

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0963

Date of Decision: 15 February 2019

#### Complaint

There is a sump in the customer's back garden, which (over a period of at least six years) has regularly overflowed with contaminated water and sewage. It fell to the customer and his wife to clean and disinfect these areas on numerous occasions. In 2017, the sump overflowed three times. Only one of those incidents was compensated under the Guaranteed Standards Scheme (GSS). The customer seeks £10,000.00 in compensation for: (1) the company's failure to send out a team, leaving his wife and him to attend to the clean-ups; (2) for the failure to effect a permanent solution to the problems with the sump; (3) for all the time-consuming correspondence required and costs incurred.

#### Defence

The company's records show that the customer made contact twice in 2014. The incidents affecting the customer's property in January and July 2017 were considered to be 'escape of sewage' only and therefore, they did not meet the criteria for a GSS payment. A clean-up was carried out, however, as part of those visits in January and July 2017. The company acknowledges that there was a delay in completing the permanent solution and it has offered a goodwill payment to the customer of £150.00 accordingly.

No offer of settlement has been made.

#### Findings

It was reasonable for the company to classify the January and July 2017 incidents as not technically amounting to flooding. The company's responses to the customer's contacts (in 2014 and subsequently) were generally reasonable. The company cleaned the affected area on each occasion in January and July 2017. The company's acknowledged delay in completing the permanent solution attracts a compensation award of £150.00 in the customer's favour.

#### Outcome

The company needs to take the following further action:

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

The customer must reply by 15 March 2019 to accept or reject this decision.

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- As the overflow contains raw sewage, it would take a considerable time to carry out a thorough clean-up of the affected areas. The customer and his wife are retired and they have a compromised immune system. The clean-ups became more and more difficult for them.
- The customer states that, on the occasion of the very first flood, he should have been informed that the company had both a responsibility and a dedicated team to carry out these tasks. However, it was not until 2017 that he was told by an employee of the company that they would send out a team to carry out the clean-up.
- In 2017, three separate but identical flooding incidents occurred at his property. The Sump filled up with water, which was prevented from escaping into the outflow pipe at the base of the Sump. This was once again due to it being blocked with faeces and used toilet tissue. The water rose to the top of the Sump carrying with it faeces, used toilet tissue and other detritus. It then spilled out into the garden and patio area of the property.
- The company describes two of these incidents as 'an escape of sewage'. However, the customer argues that the faeces and soiled toilet tissue could only have spilled out over the top of the Sump as a result of rising floodwater.
- The company made numerous visits to the property over the years but, in response to the customer's requests, it has refused to supply detailed records of those visits.
- On 22 October 2018, a subcontracting crew arrived at the customer's property. The hope was that they would put in place a permanent solution to the ongoing problem, "*a solution that should have been carried out 6 years ago*", the customer submits. However, the customer maintains that the company has failed in its duty of care to provide a permanent solution. The problem was one of which the company had full knowledge but it continued to allow contaminated floodwater and raw sewage to spill out into the customer's garden from 2012 until the start of the work in October 2018.
- On 7 November 2018, the customer received a telephone call from a member of the company's customer service team asking if he was now 'completely and absolutely satisfied'. The customer replied that the work had only been completed one week before and it was far too early to give such a definitive answer. The following day, the customer received a letter from the company offering him a 'goodwill gesture' of £150.00 and informing him that his case was now closed. As to this, the customer says:
  - *"... I do not intend to accept what I believe to be a crude attempt to buy me off. To call this bribe 'a goodwill gesture' is I suppose the final insult when you consider what they have put us through as a family. They have relied on frustrating me to the point when I would simply give up. The stress they have caused me is incalculable, the hours, days*

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*and weeks of my time fighting a major corporation for compensation that they always knew I was entitled to ...”*

- As mentioned, in 2017, the Sump overflowed three times. One of those incidents was compensated under the Guaranteed Standards Scheme (“GSS”) but the customer seeks compensation for the other two (identical) incidents in 2017. He would like to be compensated:
  - for the company’s failure to send out a clean-up team following these incidents;
  - for failing, between 2011 and 22 October 2018 (when permanent repair work was finally carried out), to effect a permanent solution to these debilitating incidents - which involved floodwater contaminated with faeces, used toilet tissue and other infectious bacterial matter escaping into his garden and patio area;
  - for the dozen or more times when he and his wife were left to clean up after these flooding incidents;
  - for being forced by the company to engage in lengthy, time-consuming correspondence in order to receive compensation (when the company “*knew only too well*” that he was entitled to compensation from the customer’s very first letter to them of 1 January 2018); and
  - for all of the costs incurred (recorded delivery letters, photocopying of documents for both the company and the regulators).
- The total amount of compensation that the customer is seeking in these respects is £10,000.00.

**The company’s response is that:**

- As to its visits to the property over the last six years, the company’s records show that the customer contacted it twice in 2014:
  - on 19 March 2014, the customer reported a flooding. On visiting the property, no flooding was found but the sewer was blocked. The blockage was cleared by rodding the sewer.
  - on 2 July 2014, the customer reported a problem with the manholes in his garden. There had been some ground slippage around the chambers, which needed levelling. The work to level the manholes was carried out the following month.
- The company has no details on its records of any other calls from the customer relating to sewer flooding or sewer blockages until the incidents reported in 2017.
- GSS payments are due for each flooding incident that has occurred. If a customer’s land or property is flooded from the public sewerage system, they are entitled to a GSS payment equal to 50% of their annual sewerage charges, or £75, whichever is the higher.
- Certain criteria must be met for an incident to be classed as a flooding. The company points to

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- an extract from Ofwat's website in this respect.
- For an incident to be classed as flooding, the criteria ("Five Criteria") used by the company require that:
    - any escape of sewage covers an area greater than 2 – 5sq metres;
    - it takes longer than 15 minutes to clean up;
    - the escape has a depth greater than 3";
    - it has caused external damage;
    - it has caused access to, or usage of, the property to be restricted.
  - The incidents affecting the customer's property on 20 January 2017 and 13 July 2017 ("the January and July Incidents") were considered to be 'escape of sewage' only and therefore, they did not meet the criteria for a GSS payment.
  - The incident on 16 October 2017 was considered to be a flooding, due to:
    - the extent of the area that was affected; and
    - because the crew had to return to complete the clean-up the following day.
  - Therefore a GSS payment of £121.24 was made in relation to the 16 October 2017 incident.
  - A clean-up was carried out as part of the visits in January and July 2017. This would have involved washing and disinfecting the area. The customer did not raise any concern with the clean-up following either of those visits and did not request further attendance by the company.
  - Whilst it looked for a permanent solution, in July 2017, the company put a maintenance programme in place to prevent the sewer blockages. The frequency of the maintenance programme was increased in October 2017 when a further blockage occurred. The customer has not experienced any other problems since that time. However, the company acknowledges that there was a delay in completing the permanent solution and in recognition of that, it has offered a goodwill payment to the customer of £150.00.

### 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

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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.

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 have reviewed:

- a. the 'chain of events' contended for by the company, which is set out on pages 1 to 3 of its defence; and
- b. the bundle of call notes, job notes, visit notes, photographs and various other materials supplied by the company in support of its defence ("Defence Bundle"); and
- c. the customer's letter dated 12 November 2018, which is submitted alongside his WATRS application form; and
- d. all the documents and copy correspondence attached to the customer's letter of 12 November 2018.

2. In large part, this case seems to turn on whether the January and July Incidents ought properly to have been regarded as 'flooding'. The company classed the January and July Incidents as episodes of 'escape of sewage' only. The customer is outraged by the approach taken by the company in this respect. He says:

*"... It is indicative of [ ] Water and their breathtaking arrogance that they describe two of these incidents as 'an escape of sewage' as if it is perfectly acceptable to oversee raw untreated sewage spilling out into a customer's garden and patio area to avoid a payment under the GSS Scheme ... the faeces and soiled toilet tissue could only have spilled out over the top of [the Sump] by rising floodwater. I am extremely angry at the brazen and arrogant behaviour of this company ..."*

3. It is easy to understand why the problems with the Sump have been so distressing to the customer. I do take into account the comment that he makes at the end of his letter to WATRS dated 14 November 2018:

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“... *These events should never have come this far, they have taken a heavy toll on my health and mental well being ...*”

4. From the customer’s perspective, therefore, the company’s classification of the January and July Incidents as (merely) ‘escapes of sewage’ has exacerbated his distress at these events.
5. My focus has been to consider the reasonableness of the company’s process in classifying the January and July Incidents in the way that it did. In defence of its actions, the company refers to:
  - a. the relevant Ofwat requirements, which are included at page 39 of the Defence Bundle (“the Ofwat Requirements”); and
  - b. its own Five Criteria.
6. As I see it, if the company’s decision-making was consistent with the Ofwat Requirements then that will provide a strong indication that its conduct in this case was reasonable. I have compared the Five Criteria against the backdrop of the Ofwat Requirements. Having made that comparison, I am satisfied that Five Criteria are properly aligned with the approach that the company is supposed (in principle) to be taking when deciding whether any customer “*has been materially affected*” by any incident of this sort.
7. On the question of the company’s classification of the January and July Incidents, I have closely examined the call job notes (“Job Notes”) and photographs, which:
  - a. for the 21 January 2017 visit, are included at pages 5 and 6 of the Defence Bundle; and
  - b. for the 13 July 2017 visit, are included at pages 7 and 8 of the Defence Bundle.
8. Based on my examination of the Job Notes and the photographs in the Defence Bundle, I am satisfied (and find) that the company’s technical classification of the January and July Incidents as ‘escapes of sewage’ - as opposed to ‘flooding’ - was a reasonable one to make in all the circumstances. I have considered whether there is sufficient evidence of the company adhering to its own Five Criteria and (in looking specifically at what the Job Notes and photographs show) I am satisfied (and find) that there was such adherence to (and application of) the Five Criteria.
9. I note that the customer claims in respect of:
  - a. the company’s failure to send out clean-up teams; and
  - b. the dozen or more times when he and his wife were left to clean up after problems with

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the Sump.

10. On this aspect, however, based on the evidence contained in the Defence Bundle, I am satisfied that the company's responses to the customer's reports (in 2014 and subsequently) have generally been reasonable. I am also satisfied (and find) that, on each occasion of the January and July Incidents respectively, the company cleared the relevant blockage and disinfected and cleaned the affected area.
11. There was one failing, I find, in the services provided by the company but only in the respect that the company has already itself acknowledged ("the Acknowledged Failing"). This was the conceded delay in the company completing the permanent solution to the problems with the Sump. By way of reflection for this, I note that the company has offered a goodwill payment to the customer of £150.00 (but that the customer has not accepted this offer).
12. Accounting for the extent of the delay in question, I am satisfied that £150.00 is a reasonable and proportionate sum to direct the company to pay against the Acknowledged Failing. I shall, therefore, make an award of compensation in the company's favour for this £150.00 amount.
13. Save for the Acknowledged Failing, I am satisfied that the company has provided its services to the customer in this case to the standard that one would reasonably expect. In light of this, I do not consider that any award of compensation against the company for the lengthy, time-consuming correspondence engaged in, and/or for the costs incurred by the customer, would be warranted in this instance.

#### **Outcome**

The company needs to take the following further action:

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

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 March 2019 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

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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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**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCI Arb

**Adjudicator**

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