

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX55

Date of Decision: 19/12/2020

Complaint

Since a new housing estate was built near his property, sewage frequently overflows into the customer's garden and backs up into his toilet. The customer suffers from bowel cancer and it is essential that he can use the toilet whenever he needs to. The problem occurs because the pipes are too small to cope with the volume of waste water, especially when it rains. At times, the customer has felt that the company has not taken his complaint seriously and this is very frustrating. He wants the company to assess the pipework, increase its size, and prevent sewage from escaping into his garden and toilet.

Response

The company surveyed the pipework around the customer's property and cleared a build-up of sanitary items, silt and tree roots. To ensure the pipework remains free flowing in the future, a maintenance survey will be undertaken at least every six months. The company is satisfied that the pipes are the correct size and no immediate work is needed to improve the flow of wastewater. However, it acknowledges the special circumstances faced by the customer and, to ensure a timely response to any further reports of flooding, it has created an entry on its database so a prioritised response vehicle will attend the property. However, if the customer continues to report problems, it will complete further investigations and carry out any necessary work.

The company has not made an offer of settlement.

Findings

In accordance with WATRS's Scheme Rules, the customer's complaint regarding the company's alleged breach of its statutory duty to maintain effectual drains falls outside the scope of this Scheme for several reasons; the complaint concerns complex issues of law, the complaint would be better addressed to a more appropriate forum, and the complaint concerns matters over which Ofwat has powers to determine an

outcome. Therefore, I have no jurisdiction to assess whether the company has breached its statutory duty to maintain effectual drains or direct the company to replace the pipework. However, I am able to consider whether the company has provided its service to the expected standard while dealing with the customer's complaint. The evidence shows that the company has investigated the cause of the flooding, and has taken action to ensure that the pipework is free flowing. The company has also committed to prioritising its response to the customer and reviewing the situation should further flooding occur. In view of this, I am unable to find that the company has failed to provide its customer service to the standard reasonably expected by the average customer.

Outcome

The company does not need to take any further action.

The customer must reply by 20/01/2021 to accept or reject this decision.

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Adjudication Reference: WAT-XX55

Date of Decision: 19/12/2020

Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. • Since a new housing development was built near his property, sewage sometimes overflows into his garden and backs up into his toilet. This happens at least twice a week and the only way to unblock the pipework is to stand outside, lift the manhole and clear the blockages manually. • He suffers from bowel cancer and it is essential that he can use the toilet whenever he needs to, so this situation is very difficult for him. He cannot always wait for the company to attend and he spends hours and hours cleaning other people's waste from his bathroom and garden. He has to keep a bucket handy just in case this happens; this is not acceptable for anyone who suffers from cancer and is very upsetting. • The surface water drains and sewerage drains are all connected and the blockages occur at the T-junction of the pipes. The pipe is only six inches wide and it quickly becomes overloaded by the amount of wastewater that flows through it, especially when it rains. He believes that the sewerage flooding would stop if the pipes were replaced with bigger ones. • The company has cleared the drains of debris and says it may line them in the future; however, this will not help in the long term. • At times, the company has not taken his complaint seriously and this is very frustrating. He wants an engineer to attend his property so that he can explain where the problem lies, as the section of pipework that blocks has not been properly investigated. • He wants the company to assess the pipework, increase the size of its network and prevent sewage from escaping into his garden and toilet.

The company's response is that:

1. • The customer has advised that he has experienced issues with the wastewater pipes at his home for several years. However, the first time the customer made contact to complain about the issue was on 17 September 2019. Since this date, it has investigated the complaint to understand the cause of the problem. • The

investigations included a survey of the pipework downstream of the customer's property to ensure the network was in good condition and this identified the presence of unsuitable items (wipes and sanitary products) in the pipes on and around the property; these have been removed. To prevent this from happening again, it has issued letters to all customers connected to the wastewater pipes in question to tell them how to dispose of items that cannot be put in the sewer. • In April 2020, it completed a camera survey of the wastewater pipes starting at the property, and checked 150 metres of pipework. This investigation revealed a build-up of silt and the presence of tree roots; these have since been removed. • To ensure the pipes remain free flowing, a maintenance survey has been put in place to camera the sewer at least every six months and, if any further work is required, it will be arranged. The most recent survey revealed no further work was required as the pipes were free of obstruction and working as intended. • The customer has repeatedly raised concerns about the capacity of the pipes as he believes that a new housing development has increased pressure on the pipes. A review was undertaken to understand if the pipes were undersized, but this showed that the new development is not connected to any of the wastewater pipes at the customer's property and, therefore, it cannot be contributing to the issues experienced by the customer. • The results of the review found that the wastewater pipes at the property are designed to receive both wastewater and surface water and are sized accordingly. The pipework at the property is in good working condition and does not require any immediate work to improve the flow of waste water; however, lining work may be undertaken in the future should funding be available. • It acknowledges the special circumstances faced by the customer due to his medical condition and agrees that it is not acceptable for the customer to feel he has no alternative but to unblock the wastewater pipes himself. To ensure a timely response to any reports of flooding from the customer in the future, it has created an entry on its customer database so a prioritised response vehicle will attend. • It also acknowledges that the customer should not have to carry out additional cleaning of his home if there are any further problems with the drains. When the customer reports a problem in the future, it will arrange a clean-up of the customer's property. • However, for this system to work as intended, the customer must report every occurrence of blocked drains. Not only will this help resolve any blockages and flooding, it will help build a better picture of the cause of the problem and any further action that may be required. • As the wastewater pipes are working as intended and sized appropriately, no further work on the pipes is required. However, if the customer continues to experience problems and reports them, it will complete further investigations and any necessary work.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. Having reviewed the evidence provided by the parties, I start my adjudication by saying that I fully accept that the issues experienced by the customer are serious and would be difficult to live with for anybody, but they must be particularly upsetting for the customer, given his medical condition and the circumstances he has outlined in his application. In light of this, I fully understand the customer's desire for an urgent long-term remedy.
2. However, the customer wants the company to replace the six-inch pipework with bigger pipes, on the basis that the network cannot cope with the amount of wastewater and surface water that flows through it. Having considered the facts of the case and the evidence presented by the parties, I find that the customer wants the company to comply with its statutory duty to maintain its sewers to ensure that the customer's local area is effectually drained.
3. Section 94 of the Water Industry Act 1991 outlines the company's duty to maintain its sewers and states:

“(1) It shall be the duty of every sewerage undertaker—
(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and
(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for

effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—
(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and
(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—
(a) by the Secretary of State; or
(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

4. Since the customer’s complaint raises issues relating to the company’s obligations under section 94 of the Water Industry Act 1991, I consulted the WATRS Scheme Rules to establish whether the dispute is within the scope of this Scheme.

5. Rule 3.4 of the Scheme Rules states:

“WATRS may reject all or part of an application to the Scheme where it considers that:-

- 3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute; or
- 3.4.2 the application should have been made against an alternative water and/or sewerage company; or
- 3.4.3 in exceptional circumstances, the dispute raises a complicated issue of law.”

6. Rule 3.5 of the Scheme Rules states:

“The Scheme cannot be used to adjudicate disputes which fall into one or more of the following categories:

- disputes concerning the Competition Acts 1998 and 2002 as amended;
- regulatory enforcement cases;
- bulk supply determinations;
- disputes between undertakers, between licensees and between undertakers and licensees;
- water supply licensing disputes;
- whistle blowing;
- any matters over which Ofwat has powers to determine an outcome;
- disputes relating to eligibility to transfer to a statutory licensee;

- water quality legal standards;
- enforcement cases under the Environmental Protection Act 1990 and the Environmental Act 1995 as amended;
- disputes that are subject to existing court action or on which a court has ruled unless the court's decision has been set aside;
- disputes that are the subject of an existing or previous valid application under the scheme;
- the handling of CCWater and Ofwat complaints;
- complaints which are being or have been investigated by a statutory or regulatory agency or agencies including the Drinking Water Inspectorate and/or the Environmental Agency in respect of the breach of a statutory or regulatory requirement unless a WATRS Notification or Option Letter has been issued in respect of the complaint;
- resale and third party complaints;
- disputes relating to the fairness of contract terms and/or commercial practices;
- disputes concerning allegations of fraudulent or criminal activity; and
- any dispute or disputes that are considered by WATRS to be frivolous and/or vexatious.”

7. Considering the above, I find that the dispute falls outside the scope of this scheme for several reasons, which I shall now outline.

8. Having considered the facts of the case, I find that the complaint regarding sewerage flooding raised by the customer concerns complex legal issues, specifically the company's compliance with section 94 of the Water Industry Act 1991 above. In view of this, I find that Rule 3.4.3 of the Scheme Rules prevents me from adjudicating on this issue.

9. Also, in accordance with section 18 of the Water Industry Act 1991, Ofwat, the industry regulator, has the jurisdiction to take enforcement action against water companies that breach their section 94 statutory duties. Therefore, I find that the customer's request for replacement pipework would be better addressed to Ofwat, which I consider to be “a more appropriate forum”, as per Rule 3.4.1.

10. In addition to this, Rule 3.5 means that any matters over which Ofwat has powers to determine an outcome are outside the scope of this scheme. As above, section 94 (3)(b) of the Water Industry Act 1991 delegates enforcement powers to Ofwat and, therefore, as an adjudicator operating under the rules of this Scheme, I have no jurisdiction to consider a possible breach of section 94 or direct the company to replace the pipework.

11. In any event, the replacement of the pipework would most likely cost more than the maximum remedy of £10,000.00 allowed under the WATRS Scheme Rules.

Therefore, I am unable to award the remedy requested by the customer.

12. For the reasons I have outlined, and in accordance with the Scheme Rules, I am unable to assess whether the company has complied with its statutory duty under section 94 of the Water Industry Act 1991 and, therefore, the customer's claim for replacement pipework cannot succeed. I appreciate that my decision will disappoint and frustrate the customer, but I do not have the jurisdiction to consider or direct upon this matter.

13. However, I am able to assess whether the service provided by the company has met the expected standard and, although the customer does not claim compensation for customer service issues, he has said that the company has not always taken his complaint seriously, and he is unhappy with the customer service provided by the company.

14. The evidence shows that following the customer's complaint, the company investigated the cause of the flooding, and cleared the pipework of sanitary products, silt and tree roots. The company has put the pipework on a six-monthly maintenance programme to ensure that it remains free flowing and has earmarked the customer's account for a prioritised response. It has asked the customer to report all further issues so that it can build a better picture of the problem and said that if the flooding reoccurs, it will investigate further. On balance, considering the company's response to the customer's complaint to date, I am unable to find that the customer service provided by the company has failed to meet the standard reasonably expected by the average customer and I make no direction to the company in this regard.

Outcome

1. The company does not need to take any further action.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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.

Kate Wilks
Adjudicator