

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/3112

Date of Decision: 23 October 2020

Complaint

The customer says that his sewer is fractured and needs repairing. He believes a broken pipe leading to the sewer will cause further blockages if left unrepaired. The company refused to fix it because the costs of repair are high. The customer says that the CCTV images confirm that wastewater leaks into the surrounding ground, which will cause subsidence to the property. The customer asks for the repair of the sewer. Alternatively, he requests the appointment of an independent contractor to assess the risks posed by the leak and decide on the best course of action to fix it.

Defence

The company says that there are broken shards between the ground level (i.e. the rodding shaft) and the Buchan trap in the sewer. The company states that the sewer is fully operational and allows wastewater to flow freely and drain away; as such, the cost for repairing it would outweigh the operational need. However, the company says it has added the property into its risks list in order to keep monitoring further developments.

Findings

I am satisfied that customer's sewer has cracks that the company has not been able to patch. I find that there is a likely leak that might affect the drainage and impact the foundations of the customer's property. Accordingly, I am not persuaded that the company has discharged its duty as required by section 94(1)(a). Consequently, I find that the company have failed to reach the standard to be reasonably expected.

Outcome

I direct the company to arrange and pay for an independent assessment of the risks that the sewer may cause to the property. The appointment of the assessor will be subject to approval by the customer. Furthermore, if this assessment establishes that there is a leak that causes a likely risk to the foundations of the property, then I direct the company to take reasonable steps to repair the sewer.

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

ADJUDICATOR'S DECISION

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Date of Decision: 23 October 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The Buchan trap and the pipe leading of the sewer in his property are fractured and need repairing.
- The customer says that the broken sewer causes foul smells and floods the washing machine drum when it is not in use. Furthermore, if it is left unrepaired, the broken trap will continue to leak wastewater into the surrounding ground, which in time will make the ground become unstable and lead to subsidence.
- The company tried to patch the cracks but this could not be completed because the location was not accessible.
- The company has refused to dig the ground to fix it because the sewer was operational, and the repair would be very expensive.
- The customer believes that the company must repair the sewer as it is not patchable. Alternatively, the customer requests the appointment of an independent contractor to decide upon the operational condition of the sewer.

The company's response is that:

- The company says that it investigated the customer's sewer and found that the cracks and shards between the rodding shaft and the Buchan trap in the sewer are not obstructing the flow of water.
- The company states that the sewer is fully operational as it allows wastewater to flow freely and drain away.

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- It says that the cost of fixing the cracks and removing the shards would outweigh the operational need.
- The company believe that there is no evidence of subsidence in the property.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 says that his broken sewage was inspected by the company several times between October 2019 and February 2020 and that on each occasion the engineer told him that the Buchan trap of the sewer needed repairing, and that if left unattended the water leak could ultimately lead to subsidence in the property.
2. For completeness, I note that the complaint was initially closed by the company in March 2020 without providing an adequate response to the customer. The company has apologised to the customer for the lack of notification and compensated him with £120.00. In view of this, I am satisfied that the customer's grievance caused by the failure of communication from the company's customer services has already been addressed by the company. I will therefore not consider this further or make any additional award for this.

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3. The customer stated that there are foul smells coming from the broken sewer, which are apparent in the kitchen sink and in the manhole cover that accesses the Buchan trap. He also says that the water of the toilet fluctuates up and down, there are gurgling noises from the kitchen drain, and water enters into the washing machine drum when it is not in use. I am conscious, however, that the customer has not specified the frequency of these issues or provided documentary evidence of the water raising. Furthermore, the company says that the customer has never reported drainage issues.
4. The customer says that in February 2020 an engineer identified a blockage in one of the pipes, which has still not been resolved. Conversely, the company states that the blockage was resolved. Referring to the pictures provided by the parties and the lack of evidence of drainage issues, I find on a balance of probabilities, that the blockage in the pipe has already been resolved by the company.
5. The customer says that the Buchan trap is broken, and that this can be seen in the CCTV pictures. I have inspected the pictures and I confirm that I can see there are cracks at the base of the Buchan trap and debris close to the entrance of the trap. I accept that this means it is then possible for the wastewater to escape from the sewer and go down the soil under the property. The customer states that the company's own engineers told him that the sewer needed to be repaired but that the company did not want to due to the complexity and the costs that the repair would involve.
6. The company say that their camera survey found that there were no defects within the Bruchan Trap, but only a slight defect in the rodding shaft and some debris at the top of the pipework, which did not affect the serviceability of the sewer. The company initially sought to use a non-dig invasive solution to repair the defect, by using lining. On 1 June 2020 the company sent an engineer to survey the trap and see whether it could be patched. After two additional inspections, the last one being on June 23rd, specialist contractors concluded that they could not patch and line the trap given the design and depth of the sewer.
7. The company explored the possibility of digging to access the trap, but it ruled it out given the complexity of this in an end of terrace house. The company instructed a Field Operations Specialist (FOS) who found that, as the sewer is in the back garden of an end of terrace, the repair would mean taking down at least one of the extensions of the property, which would need to be re-built again. The FOS said that it would also require a road closure to set up a crane to

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remove the materials in and out, and that as this repair would take months, it was probable that the road closure would not be granted by the necessary time. He concluded stating that *“the best course of action for you to take is to consult with a specialist builder that has experience of renovations of this sort and see if they can come up with an estimate to carry out the works in such a fashion that the Sewer Repair can then take place safely.”* I have not seen any evidence that the company followed this advice. The company instead took the decision to put the property into a risk register for potential repair with a view to monitor further developments as it may need to be repaired in the future.

8. Section 94(1)(a) of the Water Industry Act 1991 states that it is the company’s duty to maintain the sewers to ensure that the area where they operate is “effectually drained”. In the House of Lord’s opinion in *Marcic v Thames Water* [2003] UKHL 66 considered the statutory interpretation of these words at paragraph 19: *“On its face this duty is of an absolute character. This is not to say that ‘effectually drained’ sets an absolute standard. Flood water lying on a water meadow, for instance, is not of itself an indication that an area is not being properly drained. Effectual drainage is a question of degree. There will always be flooding caused by exceptional weather.”* In light of the above ruling, I find that under normal circumstances the drainage should not allow for water to flow out of the sewer. The CCTV images showed the cracks, and I am mindful that the company could not patch them. I also understand and appreciate that fixing it by digging into the sewer would be a very complex and expensive operation.
9. However, I have not seen written evidence on the impact that a leak from the sewer could have to the property. The company details that its subsidence expert has assessed the condition of the trap and has advised it was unlikely to cause any leakage that could cause subsidence to the home. I have, however, not seen that report. I also note the customer is sceptical about the findings made by the company given that it has an economic interest in avoiding an expensive repair. Furthermore, I am mindful of the customer’s statement that the company’s engineers told him that there is a risk of subsidence if left unattended.
10. The customer has not accepted the findings made by the company’s workers and requests an assessment by an independent engineer. The company says that after several camera surveys, there would not be a benefit from an independent report. The company also noted that they do not permit third party work investigations on their public sewers. However, as the company was not able to patch the cracks, I find that this report is essential to determine the actual risk of subsidence.

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11. In view of the above, I am not persuaded that the company has discharged its duty as required by section 94(1)(a). Consequently, I find that the company have failed to reach the standard to be reasonably expected. Therefore, I direct the company to arrange and pay for an independent assessment of the risks that the sewer may cause to the property. The appointment of the assessor will be subject to approval by the customer. Furthermore, if this assessment establishes that there is a leak that causes a likely risk to the foundations of the property, then I direct the company to take reasonable steps to repair the sewer. I remind the parties that, in accordance with Rule 6.4 of the WATRS Scheme Rules, the total cost or value of the aforementioned actions is capped at a total of £10,000.00. The company therefore does not need to carry out or pay to have carried out any works above this total amount.

Outcome

I direct the company to arrange and pay for an independent assessment of the risks that the sewer may cause to the property. The appointment of the assessor will be subject to approval by the customer. Furthermore, if this assessment establishes that there is a leak that causes a likely risk to the foundations of the property, then I direct the company to take reasonable steps to repair the sewer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by xx September 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 from 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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Adjudicator

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