

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1843 – Sewerage – Treatment works

Date of Decision: 7 April 2020

#### Complaint

The customer's property has been subject to a number of sewer flooding incidents. The customer does not believe the sewer is fit for purpose. The company did not decontaminate after the latest flooding incident and it has been unresponsive to the customer's complaints. The customer requests decontamination of his property, improvements to the company's complaints handling, and a regular pre-emptive maintenance plan for the sewer pending the replacement of this.

#### Defence

The sewer has been surveyed and is not affected by any structural issues and it is fit for purpose. The company will not implement pro-active maintenance or replace the sewer. A lateral drain that appears to be a redundant old connection to the customer's kitchen has a hole in it causing debris to enter the sewer. The drain is the responsibility of the customer to repair. The feedback form and social media are not part of the complaints code of practice and may cause the company to be slow to respond.

#### Findings

The sewer does not show any structural damage and worked in good order between 2010, when root ingress was removed, to 2018 when the sewer was blocked by fat. The company is not responsible for blockages caused by sewer misuse. The survey showed that debris is entering the sewer from a connection that is, on the balance of probabilities, a private drain from the customer's property that is likely no longer in use. It is for the customer to repair, remove or cap this pipe to stop it from placing debris into the sewer. The public sewer appears fit for purpose and there is no reason to implement proactive maintenance or replace this. The company does not appear to have completed a promised sewer clean and the decontamination conducted six months after the flood was, on the balance of probabilities, insufficient. The company's website directs customers to use the feedback form to register complaints and GSS payments were therefore due for the failure to respond to these.

#### Outcome

The company needs to take the following further action:

Arrange for the sewer to be cleaned, as agreed on 22 October 2019, if it has not already done so; pay £70.00 in Guaranteed Standards Scheme payments; and, arrange for the customer's property to be further decontaminated to the customer's satisfaction (when it is reasonably able to do so, given the situation with the covid-19 crisis).

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

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1843

Date of Decision: 7 April 2020

## Party Details

**Customer:** The customer

**Company:** XWater

## Case Outline

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

- The customer's property suffered sewerage contamination in his garden, immediately adjacent to his house, on 27 July 2019. This was reported immediately and a representative of the company attended 24 hours later on 28 July 2019. The main sewer blockage was between manhole covers 8504 and 8506 and sewage was spilling onto the ground. The company advised that decontamination would be carried out. This did not occur and the customer used the complaints system on 5 August 2019. The company did not acknowledge or respond to the complaint and the customer chased this. The customer received a response when he contacted the company via Facebook Messenger. The company attended on 22 October 2019 to investigate. It identified that there was an issue with a private lateral drain. The company did not properly reseal manhole or replace disturbed garden furniture, nor did it decontaminate the area. The company reattended on 28 January 2019 and resealed manhole covers, however the area has not been decontaminated as autumn leaves and gravel remain undisturbed. The company's complaints system is non-functional and the company has made untrue claims to have attended all appointments. It has failed to meet its responsibilities for prevention and decontamination of sewage flooding. The drainage system has been subject to repeated failure over many years suggesting it is insufficient for the base demand, aggravated by the addition of a new property and the company failing to conduct pre-emptive maintenance. The blockages have damaged the private pipes around the customer's house and these require inspection and

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restitution by the company. When the company does attend, it does not seal manhole covers adequately or leave the environment in the condition in which it found it.

- The customer requests that the company conduct decontamination; provide an adequate account and explanation of the handling of the complaint and the lessons learned; that the complaints service is redressed and made responsive; and, that the company provide a regular pre-emptive inspection and maintenance plan pending the renewal and replacement of the sewer system so that it is adequate, located off the customer's property and brought up to modern standards.

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

- The company states that the customer called on 27 July 2019 to report a blockage on a shared sewer in his garden as the manholes were full and his toilets were backed up. The company attended on 28 July 2019 and the manhole was rodded and cleared, surrounding manholes were checked and the sewer line was flushed. It was free flowing when the engineer left the property. The company received an online complaint on 23 September 2019 via social media that included a feedback form from the customer. The company has no record of receiving a complaint or feedback form from the customer on 5 August 2019 which is why the customer has not received a response. The company contacted a County Customer Engineer to arrange a visit to the customer's property to investigate. The company sent a letter requesting the customer call the engineer to arrange a visit; this letter was sent on 10 October 2019, more than 10 working days after the customer's contact, and a £25.00 Guaranteed Standards Scheme payment was applied to the customer's account. The company attended on 22 October 2019 and found that the sewer was blocked by a combination of silt and large pieces of scale. This was removed to allow a CCTV survey to be completed. No issues were found other than two slightly displaced joints between manholes 8504 and 8503. The company found that more silt was coming from a large hole in a private lateral drain in the vicinity of the customer's property. The company could not survey the whole pipe due to the amount of debris. The company believes that the pipe is redundant and possibly an old connection from the kitchen at the customer's property. The homeowner is responsible for the repair of the private lateral pipe. The company agreed to attend and arrange for the sewer to be cleaned using a van pack jetter. The company sent a letter with its findings on 6 November 2019. The customer contacted its social media team on 3 November 2019 to raise concerns that the property had not been disinfected and that garden furniture and plant pots had not been put back in their original places. The company took no further action as a letter had been sent to the customer on 6 November 2019

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explaining the proposed actions. The customer then escalated his complaint to the Consumer Council for Water (CCW). The company notes that it offers a facility for customers to send in feedback forms and to contact it via social media, however these platforms are not part of its recognised complaints process and it is not the preferred method to report flooding.

- The sewer serves less than 10 properties, including [personal information removed] located upstream of the customer's property. It increases from 100mm to 150mm between manholes 8505 and 8503, after flowing through an interceptor chamber located to the rear of the customer's property. The company has reports of four separate contacts relating to the sewer, with a blockage reported on 4 June 2018 where a small amount of fat was removed, the blockage reported on 27 July 2019, a complaint that the manhole covers were not seated correctly on 13 January 2020, and a request for a re-visit to attend to disinfect the customer's property. Prior to 2014, the company has records of blockages in 2003, 2004, 2007 and 2010; work was completed to remove root ingress in 2010 and there were no further blockages for 8 years until 2018, when a blockage was caused by fat. No blockages have affected the structural integrity of the public sewer and this was found to be in good working order. The company will not arrange to replace or renew the sewer.
- The company acknowledges that, due to an administrative error, it did not attend to disinfect the property after the initial flooding incident in July 2019. Disinfection was not completed until 28 January 2020. The company accepts that the time taken to arrange clean-up work was unacceptable. The company submits that no further decontamination work is required after it attended on 28 January 2020. The survey showed the sewer to be in good condition with no issue with its structural integrity and no pre-emptive inspections or maintenance plans are required. The company will also not arrange to replace or renew the sewerage system as there is no issue with it.

### **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.

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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 customer has complained in relation to a sewer flooding incident on his property on 27 July 2019, stating that this incident is the latest in a number of historical sewer flooding incidents over many years.
2. I am mindful that the company is entitled to take a largely reactive approach to the repair and maintenance of its infrastructure due to the scale of this and the cost and logistical difficulty of regularly inspecting every sewer pipe within the company's service area. The exception to this is where a sewer is known to be the cause of regular and repeated flooding incidents, where the company is aware of the high risk of a blockage and foul flood recurring, and where pre-emptive cleaning or jetting of the sewer is necessary before a more permanent solution can be implemented, such as a repair or upgrade to a sewer.
3. I find that it is first necessary to review the history of issues with the sewer in order to determine whether the sewer represents a high risk of blocking and flooding, and then to review the latest incident in order to determine whether this has caused a change to the risk of flooding associated with the sewer for which the company may be responsible.
4. The company has provided details of historical incidents within its defence. The company has records of visits to the customer's property in 2003, 2004, 2007 and 2010. The company identified that there was ingress into the sewer from roots in 2010 and completed work to remove this. The next visit relating to a blockage was in 2018 and was found to have been caused by fat in the sewer.

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5. I find that the history shows that there was a structural issue with the sewer that caused a number of blockages. However, in 2010, the root ingress was identified and work was undertaken to remove this, rectifying the structural issue. The company's defence indicates that there were no further incidents until 2018; I have no evidence to demonstrate that this is incorrect. I therefore find that, once the tree root ingress was removed, there was no structural issue with the sewer and this was operating in a manner that was fully fit for purpose. The sewer does not represent a high risk asset that would require regular cleaning and maintenance to keep in working order.
6. The incident of 4 June 2018 was the only blockage reported to the company between 2010 and the latest event. The company found that the blockage had been caused by fat in the sewer. I am mindful that sewers are designed to remove foul waste from properties; they are not designed to transport fat or non-flushable materials. It constitutes misuse of the sewer to flush inappropriate items or to pour fat into the drains. The company is responsible for the repair and maintenance of the sewers; however it has no control over the items that people actually place into the sewer system. The company is able to leaflet properties to advise of the risk of misusing the sewers, however it is not able to stop this from occurring. Blockages caused by sewer misuse are therefore not the fault of the company as they do not relate to any failure by the company to repair or maintain the sewer system. The company is not liable for damage caused by sewer flooding where it is caused by factors outside its control, such as sewer misuse.
7. In respect of the flooding incident on 27 July 2019, the company attended, rodded the sewer and left it free-flowing. There is no information available as to whether the cause of the blockage was investigated at the time.
8. The company attended on 22 October 2019 to conduct a site survey, including completing a CCTV survey of the sewer. The company found that the sewer was blocked with "a combination of silt and large pieces of scale" and it removed "scale and large pieces of stone" before completing a CCTV survey.
9. I note that the survey was completed both upstream and downstream of the blockage. The only issues with the public sewer were "'a couple of slightly displaced joints between [manholes] 8504 and 8503". I note that manhole 8504 is located at the South West corner of the customer's house, whilst manhole 8503 is at [personal information removed] Both manholes are downstream of the area of flooding and, whilst any blockage between these manholes could

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potentially back up and flood the customer's property, I am satisfied that the displaced joints are unlikely to cause any significant deterioration in the flow of the sewer. I find that these issues do not affect the structural integrity of the sewer at this time.

10. The company also washed silt from manhole 8505, situated to the South of the middle of the customer's house, and found that more silt was coming from a lateral connection to the sewer at that point. A survey found a large hole to this lateral pipe, but the pipe could not be surveyed in full due to the amount of debris. The company believes that this pipe is now redundant and may be an old connection from the kitchen at the customer's property, the kitchen now being connected to the sewer at manhole 8506.
11. I note that the customer's email to CCW of 2 January 2020 includes a statement that the "damaged pipe/site of the most recent blockage is not currently redundant – it is the main sewer for the lane!" However, in reviewing the map provided by the company, I note that the lateral pipe travels from the South East corner of the customer's property to manhole 8505. Manhole 8506 is directly to the South of the South East corner of the customer's house.
12. In reviewing the layout of the company's sewers, I find that the pipe is consistent with a private pipe from the customer's property, rather than a junction with another sewer. The main sewer continues upstream to the East of the customer's property where it collects sewerage from the rear of neighbouring properties on Church Lane.
13. I am also mindful that the pipe is in extremely poor condition and appears to be collapsing, making a full CCTV survey impossible and causing significant debris to drop into the pipe. A hole in the pipe will allow earth and other debris could fall into the sewer network. Due to sewer systems relying on gravity, any debris in a waste pipe will naturally flow into the sewer over time. A sewer is not designed to move debris, such as earth or sewer pipe materials, and such material will inevitably cause restricted flow rates and blockages to an otherwise functional sewer pipe.
14. I am satisfied from the survey and the included photograph that the cause of the blockage on 27 July 2019 was most likely caused by the flow of debris from this lateral connection into the sewer. The level of deterioration found on 22 October 2019 and the speed with which more debris flowed into the sewer after this had been cleared, indicates that work must be completed to repair the lateral connection or the sewer will become blocked again. It may be possible to

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cap the pipe so it no longer connects to the sewer connection, however this would be a matter for a suitably qualified plumber to determine.

15. Based on the condition of the pipe, and that the pipe appears to flow from the South East corner of the customer's property, this corner now being served by a different waste pipe, I find that the company's assessment of this as a now-defunct pipe from the customer's kitchen is likely accurate. The condition of the pipe indicates that it may have been deteriorating for some time, and where it is not in regular use, this deterioration would only be identified where debris flows into the sewer itself and causes an obstruction. The deterioration may also have taken place over many years, potentially predating the customer moving into the property in 1997, but having recently become sufficiently worse that it has begun to collapse into the main sewer.
16. I am satisfied that the primary cause of the sewer blockage is debris from this lateral pipe. I am also satisfied that this pipe is the responsibility of the customer as it serves or served only the customer's property and is therefore not part of the public sewer. I am mindful that the scale of deterioration means that it appears likely that further blockages will occur in future, however this will not be due to any failure on the part of the company to provide sewerage services to the appropriate standard. As above, the sewer pipe itself shows no sign of structural deficiency and worked without issue from 2010 until 2018, when it was found that fat had been improperly disposed of, causing a blockage.
17. I therefore find that there is no requirement on the company to provide pro-active maintenance of the sewer pipe in this case, nor to replace the sewer as it appears to be functioning properly and in a manner that is fit for purpose until inappropriate items enter the sewer. This was the case with fat in 2018 and debris from the private lateral pipe in 2019. The customer is therefore not entitled to the requested remedies of a pre-emptive inspection and maintenance plan, nor for the sewer system to be removed and replaced, relocated off his property, or brought up to the modern standards applicable to new sewer installations.
18. Notwithstanding that it is the customer's responsibility to repair the lateral drain or otherwise stop this from deteriorating into the company's sewer, I note that the company did agree on 22 October 2019 to clean the sewer with a van pack jetter. It is not clear whether this has been done and I am mindful that it may help the sewer to remain free running whilst the customer arranges for the repair, removal or capping of the deteriorating private pipe. I therefore direct the

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company to conduct the sewer cleaning agreed on 22 October 2019 if it has not already done so.

19. The customer has also complained in respect of decontamination work that was not carried out after the July 2019 flooding incident, and in relation to the customer service provided during the complaint.
20. I am satisfied that the company advised that it would arrange for the customer's garden to be decontaminated when it attended on 28 July 2019. The company did not arrange this and the customer had to make a complaint to the company.
21. In respect of the complaint, I note that the customer has provided copies of two feedback form records sent to the company. These are confirmed to be a "record of form sent to Southern Water" and I am satisfied that the forms were properly submitted to the company. The first is dated 5 August 2019 and the second is dated 2 September 2019. The feedback form includes the customer's reference number, name and address, email address and preferred contact number. The customer provided details of his complaint and, on the September 2019 form, selected that he had contacted the company about the matter previously.
22. The company states that the feedback form does not form part of its complaints code of practice. I acknowledge that the feedback form is not included as a complaint contact method within the pdf of the company's complaints procedure. However, each feedback form includes the web address: [personal information removed]. When visiting this link, a person is taken to a 'contact us' page that includes a button stating, "If you have a complaint". Selecting this, the page states "Use the feedback form below to tell us what's wrong, so we can put it right".
23. I therefore find that, whilst the feedback form is not included in the published code of practice document, the company's website appears to actively encourage customers to use the feedback form to notify the company of complaints.
24. I also find that the customer's evidence demonstrates that the feedback forms had been submitted to the company on 5 August and 2 September 2019. The company has been unable to find copies of these forms, however I am satisfied that the customer did submit complaints in writing on these dates through a recognised contact method. I therefore find that the company

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fell below the standard expected of a reasonable water and sewerage undertaker when it did not respond to these complaints.

25. I also find that the failure to respond to written complaints entitles the customer to payments under the Guaranteed Standards Scheme (GSS). The customer is entitled to £25.00 for each contact that is not responded to within 10 working days, with a further £10.00 penalty being payable by the company where it does not make the GSS payment within 10 working days of it becoming payable.
26. I acknowledge that the company will not have to make GSS payments under a number of circumstances, including where a customer writes to an address that was not a notified address of the company for a complaint, query or request. As above, I am satisfied that the company's website encourages the use of the feedback form for complaints and I therefore find that the GSS payments are due in this case. I direct that the company provide the customer with £50.00 for the failure to respond to either the 5 August or the 2 September 2019 contacts, and a further £20.00 for the failure to make the GSS payments within the timeframe stipulated by legislation.
27. I find that the company responded to the customer's complaint once the customer contacted it via social media. I acknowledge that the company does not utilise social media as a main contact method, however I am also mindful that the customer had been unable to obtain a response by using the feedback form, although the company's website does refer complainants to use this. I find that the customer's repeated use of social media to register complaints is linked to the company's failure to respond by other methods of contact.
28. I am satisfied that, after the customer contacted the company on 23 September 2019 by social media, the company handled the customer's complaint appropriately, albeit that it did not send a response to the customer until 10 October 2019. The company arranged and completed a site visit to survey the sewer and this was completed properly.
29. The company sent a letter to the customer on 6 November 2019 with the results of the survey. As above, it does not appear that the sewer clean promised in this letter has been carried out. However, I find no failure in the content of the 6 November 2019 letter as it pertains to the complaint of sewer blocking.

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30. Notwithstanding this, the customer had contacted the company on 3 November 2019 to raise additional concerns, namely that the property had not been decontaminated, and that plant pots and furniture had not been put back in place after the site visit. I find that the 6 November 2019 letter did not address these matters; however, I would not anticipate it doing so as it provided the outcome of the survey. The company was therefore obliged to provide a response to the customer's additional complaints, but it did not do so on the basis that the 6 November 2019 letter was to be sent. I find this to be a failure of the company to meet the standard expected of it as it did not provide any response to the new issues raised by the customer.
31. I find that the company has been slow to respond to the customer's complaint and I am not persuaded that this can be solely attributed to the customer's use of social media to contact the company. As above, the company refers customers to the feedback form to notify it of complaints, however it did not respond to the customer and has been unable to find the forms, suggesting this may be subject to some technical issue. The company has also failed to respond to parts of the customer's complaint, in particular in relation to decontamination of the flooded areas, despite the customer raising this on multiple occasions.
32. The customer has requested that his property is decontaminated. The company states that this was conducted on 28 January 2020. In support of this submission, the company has provided a single photograph showing a drain at the edge of the customer's property.
33. In the customer's comments, he notes that the photograph shows only one of two contaminated areas, and states that the other area has not been decontaminated at all. The customer also submits that the decontamination in the area shown has not been completed properly as there has been minimal application of antiseptic, whilst the whole area adjacent to the kitchen wall and garden had been covered in sewage.
34. I am mindful that the adjudication is a documents-based process and that I have not visited the property in order to verify the extent of the area affected by sewer flooding, nor whether the decontamination has been completed to an acceptable standard. However, I am also mindful that a period of six months passed between the flooding incident and the decontamination attempt. I consider that this delay could have possibly caused contamination to be moved around by weather conditions and use of the garden area.

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35. I consider that it is reasonable for the company to ensure that the area has been decontaminated to the customer's satisfaction as the flooding was from its sewer, the company took responsibility for decontaminating the area, and it delayed for six months before completing any decontamination work. It is clear that the work completed on 28 January 2020 was likely minimal as only one photograph has been provided and no report of a site visit has been supplied. I therefore find it reasonable to direct the company to complete decontamination of the areas specified by the customer to have been affected by sewer flooding, and to ensure that this is completed to the customer's satisfaction.
36. Finally, the customer has requested that the company provide an account and explanation of its complaints handling and the lessons learned, and that it make changes to its complaints service to make it more responsive. My jurisdiction is limited to the customer's complaint and account only; I am not able to direct the company to make changes to its internal policies and processes, nor make any direction that the company take any action that would amount to a business decision.
37. The company is able to use the findings in this decision to guide its view on the effectiveness of its complaints system, including the apparent conflict between the website that guides customers to use the feedback form and that this does not form part of the company's published complaints code of practice. The decision has also found that the level of customer service provided fell below the standard expected of the company in relation to arranging for the customer's property to be decontaminated, and where it did not respond to aspects of the customer's complaint in November 2019. The customer has not requested compensation in his claim and I am therefore not able to award compensation for these failures, other than in relation to the Guaranteed Standards Scheme.
38. In view of the limits of my jurisdiction, I am not able to direct the company to take any specific action to update or amend its complaints handling procedures, nor to complete a specific review of the handling of the customer's complaint. I note that the company will have reviewed the complaint in full for the purpose of writing the defence; I am not able to direct the company to take any further action to redress its complaints handling.

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### Outcome

The company needs to take the following further action:

Arrange for the sewer to be cleaned, as agreed on 22 October 2019, if it has not already done so;

Pay £70.00 in Guaranteed Standards Scheme payments; and,

Arrange for the customer's property to be further decontaminated to the customer's satisfaction.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by XXXX 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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**Alison Dablin**, LL.M, MSc, MCI Arb

**Adjudicator**

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