

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1646 – Sewerage – Failed appointments

Date of Decision: 24 April 2020

#### Complaint

The customer has a dispute with the company regarding responsibility for flooding to his property caused by a blocked and damaged sewerage pipe. The customer contends that lack of adequate maintenance of its assets by the company caused the flood. Consequently, he requests the company prove that it was not responsible for the flood and if it cannot then he claims it should pay the costs for the repair of the pipe. The customer also requests an apology for the company for mis-informing him of its investigations.

#### Defence

The company states that it applies reactive not proactive maintenance. It asserts that it checked its assets immediately after the customer's flood incident and did not identify any problems. It did however pinpoint several locations of damage on the customer's private sewerage which it had no responsibility to repair. The company has not made any offer of settlement to the customer, and believes it has acted in a correct and reasonable manner. It believes it was not responsible for the flooding at the customer's property.

#### Findings

The customer has not presented sufficient evidence to support his claim that the company caused the flooding due to lack of maintenance of its sewerage network. I am satisfied that the company thoroughly assessed the state of its assets immediately after the flooding and found no faults. Additionally, I am satisfied that the company dealt at all times with the customer in a reasonable manner and had not been mis-informing him during its investigations. Consequently, I find the company has not failed to provide its services to the extent to be reasonably expected by the average person.

#### Outcome

The company needs to take no further action

The customer must reply by 27 May 2020 to accept or reject this decision.

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## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1646 – Sewerage – Failed Appointments

Date of Decision: 24 April 2020

### Party Details

**Customer:** The Customer

**Company:** XWater

### Case Outline

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

- The customer claims he has experienced an ongoing dispute with the company regarding flooding to his property caused by a pipe blockage and the subsequent disagreement over responsibility for the blockage. Despite the customer's ongoing communications with the company and the involvement of CCW, the dispute has not been settled.
- The customer asserts that following a heavy downpour of rain on 17 March 2019 the basement to his property was flooded with sewage. He states that he contacted the company on the following day to advise it of the problem.
- The customer states that the company sent its sub-contractor to his property on 20 March 2019 to investigate but that it stayed only a few minutes after it quickly declared the problem to be on the customer's private sewer line and therefore outside the company's responsibility. The customer asserts the sub-contractor left his property without taking any action.
- The customer records that a company representative attended his property on 21 March 2019 and organised for a private gully to be replaced to permit access for a CCTV camera to survey the pipe.

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- The customer asserts that he received further visits from company personnel on 05 April, 12 April, 19 April, and 23 April 2019. The customer contends that during the site visit on 23 April 2019 the company representative informed him that two blockages to the pipe had been identified, one some 16 metres from a manhole and another at 30 metres from the manhole. The customer claims that he was advised that the company took responsibility for the 30-metre blockage but the 16-metre blockage was the responsibility of the customer.
- The customer notes that the company has undertaken camera surveys of the sewer pipes and asserts that there are no problems with its own assets. The customer does not accept that the responsibility for repairing the damaged/blocked pipe on his property is his responsibility and believes that lack of maintenance by the company of its sewer pipe assets is the reason why his pipe was damaged.
- The customer believes that the sewer pipe running from his property passes underneath a neighbouring property and thus becomes a shared pipe which transfers responsibility to the company.
- The customer also queries why the company has topped manhole covers with tarmac.
- The customer asserts that the company has presented misleading information, and its site representatives have not recorded on its files the same details as given to him orally.
- The customer, dissatisfied with his interactions with the company, escalated his dispute on 07 May 2019 to CCW who took up his case with the company on his behalf. The customer further records that, despite the intervention of CCW, the dispute is ongoing and the company has not revised its standpoint and CCW are unable to facilitate a resolution between the parties.
- The customer remains dissatisfied with the response of the company and consequently, on 28 February 2020, has referred the matter to the WATRS Scheme whereby he seeks to have the company “*prove beyond reasonable doubt that it has not caused damage to the drain by failing to maintain the sewer*”. If the company cannot so prove, then the customer requests it pay for the repair of the damaged pipe. The customer also claims that the company issue him with a written apology.

**The company’s response is that:**

- The company submitted its Defence paper to the claim on 09 April 2020.

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- The company confirms that the customer is a domestic household customer and it provides both water and sewerage services to the property.
- The company confirms the customer contacted it on 19 March 2019 to advise that the basement at his dwelling was flooded due to rain on 17 March 2019. The company undertook a site inspection on 20 March 2019 and informed the customer that its assets were running freely and it therefore it was probably a problem on his private pipes. The company confirms that it replaced a private gully at the property as a gesture of goodwill.
- The company acknowledges that during an investigation on site on 12 April 2019 its activities caused additional flooding the customer's basement, which it cleaned up the next day.
- The company further asserts that it visited the customer's property again on 19, 21, and 23 April 2019 and that it informed the customer that it had located a pipe blockage 16 metres downstream from the manhole but still inside the boundary of his property. It also surveyed the customer's private pipe and identified additional multiple defects.
- The company confirms that on 22 May 2019, in conjunction with the local authority, it repeated the survey of the customer's pipe and found the again the same defects identified in April 2019. At this time the company understood its investigations were complete.
- The company claims that following an intervention by CCW it located a manhole cover that had been covered over with tarmac. The company notes that it uncovered the manhole on 04 July 2019, and upon discovering some debris inside the chamber it was cleaned out on 23 July 2019.
- The company confirms that it received another intervention from CCW on 05 August 2019 and agreed to repeat its previous investigations, which it did on 02 and 12 September 2019. It followed up the repeat CCTV survey by informing the customer on 17 September 2019 that it had examined a 75-metre run of the sewer and found no problems
- The company refutes the customer's assertion that lack of suitable maintenance caused the damage to his pipe, and notes, additionally, that it is not responsible for damage to customers' private lines. Also, the company refutes the customer's statement that he was given misinformation, and notes that he has not supported this allegation with evidence.
- In summary, the company believes the customer's private drain was not damaged by any lack of maintenance on its part. It notes that is has identified the location of the damaged sections of the private pipe and has advised the customer to approach his insurers regarding repairs. The company also records that it has offered the customer a goodwill gesture of £250.00 towards the cost of any insurance excess payment.

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### **The customer's comments on the company's response are that:**

- The customer has submitted comments on the company's Defence document. He reiterates that he believes he has supplied all relevant supporting data and documents. The customer asserts that the Defence document is not a full and accurate record of the series of events and correspondence exchanged.

### **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 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 the customer's dissatisfaction over the company's disinclination to accept his assertion that lack of maintenance of its assets caused damage to a private sewage pipe resulting in flooding at his home. The company asserts that it has thoroughly investigated the flooding incident and has found no faults with its assets but identified several damaged sections on the customer's private pipe.
2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.

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3. I note the main remedy requested by the customer as stated at Section 6.1 of his application to the WATRS Scheme, and quote it hereunder for ease of reference:

*The customer would like XWater to prove "beyond responsible (sic) doubt" that it has not caused damage to the drain within his own curtilage by failing to maintain the sewer....".*

4. In section 5.2 of the Application Form it is written :

*"The Customer asserts that XWater has to prove "without any reasonable doubt" that he isn't liable for the blockage".*

5. I am satisfied on balance that the customer intends in Section 6.1 to use the term reasonable doubt and not responsible doubt.
6. I find that it is important to note that proof beyond a reasonable doubt is the standard of proof used in criminal cases. The civil standard is proof on a balance of probabilities, meaning that something is more likely than not to have occurred. This is the standard of proof that I shall use throughout this decision.
7. As I have noted at Article 2 above, the burden of proof rests with the customer to show that the company has not provided its services to the standard that would reasonably be expected of it. I am satisfied that the wording of the customer's requested remedy at Section 6.1 attempts to shift the burden of proof from the customer to the company. This is not in compliance with the Rules of the Scheme.
8. Nevertheless, I am aware from the documentation submitted to me by the parties that the customer strongly believes that the flooding to his basement was the result of insufficient maintenance of its assets by the company.
9. I am aware that the custom and practice within the water supply and sewerage removal sector is for the undertakers to implement a reactive rather than proactive policy of maintenance. Thus, I am satisfied that the company is unable to show the maintenance history of the section of its sewerage assets pertinent to this dispute, and including the segment into which the customer's private pipe connects.
10. Thus, after receiving notification of a flood incident it would be incumbent upon the company to inspect the site of the incident and investigate to identify the causes. From the documents laid before me I am satisfied that the company visited the customer's dwelling within twenty-four hours of receiving the report.
11. The customer himself has documented the numerous visits made to his property by the company during March, April, and May 2019. The customer has further acknowledged that

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several of these visits were joint visits between the company and the relevant local authorities, and I am not aware of any documents indicating that the local authorities were concerned with any visible maintenance deficiencies.

12. I also take note that the company undertook several camera surveys of both the pipework on its system and the customer's private line. From the evidence submitted to me I can identify the following surveys :

No	Date	Findings
1	19 April 19	Extensive survey of nearby drains, all found to be clear
2	21 April 19	Camera survey of customer's drain, multiple defects found
3	23 April 19	Camera survey, blockage found on private pipe
4	22 May 19	Camera survey, no defects found on company assets but same defects identified on customer private pipe
5	23 July 19	Camera survey of 85 metre length, no defects found in company pipework
6	02 September 19	Camera survey of ±75 metre length, no defects found in company pipework
7	12 September 19	Camera survey of ±75 metre length, no defects found in company pipework

13. I am satisfied that the company's response has been appropriate and reasonable. It has undertaken several camera surveys, it has attended numerous times at the site of the flooding, it has liaised with local authorities, and engaged in extensive communications with the customer.

14. The customer claims that he identified a company manhole that had its cover sealed with tarmac. I note the company acknowledged this and removed the tarmac despite originally sealing the cover at the request of the local authority. I am satisfied that the company responded reasonably to the customer's concerns.

15. Having carefully studied the large quantity of evidence submitted to me, and having taken notice of the inputs of CCW, I find that I am satisfied, on a balance of probabilities, that I cannot identify any act or omission on the part of the company that can be directly attributable to being the cause of the flooding incident at the customer's basement.

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16. The customer has also, in his WATRS application, raised the issue of mis-communication and mis-representation, and has requested the company issue him a written apology for this. The customer asserts that he was given information verbally at his property by company representatives who subsequently recorded different information on the official company account notes. Unfortunately, the customer has not provided any substantiation of what information he was given verbally, and I am conscious that to record and verify such information is not without its difficulties. Nevertheless, I also must take into consideration that the company claims to have investigated this allegation with the respective staff members who attended the customer's property and as such the company stands by the written account notes. Therefore, I find that I am unable to determine what verbal advice was given to the customer by the company staff at his property and thus I am unable to make any decision in respect of this issue, and will not direct the company issue an apology.
17. In summary, I find that the customer has not provided sufficient evidence to justify his claim that a lack of maintenance of the company's assets was responsible for the flooding of his basement. The company has surveyed the customer's private sewerage line and discovered multiple faults, and while I note the customer does not refute their existence he has not substantiated that the faults were caused by the company's lack of maintenance of its own assets.
18. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person, and therefore, my decision is that the claim does not succeed.

#### **Outcome**

The company does not need to take further action.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27 May 2020 to accept or reject this decision.

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- 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.



Peter R Sansom  
MSc(Law); FCI Arb; FA Arb;  
Member, London Court of International Arbitration.  
Member, CI Arb Business Arbitration Panel.  
Member, CEDR Arbitration Panel.  
Member, CEDR Adjudication Panel.

**Adjudicator**

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