

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1148

Date of Decision: 26 April 2019

#### Complaint

The customer submits that she is the owner/landlord of the property. In July 2017, following excessive rainfall, the pumping station near the property failed and caused internal sewer flooding. After the incident the company paid £1000.00 each to both her and her tenant. She and all others affected were also advised to claim via their insurance for any losses or damage caused. Her insurance cover is "new for old". However, losses were recouped from the company by her insurance company on a "like for like" basis. She therefore now has a deficit of over £1600.00 against her property. The claim has also caused her insurance premium to increase from approximately £20.00 per month to £50.00 per month, Her property is also now on a flood risk map, affecting the value of the property. The company has paid £3000.00 for the decrease in the value of her property, and has also offered £1000.00 for the increase in her insurance premium. The customer requests that the company offer customers new for old cover. The customer also requests that her property is removed from flood risk register, and that the company provide an apology and pay £10,000.00 compensation.

#### Defence

The company submits that on 19 July 2017, following an intense storm with heavy rainfall totalling 48mm in 90 minutes; the area suffered severe surface water flooding which led to the total failure of local storm pumps. It attended affected properties to provide support and assistance. It paid both the customer and her tenant £1,000.00. The customer also alleged that the value of the property had devalued by £3,000.00 due to the incident. Its understanding is that the property was not on the open market at the time or since, but it accepted the customer's statement and paid the customer an additional £3,000.00 as a gesture of goodwill. The customer also made a claim through her own insurers and was awarded a larger settlement than that settled with its insurers. This is because its standard cover is "like for like". In October 2018, the customer received an insurance renewal quote with an increased premium. Its Flood Care policy offers customers a one-off payment of £300.00 as a goodwill gesture towards any excess and increase in premium. The customer declined this offer, and as an attempt to fully resolve matters, it increased its to £1,000.00.

#### Findings

For the avoidance of doubt, any offers to settle are a business decision for the company alone to determine and fall outside the scope of WATRS. Offers may

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be made to avoid the financial cost and time of going to adjudication. Adjudicators must consider any compensation independently of any offers made. Under the Water Industry Act 1991 the company is not generally liable for sewer flooding unless the flooding was caused by its negligence. No evidence has been submitted to this adjudication to show that the flooding was caused by the company's negligence. There is also no evidence to show that the company failed to act to the standard to be reasonably expected when the flooding occurred. No evidence has been submitted to this adjudication that shows that the company's Flood Care policy is contrary to any law or code and/or does not comply with any OFWAT guidelines. For the avoidance of doubt, in the absence of such evidence, I can only assess whether the company has applied its policy as outlined. I cannot review this policy and/or assess whether this policy is fair. Under WATRS Rule 3.4.1, WATRS is not the appropriate forum to determine any complaints about water companies' insurance cover or flood policies. The company has paid the customer the maximum General Guaranteed Standard (GSS) payment required under its Flood Care policy. Under its Flood Care policy, the company is not required to reimburse any increase in premiums, the policy gives the company the discretion to choose whether or not it will do so. Further, under the policy, amounts are fixed at a £100.00 contribution towards an increase in the insurance premium and £200.00 towards any insurance excess payment. The company has exceeded its obligations and offered the customer £1,000.00; more than it is obliged to. The company's offer is fair and reasonable in the circumstances. The company is free to still offer this sum to the customer if it feels it was appropriate. However, I have no power to direct that the company make this payment.

#### Outcome

The company does not need to take any further action.

The customer must reply by 27 May 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1148

Date of Decision: 26 April 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- She is the owner/landlord of the property that is rented out to tenants.
- In July 2017, following excessive rainfall, the pumping station in [ ], near her property, failed and caused internal sewer flooding to a number of properties in the area.
- Following the incident the company announced that it would be paying £1000.00 to each of the residents/bill payers affected. The company also paid her £1000.00 as the owner of the property.
- She and all others affected were advised to claim via their buildings insurance for any losses or damage caused to their properties, as they were told that the company's insurers could not cope with a claim that big.
- She has "new for old" cover with her insurers. However, losses were recouped from the company by her insurance company on a "like for like" basis. She now has a deficit of over £1600.00 against her property. This claim has also caused her insurance premium to increase from approximately £20.00 per month to £50.00 per month and her property is now on a flood risk map. This also affects the value of the property. When purchasing a property, the purchaser will just be told that the property is in a high flood risk area and will assume that it is because of the sea, as the property is only one road back from the sea. However, the sea defences in Rhyl are in fact very good.
- The company has paid £3000.00 for the flood having negatively affected the value of her property. The company has also offered £1000.00 for the increase in her insurance premium.

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- The customer states that she would like the company to be adequately insured and offer customers new for old cover. The customer also requests that her property is removed from flood risk register, and that the company provide an apology and pay £10,000.00 compensation.

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

- On 19 July 2017, the area experienced an intense storm (1 in 54 storm return period) with heavy rainfall totalling 48mm in 90 minutes. The area suffered severe surface water flooding that led to the total failure of the storm pumps at [                    ] Sewage Pumping Station, due to surface water ingress into the dry well.
- This event, coupled with the combined sewer network, culverts and surface water drains in the area being inundated with surface water flow, resulted in the flooding of 36 properties – 15 of which also experienced internal flooding.
- It attended the properties to provide support and assistance, which included cleaning up and advising on insurance claims.
- It wrote to customers to apologise and to provide an explanation of what had happened. It also made a £1,000.00 payment to each customer by way of apology; the tenant of the property received the £1,000.00 payment and the customer also received £1,000.00 payment.
- The customer alleged that the value of the property had devalued by £3,000.00 due to the flooding incident. Its understanding is that the property was not on the open market at the time or since, but it accepted the customer's statement to be true and as such, it agreed to pay the customer an additional £3,000.00 as a gesture of goodwill.
- In October 2018, the customer received an insurance renewal quote that had an increased premium from the previous year. The insurers confirmed that premiums take a number of things into consideration, including, but not limited to, flooding, crime rates, burglaries and other things going on in the area at the time. The customer believes that the increase is solely attributed to the flooding incident.
- Its flood care policy offers customers a one off payment of £300.00 as a goodwill gesture towards any excess and increase in premium. The customer declined this offer, and as an attempt to fully resolve matters, it increased it to £1,000.00. This was also declined.
- The customer also made a claim through her own insurers and was awarded for losses totalling £6,320.00. This was a larger settlement paid by her insurers, than the £4,756.00 settled with its insurers. This is because the customer's insurers policy cover is "new for old", whereas its cover is "like for like". It has explained that this was its standard cover.

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- It has also explained that this particular area was already a known flood risk area (as categorised by [                    ]), from surface water and tidal flooding.

### 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?

1. I must remind the parties that adjudication is an evidence-based process.
2. 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.
3. 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.

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### ***Offers to settle***

4. For the avoidance of doubt, please note that any offers to settle are a business decision for the company alone to determine and falls outside the scope of WATRS. Offers may be made to avoid the financial cost and time of going to adjudication. Adjudicators must consider any compensation independently of any offers.

### ***Sewerage flood***

5. It is not in dispute that there was an incident of internal sewer flooding in the customer's property in July 2017.
6. Under the Water Industry Act 1991 the company is not generally liable for sewer flooding unless the flooding was caused by its negligence.
7. No evidence has been submitted to this adjudication to show that the flooding was caused by the company's negligence. There is also no evidence to show that the company failed to act to the standard to be reasonably expected when the flooding occurred. I can therefore find no failing on the company's part in these regards.
8. The company has submitted a copy of its Flood Care policy in evidence.
9. No evidence has been submitted to this adjudication that shows that the company's Flood Care policy is contrary to any law or code and/or does not comply with any OFWAT, the Water Industry Regulator, guidelines. In the absence of which, I accept this evidence submitted by the company. In addition, for the avoidance of doubt, in the absence of such evidence, I can only assess whether the company has applied its policy as outlined. I cannot review this policy and/or assess whether this policy is fair.
10. Under the company's Flood Care policy, if a customer suffers internal sewage flooding from its sewers, the company will make a General Guaranteed Standard (GSS) payment equivalent to their annual sewerage bill – a minimum of £150.00 and a maximum of £1000.00). Both parties submit that the company has made the maximum amount of £1000.00 to both the customer and her tenant. The company has met its obligations in this regard.

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11. The evidence also confirms the company's submissions that under its Flood Care policy, cover is provided on a like for like basis.
12. In addition, the Flood Care policy states that if a customer's insurance premium goes up, the company "may" [*adjudicator emphasis added*] reimburse some of this increase. Therefore, essentially, under the Flood Care policy the company is not under an obligation to reimburse any increase, the company has the discretion to choose whether or not it will do so. Further, under the policy, amounts are fixed at a £100.00 contribution towards an increase in the insurance premium and £200.00 towards any insurance excess payment.
13. The company initially offered the customer the full £300.00 available under its policy and subsequently increased this offer to £1,000.00; more than it is obliged to under its policy, as a gesture of goodwill.
14. I acknowledge the customer's submissions that the company is not adequately insured and should offer customers cover on a new for old basis. I also acknowledge the customer's submissions that the £1,000.00 offered towards increased premiums is not sufficient. However, for the avoidance of doubt the WATRS scheme is limited in scope and I have no power to review the company's Flood Care policy. As discussed above, I can only look at whether a company has applied its Flood Care policy as outlined. Under WATRS Rule 3.4.1, WATRS is not the appropriate forum to determine any complaints about water companies' insurance cover or flood policies.

### **Redress**

15. The customer requests that her property is removed from the flood risk register. As discussed above, the WATRS scheme is limited in scope. I have no power to determine any complaints about the flood risk register. Consequently, this request cannot be considered.
16. As per paragraph 14, the customer's requests that the company offer customers new for old cover fall outside the scope of WATRS.
17. The customer also requests £10,000.00 compensation. However, no evidence has been submitted to this adjudication to show that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in relation to this

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matter. In addition, the customer has not submitted any evidence to support her claim for loss in the sum of £10,000.00.

18. The customer submits that the value of her property has declined by £3,000.00 due to the flooding incident. The customer has not provided any evidence to support this submission. In addition, as discussed above, there is no evidence to show that the flooding was caused by the company's negligence and/or the company failed to act to the standard to be reasonably expected when the flooding occurred. In any event, both parties' submit that the company has paid the customer the £3,000.00 requested.
19. The company has also paid the customer the maximum GSS payment of £1000.00 required under its Flood Care policy.
20. Under its Flood Care policy, the company is not required to reimburse any increase in premiums, the company has the discretion to choose whether or not it will do so. It therefore falls outside of my remit to direct that the company reimburse any sums in this regard. As discussed above, my remit is limited to determining whether the company has acted in accordance with its Flood Care policy and the evidence confirms that the company has exceeded its obligations and offered the customer £1,000.00; more than it is obliged to. I find that company's offer is fair and reasonable in the circumstances. The company is free to still offer this sum to the customer if it feels it was appropriate. However, I have no power to direct that the company make this payment.
21. In respect of the customer's request for an apology, the evidence supports the company's submissions that it has provided apologies. I therefore make no further direction in this regard.

#### **Outcome**

The company does not need to take any further action.

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

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- This adjudication decision is final and cannot be appealed or amended.
  - The customer must reply by 27 May 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 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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