

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX00

Date of Decision: 10/02/2021

Complaint

The customer complains that her property has been affected by flooding of sewage. It is an area where there is no fall in the sewer and it frequently becomes blocked. She says that the company has delayed investigation work and responses (due to Covid 19, the customer's building work, water being held in the pipe, need for Vactor attendance, etc.). She says that she did not receive either a final response or resolution to the problem and the company continues to delay. She says that her expectations have not been properly managed and there is no drive to resolve the problem despite current Government advice to stay at home which places further strain on a compromised sewer pipe. The customer asks for a direction that the company shall provide capital funding for an update to the sewer network as a long-term preventative action, compensation and an apology.

Response

The company acknowledges that its customer service has been poor. Its communications with the customer and mitigation action "could have been better". The company has offered the customer £550.00 in compensation. It has concluded that it is not justifiable to make alterations to the sewer pipe, which would cost more than £1 million and would be very disruptive without protecting the customer from flooding due to excess rainfall.

Findings

A direction to fund an investment in the sewer is outside the scope of this Scheme. The company has also not failed to apply its policies and has not arrived at its decision by a process that is unreasonable. The company has, however, provided poor customer service. In addition to the matters that the company agrees, for which compensation is fair and reasonable, it has also proceeded unduly slowly and has not managed the customer's expectations. Moreover, the company promised to compensate the customer for damage to her shed and garden in the sum of £500.00. The

company should apologise and pay the customer £1,050.00.

Outcome

The company shall:

- Apologise to the customer for its failure in customer service, including for the slow rate of progress of the investigation and the company's failure to manage the customer's expectations; and
- Pay compensation to the customer of £1,050.00

The customer must reply by 10/03/2021 to accept or reject this decision.

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Party Details

Company: X Company

Case Outline

The customer's complaint is that:

1. • The customer complains of the company's failure to mitigate against and resolve the repeated sewer flooding affecting the customer's property. • The customer explains that she became aware of frequent blockages after purchase of the property in 2017. In due course the customer was told by a technician employed by the company that hers was an area of the network that the company was monitoring. • An incident occurred in February 2020 when foul water entered the cellar. Since then, there have been numerous blockages in the sewerage. • The customer has undertaken major building works. She has filled in the cellar, which means she is no longer exposed to sewage contamination and has removed all the internal floor coverings, again reducing exposure. Having made significant financial investment in her property, any subsequent escape from the sewer may result in her needing to invoke her own insurance, thus potentially reducing the property value and increasing insurance costs. • The company has delayed investigation work and responses (due to Covid 19, the customer's building work, water being held in the pipe, need for Vactor attendance, etc.). The customer did not receive either a final response or resolution to the problem, as the company continues to delay. She says that her expectations have not been properly managed and there is no impetus to resolve the problem despite current Government advice to stay at home. This places further strain on a compromised sewer pipe. • Even though the sewer is now subject to monthly maintenance, the customer says that it still blocks between maintenance visits, demonstrating that the maintenance regime is insufficient, and there is no clear solution in place, leaving the customer at risk from further sewage escape. • The company replied finally on 9 November 2020, explaining its mitigation plan and long-term proposal to rectify the issue if funding was approved. An offer of goodwill for £550.00 was made by way of apology for miscommunication and mitigation visits that did not take place. The customer has not accepted this. • The customer asks for a direction that the company shall

provide capital funding for an update to the sewer network as a long-term preventative action, compensation and an apology.

The company's response is that:

1. • The customer has experienced only one incident of escape of sewage from the sewer since she purchased the property, which occurred in February 2020. • The customer was told at one point by an operative that the sewer in her area is flat, rather than angled, which is the company's preference to ensure flow. However, a flat sewer is not causing an operational issue or risk and this is unlikely to change. • The flooding in February 2020 was not as a direct or indirect cause of the sewer being flat but excessive rainfall. • The company has decided not to release funding to relay this sewer line as there is no immediate benefit to the customer or the surrounding properties in doing so. The work would cause high levels of disruption and take away valuable funding available for cases of severe operational risk. • The company believes that the customer is being unreasonable in her demands. There have been occasions when the customer has contacted the company to say that there is imminent risk of flooding when the sewer line has been found to be running clear on the arrival of its operatives. • The company considers that there is no benefit to the two weekly flushing mitigation that it put in place. It therefore proposes to reduce flushing to monthly, but states that it will monitor the mitigation and increase or decrease the frequency as required. • The company has offered to bolt down the manhole which overflows, so as to reduce the possibility of flooding or odours if the sewer were to become blocked or overloaded again. The customer has rejected this offer as she and her husband wish to have access to the manhole to check the water level. The company says that this is inappropriate as the manhole is a company asset and under no circumstances should the customer or her husband be accessing the public sewer network. This should be lifted only by its employees or service partners who have been trained and have completed the appropriate risk assessments. • The company says, nonetheless, that there have been times when the customer service provided could have been better. The company has apologised for this and has paid the customer late response fees as shown in its customer charter. The company has also offered a goodwill payment of £550.00 to apologise for the times that it could have been better at keeping in touch and could have provided better mitigation. The customer has not accepted this. • If the situation with the sewer changes, the company says that it will revisit this and carry out new investigations into what is required.

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. 1. The customer in this long-standing and complicated case, asks for a direction that the company shall provide capital funding for an update to the sewer network as long-term preventative action against flooding, blockages and odours, compensation (unspecified) and an apology. Her complaint centres on her belief that the company has failed to adequately address the serious nature of her complaint and the distress and actual and potential financial damage caused by the state of the sewer affecting her property.
2. The company disputes this. In essence, the company says that:
 - a. It has investigated the situation over time.
 - b. The sewer is functional, but flat.
 - c. The mitigation arrangements currently in place are greater than is necessary and should be reduced.
 - d. It has concluded that work of the type requested by the customer is not justifiable within its budget constraints and has offered a sealed manhole.
 - e. In respect of compensation, a reasonable goodwill payment of £550.00 has been offered by the company in addition to payments made for its failure to comply with its guaranteed service standards. The company's response to the customer's complaint indicates that this offer is still open for acceptance.
3. Although I have sympathy for the customer's position, and I have considered the documentation supplied to me with care (including more than 640 pages supplied by CCWater), I remind the parties that my powers under this Scheme are limited. My reasons for this statement are that:
 - a. Under the Water Industry Act 1991, decisions relating to the provision and

maintenance of a sewerage network are matters that are overseen by Ofwat. In a case that concerned repeated escapes of sewage called *Marcic v Thames Water*, ([2003] UKHL 66) the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving the network. The reason for this decision was that overview of the company's decision-making in this area was found to be, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts.

b. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. This is because its function is to resolve individual disputes between customers and companies, not to undertake a strategic review, such as would be necessary when considering competing interests for investment. I am mindful that in making changes to the company's assets, the company is required to weigh up the relative merits and needs of all its customers. This is a matter that Ofwat may be well placed to undertake, but an adjudicator is not. I therefore find that adjudicators under this Scheme have no power to direct that companies should provide capital funding for strategic works and the customer cannot succeed in relation to this aspect of her claim.

c. Additionally, I draw attention to rule 3.5 of the Water Redress Scheme Rules (2020 edition) which states that WATRS cannot be used to adjudicate disputes which fall into one or more categories, including "any matters over which OFWAT has powers to determinate an outcome". Accordingly, in accordance with the WATRS Scheme Rules, any claims that flooding was caused due to a breach of SWS' statutory duty cannot be adjudicated under the WATRS Scheme, on the basis that these are matters over which OFWAT has powers to determine an outcome pursuant to Section 94 and Section 18 of the Water Industry Act 1991.

My powers do not, consequently, enable me to direct that the company should make a capital investment in the sewerage network.

4, I do find, however, that I have power to consider whether the company has in this individual case, incorrectly applied its own policies, shown inadequate customer care, given inappropriate standards of customer service or reached its conclusions in a way that is unreasonable. These are matters that fall within the scope of this Scheme and are not in individual cases the responsibility of Ofwat. They are relevant to whether the customer has shown that she is entitled to compensation and an apology.

4. The submissions and the documentation submitted by the parties and by the Consumer Council for Water (CCWater) show, I find, that the following has occurred:

a. The customer and her husband purchased her home in X Location in December 2017. During the conveyancing it was noted by her solicitor that the property had a flood warning attached. On enquiry, the sellers advised that there had been a historic insurance claim following flooding from sewerage pipework. The customer took this to be a one-off incident.

b. The customer has submitted evidence that before she purchased the property there were at least 14 previous incidents of escape of sewage or foul odours from the stretch of pipe affecting her home. The customer says that these concerned not only her manhole and the associated part of the network, but her other neighbours in X Location and X Location 2. She also explains that the company had, before she purchased the property, set up a maintenance schedule, the access point for which was at "X House", a different house in X Location. The customer says that access to the manhole at that house had been obtained through X Location 2 but that this was prevented in 2016.

c. On 25 September 2018, the customer discovered that the company was undertaking scheduled maintenance visits and required access to the manhole on her property. This was not accessible at the time because she had been given no notice of the visit and her husband had stored some materials on it.

d. The customer also says that in 2018 there were repeated blockages in the sewer over several months. Her husband, who has a background in the construction industry, cleared this using rods.

e. In December 2018, the customer's husband met an operative who had attended to clear a blockage. The company found that the blockage had been caused by unsuitable materials. The company also agreed to carry out a CCTV survey as it was established, through rodding activity, that more properties upstream used the sewer than had been claimed by the company. The customer says that there are four additional properties and a small housing estate of approximately 20 houses.

f. The company agreed a two monthly jet wash while a Network Investigation Report was prepared.

g. In February 2020, the customer asked X Plumbers to attend to clear a blockage in the sewer.

h. On 20 February 2020, the customer experienced a large sewerage escape onto her driveway. The company's log shows that the customer was told that there would be a 5 day timescale for visiting her property. The customer says that sewerage was coming out of two manholes and had begun to encroach on an air vent. The customer says that X Plumbers found a blockage in the sewer. She says that foul water entered her cellar. The company sent a contractor to undertake an

external clean-up.

i. The customer says that the cellar flooded again a week later as a result of a blockage. The company's record says that "clean odourless water" was found in the cupboard under the stairs and that there had been a blockage in the sewer. The customer says that this was in the same location as originally encountered by X Plumbers, the subcontractor she had commissioned.

j. On 13 March 2020, fat and grease was found to be blocking the sewer. The company's records show that a Vactor was said to be required and a full tank of water was needed to remove 90% fat or grease. The customer says that there is no evidence that this was cleared because in 21 March 2020, there is photo evidence of a blockage in the same place. This was cleared on 22 March 2020. This was the same day when a positive litmus test also showed in the basement.

k. A further blockage was found to be present on 19 May 2020.

l. On 14 July 2020, the company wrote to the customer in response to her request for further information on 1 July 2020. That letter said: What is happening

We know the sewer here does not have enough fall for gravity to be as effective as we would like. There are also several dips in the sewer that cause sewage to build up and blockages to occur. This is resulting in build-ups and blockages causing the issues at your home.... [Reference to the possibility of a long-term solution of relaying the full sewer and the cost and other difficulties].

We have completed a levelling survey on 10 July 2020 which checks the current levels of the sewer and provides us with gradients of the system and area. To design a permanent solution, we need to carry out further levelling works. This work will be carried out next week and my colleague (redacted) will contact you with feedback from this job no later than 17 July 2020.

Mitigation

We do not have quick permanent solution to stop the issues... we have put a maintenance program in place. This is to flush through the sewer to make sure there is not any buildup of sewage or any issues that could cause a problem. I can see that you have experienced problems in between our flushes so I have I have asked that these checks are changed from monthly to fortnightly, this will start from next week. This will be reviewed regularly to make sure it is the best plan for your home...

m. The Consumer Council for Water (CCWater) referred the matter to the company on 16 July 2020. CCWater advised that the impact of this on-going situation should not be underestimated, and they recommended that serious consideration be given

to the customer's requests for compensation and reassurance regarding, at least, a short-term solution being found.

n. The company confirmed as of 17 July 2020 that the maintenance programme would be increased to fortnightly. The company agreed to flush through the sewer on or around the 17 July 2020 and then every two weeks.

o. Two further call-outs for blockages affecting the sewer happened in July 2020. The customer complains that when blockages occur in the main sewer, these cause water to be backed up into her private sewer pipe, with the consequence that her downstairs toilet becomes unusable, as does her washing machine, dishwasher etc. The customer is concerned about the increased pressure in her private pipework caused by these events.

p. The company stated on 30 July 2020 that funding may never be awarded for a long-term resolution. It confirmed that the mitigation plan was set currently at fortnightly visits but would be subject to further review. The company encouraged the customer to report any incidents in the interim.

q. CCWater wrote to the company on 6 August 2020 in reply to its response. The customer complained that while she accepts that there is a funding process to follow, the company had paid little consideration to the customer's situation and a delay of 5 years with no guarantee of approval was not acceptable. The customer complained of restriction of the use of her land due to flooding as well as the impact that this situation will have on the value and saleability of her home.

r. The company responded on 20 August 2020. CCWater wrote to the company again on 2 September 2020 explaining the customer's concerns.

s. On 17 September 2020, the company responded and said that a meeting had taken place. CCWater pointed out to the company, consistently with the email of 14 July 2020, that the sewer does not have enough fall to be classed as self-cleansing. CCWater asked if the full sewer could be relaid in an area or a way that creates more of a fall. This would mean that natural gravity would aid the flow of the sewer and would meet industry standards.

t. The company responded that relaying the sewer would cost a lot of money. The company explained that it has a set amount of money which the regulators, Ofwat, allow to be spent every 5 years. The company has to make decisions how it uses this money based on a number of factors, aiming to resolve as many issues as possible. The company said that it has completed several investigations and levelling surveys to come up with the best solution and a plan to put forward for funding. The company said that it was keen to ensure that it adhered to the fortnightly flushes with prior notification being given. A plan for this would be to

have the same person attending for each visit and having the technician call when they are due to attend 24 hours before as requested.

u. CCWater wrote to the company again on 22 September 2020, providing correspondence and highlighting that the customer was considering legal action at this point as progress was not being made.

v. A site meeting took place at the customer's address on 1 October 2020. The customer sent further correspondence documenting the meeting.

w. CCWater wrote to the company on 2 October relaying the customer's comments and CCWater's disappointment at not being provided with details from the meeting. CCWater said that it would make a Formal Investigation. This was raised on 12 October 2020 on the grounds that there has been an unresolved longstanding incident.

x. On 9 October 2020, the customer reported another blockage.

y. The company's Formal Investigation response was provided on 22 October 2020 stating that the company is confident in its mitigation proposal in the short-term attending fortnightly to flush the network. The company confirmed that a response would be provided by 30 November 2020 to confirm if funding had been approved for a long-term solution.

z. At that point, the customer indicated her wish to proceed to WATRS.

aa. The company has subsequently indicated in its response that no request for funding will be made and the mitigation measures will be reduced.

5. The picture presented in the evidence is of a poor relationship between the parties.

a. The customer considers that the company has been slow and not transparent and that certain matters (such as the number of instances prior to her purchase of the property) were not disclosed until she received the result of her formal request for information. She is very distressed at the continuing risk of contamination of her property by sewage and the consequential risk of illness.

b. The company has, on the other hand, indicated in its submission to WATRS that the customer's concerns are taking up time that the company would wish to spend on other customers. The company complains that the customer has been undertaking inappropriate actions in relation to the sewer, but also complains that the customer has called out the company when this has not been necessary.

I find that the mutual lack of trust may have complicated the dispute between the parties although I do not find that this has affected the service level provided by the company. I nonetheless am not satisfied that the company has supplied its

services to the standard that an average customer would reasonably expect, as I explain below.

Policies

6. Having regard to the matters set out in the very extensive correspondence in this case I do not find that the customer has proved that the company has failed to adhere to any specific published policy, although I note that, whether taken from the customer's first engagement with the company in 2018 or from the flood that occurred in February 2020, the time taken in investigation of this matter is much longer than would reasonably be expected. Although there have been causes for this other than the actions of the company (for example, the pandemic and the customer's own building work) this does not, I find, explain why it has taken nearly one year for the company to be able to reach an informed decision as to whether it would prioritise the customer's application for funding a long-term solution. I find that the company has fallen short of expected service standards.

Customer Care and Service

7. I am mindful that an escape of sewage, even if this happens on repeated occasions, does not, in itself, prove lack of customer care. Overflows of diluted sewage that occur during very heavy rainfall may be part of the normal functioning of the sewer, even though this is unpleasant and distressing. Actions of third parties, such as disposing of grease, wet-wipes and other refuse can also cause sewers to block and overflow.

8. Nonetheless, having regard to the history of this matter, I find that there are very many ways in which the company did not provide to the customer the standard of service that would be expected.

9. The company has offered to the customer the sum of £550.00 in compensation for its failure to meet expected standards. It has made clear in its response to this application that it accepts that "there have been occasions that the customer service they have provided to the Customer could have been better". The basis on which this goodwill payment was offered related to its failure to communicate with the customer over the lengthy period of this dispute and its failure to attend to the mitigation of the problems of the sewer on the days promised. As the sum offered is related to an acceptance that it had not provided good customer service, I understand that this offer is still open for acceptance, even though the customer has expressed a wish not to agree to compensation until the end of the process.

10. Having regard to the documentation as a whole, I note that there have been a number of instances when the sewer mitigation did not take place on the days expected and when the company failed to give accurate information to the customer about the days when it could be expected to attend. Moreover, the

company did not keep the customer informed of the progress of its investigations. An illustration is as to the timing of the levelling survey, which the customer had been led to believe would have been completed in June 2020, but the second levelling survey was not commenced until August 2020. Notably, during that period, it was being stated to the customer that the company would be looking to apply for funding for a long-term solution and the purpose of the survey was as to how to achieve this, I find that in communicating with the customer in this way, it held out to her a false hope of a solution other than continued monitoring and flushing. It was a false hope because in due course the company decided that it would not use that information to find a solution. The conclusion reached after the investigations were complete were that no long-term solution would be offered. I find that, at least in the company's manner of communication with the customer, this was a change of stance in respect of which the company did not properly manage the customer's expectations. I find that the company's offer of £550.00, in the context of this aspect of the dispute is fair and reasonable.

11. It is notable, however, that the company in August 2020 also indicated to the customer that it would be willing to consider a goodwill offer in relation to the damage that she complained of to her shed and garden. The company said:

We are not liable for damage caused by sewage escapes, and I appreciate The Customer does not wish to claim through her insurance. We would usually offer £250 towards her excess payment and £250 towards the next years increase, so as a goodwill gesture, we would be happy to offer £500 towards the damaged items. This is purely as a goodwill gesture and to be clear, is not an admission of liability.

12. This was an ongoing offer. On 20 August 2020, in response to the customer's complaint that it had taken 2 weeks before anyone came to sanitise her cellar after the litmus test had produced a positive result, the company said:

As previously stated, we are willing to look at goodwill for all service failings once we know if a full solution will be picked up or if this will remain on a cyclical flush. This will not be indefinite as The Customer has expressed concerns over, but will take some more time. This is only the goodwill for the service issues we are referring to here, the offer of £500 towards the damaged items can be discussed and arranged any time.

13. I find that the element of "service failing" that the company referred to in the above quote was included in the company's offer of £550.00 compensation which was for "mitigation isits" of which I find this would be one. I find that no further compensation is due for this service failure, but the company had indicated that the company's practice might be to make a goodwill payment relating to insurance to other customers. The email of 20 August 2020 confirmed that the company would make a payment of £500.00 which was being held open for the customer to accept.

I find that an average customer would reasonably expect that offer to remain open for acceptance and to be incorporated in the overall resolution of the customer's issues within the this process. I find that it is fair and reasonable that the company shall also pay the sum of £500.00 top the customer as promised in August 2020 for the damage to her garden and shed.

14. Finally, I note that the customer says that there are two GSS payments due to her in relation to late correspondence on 1 July 2020 (response was to have been made by 23 June 2020) and 12 August 2020 (response was to have been made by 3 August 2020). I was not initially satisfied, however, on the basis of the documentation I was able to find in the CCWater case file, that the customer is entitled to these payments and I note that the company has not had the opportunity to respond to this complaint. Having regard to the customer's response to my Preliminary Decision, i have now located the evidence for the late payments to which she refers. Nonetheless, it remains the position that the company did not have an opportunity to respond to the customer's claim for these payments and, as no proposed direction was made for compensation in this respect, the company did not have a reason to comment on these in response to my Preliminary decision. I make no direction for additional compensation in this regard.

15. It follows from the above, therefore, that in respect of my findings that the company has failed to supply its services to the standard that would reasonably be expected, I find that a fair and reasonable sum by way of redress is £1,050.00.

16. I further find that it is fair and reasonable that the company should apologise to the customer for its failure in customer service, including for the slow rate of progress of the investigation and the company's failure to manage the customer's expectations throughout this process, when she had been led to believe that the company would find a permanent solution but it has not done so.

Reasonableness

17. As for the process of reasoning by which the company reached its conclusion, I do not find that the customer has proved that the company's decision fell outside the range of reasonable decisions that could be made by a water and sewerage company. The company has explained in its response that it has taken into account the following arguments and based these against need in other areas:

- a. That there has been a single instance of flooding at the customer's home;
- b. That the sewer in the customer's location is flat. It would be very difficult and very expensive for the company to make any changes that would resolve this. The company says that the costs would be in the region of £1 million.
- c. That making a change would be very disruptive. Relaying the sewer would affect local homeowners and road users. There would need to be a rising main and pumping station in the customer's garden with a right of access to enable the

company to maintain its assets.

d. That the cause of the flooding in February 2020 was excessive rainfall. Even if the sewer had not been flat, but had had a slope, there would still have been a flood in February 2020.

e. Although there have been blockages, those are due to misuse of the sewer. In addition, the incidents that occurred before the customer purchased her home were also blockages. Of the blockages caused, most were due to unsuitable articles such as wipes, fat and grease being introduced into the sewer.

f. That, except where there have been blockages, the sewer has been free-flowing at 20% full.

g. That the sewer is adequate for the number of properties that it serves.

h. The company has offered the customer a screw-down manhole which it says would protect her from flooding. While the customer does not accept that she would be protected and argues that a screwed-down manhole would increase the pressure and causing backing up in her private sewer, I find that the company has taken these considerations into account.

18. Although the customer continues to maintain that the company's conclusion ignores the need for the mitigation plan and that a fixed manhole will only cause blockages to appear further upstream and possibly in her sewer, I find that the company has not taken into account irrelevant considerations, nor, I find, has the company ignored the customer's arguments. It has researched its conclusion by carrying out two levelling surveys and costing the alternatives. While I note that the customer says that there might be other options, I do not find that there is any clear evidence that these would be more satisfactory than the outcome that the company has arrived at. I therefore do not find that the company has carried out its decision-making process in an unreasonable way.

19. It follows therefore that the outcome is as stated below.

Outcome

1. The company shall:

- Apologise to the customer for its failure in customer service, including for the slow rate of progress of the investigation and the company's failure to manage the customer's expectations; and
- Pay compensation to the customer of £1,050.00

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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in 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.

Claire Andrews
Adjudicator