

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1020

Date of Decision: 10 October 2018

Complaint

The customer submits that the lane outside his property has been subjected to sewerage flooding since he moved in in 2007. However, in 2012 the entire ground floor of his home was flooded and, as a result, he was unable to live at his property for over 12 months. Since this initial incident the company has installed a Non Return Valve (NRV) to his property and capped a manhole in the lane outside his property. However, all this has done is moved the issue to a second manhole approximately 60 feet away. The company's contractors and a Senior Engineer recommended that the second manhole be capped. However, the company subsequently confirmed that the sealing of the manhole cover would move the flooding to other properties in the village. The company states that it has had no reports of external/internal flooding at the property since the NRV was fitted in 2014. However, he reported two occurrences in 2018 and one previously in 2014 post-capping and the installation of the NRV. The company has also allowed approximately 350 new houses to be built in the village in 2017/18 connecting into the same sewer system without including any work to improve the system until 2020-2025. The customer requests that the company seal the second manhole cover and improve capacity at the pump station.

Defence

The company submits that it was made aware of the flooding at the customer's property in 2013. Following investigations, it was found that the main cause of the flooding was due to highway drainage and a nearby brook. However, to try and prevent any further incidents, it installed a NRV outside the customer's property and capped off a manhole. There have been no flooding incidents affecting the customer's property since the work was completed. Sealing the second manhole would cause flooding to other properties and investigations at the pumping station have confirmed that it is working as it should. A capital scheme has been promoted to address the sewerage network issues in [], which has been identified for inclusion in its 2020 to 2025 investment programme. The delivery of a capital solution will be subject to it satisfying investment protocols. No offer of settlement was made.

Findings

The evidence confirms that the customer has reported incidents of flooding since the company installed an NRV and a manhole in the lane outside the customer's property was capped in 2014. However, the evidence, including the

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customer's own photographs and descriptions of the incidents, also indicate that these floods occurred in the lane/highway outside the customer's property, and not on or in property belonging to the customer. I acknowledge the stress and inconvenience that the floods have caused. However, I accept the company's submissions that sealing of the second manhole cover would cause flooding to other properties in the area, and in view of the fact that the customer's property has not been directly affected since 2014, I am not satisfied that the customer has shown that the company has failed to provide its services to the standard to be reasonably expected by the average person in this regard. There is no evidence to show any failings on the company's part in relation to the pumping station. It falls outside of my remit to review how the company prioritises capital investments. It also falls outside of my remit to determine whether the company breached any obligations in relation to the connection of 350 new homes to the local sewer.

Outcome

The company does not need to take any further action.

The customer must reply by 7 November 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 10 October 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In 2007, when he moved into his property the lane outside of his property started flooding and he was informed by neighbours that this had been ongoing for some time and to contact the council to obtain sandbags to stop water entering his property, he had to do this several times.
- However, in 2012 over four feet of waste water and sewerage filled the lane outside his property, with over 10 inches of the same flooding the entire ground floor of his home. As a result, he was unable to live at his property for over 12 months at a cost of over £60,000.00 in insurance claims, for which he is still paying an increased premium. He was also left with no choice but to personally pay £19,000.00 for a wall around his property that the company contributed £2,000.00 towards.
- Since this initial incident, the company has installed a Non Return Valve (NRV) to his property and capped a manhole in the lane outside his property. However, all this has done is moved the issue to a second manhole approximately 60 feet away at the same low point outside his property, allowing sewerage to vent from the manhole and run downhill and fill the lane as before.
- He has been visited twice, once by the company's contractors and once by its Senior Engineer, who both confirmed that the system could not cope at the time of the flood incidents. Both the contractor and the Senior Engineer recommended to their managers that the second manhole be capped.

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- However, the company subsequently confirmed that the hydraulic performance of the sewer during storm conditions predicts that the sealing of the manhole cover would move the flooding to other properties in the village.
- The company states that it has had no reports of external/internal flooding at the property since the NRV was fitted in 2014. He does not understand why the company is stating this as, he reported two occurrences in 2018 and one previously in 2014, post-capping and the installation of the NRV. All of these incidences were reported to the company at the time of occurrences.
- He also sought answers as to why the company allowed approximately 350 new houses to be built in the village in 2017/18 connecting into the same sewer system without including any work to improve the system until 2020-2025.
- This situation constitutes an environmental health violation due to risk of exposure to human faeces including cholera, e coli and salmonella.
- The customer requests that the company *“seal the second manhole cover to stop the flooding outside [his] property and improve capacity at the pump station to stop the issue arising.”*

The company’s response is that:

- In November 2012 the customer suffered internal sewer flooding at his home. The customer did not report this at the time, so it was unaware of the flooding. Its notes show that the customer had previously contacted [] council in relation to flooding.
- On 15 April 2013 the customer reported flooding to it. It attended the customer’s property, carried out a 200m CCTV survey and found no issues on its network. It was found that the main cause of the flooding was due to highway drainage and a nearby brook. However, to try and prevent any further incidents, it installed a NRV outside the customer’s property and capped off a manhole. It also made a contribution of £2,000.00 towards the cost of a wall that the customer built to protect his property.
- There have been no flooding incidents affecting the customer’s property since the work was completed.
- In May 2018 the customer reported flooding on land near to his property. Following subsequent correspondence between it, the customer, and the Consumer Council for Water (CCW), the customer remained unhappy. [], the RSW Waste Team Manager, subsequently contacted the customer and a meeting was arranged for Thursday 9 August 2018.
- At the meeting, it was agreed that it would assess the effects of sealing the additional manhole cover identified during the meeting, and consider sealing manholes if no new flooding was

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predicted. It would also send its historic flooding records and a questionnaire to the customer to ensure that all flooding has been recorded.

- It has now reviewed the hydraulic model within the area and if any additional manholes were to be sealed it is very likely to move flooding from within the highways outside the customer's home to other nearby manholes. The customer has been supplied with a list of dates that it has flooding recorded for his property, and a questionnaire was sent to the customer, to be returned to [] should any dates be missing.
- Investigations at the pumping station have confirmed that this is working as it should - any upgrade in capacity would need to be considered during capital feasibility.
- It has explained to the customer that a capital scheme has been promoted to address the sewerage network issues in [], which has been identified for inclusion in its 2020 to 2025 investment programme. The delivery of a capital solution will be subject to it satisfying investment protocols, which include cost benefit analysis, prioritisation against all other investment needs across the [] region and securing any necessary approvals or permissions to implement the solution.
- It is not legally liable for loss or damage caused by flooding from public sewers. It is not possible to guarantee that flooding of properties from public sewers will not occur. Flooding incidents can be as a result of blockages caused by debris, fat, sanitary products, root intrusion etc., sewer pipes can break or collapse and rainfall can be in excess of the current design criteria for sewerage systems.
- As a company, its strategic aim is to eliminate flooding of properties from sewers particularly for internal flooding, except as a result of exceptionally high rainfall that exceeds the design standards for its system. Its investment to resolve flooding issues across its operational area, which includes 97,000km of public sewers, has to be prioritised. It prioritises by taking into account whether the flooding is inside a customer's property, the impact on customers, the frequency and severity of sewer flooding and feedback from its customers in terms of their willingness to pay, through higher bills, for certain enhancements and improvements to the sewerage network. It also considers the views of its regulator, OFWAT, and CCW. This approach means that it directs its resources to areas where there is the greatest impact and need. Its approvals board review this programme of work and prioritise this investment continually.

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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.

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?

Environmental health violation

1. I acknowledge the customer's submissions that the flooding incidences constitute an environmental health violation with potential danger to health. However, I consider that in accordance with s.3.4.1 of the Rules such disputes are better resolved in another forum. The customer's claims in this regards cannot be considered.

Adjudication Process

2. I must also remind the parties that adjudication is an evidence-based process where the burden of proof rests on the customer, to show on a balance of probabilities that the company has failed in its obligations.
3. Submissions made without supporting evidence are unlikely to be accepted as proven.

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4. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.

Flooding incidents

5. Correspondence submitted in evidence by the company, from the customer to his MP dated 28 October 2013, shows that the customer reported that he had been experiencing flooding incidents at his home to the company in or around February 2013.
6. The parties submit that, following investigations, in 2014 an NRV was installed and a manhole in the lane outside the customer's property capped. However, the customer submits that this has only moved the issue to a second manhole approximately 60 feet away.
7. The company contends that there have been no flooding incidents affecting the customer's property since the work was completed.
8. I note the customer's submissions that he does not understand why the company is stating this as he reported two incidents of flooding in 2018 and one previously in 2014, post-capping and the installation of the NRV. The customer states that all of these incidences were reported to the company at the time of occurrences. The customer has also submitted in evidence photographs to support his submissions.
9. I acknowledge the customer's submissions. The correspondence submitted in evidence indicates that the customer has reported incidents of flooding to the company after 2014. However, I am mindful that there is no clear evidence showing that these floods occurred on or in property belonging to the customer. The customer, in his Application to WATRS, describes the flooding as occurring in the lane outside his property. The photographs submitted by the customer in evidence also indicate that the flooding occurred in the lane/highway outside the customer's property. The customer has not submitted clear evidence to show that the floods affected his property directly following the completion of the works.
10. In addition, the company submits that following the latest meeting with [] on Thursday 9 August 2018, it has considered the customer's request to seal the second manhole cover; however, the hydraulic performance of the sewer during storm conditions predicts that flooding

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would be caused to other properties in the area. In the absence of any evidence submitted to this adjudication showing otherwise, I accept the company's submissions on a balance of probabilities. Consequently, in view of the fact that the customer's property has not been directly affected since 2014, I am inclined to find, on a balance of probabilities, that the company's decision to take into account the other properties in the village is fair and reasonable in the circumstances. I am therefore not satisfied that the customer has shown that the company has failed to provide its services to the standard to be reasonably expected by the average person in this regard.

11. The company also confirms that investigations show that the pumping station is working as it should. Again, in the absence of any evidence submitted to this adjudication showing otherwise, I accept the company's submissions on a balance of probabilities.
12. I note the company's submissions that that it prioritises flooding resolution investment by taking into account factors such as whether the flooding is inside a customer's property, and the impact on customers etc. The company states that a capital scheme to address the sewerage network issues in [] in the long term has been identified for inclusion in its 2020 to 2025 investment programme. The company also states that that this is subject to a number of factors and its approvals board reviews its programme of work and prioritises investment. For the avoidance of doubt the WATRS scheme is limited in scope and I have no power to review programme of works and/or how a company prioritises investments.
13. I also note the customer's complaint that the company allowed approximately 350 new houses to be built in the village in 2017/18 connecting into the same sewer system without including any work to improve the system until 2020-2025. However, again I have no power to review or make a decision on this part of the customer's complaint.
14. In light of my findings above, I acknowledge the customer's submissions and the stress and inconvenience that the floods have caused. However, the customer has not shown that the company is required to undertake the actions requested. Consequently, the customer's claim is unable to succeed.

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Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 7 November 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.



U Obi LLB (Hons) MCIArb
Adjudicator

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