

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1618

Date of Decision: 2 October 2019

Complaint

The customer asserts that her property was flooded and she seeks compensation for the damage caused by flooding to her home in the sum of £1415.10. She also requests that the company install flood defences at her home, as promised.

Defence

The company asserts that its investigations showed the flooding at the customer's property was caused by the sewer surcharging during a heavy downpour and debris and tree roots in the sewer, restricting the flow. As the flooding did not occur as a result of negligence on its part, it does not accept it is liable for the costs claimed. It has cleaned the sewers and removed the debris so the sewer is free-flowing. It has paid the customer the required GSS payment and a further payment of £100.00 for confusing information it provided to her. It did not make any settlement offer.

Findings

The company has demonstrated that it removed blockages found in its sewer network following the flooding at the customer's property, in accordance with its obligation to effectively repair and maintain its sewer network. As there is a lack of evidence to establish negligence on the company's part, it is not liable for the costs incurred by the customer. However, it did not follow up its offer to provide flood defence or address the customer's request for this when raised, therefore it did fail to provide its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company shall address the customer's request for flood defences to be installed at her home; either by providing the said flood defences or providing an explanation as to why it is unable to.

The customer must reply by 31/10/2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1618

Date of Decision: 2 October 2019

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- Her complaint concerns the flooding of drain water into her home due to the drains not flowing correctly.
- Her home got “completely flooded” after a downpour; it came from the back drain, flooding her kitchen, dining room, sitting room and hallway.
- The company carried out camera work and found some roots that it stated it removed in its pipework, however, similar flooding occurred in August 2018, also caused by tree roots.
- She was told at the time the issue had been rectified but she experienced flooding again due to the same issue in April 2019.
- She has lived in her home for over twelve years and never been flooded during this time yet the company has said it is due to the lay of the land and the amount of rainwater and tree roots removed in August 2018. A concrete slab was also found in the pipework.
- The company has said it cannot guarantee this will not happen again and she was advised by its engineer that flood barriers could be installed around her home but this has not been offered.
- The company has deducted an amount from her bill but this does not cover the cost of the damage that occurred twice in six months.
- The customer seeks compensation of £1415.10 to cover the cost of damage caused to her home (she had to many items including flooring and mats for the second time after the flooding in April 2019).

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The company's response is that:

- The customer had a flooding incident on 12 August 2018 which has been adjudicated on under WATRS case reference WAT/ /1618. It contends this incident happened due to a 1 in 156 year storm event.
- The customer reported a further incident of flooding at her home in April 2019.
- It checked the drain at that time which was running freely but showed a tidemark which suggested it had been high during the heavy rainfall the day before. It confirmed the drain from [06 to 04 was running clear at that time. It attempted to carry out a camera survey from manhole 06 at the time but the water level was too high.
- It returned on 26 April 2019 and cleaned the drain from manhole (MH) 04 to 06 and it reported its findings to its Drainage Deliver Engineer for further work to be arranged as it had found excessive amounts of grout, tree roots, concrete and a loose patch liner which had caused the blockage.
- In May and June 2019, it cleared the drain from MH 06 to 61[] and from 06 to 50[/50] at that time the drain was clear and running freely.
- It made a payment to the customer of £304.63 under the Guaranteed Standards Scheme (GSS); this being £204.63 wastewater charges and an additional £100.00.
- Unless negligence on its part has been identified, it is generally not legally liable to pay compensation in respect of sewer flooding as it cannot control what goes into the sewer system or the amount of rainfall.
- It does not believe that the flooding experienced by the customer in April 2019 has been as a result of negligence on its part; it cannot control what may discharge into its network, the level of rainfall or other contributing factors such as third party assets being unable to drain the rainwater.
- Additionally, as the customer has not submitted evidence to show she has either been refused insurance or has a large excess of £500.00 or more, or any other evidence to support her claim, it is unable to agree to pay the sum of £1415.10 as requested.

Reply

- The customer reiterates that the flooding at her home in April 2019 was the second flooding incident in six months. When she was flooded again she rang the company who said it was nothing to do with them and to ring the council, which she did. The company has admitted the

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call handler was at fault, however at the time when her home was flooded, this was very upsetting.

- When the company's Contract Engineer attended on 25 April 2019, she was told the pipework was not free-flowing and that there was an issue however when its Network Engineer (Mr Brown) attended on 26 April 2019, he said it was flowing correctly. The report stating that there was a blockage thirty metres from her home (restricting the flow to 30%) suggesting the Contract Engineer was correct.
- Mr Brown told her the more often it occurs the more chance she has of the company doing something, the customer says this "should not be the case". She reiterates that Mr Brown also said he would look into getting her home flood protected but this has not happened.
- The customer also clarifies that she received the payment of £304.65 as a credit on her account.

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 (drain) water flooding at the customer's home: [] (the Property). The customer's claim for compensation of £1415.10 is for the costs incurred due to damage caused to the Property as a result of the flooding.

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2. I acknowledge receipt of the evidence submitted by the company at Appendices 1 to 17 of the Defence in support of its stated position and also the Consumer Council for Water documentation.
3. I acknowledge that a previous flooding at the Property which occurred in August 2018, has been the subject of a previous adjudication under Watrs (case reference WAT/[]/1618). I remind the parties that in accordance with Watrs Scheme Rule 3.5, the same matter cannot be adjudicated on twice; as such I will limit this review to the flooding that occurred in April 2019 and any events that occurred since, as I am satisfied this matter was not considered under the previous adjudication reference WAT/[]/1618.
4. I find that, in accordance with section 94(1) of the Water Industry Act ('The Act'), the company is obliged to repair and maintain its sewers so that the area is effectually drained. However, I am 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, although, where there is a known issue, companies should repair their assets. Further, generally, unless a company has acted negligently, it would not be responsible for any damage from flooding if the cause is outside of its control i.e. due to third party actions.
5. The parties agree that the customer experienced a flooding (internally) at the Property on or around 24 April 2019 through no fault of her own and that, as mentioned above, this was the second flooding incident (the first being in August 2018). Having reviewed the evidence submitted to me, including the company's worknotes (submitted at Appendix 3 and 4 of the Defence), I accept that following the company's attendance on 25 April 2019, it cleaned a section of the drain on 26 April 2019 and arranged for a team to re-attend on 3 May 2019 to carry out a camera survey that identified grout, tree roots, concrete and a loose patch liner to be the cause of a blockage, reducing the flow to 30%. This prompted several further visits during May and June 2019 when it removed tree roots and debris including concrete from the sewer network in order to restore the flow. I acknowledge that the company also completed patch lining on a part of the sewer that had root ingress. The company submits that whilst it was unable to fully line the combined sewer due to a buried chamber on the line with an inlet and outlet which makes it very difficult to line, the drain was flowing freely when checked at that time. In light of the evidence submitted to me including

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photographs dated 12 July 2019 and in the absence of the customer suggesting otherwise, on balance I accept that the drain was flowing freely after the company completed the above works.

6. Therefore, I am satisfied that by taking action to remove the blockage found to be a contributory cause of the flooding (along with a heavy down pour), the company has demonstrated that it met its obligation to repair and maintain its sewer network.
7. I acknowledge that the customer has said that root ingress was the cause of the previous flooding at the Property and asserts that she was told by the company at the time that it had removed roots and that the issue had been addressed. The company has not denied this but said the former flooding incident happened due to a 1 in 156 year storm event, which I find it has reiterated in its responses to the customer. The evidence supplied by the company includes photographs which I am satisfied supports its contentions that it removed debris from its sewers including grout and concrete (and a third party patch liner) and that these were contributory causes of the flooding. On balance, I am satisfied that such causes were outside of its control. I note that the maps supplied by the company at Appendix 5 and 6 of the Defence, show the affected area which indicate that concrete and grout was found approximately thirty metres away from the Property between manhole (MH) []04 and MH []08 and that tree roots were found on the section of sewer between MH []06 and MH []04.
8. Therefore, on balance I accept that the incident occurred due to the sewer overloading and surcharging during a period of heavy rainfall and also as a result of blockages caused by debris entering the sewer system (due to third party actions) and tree roots. As I accept that the evidence supports the company's contention that the roots were found on a different section of the sewer than had been previously found and as this was only a partial cause of the flooding, I find there is insufficient evidence to establish that the flooding was due to an issue previously known to the company that it failed to take steps to mitigate against. As such, I find there to be insufficient evidence to establish that the cause was due to negligent actions on the company's part.
9. The customer claims that its Network Engineer told her (in person) on 26 April 2019 that there was no issue with the sewer yet its subsequent investigations showed the contrary: that there was a blockage. I note that this was addressed by the company in its response to the customer dated 1 August 2019. I find that the company accepted that information that

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had been provided to the customer had caused confusion and I find it agreed to pay £100.00 into the customer's bank account within the next ten days. I am satisfied this is reasonable recompense in the circumstance and as such the company is not liable to provide any further remedy. The customer also submits that the same Network Engineer advised her that flood barriers/defences could be installed around her home but she asserts this has not been offered. I can see that the customer raised this in her letter to the company dated 18 July 2019, however, I find no evidence of the company responding to this issue, either in its subsequent response to the customer dated 1 August 2019 or in its Defence. As I accept that the company has not followed up on, or addressed this matter when subsequently raised by the customer, on balance I find this to be evidence of it failing to provide its services to the customer to the standard to be reasonably expected by the average person. Therefore, I find it reasonable to direct that the company shall address the customer's request in this regard; either by providing the flood defences or providing an explanation as to why it is unable to.

10. In summary, I am satisfied that the company has shown that it removed blockages, cleaned and patch-lined its sewers, in accordance with its obligation to maintain its assets (and in line with the accepted reactionary approach). In light of the evidence indicating the cause was due to a combination of factors, the majority of which I accept are outside of the company's control and, as there is insufficient evidence to show the flooding was as a result of it failing to properly address the causes of the previous flooding in August 2018, I find that legally, the company is not liable for the cost of any damage caused by the flooding.

Outcome

The company shall address the customer's request for flood defences to be installed at her home; either by providing the said flood defences or providing an explanation as to why it is unable to.

What happens next?

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- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 31/10/2019 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.
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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCIArb

Adjudicator

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