasonably expected.

Outcome

The company is required to pay the customer £300.00 in compensation.

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

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Date of Decision: 17 September 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- His dispute concerns foul water sewer discharges and sewer flooding in relation to [] ('the property') that he and his wife have experienced since 2002. The company's continuously malfunctioning foul water sewer regularly surcharges and has caused raw sewage to flood and enter his property, endangering the health and safety of the occupants and causing extreme anxiety and stress. The customer asserts statutory nuisances have occurred as a result of the surcharging foul water sewer.
- When the foul water sewer surcharges, it forces raw sewage to back up into his house drain and can cause raw sewage to overflow into his property. This happened on 23 June 2016 when thousands of gallons of raw sewage overflowed from the foul water gulley in the garage attached to his property, causing flooding to the garage floor and also overflowed into the surface water gulley. It had previously happened on 20 July 2007 when he notified the company that both the surface water and foul water sewers in Oak Street had surcharged, causing the under floor of the house, garage and outhouse to be flooded with raw sewage and surface water resulting in considerable damage. He made a claim on his house insurance for the flooding, which led to an increase in insurance premiums.
- The problem with the surface water sewer was resolved by work carried out by the company in 2008, which included the installation of surface water overflow tanks in the road outside his property and installing a new larger foul water sewer in the garden of number 5 Oak Street. The company, however, has failed to abate the nuisances caused by the surcharging foul water sewer.

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- Since early 2016 there have been many instances of foul water sewer discharging. On two occasions, on 9 August 2017 and 27 May 2018, during heavy rain, the sewer surcharged and was moments away from flooding the garage floor with raw sewage.
- The company knowingly uses his private house drain as a sewage relief, to take the excess raw sewage from hundreds of properties in the surrounding area when the foul water sewer in Oak Street malfunctions.
- He has proposed simple low cost and “best practical means” solutions to the company to rectify the situation on a temporary solution and these include:
 - Fitting of a combined sewer overflow device (with a telemetry monitoring device in the foul water overflow device);
 - constructing a new and enlarged foul water sewer in the road;
 - altering the course of the “foul” water sewer in road and prevent surcharging when it occurs; or
 - installing a “non-return valve” between the house lateral drain and the foul water sewer in the road to prevent raw sewage surcharging in his property.
- He feels that the installation of a combined sewer overflow device would provide an immediate interim solution to the nuisance at a very low cost. He refutes the company’s reason given for refusing to carry this out, namely that it does not want to connect any overflowing sewage that may occur into a surface water sewer due to the risk of contamination; it is possible for the company to apply to the Environment Agency for a licence.
- The company has refused to carry out the above and this is a breach by the company of its duty of care to take reasonable steps to prevent foreseeable nuisances and damage to his property, and it has placed the health and safety of the occupants at risk. He questions if a small amount of contamination of a surface water sewer is more important than the health and safety of human life.
- The customer asserts that the company could have installed a telemetry monitoring device in the foul sewer instead of relying on the customer to tell it that surcharging is taking place; however, the company confirmed it has a reactive policy whereby it relies on its customers to tell them it has happened.
- This policy is unfair in cases where customers are exposed to regular events of raw sewage, as in his case. He and his wife are being subjected to a recurring unpleasant nuisance and when it does occur they are put to considerable inconvenience and, in addition, their health and safety is put to extreme risk.

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- He has asked the company to comment on the structure of sewer but it has refused to do so. This adds weight to his belief that the sewer was laid with rigid joints on a rigid concrete bed. Over time this has been subject to damage as a result of the continuing movement of the [] clay soil in which the sewer pipes have been laid. Bearing this in mind, and the history of repeated sewer defects, it is clear that the foul water sewer is beginning to pass its useful life.
- Following the flooding of raw sewage on 23 June 2016, the company found that the foul water sewer was in a very bad state of repair due to 88 years of ground movement plus wear and tear and, whilst it undertook repairs, it has not prevented surcharging. He asserts it is likely to collapse or block at any time due to its age and condition.
- The customer requests that the company carry out works to Oak Street in order to stop sewage from entering and flooding the house drains and garage of his property now and in the future; and to contain any surcharging raw sewage in the road rather than allowing it to enter his house drain and garage of his property whenever the foul water sewer malfunctions. He suggests the best practical means to resolve the problem is by the company fitting a combined sewer overflow device in the road or a “Forge” non-return valve in to the house drain; both of which could be done for under £10,000.00. He would have liked substantial compensation (£10,000.00) for the stress and inconvenience caused but he would rather the £10,000.00 maximum limit be spent by the company on resolving this unpleasant problem.

The company’s response is that:

- It’s records show that there have been two reported and confirmed incidents of the sewer in Oak Street flooding from the foul sewer. The first occurred on 14 October 1999, and was found to have been caused by a hydraulic overload. This is where the rainfall on that particular day was unprecedented and extensive and could not have been prevented or predicted. The second confirmed flooding was on 23 June 2016, which was due to a blockage following sewer abuse; debris was found in the sewer when it attended the same day, and again, this could not have been prevented or predicted.
- When a customer suffers any type of sewer flooding, they are required to report this and it will subsequently attend the property to confirm the reason for the flooding following investigations. The information is added to its Sewer Flooding Database (SFD). Its uses this information to ensure affected customers receive the appropriate payment under its Customer Guarantee Scheme (CGS) and this is also a primary tool to confirm whether any mitigation should be considered and/or funding allocated for a flood alleviation scheme.

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- The recorded flooding events in the customer's case took place 7 years apart and it disputes that the requested mitigation works can be carried out. It has a duty under the Water Industry Act 1991 ('the Act') to maintain its sewers and to ensure the area is, and continues to be, effectively drained and to make provision for the emptying of these sewers. However, it cannot be held responsible for sewer flooding when caused by factors beyond its control; therefore, it has a reactive approach to the maintenance of its sewers and where there is a known issue it will act accordingly. Following the flooding incident in 2016, it took the following action:
 - Sent tankers to deal with flooding; confirmed that the foul sewer was full of debris, fat and grease and a hole was located in the sewer; distributed 'Bin In Don't Block It' leaflets to all households in the neighbourhood; removed the private interceptor trap from the inspection chamber in the front of the customer's home as a gesture of goodwill; explained why it will not install a "Forge" non-return valve (NRV); cleaned the customer's brick paved drive; cleaned and cleared the sewer of debris; re-lined the sewer to help prevent any further issues; paid goodwill gestures of £150.00 to say sorry for any delays in dealing with its investigations and any service failures on 14 December 2014; made two payments of £50.00 on 6 and 13 December 2016, as it did not attend to clean up drive on these pre-planned dates; paid two £30.00 CGS payments for replying to the customer's correspondence after its 10 working day timescale; carried out CCTV; explained that all sewer flooding must be reported to it and the reasons why this is necessary; provided photographic evidence that it had carried out the works; assured the customer the chances of him catching an infection after a sewer flooding are minimal, and sent cleaning up guidelines from Public Health England; carried out post CCTV surveys to ensure that the sewer was working well and without issues following the lining it carried out; and, arranged for its Customer Representative (CR) and its Contractor's Supervisor to meet with the customer to discuss all concerns, who corresponded directly with the customer after their meeting.
 - In 2017 it: continued to correspond with the customer to reassure him that it had done all it can to help prevent further sewer flooding, and its solicitors, [], explained its position; confirmed that Oak Street had been added its planned maintenance programme (Sewerbatt), where it regularly checks the sewer for any issues; carried out visits and completed cleaning; considered whether it would benefit the customer to have a sewer alarm fitted; sent two CRs to meet with the customer to discuss his concerns again and show him the CCTV images; paid a goodwill gesture of £50.00 for providing

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incorrect information in its correspondence dated 26 May 2017; paid a £30.00 CGS on 2 August 2017 for not replying to the customer's contact within its 10 days timescale; and, cleaned the customer's paved drive.

- In 2018 it: undertook a line clear following its regular Sewerbatt survey; considered whether further works were needed by taking the customer's case to its local Risk Review Meeting, agreeing to place the sewer on a regular maintenance programme and inspected it every six months; and, responded to the customer's report of a blockage on 27 May 2018 and visited the same day.

- In accordance with its policy on sewer flooding, funding is allocated where customers regularly experience internal sewer flooding so, at this time, is it unable to allocate funds for large scale sewer improvements or a flood alleviation scheme in relation to the customer's property.
- The company acknowledges that the customer has experienced surcharged sewers (sewer backing up) but it asserts that the customer appears to be confusing the rise and fall of the contents of the sewer with actual flooding, which its Field Operation Specialist, [], confirms and explained that this happens in wet weather and it is not required to capture these events unlike reports of sewer flooding.
- It has met with the customer on many occasions over the years and has explained its position. It has also advised that he should not try and clean up following sewer flooding but he must report the incident to it so it can offer a free clean up service and disinfection service to him.
- The company asserts that it has met its statutory obligations by investigating and taking all relevant steps to alleviate, as bet it can, any sewer flooding to the customer's home but this cannot be guaranteed.

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

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customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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 dispute relates to sewer surcharges and sewer flooding to the customer's property. The crux of the customer's complaint is that the sewer outside of his property is defective and that the company has not taken sufficient action to prevent these incidents reoccurring. He requests that the company undertake specific works to mitigate the risk of further sewer floods. The company contends that following work carried out to the sewer in 2016, the sewer in question is classed as grade 3 and that there were no signs of any deterioration. Further, that by having a planned maintenance program in place, it has met its responsibilities and it contends that there is insufficient evidence to justify any expenditure at this time.
2. At this juncture I remind the parties that, in accordance with Scheme Rule 3.4.3, I am unable to consider allegations that raise a complicated issue of law. Having considered the customer's following submissions that: the sewer, due to its malfunctioning, is classed as a legal nuisance (under common law tort); the company's failure to abate the nuisance or take reasonable steps to prevent foreseeable nuisances and damage to his property (and placing the health and safety of the occupants at risk) constitutes a breach by the company of its duty of care owed; and, the risk to the health and safety of the occupants posed by the sewer contravenes Part III of the Environmental Protection Act 1990, I find that as these claims raise complicated issues of law, they therefore fall outside of the scope of the Scheme, on this basis. In addition, I consider there are more appropriate forums for these questions to be referred to for resolution (as per Rule 3.4.1). WATRS is designed to be a quick and inexpensive method of resolving disputes between companies and their customers. I am only able to consider, on a balance of the evidence provided, if the company has provided its services to the customer to the standard to be reasonably expected by the average person. In the customer's case, I will consider whether the company has acted in accordance with its legal obligations under the Act to effectively

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maintain its sewers and address known issues in order to mitigate the risk of flooding reoccurring.

3. I acknowledge that a company is not 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 rather than a proactive or pre-emptive approach. Furthermore, whilst it must adequately repair defects to its sewers, I am mindful that there is no duty on the company to completely eradicate the risk flooding by taking whatever measures may be deemed necessary.
4. The customer has supplied a detailed report setting out the issues as he sees them and he has also provided his correspondence exchanged with the company dating back to 2006, as well as photographic and video evidence. I also acknowledge receipt of CCW documentation and the company's Defence in which it highlights evidence in the CCW bundle, including its responses to the customer's communications since 2016.
5. I accept from the evidence that the company carried out flood alleviation works to the surface water sewer in Oak Street in 2008. This consisted of enlarging the surface water sewer (in 5 Oak Street) and installing storm water overflow tanks in the road. However, there was a sewer flooding incident at the customer's property on 23 June 2016 that the company has verified and confirmed was found to be caused by a blockage and defects to the sewer. It has also confirmed another flooding event in 1999 (prior to the customer's occupation of the property), which the company concluded was due to a hydraulic overload (when the rainfall on that particular day was unprecedented and extensive to the extent it could not have been prevented or predicted). However, I acknowledge that the customer refers to a third incident on 20 July 2007 whereby the surface and foul water sewers surcharged causing flooding to the customer's internal property. The company has stated this event has not been recorded as verified on its SFD, however, in light of the customer's report and supporting correspondence supplied, on balance I accept that he reported this incident to the company at the time. In the absence of any explanation supplied by the company for this, on balance I find its failure to record this on its SFD, is evidence of a service failing by

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the company. There were also blockages in 2003 and 2006 and there have been numerous incidents of the foul water sewer surcharging. The customer has highlighted 17 occasions (nine since early 2016) when the sewer has surcharged and, whilst not disputed by the company, it points out that it is common for a sewer to surcharge in wet weather and that incidents of the sewer surcharging would not justify any expenditure.

6. The customer has detailed two recent occasions on 9 August 2017 and 27 May 2018 when the foul water sewer surcharged into the house drains, whereby he submits that the sewage in the manhole was “moments” away from escaping. I note that the company’s Field Operation Specialist (FOS) states in his e-mail of 10 July 2018 that flooding (in the customer’s case) has occurred when the sewer surcharges to the point of breaking ground and flooding escapes out of the manhole. I accept, from the evidence, that this is what happened in 2016. Whilst the company has shown it took action to repair the sewer at this time following its investigations, which revealed holes and defects to the sewer and also blockages, I acknowledge the subsequent sewer surcharges into the customer’s house manholes have given the customer cause for concern. I find that, due to his dissatisfaction with the company’s response to these, this has led to his Application to WATRS.
7. The customer has also raised concerns regarding the risk to health to the occupants of the property posed by exposure to raw sewage and has submitted detailed submissions to show this. He also advises of his and his wife’s health conditions and an illness he suffered following contact with sewage in 2016. Whilst it is clear that touching raw sewage may pose health risks to humans, I am unable to consider the legalities of such a risk posed due to the actions or inactions by the company (if this is being claimed), because this matter also falls outside of the scope of WATRS. In its Defence the company has highlighted that it offers a free clean up and disinfection service and urges the customer not to clean up any sewer escapes. I can see from the evidence that the company has in the past advised the customer not to clean up sewage and has also sent the customer cleaning up guidelines from Public Health England. I acknowledge the customer’s submission that he has been left with little choice to bail out sewage as attendance by the company takes a few hours (as on 20 July 2007) however, I accept that this is the likely timeframe it would take for the company to send someone and I do not consider this is unreasonable. The customer also denies that the company offered assistance to thoroughly cleanse/disinfect the area contaminated by raw sewage. I have reviewed the actions taken by the company as listed in its Defence and whilst it includes cleaning the customer’s driveway in 2016, it has not

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suggested that it provided a disinfection service to the areas contaminated within the customer's property, including the customer's garage, either following the incident in 2016 or at any other time. As I accept that the customer would have accepted an offer to disinfect the areas contamination by raw sewage, I find that its failure to provide this service, constitutes evidence of the company failed to provide its services to the standard one would reasonably expect.

8. At Appendix 4 of his Application and titled 'Statement of Facts', the customer has provided a detailed history of the sewer in Oak Street. Based on this information, I accept that, due to its age and construction, it is likely to need replacing in the not too distant future. However, it is commonly known that this applies for much of the company's sewer network across []. I remind the parties that the maximum amount of compensation that can be awarded under Scheme Rule 6.4 is £10,000.00 (including the cost or value of any action to be taken) therefore any request for large scale improvements or structural work to update the sewer network would fall outside of the remit of the Scheme by virtue of this rule.

9. In his Application, the customer has requested that the company carry out works to Oak Street in order to stop sewage from entering and flooding the house drains and garage of his property now, and to contain any surcharging raw sewage in the road (rather than allowing it to enter his house drain and garage of his property whenever the foul water sewer malfunctions). Therefore, I acknowledge that the customer has not specifically requested large-scale sewer improvements, in line with the limitations of the Scheme. Rather, he lists suggested actions which he says are inexpensive ways to mitigate the risk. The two he most favours are a combined sewer overflow device (with a telemetry monitoring device in the foul water overflow device) and a NRV. The company does not accept the customer's suggestions and has given reasons for this. It is clear from the parties' correspondence, that the customer has requested for the company to take some of these measures in 2016 and the parties have had protracted communications about such. In its correspondence to the customer dated 28 October 2016, the company stated that NRVs are designed to protect properties from sewer backflows by "closing" during periods of rainfall and that this device is more appropriate when flooding occurs due to hydraulic incapacity during normal weather conditions, when no other contributing factors such as obstructions, blockages or defects are present. It contended that as the customer's flooding in 2016 was largely due to a blockage, this device would not be appropriate and it has reiterated this position ever since. In its Defence, the company has also highlighted that the installation of a NRV at the customer's

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property would risk moving the flooding to adjacent properties. Based on the e-mail from its FOS dated 10 July 2018, it appears that the company opposes the installation of a combined sewer overflow device as it believes it would involve overcoming environmental issues, which would be difficult (requiring an application to be made to the Environment Agency), and also due to this option causing possible contamination of the surface water sewer.

10. In light of the evidence, I accept that the sewer is prone to surcharging during rainfall causing sewer to run into the customer's house drains. I note the company's submission that the customer's property is in a basin and at the lowest part of the road he lives on, and for this reason it makes his property more susceptible to flooding. However, following the company's works carried out in 2016 whereby it deemed the sewer to be in a good condition (class 3) and because, according to the company, the number of actual floodings do not justify expenditure under its sewage flooding policy, it has refused to undertake further works. I accept a flooding incident has not occurred since the company undertook work to the sewer (repairing the cracks and fractures, and relining and cleaning the sewer line) following the flood on 23 June 2016. In the absence of substantive evidence, such as independent evidence from the customer showing otherwise, on balance, I accept the company's assertion that the sewer is in a useable condition and that the lack of any flood incidents since 2016 supports its submission that the said repairs reduced the risk of blockages or sewer flooding. I acknowledge that in light of the two incidents in 2017 and 2018, whereby the sewer surcharged during rainfall causing sewage to flow into the into customer's drains, the customer disputes that the work or action taken by the company is sufficient as it has not stopped the sewer surcharging to the extent it was close to overflowing. I do not doubt the customer's assertion in this regard and I acknowledge the video evidence supplied, which shows the sewer flooding the customer has endured and also the stress and worry caused to the customer due to the risk of further flooding as a result of a severe surcharge. However, whilst I have not been provided with details of its sewer flooding policy as referred, I accept that the company has finite resources to spend on updating the sewer system and because there have been no floods since it last carried out works to the sewer and the relatively low number of floods experienced (over 19 years), I find that its stated position that it prioritises customers who are regularly experiencing internal sewer flooding, does not seem unreasonable. For the avoidance of doubt, even if I had the full details of the company's sewer flooding policy, I would be unable to rule on the effectiveness or fairness of its policy nor would I be able to direct it change its policy as such

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matters relate to an internal business decision, which falls outside of the scope of this Scheme.

11. As the company has shown that it carried out the works in 2016 to clear the blockage and repair the sewer network, I find that its actions are sufficient to show that it has acted in accordance with its obligations to repair its assets where there is a known issue. This is in line the reactive system of maintenance that the courts have found to be a reasonable approach for water and sewerage companies to adopt. I reiterate that there is no obligation on the company to carry out works in order to guarantee flooding will not occur. In the customer's case, I accept that its regular monitoring of the customer's sewer under its maintenance programme will ensure continued maintenance to the sewer and that any blockages identified are cleared, which I accept will reduce the risk of flooding if the sewer surcharges during rainfall. Therefore, I am satisfied that the company has taken sufficient steps to discharge its burden to maintain and repair its sewer network to mitigate flooding risks. Consequently, I find that the company is not required to take additional action (on top of the action it has already committed to take) in order to further reduce the flood risk to the customer's property, at this time. As a consequence, this aspect of the customer's claim cannot succeed. However, in light of my above findings that the company failed to provide its services to a reasonably expected standard when it did not record the sewer flood in 2007 on its database and failed to offer its disinfectant service either in 2007 or 2016 following reported sewer escapes, I find that it shall pay the customer compensation of £300.00 for the stress and inconvenience caused. I am satisfied this amount is proportionate to the proven issues. Whilst the company must continue to maintain and repair its sewers and to respond to reports of floods accordingly, as it is already under an obligation to provide this service, it is not necessary to make a direction to this effect.

Outcome

The company is required to pay the customer £300.00 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.
 - 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.
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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb
Adjudicator

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