WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1187

Date of Decision: 11 June 2019

Complaint

The customer's complaint relates to water ingress under property that she says has a strong odour and has been present since 2011. The customer submits it is sewage water and therefore the company is responsible for addressing the cause. She feels that the company has failed to adequately address the problem. She is "at the end of her tether" and submits that the company allowed her and her son to live in "inhumane conditions". She seeks £10,000.00 in compensation for the costs incurred including rental payments as she and her son and no choice but to move out of the property due to the sewage affecting their health. The customer also requests that the company maintains the sump pump if this is installed at her property to remove water.

Defence

The company accepts that defects and issues with its assets may have caused or contributed to the water ingress at the customer's property in the past. However, it asserts that dye and ammonia tests carried out following repairs completed in 2015 indicate that it was now a groundwater issue and there have been no further problems on its assets. It does not accept to pay the customer the compensation amounts sought, however, it states that if the customer had made a claim on her home insurance to cover her losses, it would have given consideration to covering any excess payments she had made and further it would still consider this if the customer provides proof of the claims. The company agrees to install a sump pump at the customer's property, however, it asserts that as the water is groundwater, it would be the customer's responsibility to manage and maintain. It made no offer to settle the claim.

Findings

The evidence shows that since the company undertook repairs to its sewer and has been managing swillies, no blockages have occurred and I am satisfied that the evidence supports its assertion that the water underneath the customer's property is ground water. However, I find that defects and issues with its assets were a contributory cause of the water ingress at the customer's property in the past as the very high levels of ammonia present showed the water included contaminated sewage water. As the evidence shows the company failed to carry out thorough investigations in the first instance over a number of years, I find this is evidence of it failing to provide its services to a

reasonable expected standard. It also provided unsatisfactory customer service at some stages when dealing with the customer's case. The company shall pay the customer £2,500.00 for the significant stress and inconvenience I accept was caused to the customer as a result of its service failures. Due to insufficient evidence, I am unable to direct that the company reimburse the customer for the costs incurred for flooring and rental payments, as per her claim.

Outcome

The company shall pay the customer £2,500.00 in compensation.

The customer must reply by 9 July 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1187

Date of Decision: 11 June 2019

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- She has experienced an ongoing issue with her property: [ ] ('the Property') dating back to her purchase in 2011. The cellar (under her house only accessible under the floorboards) was full of "smelly" water. She paid £700.00 to have this "sumped" out as she believed the issue to be her responsibility. The next day the water returned. She has contacted the company many times over the past eight years, only to be informed it was not its problems or error. The company told her to stop flushing wipes and nappies down her toilet as this was causing the problem. She was offended; she did not have children at that time and would know not to do this, in any event. As she is the "main drain" for the street, it was other people's nappies that were flooding under her Property.
- Throughout this time until December 2013, she was "back and fourth" with the company "getting nowhere". In December 2013, she came home with her eight-week-old son and found sewage seeping from every drain. She called her insurers who said the problem lie with the company. The company attended and cleaned up the waste and investigated the pipework and swilleys but advised the problem was hers.
- In March 2014, she moved out the property as the stench was overbearing and her son was suffering from a recurring chest infection and skin problems. Her body was also covered in psoriasis from the stress of the smell and trying to bring up a young son with the smell of raw sewage.

- During this time thousands of gallons of “disgusting water” was pumped out of her home into tankers during several visits. The company’s contractors confirmed the high levels of ammonia present in the water. She had to “rip up” her tiled floor to allow them to gain access.
- She had to move back into her home in March 2016 as she could not afford to pay rent on top of her mortgage (a friend had been staying in the Property but they only covered the bills – the house was not in a condition to formally rent). The smell continued but she was told by the company that it was ground water. The company allowed her and her son to live in “inhumane conditions”.
- In June 2017, she received a letter from the company advising that a drain in the waste land at the side of her house was on the wrong gradient (which she has been telling the company for years) which means the water is not swilling away as it should but instead backing back up into her Property. It wanted to gain access under the house and it mean she had to “rip up” another floor (to show contractors that the water was present) and her decking that she had just spent thousands of pounds on, would have to be removed so the company could access a manhole underneath it. It agreed that the works could commence on 4 September 2017 and she “did nothing” to her garden all summer as she was expecting the works to start. She also got two quotes for the cost of removing and then re-laying the decking as agreed, however, she then did not hear back from the company. It subsequently told her in October 2017 that it does not need to access to her garden and that it had completed the work remotely. She questions why the company initially thought it would need access via her garden. She has asked for evidence of the works completed remotely but this has not been provided by the company.
- The customer requests that the issue is resolved and that the company pay her compensation of £16,815.00 (capped at £10,000.00) for the costs she has incurred as a result of the company’s errors: £9,775.00 in rent paid from August 2015 to March 2016; £2,270.00 x 2 for the cost of replacing her tiled floor - the first time was in 2014 when the company admitted ammonia and sumped the water out and the second time was in 2017 when the company “ripped up” her floor again to sump out the water –she lived with a hole in her floor for a year before replacing the floor again. The company claimed surface water on this occasion but has not provided any clear records of what works have been carried out.
- The customer also requests that the company maintain the sump pump (if installed at her Property) and get her neighbour to take responsibility for the pump who also shares the same problem and so should share equal responsibility.

The company’s response is that:

- The customer moved into the property in 2011 and the customer's plumber contacted it in October 2011, advising that there was a blockage in the network. It arranged for camera work and found no issues. The customer contacted it again in July 2013 regarding sewage issues, reporting that there was an odour. On checking, it found the sewer to be clear. It was thought the blockage may be on the customer's private gully.
- The next contact received from the customer was in December 2013 when a blockage was reported causing sewage to escape across the back gardens of the Property; there were fears that this would cause flooding inside the Property. Upon attending, it found that the blockage was being caused by unsuitable items that had entered the sewer i.e. nappies. A letterbox style cut was made in the soil stack at the Property for access and the line was cleared and the area disinfected. Another blockage was found on 21 December 2013 forty metres downstream from the Property under the wasteland next door. A manhole was found within that land and a mass of paper wipes were cleared from the network there. A camera survey of the sewer found a small crack in the channel of the inspection chamber, this was repaired in January 2014. It also sent letters to the customer and neighbouring property regarding what should and should not be placed in the sewer.
- The customer continued to report water in the cellar/under the floorboards. To assess the source it needed to pull up the floorboards. The customer advised the floor had been lifted on 29 July 2014 and on 30 July 2014 it visited the Property and completed a camera survey and found no blockages. Dye tests carried out came back negative. Unfortunately, on this occasion, an ammonia sample could not be taken as the access to under the Property was small and depth of the water was too low.
- On 16 August 2014, it received calls that there had been a sewerage escape at the rear of the Property. On 22 August 2014, it surveyed the sewer line which runs down the middle of [ ] Grove to the main road; [ ] Road. All the manholes on this line were checked and some of the line was found to be partially (50%) blocked with silt. It accepts that the ammonia test carried out by its contractors showed a high reading of 18.9.
- It attended on 29 August 2014 and removed the silt from the sewer line at the front of the Property. During that visit it also pumped out the water that was under the Property. It explained to the customer that it needed access to the land at the side of the Property to check a buried manhole. Once it was able to access the buried manhole in October 2014, it completed a camera survey was completed which found that there were a number of defects around where the private gully from the property connected into the public sewer and where the private sewer from the neighbouring property joined the Property's sewer and becomes public. It raised work

to correct these defects by lining the pipes. On 3 November 2014, an excavation was made to repair the defects and line the sewer and on 20 November 2014 it attended and removed the water from under the Property.

- It attended again in January 2015 and carried out dye and ammonia tests. The ammonia tests had readings of between 2 and 4 and the dye tests indicated an issue with the front gully (the gully was not in line with the fall pipe which was causing water to run down the side of the house). It excavated and replaced the front gully, however, the customer experienced further issues with water under the floorboards, which it continued to try and find the cause. A further issue was found with the private rear gully of the neighbouring property.
- It visited again on 4 March 2015 to check if any water/dye was under the floorboards after the work it had carried out during the previous visit. Although there was no dye showing, there was clear water under the floor. It became apparent that the private gully at the neighbouring property had still not been repaired. All of its assets around the property had been lined.
- On 30 March 2015, it confirmed that there was no dye visible within the Property and the water had drained. The customer was made aware of the situation and understood that it could do no more to help.
- It assisted the customer by repairing a leak on her private water supply on 22 March 2016.
- In June 2017 its contractor partners, who work on large mains laying schemes, contacted the customer to discuss the relaying of the sewer further down the line from the Property and dig up and replace the pipes under the customer's decking. This work was operational in order improve its sewer and not to stop the groundwater getting under the Property. Two sections of pipes were found to have a swilly in (a dip in the sewer that can sometimes hold the flow of waste going through and cause blockages); one is located beneath the decking at the customer's home and the other through the patch of ground adjacent to the Property. Although it did originally plan to dig and replace the pipes, after further investigation, it managed to line and seal the pipes without a need to dig, using less invasive techniques. It acknowledges that the customer got quotes to replace the decking in her garden. It apologises for not clarifying the change to the customer earlier.
- The section of pipe beneath the decking at the customer's home has been re-lined and sealed to help the flow of waste – since this has been carried out, there have not been any problems with this sewer. In relation to the section of pipe with a swilly in it adjacent to the customer's land, it has added this to its business rick model and will repair it when funding becomes available. In the meantime, it has a maintenance plan so it is checked/cleaned periodically for any blockages to help the sewer to run freely.

- The result of its extensive testing on 20 February 2018 showed a very low ammonia reading indicating no more water was coming from its assets.
- Therefore, it admits there have been problems with the sewer in the past. It acknowledges that resolving the issues on its network, which may have contributed to the water ingress under the property, has taken longer than is ideal. However, this was a complex issue, which was made worse by the access issues to waste land at the side of the Property, in addition to being able to contact the customer for access to the Property for investigations to be completed.
- When it had been made aware of the issues it attended at the Property, investigated them and repaired any defects found. Work was completed within timescales when feasibly possible.
- It believes any current issue is ground water which it is not responsible for. The swillies are not the cause of the problems the customer is now experiencing. It has offered for its contractors to install a "sump and pump"; this will withdraw any water from the area and remove it to the sewer. The customer would be responsible for managing and maintaining this asset.
- In relation to the customer's claim for compensation, in March 2015 it paid the customer £170.00. This was made up of a Guaranteed Service Standard (GSS) payment of £150.00 for 100% of the sewerage charges due to internal flooding, plus a late payment penalty of £20.00.There is no provision in the Water Industry Act 1991 (The Act) for it to be responsible for any damage caused by sewage escapes. It will not be offering the customer any compensation for the loss of rent or for replacing the floor. It avers that the Property was habitable; the customer advises that they rented the Property to a friend during the time they were renting another property which demonstrates that it was habitable. If the customer had made a claim on her home insurance to cover her losses it would have given consideration to covering any excess payments the customer had made. It would still consider this if the customer provides proof of the claims and why they were made.

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. The dispute relates to water ingress in the cellar underneath the floorboards at the customer's Property. The customer submits that the company has failed to adequately resolve the issue.

2. 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 nappies and wet wipes 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.

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

4. It is clear from the evidence that the customer has been reporting this issue to the company since she moved into the Property in 2011. The company accepts that defects and issues with its assets may have caused or contributed to the water ingress at the customer's Property in the past, however it asserts that dye and ammonia tests carried out following

repairs completed in 2014/2015 indicate that it was now a groundwater issue and there have been no further problems on its assets.

5. In light of the evidence, in particular the blockages in the customer's sewer found by the company in December 2013 and August 2014 causing sewer surcharging from the customer's drains and also the results of ammonia tests completed by the company's contractors in August 2014 showing ammonia levels of 18.9 mg/l, on balance I accept that the water ingress underneath the customer's floorboards came from, or at the least partly came from the company's sewer network. This is confirmed throughout the company's work notes submitted at Appendix 1 of the Defence (provided to the customer following her SAR) including the internal note dated 26 January 2018 which states it was a mix of foul and clean water. I am also mindful that based on the information in the company's booklet titled Ammonia testing v1, a result of 6 mg/l and above suggests sewage contamination.

6. I accept that between January 2014 and February 2015 the company undertook work including various repairs to defects found in the sewer network including to the front gully. It also removed silt from its sewer line from the front of the property (found to be 50% blocked) and re-lined and sealed its sewers. Furthermore, it cleaning up the affected areas and pumped out hundreds of gallons of foul water from under the customer's floorboards. I find the above is confirmed in the company's work notes submitted at Appendix 1 of the Defence.

7. On balance I accept subsequent dye tests carried out by the company in March 2015 were negative and therefore indicated that any water ingress under the property was not from its assets. I am satisfied that the evidence in the company's work notes submitted at Appendix 1 of the Defence, supports my above finding.

8. I acknowledge that the customer has said the foul odour continued after she moved back into the Property in March 2016 but that the company informed her that the issue was groundwater. I acknowledge that following contact from the company in June 2017 (discussed below), the company took further samples from the water underneath the customer's Property in February 2018. The company contends the results indicated the water was ground water. Having reviewed the company's work notes submitted at Appendix 1 of the Defence that state ammonia levels were "relatively low" with the highest of 4 tests

taken being 1.3 mg/l and that dye tests were negative, I accept this evidence supports the company's position that the water still present did not derive from the combined sewer.

9. The parties have made reference to the neighbouring property and other properties in the customer's street also have ground water in their cellars, therefore suggesting ground water is inherent in the area. The company also says that during its investigations it found the property to be low lying and that her neighbour has a private soakaway which may be a potential cause of the water ingress. I consider these are plausible causes. Whilst I accept that the company is not responsible ground water occurring, I acknowledge that it has offered to pay for a "sump and pump" to be installed at the Property which it says is the most common solution for dealing with ground waters in cellars. It has reiterated this offer to install the pump in its Defence. In its response to the customer dated 26 October 2018, it has also provided information regarding other possible methods of addressing the issue including installing land drainage and tanking/waterproofing and the contact details of organisations that may be able to assist.

2017

10. The customer was contacted by the company in June 2017 regarding a project to remove swillies from the network. The company contends that rather than this being an issue which would be likely cause a direct leak into the Property, it was operational to improve the performance of the sewer in the longer term by reducing the likelihood of it blocking up (by the build-up of materials in the swillies). In light of my above finding that dye tests and ammonia tests taken in 2015 and again in 2018 showed that the water underneath the Property was not foul, I accept that the purpose of the works was not to specifically address the flooding underneath the Property but to mitigate the risk of future blockages in the customer's area.

11. However, the company accepts that after initially contacting the customer in June 2017 to advise of the proposed works to begin in 4 September 2017 which included excavating her garden to access one of the swillies, the project did not go ahead as scheduled. I am satisfied from the evidence the company failed to advise the customer of its amended schedule. In its Defence, it apologises for the lack of communication provided to the customer in relation to the change and it is clear from the evidence that the customer had to chase the company for an explanation after no one turned up. I am satisfied this is evidence

of the company failing to provide its services to a reasonably expected standard. I accept that the customer had gotten quotes for the cost of removing/relaying her decking, as agreed with the company and also had "done nothing" to her garden all summer as she had been informed work would begin in September 2017, which as it turned out, did not happen. When assessing the claim for compensation below, I shall take into account the stress and inconvenience caused to the customer by the company's service shortfall here.

12. The customer subsequently raised a complaint with the company in September 2017 escalating it the Consumer Council for Water (CCW) in March 2018. One element of the complaint was that she had been told the work (that originally involved digging up her garden) had been completed remotely but that the company has not provided her with details of this. She has reiterated this complaint in her WATRS Application. In the company's response dated 26 October 2018, I am satisfied it explained the reasons the original proposal to replace the pipes was not implemented (relating to costs and problems with hazardous materials and accessing the adjacent land) and that instead it was "managing" the swillies (without the need to dig). It explained that as well as lining and sealing the sections of sewer, it was undertaking routine inspections and cyclical flushes. This is reiterated in the Defence and the company also states it is unaware of any further blockages since these measures have been implemented, which based on the evidence, I accept.

13. In relation to the customer's claim for compensation, as above, under the Act the 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 nappies and wet wipes into the network. I accept that blockages caused by third parties may have contributed to the issues experienced but it is clear there were other factors including silt and defects within the sewer network that, when addressed by the company stopped further blockages occurring. The company has said it investigated and repaired the defects found and that necessary work was completed within timescales when feasibly possible. However, bearing in mind the customer first reported a blockage to the company in October 2011, and work was not completed until 2015, I am not satisfied the company has shown it addressed the issue in a timely manner.

14. I accept that on occasions the company's ability to investigate the problem was held up due to factors outside of its control such as having to obtain permission from the council to access the private land adjacent to the customer's property (in order to camera survey the

manhole) and also on occasions due to access issues, for example when it had to wait several months for the customer to remove her flooring in 2014 so it could investigate the water ingress. However, I find that whilst the company responded to the blockage reported in October 2011, it advised the customer that there were no issues on its assets apart from the sewer being on a gradient, and so no work was carried out. When the customer reported another blockage in July 2013, again she was told it was a private problem. It was only after there were sewer escapes at the rear of the Property in December 2013 that the company investigated the internal flooding underneath the Property (in July 2014). At this point it said it was a private issue. However, after ammonia tests in August 2014 were found to be "very high" and indicated that the water was foul and following a further sewage escape from the manholes in the rear garden, the company finally began to undertaken repairs following subsequent camera surveys showing defects and issues within its sewers. As such, I find its investigations up to this point were not sufficiently thorough. In the job note dated 17 August 2014, submitted at Appendix 1 of the Defence, the company admit its earlier investigations were not thorough enough. This is evidence of the company failing to provide its services to a reasonably expected standard.

15. In her WATRS Application, the customer requests compensation of £10,000.00 (although the breakdown of costs submitted total £16,815.00, including £2,500.00 for stress and inconvenience). I remind the parties that, as per the Scheme Rules, the maximum claim amount under WATRS is £10,000.00. Having considered the claims for rent (£9,775.00) and flooring (£4,540.00) whilst I accept from the evidence that a) the customer moved out of the Property in 2014 and returned in March 2016 as a result of the issues encountered and b) she had to remove her flooring twice in order to allow the company access to investigate the water ingress, I have not been provided with proof of these sums incurred. Furthermore, I am mindful that the customer has explained her friend moved into the Property after she and her son moved out, asserting that they only covered bills and she had to continue to paying the mortgage, on top of rent, during this timeframe. If, as a result of the above mentioned circumstances the customer suffered a financial loss, I find that such would need to be fully evidenced in order for me to consider this claim. As the above claims have not been evidenced, I cannot uphold these claims. The company in its Defence has stated that if the customer had made a claim on her home insurance to cover her losses, it would have given consideration to covering any excess payments she had made and further it would still consider this if the customer provides proof of the claims. Therefore, in order to pursue these

claims, the customer may wish to take this up directly with the company, outside of this process.

16. However, in light of the company's shortfalls in service provided to the customer since 2011, including its delay in addressing the cause of the reported blockages/water ingress, in addition to the poor customer service provided during 2017, I find that the amount sought of £2500.00 is fair and reasonable; I accept that significant stress and inconvenience has been caused to the customer over the seven year timeframe as a result of the company's errors, particularly due to the serious repercussions and disruption caused by the lack of thorough investigations by the company between 2011 and 2014 into the cause of the contaminated water underneath the customer's property. I am satisfied this amount takes into account the compensation sum of £170.00 already paid to the customer in 2015 (£150.00 GSS payment and £20.00 for a missed appointment).

17. I acknowledge the customer's requests for the company to a) maintain the sump pump (if installed at her Property) and b) to get her neighbour to take responsibility for the pump. The company has explained it is willing to bear the cost of installing a sump pump but has stated that it would be the customer's responsibility to manage and maintain it as the ground water is not its responsibility. As I accept the company has shown the water now present is not from its assets, I accept its stated position and I find no basis to uphold this request. Therefore, this aspect of the claim cannot succeed on this basis. In relation to b), I find this remedy falls outside of the remit of WATRS as it concerns a third party and as such this remedy would be unenforceable.

Outcome

The company shall pay the customer £2500.00 in compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 July 2019 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.

A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCIArb

Adjudicator