

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-XX98

**Date of Decision:** 21/02/2021

#### Party Details

**Customer:** Customer

**Company:** XWater

#### Complaint

The customer says that the Property has been damaged by the company's sewer and that he has experienced poor customer service.

#### Response

The company acknowledges that there have been some customer service failings, but denies that there is evidence that the problems experienced by the customer have been caused by the sewer.

The company has offered compensation of £150.00.

#### Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to certain communications with the customer.

#### Outcome

The company needs to take the following further action: It must pay the customer compensation of £150.00.

The customer must reply by 22/03/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-XX98

**Date of Decision:** 21/02/2021

## Case Outline

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

1. The customer's complaint is that: • The company has allowed sewage to leak onto the Property for nearly two years. • This has damaged the Property and caused him to become ill. • The company has lied to environmental officers and his local M.P.'s office. • The Property smells and a hedge is dying due to infection. • The Property is not draining as it should. • The company has not maintained the local drains. • He has experienced poor customer service and missed appointments. • The company contacted the Consumer Council for Water (CCWater) before it had formally taken up the case. • CCWater has not acted impartially. • He requests that the company clear the sewer, remove contaminated land, remove all its assets from the Property, maintain its assets, apologise for misleading him and lying to him, and pay compensation of £5,000.00. The customer's comments on the company's response are that: • The sewer on the boundary of the Property has been blocked for over two years. • The catchpit is in very poor condition and looks like it is starting to collapse. • A report produced by the company notes that the sewer is blocked downstream. • Videos of the sewer show roots intruding and other problems. • The company told the environmental health officer that the sewer only had surface water in it. • His M.P. stated in a letter that the company said CCWater had concluded the company had done everything required. This is untrue. • His hedge began to die last year. • The area around the hedge smells, and this has been noted by the company's engineers. • Water is not draining from the Property due to the downstream blockage in the sewer. • The catchpit has not been maintained for years and the company has not addressed the issue after it was reported.

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

1. The company's response is that: • It originally attended the Property on 22 January 2019 after being notified by the customer that the chamber outside the Property needed to be cleaned. • After attending, follow-up work was arranged to determine if this was an asset of the company. • The company attended again on 24 January 2019. Work was raised to clear silt and debris from the sewer, which was completed on 21 February 2019, the original attempt being aborted due to the need for traffic management. • The company had also attended on 4 February 2019 after the customer expressed a concern about the effect of water on his driveway. On

this visit the company determined that the issue was not with its sewer, but with private drains that had sunk. • The customer expressed concerns about a manhole outside his garden holding water. • This manhole is a catchpit that was inherited by the company. • Catchpits are designed to hold a certain amount of water as they are usually installed on surface water sewers. • The sewer was changed from a surface water sewer to a combined sewer due to development in the area, the sewer diverting water from a ditch and discharging it into a combined sewer. • The company plans to pipe through the remaining catchpits, as they are working as designed, and this will avoid future odours from combined sewage passing through them. • There is no evidence of a leak from the company's sewers onto the Property. • The company denies lying to environmental officers or the customer's M.P. • The customer has provided no evidence of any kind of infection to his hedge. • Surface water from the Property goes to a private soakaway, which is the customer's responsibility to maintain. • The company maintains drains on a reactive basis, and has responded when issues have been raised by the customer. • The company was unaware of the presence of the catchpits until after the customer's first contact in January 2019. They have now been added to the company's maps and will be piped through and bypassed in the near future. • Other than odours, the catchpit is not causing any escapes or issues that are impacting the customer. • The company has not missed any appointments. Some visits did not go ahead, but these were not visits for which the customer needed to be present. The company acknowledges that it could have communicated better why these visits did not go ahead. • The company followed correct procedures when interacting with CCWater, and has seen no evidence that CCWater has not acted impartially.

### 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.

## How was this decision reached?

1. The customer's primary complaint relates to the condition of the sewer by the Property and the impact he alleges it has had on the Property. The company acknowledges that there were components of the sewer of which it was unaware, as it inherited these components rather than constructing them, but it states that work has been planned to address these components and it denies that there is any evidence that any problems experienced by the Property are due to the sewer.
2. In many disputes, the evidence as to precisely what happened will be to some degree unclear, and the law addresses this uncertainty through what has come to be known as the "balance of probabilities" test. Under this test, the decision-maker must look at the evidence provided by the parties, and decide what is most likely to have happened based on that evidence. Importantly, this decision is only based on the evidence provided by the parties, and so is made with full knowledge that the evidence provided may in some way be misleading, or that there may be additional evidence that would justify a different conclusion. However, as a decision must be made, it must be made based on the evidence actually provided, not on the decision-maker's unsupported speculations regarding what may or may not have happened.
3. In addition, the law requires that disputes be decided in accordance with "burdens", with the customer having the "burden" of producing evidence to support the claim. This means that if the evidence provided by the parties is evenly balanced between the accounts of the two parties, or is otherwise insufficient to justify a conclusion that the customer's account is more likely than not correct, then the customer has failed to meet the burden and the claim cannot succeed. Again, this evaluation must be made based on the evidence actually provided by the parties, not based on unsupported speculation by the decision-maker regarding what may or may not have happened.
4. In the present case, while I accept the customer's statements regarding the problems he has experienced, I find that he has not produced evidence sufficient to make it more likely than not that those problems have been caused by the sewer or by a failure of the company to provide its services to the customer to the standard to be reasonably expected by the average person.
5. The customer emphasises that his hedge is dying, but while evidence has been provided of the condition of the hedge, no evidence has been provided linking that condition to the effects of the sewer. Similarly, while he argues that water is not draining from his property, he has not provided evidence from which it could reasonably be concluded that this is a result of any build-up in the sewer that

prevents drainage, rather than a result of poor functioning of the private soakaways present on the Property.

6. In his comments on the Proposed Decision in this case, the customer objected that the company had not proven that the soakaways were the cause of the drainage problems experienced by the Property, but that this was simply accepted “asa fact” in the Decision. However, as explained above, I make no finding regarding whether the soakaways are or are not the cause of the drainage problems experienced by the Property, precisely because no sufficiently conclusive evidence has been provided on this point. But because the Claimant has the burden of producing evidence to support his claims he must produce evidence that makes it more likely than not that the company’s assets are the cause of the problems that he is experiencing. Where the evidence is insufficient to reach a justified conclusion as to the likely cause of those problems, as in the present case, then the party bringing the claim has not met the burden the law imposes on him, meaning that his claim cannot succeed. This does not constitute a finding that the company’s position is correct, but only a finding that the evidence actually provided by the parties is insufficient to support a finding that the Claimant’s argument is more likely than not correct.

7. The customer also argues that the company has failed to maintain the sewer properly. However, as argued by the company, its legal responsibility is generally to act appropriately on a reactive basis, addressing problems as they are reported. In the present case, I find that the company responded quickly to the customer’s complaint and then acted appropriately, including planning further actions that will address remaining problems with the catchpits.

8. The customer emphasises that catchpits require active maintenance, and argues that they have not been maintained for years. However, the company has satisfactorily established that it was unaware of the presence of the catchpits until the customer raised his complaint, as they were inherited rather than constructed by the company. The company cannot be found to have unreasonably failed to undertake work that it had reasonable grounds for not knowing was required.

9. I find, therefore, on the basis of the evidence provided by the parties, that the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the sewers by the Property.

10. For the reasons given above, the customer’s requests that the company be ordered to clear the sewer, remove contaminated land, remove all its assets from the Property, and maintain its assets do not succeed.

11. The customer also requests that the company apologise for misleading him and lying to him.

12. However, while I accept that some responses initially provided by the company were incorrect, such as that the catchpits only contained surface water, I find on the basis of the evidence provided that these statements were reasonable at the time that they were made, even though they were subsequently proven to be untrue. As a result, I cannot find that the company lied to the customer or that it knowingly or negligently misled him.

13. The customer has also complained about statements made by the company to an environmental health officer and to the customer's M.P.

14. However, while the letter from the environmental health officer states that the company told her that the catchpits only contained surface water, no evidence has been provided on the basis of which I could reasonably conclude that the company knowingly misled the officer in this respect, rather than that the company made a statement on the basis of its genuine belief at that time, which turned out not to be true. If the company did not know that the statement was untrue when it made the statement, it cannot be found to have lied or knowingly misled the officer.

15. The customer also objects that the company told his M.P. that CCWater had found the company had fulfilled its responsibilities, but that this was not true. However, the customer has produced no evidence that this statement was untrue and has specifically requested that evidence from his complaint with CCWater not be considered.

16. The documentation produced by the company includes a letter from CCWater to the company confirming that it did not believe the company had adequately responded to the customer's complaint. However, that letter is then followed by a detailed response from the company that I find adequately addressed the points raised by CCWater. As a result, without direct evidence that CCWater remained unhappy with the company's response to the customer's complaint, I cannot find that the company's statement to the customer's M.P. was more likely than not untrue.

17. For the reasons given above, the customer's request for an apology does not succeed.

18. The customer also requests compensation of £5,000.00 for his distress and for damage to his hedge and contamination of his land.

19. However, I have found that there is inadequate evidence that any damage to the customer's hedge or the Property resulted from the sewer or another failure by

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

20. In addition, while I accept that the customer has experienced distress, I can only award compensation for that distress if it was caused by a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person. The company has acknowledged that there were failings in communication with the customer and I find that the compensation of £150.00 offered by the company is both fair and appropriate for those specific failings. However, as I have not found that there were additional failings by the company, I cannot award additional compensation to the customer for additional distress he has experienced.

21. For the reasons given above, the company must pay the customer compensation of £150.00 for failing to provide its services to the customer to the standard to be reasonably expected by the average person.

### Outcome

1. The company needs to take the following further action: It must pay the customer compensation of £150.00.

### 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.

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.

- 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.

---

**Tony Cole**  
**Adjudicator**