

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1377

Date of Decision: 8 May 2019

Complaint

The customer's property has been flooded from the company's sewer over the nine years that the customer has lived there. The company should be proactive in regularly flushing the system to prevent the build-up of detritus. It is not the customer's responsibility that other residents are putting undesirable items into the sewers.

Defence

The customer has cleared blockages to the sewer when reported. These were caused by fat, oil and grease and, on one occasion, mass rags put into the sewer. The company has cleaned up any areas affected by the flooding free of charge. It has considered a planned maintenance cleaning programme; however, it must prioritise work for customers regularly suffering from internal sewer flooding. It has sent leaflets to local residents in an attempt to resolve the issue. It denies any responsibility for the blockages as these are caused by sewer misuse by unknown third parties.

Findings

The company's sewer flooded externally approximately once every two years, although the last incident occurred less than a year after the previous incident. The cause of the blockages is outside the company's actual control. It has taken reasonable steps to address the cause of the issue by leafletting local residents. The company also acted reasonably in considering and declining a proactive cleaning programme and prioritising more severe blockages. The customer reporting every incident will allow the company to obtain a better picture of the issue and possibly reconsider a cleaning schedule. The customer will be entitled to Guaranteed Standards Scheme payments in respect of the external flooding of her property.

Outcome

The company needs to take the following further action:

Provide the customer with the relevant forms and assist her to claim a Guaranteed Standards Scheme payment in respect of the sewer flooding.

The customer must reply by 6 June 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 8 May 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer's property has been flooded from the company's sewer over the past nine years that the customer has lived there. There were flooding incidents in 2010, 2012, 2015, 2017 and 2018. The cause of the flooding is a blockage in [] at the junction with [], the customer's street, which then backs up onto the customer's property. Sewage then floods onto the customer's patio and front garden and she is not able to access her garage. The customer has to walk through sewage to use her front door.
- The customer has requested that the company implement regular flushing of the system to prevent the build up of detritus, and that it provides her with £2000.00 in compensation for the detrimental effect of the flooding on the value of her property.

The company's response is that:

- The company states that the cause of the sewer flooding in the customer's case is misuse. The blockages are caused by fat, oil and grease put into the sewer and, on one occasion, a mass of rags was found. The company has left the sewer clear and free flowing after each incident and has disinfected and cleaned up any areas of the customer's property that were affected by the flooding as part of its free clean-up service. The company has considered the customer's request to provide a planned maintenance cleaning programme. However, it determined that this would not be the best use of the company's resources and that it must prioritise work for customers regularly suffering from internal sewer flooding. The company has provided 'Bin It Don't Block It'

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leaflets to residents in the customer's street and will be sending these leaflets to residents in the wider area of properties connecting to the Orchard sewer. The company has asked the customer to report all incidents to it in order that it may keep records of the frequency of the blockages and flooding. This will enable it to reconsider a planned maintenance programme for the area in the future. The company denies that it is responsible for the sewer blockages. The sewers are in good condition and would be self-cleaning if not for the misuse. The company is not able to justify a regular cleaning programme as there is no knowledge of internal flooding in the area and the customer is the only customer reporting an issue. The company is only obliged to react to a sewer blockage when it becomes aware of this. The company denies that it can be held responsible for the actions of unknown third parties who abuse the sewers.

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 customer's property has suffered from external sewer flooding on a number of occasions. The customer states that the first issue she experienced was in 2010; the company's correspondence indicates that it has found blockages reported as far back as December 2012.
2. I am satisfied from the submissions that the customer's property is being flooded only externally; the sewage is not flooding the internal areas of the customer's house or garage.

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3. The dates provided by the parties of sewer flooding incidents indicate that the sewer is blocking approximately once every two years. I note that the latest flooding incident, in November 2018, occurred less than 12 months after the previous incident, reported on 27 December 2017. This may indicate that the issue is increasing in severity, however I find that there have been insufficient flooding incidents to confirm this.
4. I am satisfied that, when the customer has reported an issue to the company, it has attended and cleared the blockage to the sewer. On each occasion, the cause has been found to be inappropriate items entering the sewer, such as oil and fat and, on one occasion, rags. I find that this cause must be viewed separately from any cause within the company's control, such as where a sewer collapse has occurred, or where tree roots have entered the sewer to cause an obstruction. In these two examples, the company could take effective action to resolve the cause of the blockage by repairing the sewer or lining it to stop the ingress of tree roots.
5. However, in this case, the cause of the blockages is the continued misuse of the sewers by the residents of properties that discharge waste into the company's sewer. This is not a simple issue for the company to resolve as it has no control over the actions of third parties. The company is not able to complete a repair and resolve the problem as the problem recurs with ongoing misuse.
6. I find that the only long-term resolution to the issue is a change to the behaviour of local residents, such that they no longer flush or pour inappropriate items into the sewer network.
7. I am satisfied that the blockages have not been caused by any failure by the company to maintain and repair its sewer network. The blockages are caused by the actions of third parties and are therefore wholly outside the company's actual control. I find that the company is able to raise awareness and make reasonable efforts to advise local residents that their actions are having a detrimental effect on the sewer network. I am satisfied that the company has and is taking appropriate action by delivering leaflets about what should and should not be placed into the sewer to local residents. There is no way to guarantee the effectiveness of this strategy as the company is ultimately not able to control unknown third parties that misuse the sewer; however, I find that the company has taken a positive step to address the cause of the issue.
8. The company has also considered the customer's request for regular flushing of the sewer to proactively keep it free running. I acknowledge that this would be an effective remedy and that it

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would likely ensure no further flooding incidents occurred. However, the regular flooding of a sewer comes at a financial cost and must therefore be budgeted for. I find that it is reasonable for the company to fully review the costs and benefits of regularly flushing any given sewer, as this will ensure that it spends its budget in the most effective way.

9. I am mindful that regular flushing will ordinarily be utilised where the cost of doing so is less than the cost to react to reports of sewer flooding. This will clearly be the case where a customer is experiencing frequent and regular flooding inside their property, or where an issue can be repaired but the timeframe for doing so is unavoidably long.
10. I am satisfied that the customer's issue of external sewer flooding approximately every two years does not constitute a high priority for sewer flushing. However, should the flooding increase in regularity or severity, the company is able to review its decision not to proactively flush the sewer. I find that, based on the comparatively low severity of the issue, the company has acted reasonably by sending leaflets about sewer misuse to local residents, and by requesting the customer contact it about each and every sewer flooding incident.
11. I acknowledge that it will be inconvenient for the customer to contact the company on each flooding occasion, however, by doing so, the company will be able to build up a comprehensive picture of the severity of the issue. The company will then be able to review its decision in respect of a planned maintenance programme in view of the latest information about the severity of the issue and the company's latest budget for such projects.
12. For the avoidance of doubt, and whilst I accept that this will be extremely disappointing for the customer, the company has behaved at all times in the manner expected of a reasonable sewerage undertaker by taking a reactive approach to the customer's sewer flooding, clearing the sewer and providing a free clean-up service only once a flooding report has been made. The company has taken appropriate action by sending information to local residents in an attempt to address the cause of the issue; however, the cause of the flooding is not within the company's control and it cannot be held liable for the flooding or the impact of this as the issue was not caused by the company's negligence.
13. The customer has requested that the company implement a planned maintenance programme. As above, I am satisfied that the company has appropriately considered this request and reasonably declined it based on the information available about the severity and frequency of the

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flooding. I am not persuaded that it must reconsider this decision until further data can be obtained that demonstrates that the issue has become more severe, either in frequency or by flooding internally.

14. The customer has also requested £2000.00 in compensation for the loss of value in her property caused by the sewer flooding. As above, the cause of the sewer is not a factor within the company's control or caused by any negligence of the company. The company therefore cannot be held liable for any loss of value in the customer's property.
15. I am, however, satisfied that the customer will be entitled to a Guaranteed Standards Scheme (GSS) payment in respect of the external sewer flooding of between £75.00 and £500.00, depending on the value of the customer's annual wastewater charges for the period in which the flooding incident occurred. I therefore direct the company to provide the customer with the relevant forms and assist her to claim the GSS payment, this being the only compensation to which the customer is entitled.

Outcome

The company needs to take the following further action:

Provide the customer with the relevant forms and assist her to claim a Guaranteed Standards Scheme payment in respect of the sewer flooding.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 June 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.

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- 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.



Alison Dablin, LL.M, MSc, MCI Arb

Adjudicator

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