



Sewer flooding

Standard Note: SNSC-6465

Last updated: 8 November 2012

Author: Oliver Bennett, Policy Analyst

Section: Science and Environment

This note provides information on sewer flooding from public sewers including liabilities, compensation and prevention. This note does not constitute legal advice.

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1 Liability

1.1 Limitations on liability

Under the *Water Industry Act 1991*, sewerage companies are generally not liable for sewer floods from public sewers.

Ofwat, the water industry regulator, explained that this exemption exists as flooding can be beyond the control of the water companies. For example, household discharges such as grease, fat and domestic waste can lead to blockages beyond the control of the companies. Ofwat also noted that “sewers will overflow from time to time during periods of exceptional weather”.¹

Without this exemption sewerage companies could face large liabilities for sewer flooding. This could lead to increases in water bills.

1.2 Negligence

While sewerage companies are generally not liable for sewer flooding, they may still be held liable if the flooding was caused by negligence. A paper written by Camilla Lamont of Landmark Chambers, *Flooding—Private Law Claims*, provides useful additional background information on flooding liabilities and negligence.

If someone believes that sewer flooding is caused by negligence they should seek formal legal advice. It may be for the affected person to seek redress in the civil courts. See Library Standard Note [Legal help: where to go and how to pay](#).

The Environment Agency may also take legal action against sewerage companies where they have failed adequately to address serious sewage flooding incidents. In 2011 Thames Water was taken to court by the Environment Agency over a serious sewer flood. Thames Water was ordered to pay £345,000 for 15 environmental offences, and compensation totalling £2,250 was granted to two local residents.²

2 Sewerage companies may have to pay compensation

Sewerage companies are required to provide compensation for sewer flooding in certain circumstances. These payments are made per incident. Where sewage enters a building the company must:

- Make an automatic payment of the “sum equal to the customer’s annual sewerage charge up to a maximum of £1,000”. The minimum payment allowed is £150.
- The company must make an additional penalty payment if it fails to make this automatic payment after 20 days.³

However, payments are not required in the following circumstances:

- exceptional weather conditions;
- industrial action by the company’s employees;

¹ [The rules that favour water companies](#), BBC Watchdog, 27 April 2009 [viewed 6 November 2012]

² [Thames Water ordered to pay £345,000 after serious sewage spill](#), Environment Agency, 15 March 2011 [viewed 8 November 2012]

³ [The guaranteed standards scheme \(GSS\), Applicable to England and Wales from 1 April 2008](#), Ofwat, April 2008 [viewed 8 November 2012]

- the actions of the customer;
- a defect, inadequacy or blockage in the customer's drains or sewers; or
- [where it was] impractical for the company to have identified the particular customer as being affected, and the customer has not made a claim within three months following the date on which the effluent entered his building.⁴

In cases where sewer flooding is external, the company must make a payment of the "sum equal to 50% of the customer's annual sewerage charge up to a maximum £500".⁵ The minimum payment is £75. The customer must claim the payment from the company within three months of the incident. This payment must be made for each incident.

Sewerage companies do not have to make this payment if:

- the entry of the effluent was caused by:
 - exceptional weather conditions;
 - industrial action by the company's employees;
 - the actions of the customer;
 - a defect, inadequacy or blockage in the customer's drains or sewers;
- the company has made a payment to the same customer in respect of the same incident for internal sewer flooding;
- the customer was not materially affected by the incident; or
- the customer has not claimed the payment within three months following the date on which effluent entered the customer's land or property.⁶

[See here](#) for more information.

3 Insurance

Those that experience sewer flooding may be able to make a claim on their building insurance policy to cover the cost of repairs.

4 How is persistent sewer flooding dealt with?

Sewerage companies and Ofwat decide how much money is spent tackling sewer flooding every five years in the Price Review.⁷

Given the constraints on funds the more serious sewer flooding cases are prioritised. This is done by considering a number of factors including whether the flooding is internal, the number of properties affected, the frequency of the flooding, and the cost of addressing the problem.

⁴ [The guaranteed standards scheme \(GSS\), Applicable to England and Wales from 1 April 2008](#), Ofwat, April 2008 [viewed 8 November 2012]

⁵ [The guaranteed standards scheme \(GSS\), Applicable to England and Wales from 1 April 2008](#), Ofwat, April 2008 [viewed 8 November 2012]

⁶ [The guaranteed standards scheme \(GSS\), Applicable to England and Wales from 1 April 2008](#), Ofwat, April 2008 [viewed 8 November 2012]

⁷ [Future water and sewerage charges 2010-15: Final determinations Protecting consumers, promoting value, safeguarding the future](#), Ofwat, November 2009 [viewed 6 November 2012]

Ofwat oversees this system. It looks at how a sewerage company has prioritised the work and the data that underpins these decisions. Where Ofwat determines that a sewerage company has failed to meet its duties it can compel the company to undertake work to prevent sewer flooding. It has a number of criteria for deciding whether this is appropriate, including:

- Physical factors relevant to the flooding, for example, the location of the property.
- The severity of the weather at the time of flooding. - Factors outside the company's control which are contributing to the flooding. These could include inadequate drainage arrangements, for which the company is not responsible, for example highway, surface or land drainage. - Where flooding has resulted from a blockage, the cause of the blockage (e.g. third party action, lack of maintenance).
- The number of properties affected.
- The frequency and extent of the flooding.
- Whether the flooding is internal (inside the building) or external (e.g. restricted to gardens or outbuildings). - Usage of the property – for example, whether it is domestic or non-domestic.
- Whether the company has a scheme of works reasonably prioritised.⁸

Ofwat said that it is “more likely to conclude” that a sewerage company has failed to provide an adequate service where “several properties have been flooded, internally, several times annually”. It went on that “we are less likely to conclude there has been a breach” where a single property is involved that has experienced one incident of internal or external flooding, or where the flooding is “caused by exceptional weather”.⁹

[See here](#) for Ofwat’s full approach to sewer flooding.

5 Can you appeal a sewerage company decision?

Those unsatisfied by a sewerage company’s response to sewer flooding can make a complaint to Ofwat. Ofwat will determine whether the company is meeting its duties with regards to sewer flooding.

Ofwat occasionally finds that companies are not meeting their requirements, and can compel them to undertake capital works to prevent further flooding. [See here](#) for an example of this.

In cases where a permanent solution cannot be provided, companies may install mitigation measures. These can include ‘flap valves’ to prevent flooding or to reduce the impacts of flooding on properties should the sewers become overloaded.¹⁰

A permanent solution to the problem might get funding in the next Price Review period from 2014, depending on the priorities at that time.

⁸ [RD 03/06: Sewer flooding and Ofwat's approach to enforcement](#), Ofwat, 16 March 2006 [viewed 6 November 2012]

⁹ Ibid

¹⁰ [Future water and sewerage charges 2010-15: Final determinations Protecting consumers, promoting value, safeguarding the future](#), Ofwat, November 2009 [viewed 6 November 2012]

6 Can you appeal Ofwat's decision?

It may be possible to seek a judicial review of an Ofwat decision not to require a sewerage company to provide a permanent solution to sewer flooding.¹¹

Judicial review should not be entered into lightly. Legal advice should be sought. See Library Standard Note [Legal help: where to go and how to pay](#).

7 Where can I get more help?

The Consumer Council for Water (CCW) has produced an advice leaflet on sewer flooding. See it [here](#).

CCW can provide free independent advice to those affected by sewer flooding. Its website and contact details [can be found here](#).

¹¹ [Flooding—private law claims](#), Camilla Lamont, Landmark Chambers, 22 April 2008 [viewed 6 November 2012]