

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1573

Date of Decision: 15 November 2019

#### Complaint

The customer complains that the company has not adequately assessed the cause of sewage floods at her home and has not compensated her adequately in respect of the 10 incidents of flooding from the sewers, both internal and external, that have occurred at her home. It has not made a GSS payment in relation to the latest incident of flooding

#### Defence

The company says that there have been seven previous incidents of flooding, some of which have been wrongly attributed to the company's assets whereas they were due to a blocked private pipe, so has overpaid GSS. The last incident could not be verified and therefore the company did not make a GSS payment. The company has taken steps to resolve the customer's concerns and has supplied its services to the correct standard.

#### Findings

Although the company may be in error in attributing flooding in 2016 to a blocked private pipe and therefore in concluding that it has paid GSS that was not due, this has not affected the way in which it has dealt with flooding incidents and the company has not therefore fallen below the requisite standard in this respect. No additional compensation for distress and inconvenience is due. An average customer would reasonably expect, however, against a background of previous flooding and a broken NRV that the company would accept the customer's word that there had been flooding on 12 June 2019 and I find that in failing to make the GSS payment for that date, the company has not supplied its services to the standard that would be reasonably expected.

#### Outcome

The company needs to take the following further action: pay £150.00 to the customer.

**The customer must reply by 13 December 2019 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

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Date of Decision: 15 November 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer complains that she has had 10 or more incidents of internal and external flooding at her property. She believes that the company has failed adequately to investigate the cause of these flooding incidents, which she thinks have been caused by insufficient gradient in the pipe to prevent back-flow and she seeks additional compensation.
- The company has also refused a statutory Guaranteed Service Standard payment for the most recent flooding incident on 12 June 2019 because, although the customer provided the company with photographs and video evidence of the incident, these were taken after she had partially cleaned up. The customer says that she needed to clean up first due to the risk of flooding causing further damage to the next room. She says that the company never advised that the photographs were required to be submitted before the clean-up was started.
- Following visits from the company it was established that the non-return valve flap was broken, which can increase the possible risk of flooding. The company has said that the discovery of this was coincidental and was not the cause of the recent occurrence.
- The customer says that she was never offered a clean-up service by the company following the flooding incidents and the company says that this is because, by the time they are reported, the customer has already cleaned up.
- The customer has been awarded money to replace her bathroom floor in January 2019 following damage caused by a previous incident but the floor is yet to be replaced. The customer acknowledges that she cannot claim for this again as she did not replace it.

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- After further investigations, the company has installed a second non-return valve, since which time there have been no further incidents.
- The company has offered the customer the sum of £200.00 and acknowledgement of poor service but has not offered compensation for the distress of the continued flooding over years and the lack of support. She contends that a minimum sum of £500.00 is reasonable and she would like the GSS payment for the flooding of 12 June 2019. The customer seeks compensation of £650.00.

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

- The company has received seven reports of sewer flooding from the customer since 2016 and STW attended promptly to each reported incident. Sewer flooding was confirmed on three occasions, no flooding was found on the other four occasions. It was later found that the two confirmed sewer flooding incidents in 2016 were due to a blockage in the private drain and not to issues with the company's assets.
- The history is as follows:
  - In 2016, the customer contacted the company to report sewer flooding to her home.
  - While no flooding was found after the incident reported in June 2016, flooding was confirmed in November and December 2016. Issues were found with a non-return valve (NRV). These were repaired. Guaranteed Standards Scheme (GSS) payments were processed for these incidents. Following a written complaint received from the customer on 14 February 2017, the company arranged to meet her on site. The housing association that owns the property was also present. During this visit it was found that a private drain at the property was blocked. The company believes this to have been the cause of the earlier internal flooding to her bathroom. There were no issues found with the company's assets. The company had therefore incorrectly paid GSS payments when the flooding was not caused by their assets. The company did not ask that the payments were repaid.
  - Further incidents of sewer flooding on 27 December 2017 and 2 April 2018 were reported. On each occasion the company attended later in the day but no flooding was found.
  - A further report of external flooding was received by the company on 12 March 2019. The company attended on 13 March 2019 and, while there was no flooding at the time, there was evidence that there had been some flooding. A GSS payment was processed on 9 May 2019.

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- The company arranged to visit and meet the customer and her neighbour on 27 March 2019. This was cancelled at the customer's request and the company was asked to direct any future communications to her legal representative.
- The customer then called the company on 29 May 2019 to ask that a meeting was arranged. This took place on 4 June 2019. During the visit further work was requested to install a new manhole chamber for maintenance and so that another NRV could be installed. The company also agreed to pay the customer £200.00 in respect of damage by flooding to her bathroom flooring as a gesture of goodwill.
- The customer reported another incident of sewer flooding on 12 June 2019 although she asked that the company's team should attend the following day. The company attended on 13 June 2019 but there was no evidence of any sewer flooding when they arrived on site. As the company was unable to verify that flooding had occurred, no GSS payment was required. This was explained to the customer by telephone and in writing.
- The company has added a NRV in the garden on to a planned inspection programme in November 2016 and it has been inspected on three occasions since then. A second NRV was installed in June 2019 to help to protect the property further. No further incidents have been reported since the work was completed.

### 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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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.

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## How was this decision reached?

1. The company and the Consumer Council for Water (CCWater) have submitted supporting documentation, including a video taken by the customer in respect of the flooding said to have occurred in June 2019, in respect of which no GSS payment has been made. I base my findings on these documents.
2. I also bear in mind that in the context of litigation in the courts, a water and sewerage undertaking is not liable to compensate a customer merely because it fails to prevent flooding or because it takes a strategic decision that it will not take further action in any specific case. This is because the courts have concluded that to allow individuals to bring cases against the sewerage undertakers in respect of its strategic decisions would undermine the purpose of the statutory scheme laid down in the Water Industry Act 1991. Customers who are concerned about a decision of the sewerage company in respect of the maintenance and provision of the company's network of assets may request the intervention of OFWAT under the statutory scheme. The customer's rights to compensation are contained in the Guaranteed Service Standards scheme, which is also laid down by law. If, however, a company has been shown to be negligent in an individual case, a customer may have a right of action against the company. I find that, although in this adjudication I am not concerned with the legal principles that a court would apply, I must approach the challenge raised by the customer in the same way. That is to say, I find that I have no jurisdiction to consider the strategic decisions taken by the company in this case, but I may consider whether the company has otherwise conducted itself to the standard that an average customer would reasonably expect, and I can consider redress accordingly.
3. The documents submitted by the parties show that, even before 15 June 2016, the customer was designated as a priority flooding customer and, on 15 June 2016, the customer reported shortly after entering the property, that the manhole cover was not secure. She said that she had experienced flooding. By the time that the company attended, however, no flooding was visible, but steps were taken to replace the bolts of the manhole cover. The company recorded on 29 June 2016:

*This is on going issue for customer has the black manhole as supposable a water pump thats not working and foul sewage comes out when it rains.*

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4. On 22 November 2016, the company attended again because the customer complained the previous day of foul flooding in her bathroom. This was confirmed by the company, who also found that a flap of the non-return valve in the manhole had broken and there was a blockage in the pipe. On 3 December 2016, the customer reported internal sewage flooding coming from the toilet and the sink. Also she said that there was flooding in the back garden coming from the manhole and that this was a repeated problem. On this occasion, the company's records show that the internal flooding was confirmed and an obstruction was found under the manhole. The company's notes say:

*Issue seems to be with NRV Sewage doesn't seem to flow away through NRV correctly.*

5. On 16 February 2017, an investigation at the site discovered a different issue. The account records of the contractor state:

*met RST Water agents on site to assist in investigation of flooding at the property we found a blocked private lateral of heavy san products RST Water SNT's carried out CCTV D.S of RST Water asset and found this clear with no issues this is deemed as a private issue.*

The company's records then state that they were called out again on 27 December 2017, when they were unable to find any issue. On the following visit, however, on 2 April 2018, the company, although finding that the NRV was intact, found a blockage that needed to be jetted. The cause of the flooding was said to be hydraulic overload.

*NRV fitted at neighbouring property, before this was fitted neighbours property used to flood but this time no problems. customer unhappy as neighbour told her when the NRV was fitted we had admitted to her that it would probably cause the flooding to happen to a neighbour in future.*

6. On 12 March 2019, the customer again complained of flooding in her garden. She wanted a video call and said that she was in her garden adjacent to the escape of foul water. The notes state that when the company arrived it found *no flooding on arrival but signs of EF*. Debris which appears from the notes to have obstructed the NRV was subsequently cleared from the sewer. A decision was taken to install a new manhole cover which occurred in June 2019 although on 12 June 2019, the customer reported a further overflow. Although by the time of attendance the company was unable to see signs of flooding, they did find that the flap of the NRV had broken off and would require to be replaced. The customer had taken a video of a high level of water

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and movement of water in the lavatory, but the company found that there was no evidence of overflow. The customer says that this is because she had already cleaned up, as she had in the past. There is no evidence that she is wrong about this.

7. As part of the construction of the new manhole, a new NRV was installed. The company and the customer are in agreement that there have been no further issues.
8. Against this background, I find that although the company suggests that the company's own asset has not been the cause of flooding prior to 2017 because a waste pipe from the house (which was a private pipe) contained a blockage and has told the customer that it has changed its mind as to the cause of previous floods, I find that there is no clear evidence that the flooding in 2016 has not been a consequence (whether fully or in part) of an escape of foul water from the sewer. I reach this conclusion for the following reasons:
  - a. Even at the time of the first call out, the customer was said to be in a priority area and her neighbour was also experiencing problems of flooding sewage. The fitting of a NRV on a manhole serving the neighbour's home is indicative of a local problem with rising foul water from the sewer in certain circumstances;
  - b. The company's representatives had been called out and investigated in 2016. No suggestion was then made that the cause of the problem was a privately owned pipe rather than the company's own assets;
  - c. On many of the occasions that the company was called out, a problem of blockage, debris or displacement of the flap to the NRV was found. This was consistent with disturbance in the sewer and also with the potential existence of a problem in the vicinity of the customer's manhole that could lead to overflow; and
  - d. While I accept that in February 2017 it was found that there was a blockage in the local pipe, there is no evidence that the blockage had been in place since early 2016;
  - e. The construction of a new manhole with additional NRV has resulted in no further problem.

This therefore suggests that there has been an ongoing problem of flooding at the customer's property over many years.

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9. I further find that there is no reason to assume that the customer did not correctly report flooding to her toilet in June 2019. She says that she cleared up the evidence of flooding as soon as this has happened in order to protect other parts of her property and, presumably, because the flooding is objectionable. I find that an average customer would reasonably expect that, if able to do so, a customer would take appropriate and proportionate measures to eliminate flood water from the sewer into her home and garden, whatever the cause. I find, therefore, that there is no evidence that the customer did not clean up foul water that had escaped into her home. Although this means that the company was deprived of an opportunity of witnessing the flooding, it did not follow that there was no flood. There is no evidence that the company had at any prior stage requested the customer to verify her complaint by a photograph of the flooding before she cleaned it away and I find in the circumstances of this case that an average customer would reasonably expect the company to take the customer's word for what had occurred. This is all the more the case where the NRV flap in the manhole was found to be broken. In refusing the GSS payment, the company has disbelieved the customer's assertion without evidence that she was wrong, and I find that, in so doing, the company has not supplied its services to the standard that would reasonably be expected.

10. Accordingly, I find that the customer has proved that she is entitled to redress. Although, however, I have found above that the company may not be correct in attributing previous flooding incidents to the blocked private pipe, it does not follow that the company has failed to supply its services to the correct standard nor that the customer is entitled to additional compensation of £500.00. I find that the company has, notwithstanding its conclusion that the 2016 flooding was due to the private pipe, taken careful steps to:

- Treat the customer's property as a priority;
- Attend or offer the attendance of the company's representatives on every occasion in order to investigate the complaint and take such remedial action as shall have appeared to the company to be necessary. This includes mending the NRV and constructing an additional manhole with further NRV;
- Make GSS payments on all occasions except the most recent;
- Desist from requesting repayment of the GSS payment; and
- Offer a goodwill payment of £200.00 in respect of the damage to her floor.

Accordingly, I find that, even if the company was in error in respect of its conclusions as to the cause of flooding in 2016, there is no evidence that this caused to the company to act in a

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different way from that in which it would have acted and no evidence, therefore, that the customer has suffered any additional distress or inconvenience. The GSS payment is that set by law and I find that an average customer would expect the company to compensate for distress and inconvenience by way of that level of payment, but not more.

11. In relation to the company's refusal to make a GSS payment in relation to the incident on 12 June 2019, however, I have found above that an average customer would reasonably have expected the company to make a payment of £150.00 appropriate for flooding to a toilet inside the home, and I find that it is fair and reasonable that I should direct that this sum shall be paid now.

#### **Outcome**

The company needs to take the following further action: pay £150.00 to the customer.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13 December 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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Claire Andrews (Barrister, FCI Arb)

**Adjudicator**

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