

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX17

Date of Decision: 15/07/2021

#### Party Details

Customer: "The Customer"

Company: "The Company"

#### Complaint

The customer, complains that the company has failed to remedy, monitor or keep him updated about a leak of foul water, which may have come from steps wrongly taken by a third party affecting a storm drain, but which entered his garage and has caused damage. In consequence, this problem certainly persisted from June 2020 to January 2021 and may still be continuing. He says that he was told that the company would review the damage and compensate him when this was sorted out. He asks for the company to pay for the repairs to his garage and bring the situation to an end.

#### Response

The company says that the problem was difficult to resolve as the issue was primarily caused by third parties. It accepts, however, that there were failures in its customer service in that it did not make clear that the customer needed to make an insurance claim for damage to his garage and for a delay in returning to site to investigate continuing leakage. This was due to a breakdown in communications and waiting for further information from the local authority. The company has offered a goodwill payment of £150.00 to recognise service failures and a GSS payment of £40.00 for delay in replying to a letter.

#### Findings

The company has failed to supply its services to the standard that an average customer would reasonably expect. The company is not liable to pay for repairs to the customer's garage but it was very serious that the customer was not clearly advised to make an insurance claim. The company says that it is its policy to give such advice and there is no evidence that this happened before **XX** January 2021, by which time the customer was unable to claim. Moreover, the customer care notes for the

customer's account show a failure to make clear who was responsible and what would or should be done. The customer was not kept updated and the situation was not monitored by the company. Compensation is limited to that for distress and inconvenience, which is aggravated by the fact that the company knew that the customer was complaining of damage to his garage. Fair and reasonable amounts are £300.00 for failure to explain about the need to make an insurance claim plus £40.00 per month for each month when the repairs were overdue.



The company shall pay compensation of £460.00 to the customer.

The customer must reply by 12/08/2021 to accept or reject this decision.

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## Case Outline

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

• The customer contacted the company to notify it of a burst water pipe that is causing damage to his property in June 2021. • Due to the neighboring property being a local council property, some work was required by the Council before the company could start the repairs. “**XX Council**” wrote to the customer on **XX** August 2020 confirming that it had completed the work. • The company says that there were delays due to omission by customer because he did not contact the company but the customer has screen shots from text messages sent to Senior Network Technician, **XX** July and August 2020. By October 2020, she had stopped replying and the customer had to contact customer services again. • He has therefore asked for updates on a regular basis as the issue was getting worse and his garage and the contents were getting damaged. The company said, however, that it would review the damage once the issue was resolved. It did not advise the customer to contact his insurance company to raise a claim for the damage. • Due to this the customer has not been able to claim as he has since changed companies; the old company advises that it was too long ago, and the new company advises that it is a pre-existing issue. • The customer is not happy with the level of service he has received and believes that the company is liable due to the delays and the lack of action. He says that the company has broken its Code of Practice and are liable for the damage. He refers to breach of duty of care by misadvising him, not following on remedial work, failing to keep numerous promises made, delay in accepting the liability of the damage when it was evident from day one and also the amount of time it took to get the repairs done. • The customer wants the company to ensure that all of the issues are resolved as there is thought to still be a leak and to pay compensation for the garage and its contents.

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

• The customer raised a concern in June 2020 about flooding to his garage which is located in a separate block away from his home. The company attended to investigate and found there was an issue with a private pipe on a nearby property. As the property was undergoing building work it was left with “**XX Council**” who were responsible for overseeing the work. The company was later advised that the required repair had been completed and there was still an issue with sewer flooding. • The company accepts that there was a delay in returning to site to investigate due to a breakdown in communications and waiting for further information from “**XX Council**”. • The

company returned in November 2020 to carry out further investigations when it was found there was still an issue on a private pipe which had not been repaired. As the fence line had been moved since the earlier visit, the pipe was now outside the property boundary. In order to resolve this without further delays the company agreed to carry out the repairs on the sewer. • When the company attended on **XX** January 2021 to complete the repair it was found the pipe behind the garages had collapsed – a section of the sewer and two bends were replaced. • The customer contacted the company again to advise there was still an issue with flooding. The company attended and found there was an issue with water getting into his garage - this looked like ground water seeping through the side of the house and ground from the neighbouring property into the garage. • The company advised this should again be raised with the property owner and “**XX Council**”. • The company does not accept liability for any loss or damage due to the flooding which was not entirely from its owned assets. • The company has recognised there have been failures in the customer service “**The Customer**” has received. In recognition, and as a gesture of goodwill, the company has the customer a payment of £150.00 less a Guaranteed Service Standards (GSS) payment of £40.00 made for the late reply to a written complaint. The offer has not been accepted. • The complaint has been reviewed at Stages 1 and 2 of the company’s complaints procedure as well as being reviewed by the Consumer Council for Water (CCW). • The customer has provided no evidence of the damaged items he is claiming for. Also, there is no report, quotation or evidence regarding the remedial work he advised is needed to his garage as a result of flooding.

### 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. 1. I have considered the history of the customer's complaint. In essence, the customer is concerned that over a period of more than 6 months, he experienced a flooding in his garage which was, or was believed to be, sewage escaping from pipework in an area where there was both private and company pipework in close proximity and land owned both privately and by "**XX Council**".

2. The customer complains that there were a number of failures of customer service. Based on the documentation submitted by both parties, I find that the following occurred.

a. On **XX** June 2020, the company inspected following a complaint by the customer about foul water entering his garage. It was found by the company that a likely cause of this was flooding from a storm drain into which a misconnection had been made from a neighbouring property so that foul water from a private pipe entered the storm drain. The neighbouring property was asked not to use any toilets in the property, but it was, I find, foreseeable that this would not occur and on **XX** June 2020, the customer complained that the neighbour was not abiding by the company's instruction. The customer was advised to contact asset protection, but it is not clear that the company took any further action until the customer asked for an update on **XX** June 2020. The file was marked for the customer to be contacted although there is no reference to any such update having been given.

b. On **XX** July 2020, the company visited the site again as a result of the customer's further complaint. The customer complained that he had not been told what going on. It was identified that **XX** was responsible for overseeing this and the customer was told that she would be in touch.

c. On 20 July 2020, the company's notes state that there was an incoming call from the customer. The notes read that the customer: "says damage of this drain is "**The Company**" issue. Misconnection put right. **XX** has confirmed to Customer that this our Asset. Advise from the Council Environment Officer was that the Mis-Connection was completed. Provided "**The Company**" 0800 Number, Option 1, for Customer to raise a new defective Sewer Investigation."

It would therefore appear that at this point, the company was accepting responsibility to bring this situation to an end and was telling the customer so. The note continues that the author would send "Chase E-mail to Self to record this Chase Call". Thereafter, the company has no record in its customer care notes that the company took any steps in respect of the problem. I find that the company was not monitoring the situation to ensure that remedial work was carried out. Subsequent notes suggest that **XX** may have been off work sick at the time but no-one in the customer care team appears to have been aware of this or to

have followed up the problem.

d. The customer has submitted copies of the text messages passing between him and **XX**, in which she confirmed that she was off sick on **XX** July 2020, had returned to work by **XX** July 2020 and was away from work again recovering from an operation in September 2020. The texts say that she had passed on information to colleagues to assist and had been in with liaison with “**The council**” during this time. The company has not put forward an explanation for why it was unaware of the steps being taken by **XX** or why, in her absence, no other person could keep track of the customer’s issue.

e. This has had the consequence that the company’s own customer care notes have no further contact until **XX** October 2020. These account notes say:

“It is apparently sat with “**The Company**” **XX** who customer thinks is off sick, but he has not heard anything about this since August.”

The note ends saying that the relevant team should be chased. The company does not at this stage appear to have any contact with **XX** and there is no evidence that the customer was asked to provide any proof that this had occurred. Notwithstanding this account note, however, at a later point when the customer complained, the company at first alleged that there had been no contact between the customer and the company during the period from July to October 2020. This was inaccurate.

f. It does not appear that anyone from the company updated the customer because on **XX** October 2020, the customer contacted the company again to explain that he had had an ongoing issue for several months. The company acknowledges that the initial chase was sent off on **XX** October but the customer had heard nothing. The note records that the customer was told that he would be contacted in the following week.

g. On **XX** November 2020, the customer raised the issue again. Again, there is no evidence that he had received a response from the company. He explained that he thought that a sewer had collapsed and it may be on their neighbour’s single serving drain. A dangerous sewer investigation was raised. An investigation that day found the sewer to be clear and flowing. At this point, seemingly for the first time since the initial complaint, the company recorded that it was necessary to check that the private misconnection had been resolved. It was discovered on **XX** November 2020 that nothing had been done about the misconnection: the owner had put up a new fence to try to show that the issue was not his. .

h. On **XX** November 2020, the customer contacted the company to inform it that he

had not heard anything and a work order was finally raised on **XX** December 2020.

i. On **XX** December, the customer contacted the company again to enquire what was going on. He said that there was a great deal of confusion about who was responsible.

j. On **XX** December 2020, the customer raised a stage 1 complaint via the Consumer Council for Water. He said that he had rising damp on the walls and the concrete floor of his garage was also developing cracks and getting loose. He thought that the garage was then at a state where it would require extensive work and he asked for the cost of repairs or for the company to arrange for the remedial work to his property along with fixing the pipework which was causing ongoing damage. He said that he wanted “corrective, fair and reasonable resolution” to his complaint.

k. On **XX** January 2021, the company carried out work. The account note states:

“arrived on site and found 100mm surface pipe behind garages had collapsed in concrete causing garages to flood. removed 1 length and 2 bends and replaced with new pipe. concreted joints to prevent water leaking out. and backfilled. camera up stream and found the line goes into customers property and they have broke the pipe installing gutter pipe onto the line and also looks like a bamboo rod sticking out of the lateral they have installed. briefly spoke to a resident that was effected by the water and he his very happy with the works carried out. no further works required”

l. The customer contacted the company again on **XX** January 2021 saying that had not been kept informed and on **XX** January 2021, the company replied, saying that the process had taken longer than expected and that it was “aware **XX** our Catchment Lead for the area made direct contact with you to provide updates on progress when required and to help resolve the issues being experienced”. The company said:

“Once we’ve completed all the work on site, we’ll then be in a position to review the damage caused to the damp on your walls and the cracks in the floor.”

m. In response to the customer’s complaint that the issue was continuing, the company replied on **XX** January 2021 referring to the customer having been updated by **XX** (rather than **XX**) to say that the works had been done. The customer was advised that he would need to contact his own insurer in relation to damage to the garage and contents. This was the first time that this had been suggested, not withstanding that the company explained to CCWater on **XX** March 2021 that it is its policy to advise customers to contact their own insurers. The company has apologised that this was not made clearer to the customer,

*necessary in order to enforce the decision.*  
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whereas the customer says that he was repeatedly told by people to whom he spoke, right up until this point, that the damage would be paid for by the company.

n. The customer responded in a Stage 2 complaint on **XX** January 2021, pointing out among other matters that the company had not taken remedial action until CCWater became involved and repeating his claim for compensation. The company replied on **XX** February 2021 refusing compensation save for a goodwill payment of £100.00..

o. CCWater raised questions with a view to commencing an investigation. In its response, the company acknowledged that it had failed to provide the level of customer service. The offer was increased to £40.00 for a late reply to his email of **XX** December 2020 and £150.00 by way of goodwill payment. The company did not accept that it was liable for the damage to the garage.

3. Against this background, I find that there were a number of areas where the company fell short of the standard that would be expected by an average customer. I find that an average customer faced with a leak of foul water, would reasonably expect the company to take steps to bring the situation to an end or advise him to take steps whereby he could stop the problem. The company did not do this clearly and appeared to say that it would rectify the leak without doing so, with the consequence that the matter was allowed to drift on for a 6-month period. The matters that I find an average customer would reasonably have expected the company to address, but which I find the company did not manage to the expected standard included:

- a. Failing to make clear to the customer who was responsible for remedying the sewerage leak and in what circumstances;
- b. Failing persistently to keep the customer updated as to progress;
- c. Allowing the matter to drift in circumstances when both work and updates had been promised;
- d. Permitting the customer to liaise for an extended period with an employee who was off sick, with no monitoring of this situation;
- e. Failing to give advice in accordance with the company's policy to the customer as to how he could protect his financial position by making an insurance claim and subsequently (in the Stage 1 response) informing him that the company would pay for loss and damage. (The customer says that he had been told this previously, but there is no clear supporting evidence of this.)

4. I find that the customer has shown that he is entitled to a remedy. The customer refers to two areas where he would like a remedy. He wants the company to pay for the repairs to his garage and to "resolve" matters in the sense that the company is required to achieve a dry garage.

5. As for the garage repairs, the customer says that the walls now have diagonal structural cracks and rising damp of about 1m-1.5m from the ground up. Although initially the customer did not submitted supporting evidence as to the probable cause of this damage or as to the likely cost of repairs or the costs that have already been incurred by him (for which he says he does not have receipts) he has now submitted a report from **XX** Construction Ltd which shows that the likely cost of the repairs is more than £10,000.00 including VAT. This information was supplied belatedly by the customer outside the period within which replies should have been made in response to the Proposed Decision. The WATRS Scheme rules state:

“5.5.3...The customer may highlight factual inaccuracies and errors in law in the Preliminary Decision, as well as submit additional evidence relating to points already raised in the case. The customer cannot introduce any new complaints at this stage. The company may only highlight factual inaccuracies and/or errors in law and/or instances where the adjudicator has acted outside the powers granted under the Rules.

5.5.4 Any comments made by the parties on the content of the Preliminary Decision (including any additional evidence submitted by the customer) will be forwarded to the adjudicator, who will have the discretion to take such comments (and additional evidence) into account. The adjudicator has the power to make any amendments he or she considers appropriate to the Preliminary Decision before finalising it as the Decision.”

6. The report also suggests that the cause of the cracking is “probably due to water leak from the pipe running parallel with the garage”. However, the author of the report also records that they were asked to look at the question of structural condition of the property and remedial works needed, not the cause of the damage. The company has not had an opportunity to comment on this document and I am not satisfied that it would be fair to the company to permit the introduction of this new evidence as to the cause of damage at this stage.

7. Moreover, I note in particular that the company cannot be found liable by an adjudication scheme such as WATRS for the escape of foul water from its assets. This is because oversight of the company’s liability to maintain and repair the sewerage is the responsibility of Ofwat. This is decided by case law. See **XX v XX** ([2003] UKHL 66). 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. This position is confirmed by rule 3.5 of the Scheme rules which prohibit consideration of any matters over which Ofwat has powers to determine an outcome.

8. Furthermore, if as the company says, the leak was on a private pipe, I am not

satisfied that the customer has proved that the company fell below the expected standard in respect of the delay in carrying out a repair to that pipe. This is because, in particular, the customer has not shown that the company was under a duty to carry out the repair which was on private land. The company says that it was enabled to do the work only because the neighbouring fence was moved and that in consequence:

“the pipe was now outside the property boundary. In order to resolve this without further delays **“The Company”** agreed to carry out the repairs on the sewer. When **“The Company”** attended on **XX** January 2021 to complete the repair it was found the pipe behind the garages had collapsed – a section of the sewer and two bends were replaced”.

9. Although the customer denies that the fence was moved, I find that he has not shown that the company has always been under an obligation to repair the pipe.

10. I am also mindful that the responsibility to insure his property against damage and to make a claim on an extant insurance policy was that of the customer and not of the company. Although the customer says that he was repeatedly told to wait until the problem had been resolved and then the question of compensation would be assessed, there is no clear evidence of this until **XX** January 2021, by which time the cause of the problem had been addressed.

11. I do not find therefore that the customer has proved that the company is liable for the costs of repair of the customer’s garage, although I do accept that the failure to give appropriate advice in accordance with the company’s stated policy about the need to make an insurance claim, contributed substantially to the customer’s distress and inconvenience and may have caused financial loss.

12. Finally, although the customer says that the leak of foul water is continuing, I find that there is no evidence that this problem is ongoing. While I have considerable empathy with the customer as to his experience, the only evidence available to me is that the company has carried out testing and concluded that the customer is affected by penetration of ground water from neighbouring land. The customer appears now to accept this, because in his response to the company’s defence, he says that the cracks in his garage are permitting ground water to enter.

13. I turn now to the question of compensation for distress and inconvenience. I find, as explained above, that there are a significant number of ways in which the company failed to meet the standard that would reasonably be expected of it and they fall into two areas, first the company’s failure to advise the customer to make a claim on his insurance policy which the company acknowledges that it would reasonably have been expected to do, and secondly, the company’s failure to resolve, monitor or update the customer for a lengthy period.



14. As for the company's failure to advise the customer of the need to make an insurance claim and so permitting him to believe that this was an expenditure that the company would or might meet, I find that this was very serious, and was aggravated by the fact that throughout the 6-month period, the customer made the company aware of the difficulties that he was experiencing and the concerns he had about damage to his garage. As indicated above, however, the primary responsibility for raising a claim on an insurance policy was that of the customer. I find that a fair and reasonable sum by way of compensation for the company's omission in reminding the customer of his rights to make an insurance claim is £300.00.

15. In addition, I find that the company's failure to take the steps that would reasonably be expected to monitor, resolve or update the customer on progress was significant. I find that an average customer would reasonably have expected this problem to have been resolved within six weeks to two months from the date when "The Council" first advised that its work had been completed, namely on XX July 2020. I find, therefore that it is fair and reasonable to assess compensation over a 4-month period. The rate at which I find it is reasonable to assess compensation is £40.00 per month, giving a further payment of £160.00.

16. This gives a total award of £460.00 by way of compensation for inconvenience.

17. For the avoidance of doubt, I do not direct that the company shall deduct the sum of £40.00 already credited to the customer for the late response to the customer's letter of XX December 2020 as that was a separate issue.

## Outcome

1. The company needs to make a payment to the customer of £460.00.

## 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.

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**Claire Andrews**  
**Adjudicator**