

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1793

Date of Decision: 19 February 2020

Complaint

The customer submits that at least fourteen incidents of external sewer flooding have occurred at the property since August 2017. On 28 July 2019, following another flood, the company informed her that it would no longer take any action to help her with the flooding of her property and told her that she had to call in a private contractor. A private contractor attended and on 1 August 2019, showed that the company's main sewer pipe in the road was 50% full of rubble and debris. On 15 August 2019, the company attended. The chief engineer said that he believed this section of the main sewer had not been cleared since it was originally built. She believes that the company has acted negligently. The customer requests compensation in the sum of £6,265.00 to cover nine payments made to private contractors from 2017 to 2019 and compensation to the tenant of the property for distress, discomfort and inconvenience.

Defence

The company submits that it had no contact from the customer between March 2017 and March 2019. In addition, the blockages cleared by the private plumber in 2017 and 2018 were on private pipework. In 2019 it attended the property on a number of occasions to assist the customer and remove blockages on her private pipework. The blockages were due to a build-up of wet wipes in the customer's private single serve waste pipe and a blockage of debris was also removed from the main sewer line. The causes of the blockages were due to misuse of the sewer. In its 15 August 2019 notes, the technician noted that he "liaised" with the customer. There are no further notes on the conversation between the customer and the technician. Even if its technician did state that the main sewer had not been cleared since it was originally built, it has no liability for the cause of the blockages. Sewers, if used properly, are self-cleaning structures and should not become blocked. No offer of settlement was made.

Findings

Due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. If a company cannot and does not know that a part of its infrastructure requires repair then it has no duty to repair. Once alerted to an issue that falls within its remit a company is typically under a duty to take action. The company is not responsible for any issues on private pipework and any costs to investigate and

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remedy these. The company is also not liable for sewer flooding caused by misuse of the sewer. I can appreciate the difficulty of the situation for the customer and I acknowledge that the customer will be disappointed that I am not in a position to direct the redress requested. However, bar one invoice, the customer's request for reimbursement does not succeed. The company is liable to pay this one invoice in the absence of clear evidence showing that it undertook a full camera survey on 26 July 2019. In light of this failing, the company should also pay the customer a measure of compensation for the distress and inconvenience caused.

Outcome

The company needs to take the following further action:

I direct that the company reimburse the customer £2,205.00. I also direct that the company pay the customer compensation in the sum of £150.00.

The customer must reply by 18 March 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Party Details

Customer: Anderson Court Developments Limited

Customer's Representative: Kay Wilson

Company: Thames Water, a water and sewerage company.

Case Outline

The customer's complaint is that:

- At least fourteen incidents of external sewer flooding have occurred at the property since August 2017. There were also repeated floods before these dates.
- The cause of the problem was a blockage in the main sewer in Waldegrave Road.
- Thames Water was operating a daily look-and-lift procedure from mid-July 2019 onwards because of the frequent flooding.
- On 28 July 2019, there was yet another flood. The Thames Water contractor performing this procedure phoned at around 1900 hours to inform her that Thames Water would no longer take any action to help her with the flooding of her property. He told her that she had to call in a private contractor.
- She contacted a private contractor, who arrived at the property at 1930 hours. The private contractor immediately phoned Thames Water to get confirmation that Thames Water was no longer willing to help. Thames Water confirmed that it was not going to take any further remedial action.
- The private contractor started remedial work. On 1 August 2019, the private contractor's showed that the Thames Water main sewer pipe in the road was 50% full of rubble and debris.
- On 15 August 2019, Thames Water attended with a tanker and a suction pipe. She spoke to the chief engineer at the location. He explained that the main sewer was 50% blocked with rubble,

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and that some of the rubble had backed up into the sewer pipes and manhole of the property, directly causing the flooding.

- The chief engineer said that he believed this section of the main sewer had not been cleared since it was originally built. He showed her a large pile of bricks and debris that had been found in the main sewer but were too big to travel up the suction pipe. He also explained that he had cleared the immediate section upstream in Waldegrave Road in 2018, which would have made the flooding into the property more frequent.
- She believes that Thames Water has acted negligently.
- The customer requests compensation in the sum of £6,265.00 to cover nine payments made to private contractors from 2017 to 2019 and compensation to the tenant of the property for distress, discomfort and inconvenience.

The company's response is that:

- It had no contact from the customer between March 2017 and March 2019.
- In addition to this, the blockages cleared by the private plumber in 2017 and 2018 were on private pipework.
- In 2019 it attended the property on a number of occasions to assist the customer and remove blockages on her private pipework.
- The flooding was due to a build-up of wet wipes in the customer's private single serve waste pipe and a blockage of debris was also removed from the main sewer line.
- It has no liability for the cause of the blockages.
- While it can empathise with the customer for the issues she has experienced, the Water Industry Act (WIA) 1991 does not contain any legislation to state that a sewerage undertaker has a strict liability for damage caused by sewer surcharge. Any liability is entirely dependent upon proof of negligence. In this case, there has been no proof of negligence as it has found the causes of the blockages to be due to misuse of the sewer.
- It must be borne in mind human waste will break down in a sewer, just as toilet paper will; meaning human waste and toilet paper will not cause blockages. However, inappropriate items disposed of in sewers such as, nappies, wet wipes or cooking oils will not breakdown and will cause blockages. Unfortunately, while it endeavours to educate its customers about the implications of discharging inappropriate materials into the sewer, it has no direct control over this. It cannot be held responsible for third parties putting inappropriate items into the sewer. Sewers, if used properly, are self-cleaning structures and should not become blocked.

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- In its notes from 15 August 2019, the technician has noted that he “liaised” with the customer and that she was happy with the work carried out. There are no further notes on the conversation between the customer and the technician.
- It is important to stress at this stage, regardless of there being no evidence that its technician did state the flooding at the property was caused by rubble and debris in the Thames Water owned sewer, it is actually a moot point. Even if its technician did state this, Thames Water are not responsible for incorrect items being placed in its sewers. Rubble and debris are clearly items that are not supposed to be disposed of in a public sewer and so, if flooding was caused by rubble or debris in the Thames Water owned sewer, it holds no liability for this.

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. I must remind the parties that adjudication is an evidence-based process.
2. 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.

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3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.
4. The customer submits that the company was negligent and has breached in its duty of care. I consider that the issue of "negligence" is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle. However I consider that I remain able to consider the dispute by considering whether or not the company failed to provide its services to the standard to be reasonably expected.

The parties' responsibilities

5. Property owners and/or occupiers are legally responsible for private pipework/assets that run from the boundary of a property into the property. Any issues on private pipework/assets and any costs to investigate and remedy these are the responsibility of the property owners/occupiers.
6. In addition, I accept the company's submissions that due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. The company's submissions are supported by the approach to the regulation and supply of water in the UK. It is accepted that the complexity and age of the network means that companies cannot reasonably be expected to proactively maintain all parts of the network and are allowed to operate a reactive maintenance system for much of the infrastructure. Once alerted to an issue that falls within its remit a company is typically under a duty to take action. If a company cannot and does not know that a part of its infrastructure requires repair then it has no duty to repair. The company's obligation is then to make reasonable attempts to resolve any reported issues within a reasonable time.
7. In addition, the company is not liable for sewer flooding caused by misuse of the sewer.
8. In respect of the customer's invoice dated 21 March 2017 for £90.00, the invoice confirms the company's submissions that works were carried out on private assets, and that the cause of the blockage was sewer misuse. As discussed above, the company cannot be held responsible for any issues on private pipework. Accordingly, the company is not liable to reimburse this sum.

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9. In respect of the customer's invoices dated 23 November 2017 for £180.00; 22 March 2018 for £125.00; 29 March 2018 for £125.00; and 4 April 2018 for £750.00, no evidence has been submitted to this adjudication showing that the customer contacted the company between April 2017 and March 2019. The evidence also confirms the company's submissions that work was carried out on private assets and indicates that it had no responsibility for the cause of the blockages. As discussed above, the company cannot be held responsible for any issues it is not aware of and has not been given the opportunity to resolve, or for blockages caused by issues it has no direct control over. Consequently, the customer's requests for reimbursement of these sums also do not succeed.
10. The customer contacted the company again in March 2019.
11. The evidence confirms that the customer reported multiple incidents of flooding from that date.
12. The evidence shows that a number of blockages were found to be due to wet wipes, a dropped joint which is considered to be a minor issue but which exacerbated the problem caused by sewer misuse, tree roots and concrete and rubble. The evidence also indicates that the company attended and removed these blockages, and on or around 22 July 2019 agreed to carry out a full camera survey on 26 July 2019.
13. However, it is not clear from the evidence and/or the explanation provided by the company in its Defence that the company undertook a full or sufficient camera survey on 26 July 2019. I am particularly mindful that the notes also show that the customer contacted the company on 31 July 2019 and informed her case manager that the company had not used the correct camera. The evidence does not show that the company addressed this complaint. A screenshot of the company's notes on 28 July 2019 also state that a CCTV survey is needed. The company did not provide any clarification.
14. The customer also submits that on 28 July 2019 following another flood, the company informed her that it would no longer take any action to help her with the flooding of her property, and that she had to call in a private contractor. The company's 28 July 2019 account notes describe a blockage on private pipework, indicate some kind of altercation between the parties and the clearing of the blockage by the technician, but the technician's notes also indicate that there was further work that could have been undertaken, but he "*didn't bother*". The technician also noted

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that there was “No follow on.” In light of this evidence, I am inclined to accept, on a balance of probabilities, the customer’s submissions that on 28 July 2019 the company informed her that it would no longer take any action to assist her and that she had to call in a private contractor.

15. The customer states that she then contacted a private contractor who arrived at the property that same evening of 28 July 2019.
16. Two invoices dated 28 July 2019 for £240.00 and £1,000.00 respectively from the private contractor have been submitted in evidence by the customer. However, I accept the company’s submissions that there is no evidence to show what work was carried out. In the absence of any evidence showing what work was carried out and that the company should be liable to pay for this work, the customer’s requests for reimbursement of these sums also do not succeed.
17. The evidence shows then that the private contractor attended the property again on 1 August 2019. An invoice dated 1 August 2019 for in the total sum of £2,205.00 has been submitted in evidence. This invoice includes work notes. The work notes state that the private contractor undertook a “looksee” with a camera and found the company’s sewer to be 50% full of rubble and debris. As discussed above, it is not clear that the company carried out a full and sufficient camera survey on 26 July 2019 or subsequently after. I also note the company’s submissions that it was in regular in attendance at this time, but the customer did not discuss employing a private plumber with her Case Manager. However, as discussed above, I accept the customer’s submissions that the company informed her that it would no longer take any action to assist. Therefore having carefully considered the matter, bearing in mind the fact that this looksee was undertaken just a week after the company was supposed to have undertaken a full camera survey and the company’s asset was found to be 50% full of rubble and debris, I am not satisfied that the company has shown that it provided its services to the customer to the standard to be reasonably expected in this regard. I find it fair and reasonable in the circumstances that the company reimburse the customer the sum of this invoice.
18. For the avoidance of doubt, no evidence has been submitted to this adjudication to show that the company should have proposed a full camera survey sooner than 22 July 2019 or that the company should have made its initial attempt to carry this out sooner than 26 July 2019. In the absence of which, I find no failing on the company’s part in this regard.

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19. A further invoice which also from the private contractor dated 6 August 2019 has also been submitted in evidence. This invoice also includes work notes. The work notes state that this was a *“return visit to remove a section of root that had breached the rendering in manhole chamber.”* The evidence indicates that this manhole chamber was a private asset. There is no evidence to show that the tree was the company’s responsibility and as discussed above, any issues on private assets and any costs to investigate and remedy these is the responsibility of the property owners/occupiers. As such, the customer’s request for reimbursement of this invoice does not succeed.
20. The parties state that on 15 August 2019 the company attended the property and removed the rubble and debris from the company’s sewer. The customer states that there has been no flooding at the property since.
21. The customer has requested £300.00 to cover the cost of a compensation given to her tenant for distress and inconvenience caused by the flooding. The customer has submitted evidence from her bank showing that this sum was paid on 20 August 2019. In light of my findings that the company has not shown that it provided its services to the customer to the standard to be reasonably expected in relation to the full camera scan, I am satisfied that the customer is entitled some compensation to cover this payment. However, I find that the sum claimed is disproportionate to the failings shown on the company’s part. I also take into account the fact that as discussed above, work was undertaken by the private contractor dated 6 August 2019 to remedy issues which would have contributed, on a balance of probability, to the flooding. Having carefully considered the matter, I consider £150.00 to be a fair and reasonable level of compensation. I am satisfied that this amount represents a fair and reasonable remedial sum. The customer has not provided any evidence to justify a larger sum of compensation for the failings shown. I therefore direct that the company pay the customer compensation in the sum of £150.00. Consequently, this claim succeeds but only in part.

Outcome

The company needs to take the following further action(s):

I direct that the company reimburse the customer £2,205.00. I also direct that the company pay the customer compensation in the sum of £150.00.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 18 March 2020 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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Uju Obi LLB (Hons) MCI Arb
Adjudicator

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