

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX25

Date of Decision: 10/02/2021

Complaint

The customers complain that the company has provided a sub-standard service in that it has permitted the sewerage network close to their home to fail on repeated occasions, such that sewage has leaked out, they have been caused frustration, loss of sleep and distress. They also complain that the company has not kept the customers informed of the activities that it is taking to prevent disturbance and to prevent further occurrences. The customers ask for a range of remedies, including proactive works affecting the sewers in their village, compensation, the provision of information and apologies.

Response

The company says that it has responded to emergencies affecting the network including the collapse of the sewer close to the customers' home. It has communicated with the customers as much as possible and it has taken appropriate steps to protect the customers and others from contamination by the escape of sewage. It recognises that the customers have been caused considerable inconvenience due to the location of their home, and has made compensatory goodwill payments. The company challenges that the customers are entitled to raise much of the complaint with WATRS.

Findings

The customers' claim for additional works to the local sewers form part of strategic planning for the network. These fall outside the scope of the WATRS Scheme. As for the customers' remaining complaints, I find that the company has provided its services, including responding to emergencies, not perfectly, but within a range of service levels that would reasonably be expected in the case of emergencies affecting its sewerage services. The company has made goodwill payments to compensate the customers for the events in question.

The company is not required to take further action.

Outcome

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

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Party Details

Company:

Case Outline

The customer's complaint is that:

1. • The customers have suffered multiple wastewater floods from a manhole on their property immediately outside their front door, affecting access to their property and causing severe distress from noise, odours, and poor communication from the company. • These incidents have occurred on: o 8 October to 14 October 2019 (several during these dates), o 22 January 2020, o 5 November 2020, o 8 November 2020, o 14 November 2020, o 15 November 2020 (twice in one day), o 25 November 2020. • Two sewer collapses (8 October 2019 and 22 January 2020) occurred within three months of each other. • A recent third set of extensive emergency works (that began on 27 October 2020) to replace deteriorating pipes has lasted 6 weeks. • During all three of these series of incidents the company positioned tankers immediately outside their windows disrupting their sleep and home life. • In October 2019 the customers were subjected to tanker noise 24hrs/day for six days without any communication from the company until the customers sent a desperate message to our local district councillor who alerted his contacts. The customers were assured that lessons would be learned but again tankers were outside in January 2020 for a few nights and during more sewer flooding in November 2020, they had tankers immediately outside their home affecting their sleep for 4 days and nights before they were contacted and offered an apology, despite registering their complaint via phone and email. • The customers also suffered noise disturbance and fumes from diesel-powered pumps in close proximity to their home for two weeks in October 2019, 5 weeks in January/February 2020 and again for 4 weeks in November/December 2020. • The customers have communicated with the company by phone, text and email numerous times but have suffered inadequate communication. They contacted the Consumer Council for water (CCWater) after an unsatisfactory response following the first two series (October 2019 and January/February 2020). They had to persist for Customer Guarantee Scheme (CGS) compensation and were not told about its

existence until CCWater got involved. • During an exchange of information following their complaint to CCWater, the company insisted after the October 2019 collapse that the company was monitoring the sewer outside their home as there “were additional concerns following their repair”. The “monitoring” failed to prevent a second collapse in January 2020. • Following the first collapse in October 2019, if preventative action to safeguard their property (and their neighbours’) had been taken by surveying the sewers in the vicinity - not just camera surveys of new pipes - remedial work could have been actioned sooner and the extensive disturbance in January/February 2020 and November/December 2020 could have been avoided. • The company appears to insist that prevention is not possible or part of the company’s remit because it cannot manage the enormous network it is responsible for. As paying customers, the customers “deserve and desire” a water/sewerage company that is willing to invest in proactive work and ensure a reliable and robust network. • During Nov 2020, repeated sewer flooding also occurred due to faults with equipment. Each time the customers have tried to communicate and request remedies, it took incredible persistence to receive mitigating action. For example, the customers made repeated requests for the over-pumps to be checked (as detailed in emails and timeline documents) but requests were initially rejected until two separate sewer floods occurred during the day on Sunday 15 November 2020. This resulted in a large HGV delivering a pump at 10pm on a Sunday night. Over the course of two weeks, the over-pumps failed four times causing sewer flooding on their property which demonstrates that the equipment is inadequate, however the customers have been advised that mechanical failures occur and there has been no recognition from the company that changes are necessary as to how their pumps are installed, monitored, or maintained. • Responsibility between subcontractors has been confusing, resulting in a lack of accountability and poor information-sharing, necessitating further calls to request sewage clean-ups because subcontractors attending the over-pumps on-site said they were not responsible and/or did not have the capability to do it. • Also equipment is being removed on 9 December 2020 after the road has been reopened, without any traffic signage. One lane is completely blocked causing a dangerous sight limitation to motorists and buses that use this road. The customers complain that lack of joined-up work to ensure safety and effectiveness is astonishing. • Also, repeated attempts to request sandbags (at least 3 times) were rejected, so the customers suffered six sewer floods in November 2020 before they were installed. • During the most recent series of sewage floods in November/December 2020 of six separate wastewater flooding incidents, noise disturbance and communication failures, the customers asked for a meeting with a senior representative of the company. • The customers provided documentation with requests for answers and solutions and had to ask for a goodwill gesture/compensation. They took time out of their workday to engage with company representatives and provide comprehensive information about their experience but their efforts to ensure long-

term reassurance was to no avail. The reply took nearly 2 weeks and was delivered via a customer services rep. The response lacked any firm reassurance of making amends for the customers' suffering and lacked commitment for long-term solutions to prevent further incidents. • The customers complain of lack of preventative action. They say that the company advises that it undertakes camera survey work on newly repaired pipework only but that if a camera survey was undertaken of the network of their village, problems could be identified before they became too serious. • The customers ask for:

- o "Accountability, transparency, short-term remedies, long-term solutions/preventative actions and compensation/awards for distress that go some way to make amends for what they have personally suffered".
- o Follow-up remedial work:
 - ? Jet washing of lateral pipes serving their property (and our semi-detached neighbours);
 - ? Camera survey to check that no damage has occurred and any remedial works shall be undertaken without charge.
 - ? The sandbags left on the customers' property should be removed as should the equipment left opposite their home on the road verges.
- o Preventative actions:
 - ? Camera surveys of the village sewer network to identify other areas of pipe deterioration and ensure replacement or remedial work is planned and executed accordingly.
 - o Infrastructure improvements:
 - ? The customers ask for a design change to mitigate against the sewerage backing up again in their drains and those of their neighbours (Windmill Cottage and Masons Arms pub) and to ensure they do not suffer wastewater flooding outside their door again.
 - o Communication:
 - ? Following the October 2019 failure, the customers were told that lessons would be learned regarding communication, but this did not happen in November-December 2020. The customers ask for an apology.
 - ? The customers also want the company to explain what improvements they will be making regarding communication with residents during emergencies and active on-site works, including prompt and proactive communication when faults occur.
 - o Information:
 - ? The customers say that they require the company to provide specific answers regarding when they last inspected the village sewer, including what action was taken or not taken that could have prevented the October 2019 collapse.
 - ? Letters to be sent to all North Leigh residents on the current state of the village network, stating specifically what occurred in the 3 incidents since October 2019 (including a demonstration of being accountable for what happened) and advising what the company is doing to actively monitor the sewers with a commitment to repair/replace any other aging pipes.
 - o Compensation/monetary gestures:
 - ? Compensation for multiple and repeated sewer floods on the customer's property, from November to December 2020 (6 claim forms are attached).
 - ? The customers say that they require "a significant monetary gesture" to account for the extensive emotional distress, noise disturbance, and sleep deprivation they suffered. The noise disturbance from tankers, workers needing access to our property to fix flooding and the noise and fumes of over-pumps

24hrs/day has caused serious sleep deprivation, caused the customers to miss work and has invaded their lives for weeks. ? Compensation for the systemic communication failures from October 2019 to December 2020, as detailed in their supporting documentation. The lack of information and customer care has caused the customers to spend enormous amounts of time reporting incidents, chasing clean-up, checking status of works and seeking answers. ? An overall monetary gesture for the substantial impact of multiple incidents of sewer flooding and overall lack of communication throughout. o An apology ? The customers ask for an apology for multiple incidents for more than a year, the smell of sewage immediately outside their front door for hours, days and weeks at a time, diesel fumes of tankers and over-pumps for weeks. ? They ask for an apology for lack of communication, which has resulted in excessive stress, ongoing worry and emotional distress affecting their wellbeing including exhaustion, lack of privacy and persistent frustration by having to spend a huge amount of time reporting incidents and communicating complaints. ? They ask for an apology for not making the customers aware of the CGS scheme and they finally received the application forms on 19 June 2020 after intervention by the company. ? The customers ask for an apology for having to wait too long for the company to accept responsibility for their persistent mistakes and make amends for the customers' suffering in the form of monetary gestures. The prolonged delays have added to their stress and upset.

The company's response is that:

1. • In the village where the customers live, there have been issues with sewer flooding due to collapses of the sewer pipework. Their property is located immediately where the company has had to undertake essential and emergency work to stop the flooding occurring again. • Due to undertaking these repairs, other problems were found. • Due to the extremely close proximity of the customers' property to the road where the works were being carried out, the company accepts that the customers have been inconvenienced by the works, the traffic management, the heavy plant machinery and noise at various times of the day and night. However, these works were also to protect their own property and that of others in the village. While the company has explained that the inconvenience could not have been avoided, the customers are seeking unspecified compensation over and above that already given. • In addition, the customers have been unhappy with the customer service and communication. However, due to the vast size and nature of the company's network, a reactive system of maintenance is a reasonable approach to adopt, although, where there is a known issue, companies should repair their assets to avoid or reduce the risk of flooding. • The company also observes that the customers' requests for follow up works, preventative actions, and infrastructure improvements are outside the scope of the WATRS Scheme rules in our view and, in any event, would almost certainly exceed the £10,000.00 threshold. • The company says that it has surveyed the sewer lines

and identified additional works which needed to be carried out. Some of the sewers in the village have been placed on the company's risk register to ensure it continues to monitor the situation. In carrying out the works, surveying the lines, carrying out additional works to defects and placing the sewers on a risk register the company says it has fully discharged its duties under section 94 of the Water Industry Act 1991. • The company denies liability to the customers.

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.

I also confirm that I have taken into account the submissions made by the customers in response to my Preliminary Decision.

Customer:

How was this decision reached?

1. Although I empathise with the customers' position, and I have considered the documentation supplied to me with care, I remind the parties that my powers under this Scheme are limited. This is because:
 - a. Under the Water Industry Act 1991, sewerage companies are not generally liable for the escape of the contents of public sewers in the absence of negligence. Instead, companies may, depending on the circumstances, be required to make guaranteed payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 or similar Customer Guarantee Schemes operated by the companies themselves.
 - b. Moreover, 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 XWater 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.

c. Although WATRS is a specialist adjudication scheme, its position is similar in some ways 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 undertake or fund strategic works. The customers cannot succeed in relation to this aspect of their claim.

d. Rule 3.5 of the Water Redress Scheme Rules (2020 edition) underlines that WATRS cannot be used to adjudicate disputes which fall into one or more categories, including "anymatters over which OFWAT has powers to determinate an outcome". Accordingly, in accordance with the WATRS Scheme Rules, claims about strategic work cannot fall within my jurisdiction because OFWAT has powers to determine an outcome. (The relevant law can be found in sections 94 and 18 of the Water Industry Act 1991).

2. Although I note that the customers' reply to the company's response does not accept the "legalcomplexities" of this situation, I nonetheless find that this restriction means that I cannot consider the steps that the customers think should be taken to improve the network in their village. These strategic issues are for the company and OFWAT and not for WATRS adjudicators.

3. In terms of the remedies asked for by the customers in their application, it follows that I cannot direct that the company shall undertake the follow-up works, preventative actions or infra-structure improvements that the customers refer to in their complaint. Nor can I direct that the company should give compensation or make an apology for repeated failures of the sewers or sewer collapses merely because the company has taken a reactive approach (if it has) to the condition of the sewers. The company denies that it has taken only reactive steps because it has surveyed the sewer lines and identified additional works which needed to be carried out as well as having placed some of the local sewers on its risk register. To the extent that the company has decided that it will not prioritise additional

sewer works in the customers' village, however, this is a strategic decision and not one about which it is open to me to make findings.

4. I can consider, however, the extent to which the company has supplied its services to the customers to the relevant standard and in particular whether it has provided its customer services to the standard that would reasonably be expected.

5. I have considered the history of the three incidents with some care, including the correspondence passing between the customer and the company and the actions taken by the company to try to meet the customer's concerns and to compensate the customers for inconvenience.

6. I find that central to each of the incidents is that they were emergencies in which sewage was escaping into the environment from the sewers and the sewers themselves had failed, such that extensive work was needed that affected not just the customers but the network itself. Although the customers, in their response to my Preliminary Decision, point out that one of these incidents occurred during planned work that had started approximately 10 days earlier, I find that this unexpected escape of sewage in the course of the works was just as much an emergency as if it had happened when no work was being carried out. I find that, in these circumstances, the company did not have an option of whether or not to undertake work to stop the problem and also did not have an option to wait. I am mindful that such work, carried out for the public good, inevitably involves noise, odour and disruption.

I make clear that I accept that in the first and third incidents, the works occurred in a location outside the customers' home and the customers were significantly affected, both day and night. The customers explained the level of disruption in their initial submission to WATRS and repeated in their response to my Preliminary Decision that they believe the work could have been undertaken in a more "timely" way. I remind the parties, however, that in respect of the carrying out of repair work, the question of the company's operational activities, setting of priorities and allocation of resources are matters that, for the reasons given above, are outside the scope of this adjudication .

7. I find also that it does not follow from the fact that the customers have been inconvenienced that the company must compensate the customers, although it would reasonably be expected that the company would consider whether to make goodwill or other payments in consequence of the disruption. As indicated below, I find that the company has done this. In this instance, the company has made goodwill payments totalling £1,075.00 across the three incidents, and therefore providing the customers with the full payment to which they would be entitled for thirteen different escapes of sewage into their garden, as they say, in addition to two further goodwill payments of £50.00.

8. As for whether the company has failed further in the provision of its service standards, however, I am not satisfied that the customers have proved this. While I recognise that the customers' experience has been horrible, I find that an average customer would reasonably have expected the company on each occasion to take swift action and to prioritise the interests of customers and other affected users of local services (such as users of the highways) as a group of people affected, rather than to give precedence to the impact on individuals.

9. I find on the basis of the documents submitted by the parties and CCWater that the following happened:

a. In the first incident in October 2019:

i. The customer made a complaint that sewage was escaping from the manhole at 10.15 on 8 October 2019. The company attended approximately three hours later and found a defect that required work. It arranged immediately for tankers to pump out sewage so that any environmental hazard was minimised. Although the customers say that the tanker was "woefully inadequate" and that an over-pump could have been installed sooner, I am mindful that this issue cannot be judged with hindsight. Furthermore, there is no evidence before me that the company should at the time in question, have afforded different priorities to this work. I accept, however, that a by-product of this work was noise, diesel fumes and sewage odours, but I find that it was necessary and consistent with the company's legal obligations.

ii. The work was not immediately done. On 14 October 2019, a local councillor and other local residents became involved. It was evident that the situation was complicated by heavy rainfall that was causing problems.

iii. The company decided to use an overland pump, in part to try to reduce the noise level and at a later point also some acoustic fencing.

iv. Text messages were exchanged between the customer and the company throughout October 2019 and at the end of the work, the company made a goodwill gesture of £350.00 and a present of a hamper to thank the customers for their patience and to apologise for the disruption.

v. The customers thanked the company for its care on 25 October 2019 and accepted the gestures.

vi. While I take into account that the customers complain that they had no "proactive" communication from the company for six days, I find that the customers were able to make contact with the company. I find that it does not follow from the

fact that the company did not take the steps that the customers wished that the customers were ignored, as is clear from the goodwill gesture made to the customers at the end of the work. I do not find that the service provided by the company fell below the standards that would reasonably be expected.

b. In the second incident that started on 22 January 2020:

i. The location of the works to the sewer on this occasion were not immediately outside the customers' house but a little way up the road. The actions of the company would nonetheless have been clearly audible to the customers and they say that the tanker was positioned outside their house. I find that the noise, smell and traffic disruption would have affected the customers.

ii. The company again supplied an over-pump and acoustic fencing.

iii. The company explained to the customers that it had decided that night repair work was necessary for traffic management reasons. There is no evidence that this decision was made without due regard to all relevant circumstances and priorities. I do not find that the company supplied a sub-standard service in reaching its conclusion that this was the best thing to do.

iv. On 26 January 2020, the customers told the company that they were getting used to the sound of the pumps and the level of noise overnight was, with the use of precautions such as earplugs when trying to sleep, "tolerable".

v. On 14 February 2020, Valentine's night, the customers complained that they had not been alerted to the fact that the company would clean out the over-pump. The company was not at the time that the complaint was made in a position to prevent or undo the disruption, but I find that this was non-urgent supplementary work about which the customer would reasonably expect to be informed when carried out at an unsocial time.

vi. On 1 to 2 March 2020, the customer again complained of noisy works early on Sunday morning but the company explained that there had been an unexpected failure in the pipe a little further up the sewer and it had had to make an emergency response.

vii. The emergency work was completed in March 2020, but the company intended to carry out further investigations.

viii. The customers asked for a goodwill payment, making reference to the payment that they had previously received and asked the company to arrange for cleaning up. The company promised a clean-up, which it carried out and said that it would consider a goodwill payment at the end of the works.

ix. The customer was notified of the company's intention to carry out a camera survey in advance. The customers complain that they had insufficient notice to be able to object because the notification came at 4.50 by email on the previous evening. The company says, however, that a voicemail was also left. In any event, when the survey was carried out on 15 April 2020, the presence of some plastic piping deposited in the sewer by a third party was detected and arrangements had to be put in place to remove this.

x. On 20 May 2020, the customers enquired again about a goodwill payment.

xi. In June 2020, the Consumer Council for Water (CCWater) became involved and informed the customers about the Customer Guaranteed Service Scheme. The customers were unhappy that they had not been informed of this.

xii. The company did not consider that the customers were eligible for a general goodwill payment for the disruption on this occasion and nor did the company believe that the customers were eligible for a CGS payment, but it agreed two goodwill payments of £50.00 for failing to give notice about additional works on Valentine's Night and for failing to explain to the customers about the CGS Scheme. An error was then made in respect of the payment and only one cheque was raised.

xiii. On 5 October 2020, the company made a further payment of £50.00 and apologised for its error as well as paying the sum of £50.00 due. In addition, the company made two goodwill payments of £75.00 in place of CGS payments. The company made goodwill payments in this respect because it did not believe that GSS payments were due.

xiv. I find in respect of this period that there were some failures by the company to meet the expected standards in relation to the warning for Valentine's night work and in failing to alert the customers that they potentially could apply for GSS payments, but the company has, as would be expected, compensated the customers for this. I do not find that the customers have shown that the company fell short of the standards that would reasonably be expected.

c. In respect of the incident commencing in November 2020:

i. On 5 November 2020, the company was alerted to a further escape of sewage outside the customers' home. The company again responded by sending tankers to prevent the discharging of sewage into the surrounding area, including, I find, the customers' own garden.

ii. It was reasonably to be expected that the customers would at this point feel frustrated and exasperated, particularly as the pandemic meant that they were not

able to leave their home to get away from the problem. On 7 November 2020, the customers complained that their water had been cut off. They emailed the company to state:

We require a reply TODAY that either provides reassurance that the tankers will be gone before this evening or that you provide us a means to get us a peaceful night's sleep.

My requests are simple.

- We need some sleep
- We need some communication from XWater Water
- XWater Water's handling of customer communication and care regarding this situation so far is not OK.

iii. The company installed an over-pump, but on the following day it broke down.

iv. The company responded to the customer on 9 November 2020 and was also dealing with other customers and a local councillor.

v. A site meeting with the Council was arranged for 11 November 2020 at which it was agreed that there would be two pumps, not tankers, with one pump shut down except for surplus requirements and an acoustic fence. The customers say that they had been notified of the meeting by the Council so that they could attend. The customers did not attend but they complained, however, on 13 November 2020 that they both work and that one day's notice of that meeting had been insufficient.

vi. The customers asked for a meeting on 19 November 2020, to which the company subsequently agreed. At the meeting, the customers asked a number of detailed questions about the company's performance. They complained that there had been five escapes of sewage into their garden in this incident.

vii. On 26 November 2020, the customers complained of a further leak of sewage and the company provided sandbags.

viii. The company allocated two CGS payments of £150.00 for escapes on 5 and 8 November 2020. This was subsequently increased to £450.00. The customers were told:

Whilst you're not entitled to the statutory CGS payment, this money covers the amount you'd receive if you were eligible. Additionally, we've taken into the consideration inconvenience of the works and disturbance caused by our equipment. The cheque has been issued and you'll receive it in the post within the next ten working days.

ix. The situation was resolved, save for a patch repair away from the customers'

home that was to be completed on 21 December 2020.

x. Against this background, I find that the company has carried out necessary work in the context of an emergency. Even though it is not satisfied that the customers were eligible for a CGS payment, the company has treated them as though they were.

xi. I am not satisfied in respect of this incident that the customers have proved that the company fell short of the standard that would reasonably have been expected.

10. I am also satisfied that the company is not under an obligation to explain to the customers the underlying reasoning for its strategic decision-making, which I find is an operational matter for the company. In failing to answer the customers' questions about such issues, I find that the company has not failed to meet expected standards.

11. In summary, therefore, I find that:

a. My powers do not enable me to direct that the company should make changes and carry out pro-active work, including additional camera surveying and other matters, to the company's network.

b. In respect of its dealings with the customers, I find that the services provided by the company were, albeit not perfect, within the range that would reasonably be expected; and

c. The company has provided significant compensation, including for matters where it does not believe that it was at fault. Although the customers argue that they are entitled to additional compensation at a level above that which the company says publicly that it will provide under its guarantee scheme, I do not find that this would be expected by an average customer.

12. Considering all these factors, I find that, despite the customers' understandable distress at these events, they have not proved that the company has provided a substandard service such that the customers are entitled to a remedy under this Scheme.

13. Accordingly, I do not direct the company to take any further action.

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.

Claire Andrews
Adjudicator