

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1865

Date of Decision: 24 March 2020

#### Complaint

The customer asserts that he and his family have been suffering with problems with blockages in the waste pipe causing sewer surcharges in his house via the downstairs toilet and bath. There are also bad odours present within his home. He has been complaining to the company since 2014 then yet it has refused to replace the sewer pipe despite it deeming this to be the only permanent solution. The customer requests that it carry out this work and pay him compensation (amount unspecified).

#### Defence

The company accepts that there is inadequate fall in the sewer and that the only permanent solution is to replace 57 meters of sewer in the vicinity of the customer's property. To date, this work has not been provided but it is on the 'corporate risk system' and is being prioritised amongst the other risks regionally in its Business Plan for the next 5 years. However, the cost of this is in the region of £108,500.00 and therefore this remedy falls outside the scope of WATRS. It has been undertaking cyclical flushes since 2016 which have reduced the risk of blockages. The company accepts that there have been times it may have been able to do more to help and accordingly, it has paid the customer £250.00 in compensation (October 2019) and provided a £20.00 Amazon voucher and sweet hamper for the customer's son.

#### Findings

The main cause of the issues and blockages are due to the sewer not having a sufficient gradient resulting in a build up of waste/material. The company is currently carrying out regular flushes to mitigate the risk of further blockages. The remedy sought for the replacement of the sewer line falls outside of the scope of WATRS due to the cost of this remedy exceeding the maximum compensation amount under the Scheme. However, the company has confirmed funding for this work will be re-considered in its Business Plan for the next 5 years. There were instances of the company failing to provide its services to a reasonably expected standard and I find the £250.00 compensation already provided is insufficient in the circumstances. I direct that the company pay the customer a further amount of £350.00 for the stress caused due to the company's service shortfalls and issues experienced.

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### Outcome

The company shall pay the customer £350.00 in compensation (please see paragraph 10 for more details). It does not need to take any further action other than that which it is already taking and confirmed it is taking in regards to providing a long-term solution to the disputed issue.

**The customer must reply by [ ] 2020 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1865

Date of Decision: 24 March 2020

## Party Details

Customer: [ ]

Company: [ ]

## Case Outline

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

- He and his family moved into the property in October 2013 and by the following April (2014), they had suffered problems with blockages in the waste pipe causing sewage to enter their house via the downstairs toilet and bath.
- They have been complaining ever since. They have exhausted the company's internal complaints procedures as well as Resolver's and they have escalated their complaint to the Consumer Council for Water (CCW) and via their solicitor.
- They have a child who is 4 years old and he has grown up in a house that regularly smells of sewage, has blocked external and internal facilities and has scared him to an extent, he refuses to take a bath. There have also been several unexplained instances of sickness/vomiting in the household including with their puppy.
- He has stopped paying the water bill in protest and they demand that the waste pipe is replaced. Further, he now has the back from every house on his street.
- On discussing his complaint with his neighbours he has learned that number 5 Green road, had a huge problem 10 years ago with sewage flooding under their home and number 7 Green road is sure problems existed prior to this. His neighbours at number 1 Green road have only recently moved in and had to call the company to unblock their section of the pipe. All have experienced odours.
- He asked the company to provide him with a full log of his complaint under a Subject Access Request that he has now received.

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- They have suffered a great deal of stress over this issue. Looking at the company's profits, it is clear that it is only interested in profit, which are "obscene". Clearly privatising public services has been a grave mistake and an injustice to the people of this country.
- He requests compensation for stress and inconvenience, at the discretion of the adjudicator (amount not specified).
- He requests that the company replace the waste pipe with a pipe with the correct fall for the waste water to flow away. This work needs to begin as soon as possible, within six months at the latest.

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

- The customer's complaint relates to the ongoing problems they have had with blockages in the waste pipe, which has resulted in restricted toilet use and external sewage flooding at the property. The customer alleges that this is causing unexplained health issues. The customer would like the sewer to be replaced.
- It fully appreciates the impact the problems with the sewer have had on the customer and his family. It is aware that unsuitable materials (mainly wipes) have been introduced into the sewer, causing the sewer to be blocked.
- It has posted letters to the property and the neighbouring properties to inform customers what causes blockages in the sewers and to request that they refrain from placing unsuitable materials, including wipes, down their toilets.
- It is also currently mitigating the blockages with cyclical visits to flush the sewer and clear the blockages.
- It has explored a more permanent solution to relay the 57 metres of sewer and ensure the sewer has the correct fall, however, this is currently out of scope due to the cost of the works (estimated in 2016 at £108,000.00).
- The above solution is on the 'corporate risk system' and is being prioritised amongst the other risks regionally in its Business Plan for the next 5 years. To date the solution has not had the drivers and funding to progress but will be reprioritised and assessed again for funding. It "welcomes" the customer to continue to report operational issues to its helpline for these to be added onto the risk register for it to be considered for funding in this new review period.
- As explained above, the cost and work required for this permanent solution will need reviewing again against all other new risks before this solution can progress any further.

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- In relation to the customer having stopped paying his water bill, the company asserts that whilst the customer has experienced problems with the sewer, the clean water at the property remains unaffected and the wastewater system is maintained via the cyclical visits that are done every 2 weeks. As it is providing a service, the bills remain payable and the customer will continue to receive reminder letters about this. The last payment received from the customer was on 30 August 2018 and it wrote to the customer on 18 July 2019 to notify them that failure to pay would affect their credit score and again on 29 July 2019 where it confirmed a reminder for the bill had been sent on 23 July 2019. The outstanding payment on the account is £219.13 as of 1 March 2020.
- It confirms it is aware of some historical issues at neighbouring properties and the impact of unsuitable materials on the sewer system. This is the reason why it has implemented the cyclical visits initially on a 2-monthly basis but then progressed this to fortnightly given the impact that wipes and other unsuitable materials had on the sewer system. It intends to ensure that the cyclical visits continue given they are currently effective in mitigating the risk of flooding and restricted toilet use. It is happy to continue to revisit this as and when the customer or neighbours reports operational problems and if the cyclical maintenance is no longer effective.
- In relation to the customer's request for compensation (at the adjudicator's discretion), it has reviewed the actions of its team and does consider its actions to be representative of the symptoms reported. While there have been no service failings in accordance with its Customer Charter, there have been times it may have been able to do more to help. It therefore confirmed within a letter to the CCW on 16 August 2019 that it would provide a goodwill payment of £250.00. This was payment was issued to the customer on 2 October 2019. It has also provided the customer and his son a £20.00 Amazon voucher and sweetie hamper to apologise for the upset the incident with a blockage caused when the toilet gurgled as the bath was emptying.

## Reply

- The customer submits the company has failed to acknowledge any history of problems prior to their complaint raised in 2013. The company has highlighted that wipes have occasionally been found to be the cause of blockages however the company has not provided evidence of this and he believes the main cause is due to the angle of the sewer preventing the sewerage to escape.
- He disputes that cyclical flushing is a permanent solution. He has concerns about the sewer pipe withstanding the high pressure flushing.
- The customer questions that the cost of landscaping and managing the sewer replacement would increase the cost from £40,000.00 to £108,500.00 and requests evidence of this.

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- He disputes that lack of funding should be a reason for the delay to the work, as he says the company made 900 million in annual profits and has £2 billion “sitting in a bank account”.
- In response to its suggestion he should call every time he smells a bad odour is unrealistic as he would be “on the phone for hours each week”.

### 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 company supplies water and waste services to the customer’s property at 3 Green Road, [ ] (the Property’).
2. The dispute concerns blockages of the customer’s sewer pipe causing sewage to enter the Property via the downstairs toilet and bath and the presence of bad odours in the customer’s home. The customer also believes the issue is the reason for family members including his son and dog, becoming sick. The customer says he has been complaining for approximately 5 years and requests that the company replace the sewer as it has advised him that the main cause of the issue is the gradient of the sewer being at the wrong angle. The customer also requests that the company pay him compensation (amount unspecified).

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3. The company asserts that it has considered (in 2016) the more permanent solution of replacing 57 meters of sewer but the cost was estimated to be £108,500.00. It contends whilst this work is on 'the corporate system', to date it has not "had the drivers and funding to progress" but submits that it is being considered again for funding in its Business Plan for the next 5 years and meanwhile it has been carrying out cyclical flushes which have reduced the blockages.
4. I find that under the Water Industry Act 1991 ('the Act'), the company is obliged to repair and maintain its sewer system, however, I am also 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 rather than a proactive or pre-emptive approach. Furthermore, whilst it must adequately repair defects to its sewers, I am mindful that there is no duty on the company to completely eradicate the risk of blockages or flooding by taking whatever measures may be deemed necessary.
5. Having reviewed the case papers, I find that it is undisputed between the parties that the customer first reported a blockage on 6 April 2014, after moving into the Property in late 2013. The blockage was cleared by the company on the same day and after a further visit in May 2014, the company identified an issue with the gradient of the sewer. The company submits that the gradient of the sewer is such that when unsuitable materials are put down the sewer, these materials were being held in the sewer, preventing water escaping naturally. I acknowledge that the company issued letters to residents at this time explaining the issue in the hope this would reduce the risk of the problems reoccurring. However, it is clear from the evidence, including Appendix 1 of the Defence, which I find includes details of the company's visits since 6 April 2014, that the customer experienced a further blockage in January 2015. The evidence indicates that after jetting the sewers and clearing the blockage, the company: undertook investigations of its sewers between March and June 2015; carried out a survey on 8 July 2015 and; concluded in December 2015 that the way the sewer had been laid means it holds waste. It therefore agreed to carry out cyclical flushes until it could assess the cost of providing a permanent solution. I acknowledge that the company began to provide flushes every 2 months but then increased these to 1 every month as the company says in October 2016, it found further wipes to be the cause of blockages (in conjunction with the lack of gradient in the sewer). It is clear from the evidence

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that the company carried out a review in 2016 to identify a permanent solution and found the only permanent solution was to replace 57 meters of sewer pipe. It is clear that the company decided not to proceed with replacing the sewers due to factors including: the estimated cost (£40,000.00 plus £68,000.00 to restore landscape and manage the project); as it believed that mitigation could be used as an effective solution in preventing flooding and odour and; in order to allow funds to continue to be available to the most high-risk operational issues. The company has maintained cyclical flushes since 2016 and further increased them to once every 2 weeks after the customer contacted the company in March 2019 regarding the continuing odour at the Property. In its 16 August 2019 response to the customer, I note the company explained that flushing the line on a regular basis ensures it continues to flow as it should, preventing the build-up of slow-moving foul water which cause the smell and on occasion, restricted toilet use or flooding.

6. Therefore, in light of the evidence, it is clear that primary cause of the blockages and odours is the sewer having been laid without sufficient fall although I accept from the evidence that items placed in the sewer, such as wipes, exacerbate it and that items placed in the sewer by third parties, are outside of the company's control. However, in light of Appendix 1, I accept that on numerous occasions the company also found a build up of tissue in the sewer. I consider this highlights the inadequacy of the sewer and indicates that it is not just "unsuitable items" that are placed in the sewer that may cause blockages. As above, I accept the company has been aware about the inadequate fall since 11 May 2014 and that it has deemed the only permanent solution is to replace the sewer line in the vicinity of the customer's Property. I acknowledge that the customer has said that the odour is still present and also that he believes the issue is the reason for family members including his son and dog, becoming sick. I can also see that a further blockage occurred on 28 June 2019, which the customer has advised affected the downstairs bath.
7. On balance, I accept the mitigation carried out by the company has not completely eradicated the issue. However, the company has demonstrated it has taken steps to reduce the issues including fortnightly flushes of the sewer line and issuing letters to local residents to inform them of the importance of not placing inappropriate items in the sewer. In light of the evidence which includes the customer's contact and complaints since 2014, I find that these measures have reduced the number of blockages. As above, the company is obliged to repair and maintain its sewer network, however, I am satisfied that the company has

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shown that currently, it is mitigating the risk of blockages in the customer's sewer pipes by carrying out cyclical flushes. As such, I accept this constitutes it maintaining the sewers, as per its obligation.

8. However, it is undisputed that the only permanent and long-term solution is for the company to replace a 57-meter section of the sewer. I acknowledge that the customer has advised that other properties in the street have experienced similar issues. The company has confirmed that historically, there have been issues with the sewer which have affected other properties in the customer's street. However, I accept that it remains up to the company to assess and prioritise cases with the highest risk. I note it has confirmed the work in question will be re-considered in its next 5 year Business Plan and further, has indicated that if the customer reports all instances of bad odour and any other issue, this will strengthen the case. Moreover, I am mindful that improvement works such as replacing sewers are relatively large scale and, on balance, I accept the company's estimation that in the customer's case it would cost between £40,000.00 and £108,500.00 (including the cost of reinstating landscapes and project management); therefore I accept this remedy exceeds the £10,000.00 compensation limit in accordance with WATRS Rule 6.4. As a consequence, I must conclude the remedy sought falls outside of the scope of WATRS and I am unable to uphold this aspect of the claim on this basis.
  
9. The customer claims compensation (amount not specified) for stress caused. The company admits that, at times, it could have done more and I acknowledge it paid the customer £250.00 in compensation (on 2 October 2019) and provided a £20.00 Amazon voucher and sweet hamper for the customer's soon. Based on the evidence, I am mindful that its investigations carried out in 2015 in order to identify an appropriate course of action took from March until 4 December 2015 in order to reach the conclusion that cyclical flushed were needed until it had reviewed a more permanent solution. Further, I am mindful these cyclical flushes did not commence until April 2016. As such I consider there was an unreasonable delay. It is also clear from the correspondence submitted at Appendix 2 of the Defence, that there were occasions in 2019 when the company failed respond to the customer's communications within a reasonable timeframe or within the timeframes stipulated in its Customer Charter. This includes when the company promised a substantive response by 16 April 2019 but failed to do so until 18 July 2019 and only after the customer had written a further complaint dated 11 July 2019 to chase the company for this response. In light of

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these issues and the stress and inconvenience caused as a result of these shortfalls and the length of time the customer has been suffering the issues resulting in sewage surcharges, I find that the £250.00 in compensation is insufficient for the stress and inconvenience caused.

10. In the circumstances, I find that the company shall pay the customer a further amount of £350.00 in compensation. The company may deduct the outstanding balance on the customer's account of £219.13 (as at 1 March 2019) from this amount, forwarding the customer the balance. I am satisfied this is a fair amount and reasonable in the circumstances.

11. In summary, the remedy sought for the company to replace the sewer falls outside of the scope of WATRS, however, the company shall pay the customer a further compensation amount of £350.00 for the issues experienced.

#### **Outcome**

The company shall pay the customer £350.00 in compensation (please see paragraph 10 for more details). It does not need to take any further action other than that which it is already taking and confirmed it is taking in regards to providing a long-term solution to the disputed issue.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by [ ] 2020 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), MCI Arb

**Adjudicator**

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