

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X435

Date of Decision: 07/07/2021

Party Details

Customer:

Company:

Complaint

The customers state that following heavy rain fall on 17 June 2020, the manhole chamber under their driveway flooded. CCTV showed that the flood was caused by the presence of silt and roots in the sewer, which damaged the pavement that became uneven. After nearly a year and many contacts from the customers, the matter remained unresolved. The customers seek the repair of the sewer, an apology, and £3,000.00 in compensation to pay towards the cost of repairing the payment, for the service failings and for the inconvenience caused.

Response

The company states that following challenges in accessing the pipes from the neighbour's property, it completed the repairs on 4 June 2021. The company states that it is not liable for negligence in respect of the flooding, but it has apologised to the customer, and it recognised service failures. The company has offered a £250.00 goodwill payment, but this amount was rejected by the customer.

Findings

The company is required to compensate the customer when there is a breach of duty causing a loss to the customers. I find that the company was not in breach of duty when the flood occurred. However, taking nearly a year to carry out the repairs is longer than what would be reasonably expected in the industry. I note that the company has admitted to failures in its services. In view of that, I direct the company to apologise to the customers and to compensate them with £500.00 for the inconvenience caused.

Outcome

I direct the company to apologise to the customers and to compensate them with £500.00 for the inconvenienced caused.

The customer must reply by 04/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- On 17 June 2020 heavy rain resulted in surface water pipe under their driveway to flood the manhole. This caused the block paving to sink and becoming uneven.
- CCTV footage showed that the cause of the flood was silt and roots blocking the pipes.
- The company agreed that it needed to repair the pipe, but after many communications the pipe has yet to be repaired nearly a year after being reported.
- They request the repair of the sewer, an apology, and £3,000.00 in compensation as a contribution to the cost of fixing their driveway, for the service failures, and for the inconvenience caused.

The company's response is that:

- The repair of the surface water pipe was completed on 4 June 2021.
- It recognised missed appointments and service failings, for which it has apologised and offered a £250.00 goodwill payment.
- The House of Lords decision ruled that water companies are not required to compensate for damages occurring because of capacity issues.
- It is not required to pay for the damage caused to the driveway, which ought to be covered by the customers' house insurance.

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 customers experienced flooding in their driveway because of heaving rain on 17 June 2020. The customers contracted a private contractor who used CCTV to investigate the problem and identified silt and branches which contributed to blocking the surface water pipe under their driveway.
2. The customers contacted the company on 19 of June 2020 and reported the flood in their driveway. The company notes that the customer should have notified them on the day of the flooding, so that that the origin of the problem could be investigated on that day. However, I note that after the notification two days later of the flooding, the company attended the property on 10 July 2020, which was 21 days after the notification made by the customer.
3. The company could not cleanse the pipe on the 10 July 2020, so it returned four days later to flush the silt with a power hose and conduct a CCTV survey. Once the company gained access to the manhole, the CCTV showed that it was necessary to remove roots and re-line the pipes, for which they needed access via the neighbour's property. Eventually, after many communications and a number of visits from the contractors, the lining work was completed on 4 of June 2021, which was after this claim was filed by the customers to WATRS. Therefore, I find that the repairs requested by the customers have already been completed.
4. The customers state that their home insurance would only pay for part of the cost of repairing their driveway. The customer has attached a quote for the repair of the driveway, dated on 29 June 2020, for £8,154.00. I am mindful that in an email sent by CCW it states that the customers were seeking new quotes for the value of up to £6,000.00. On that email, it is noted that the customers state that their insurance has already paid them £3,000, and that they are looking for the wholesaler to pay the remaining £3,000.00.
5. The company states that although there was some damage to the pipe, and lining work was required, the cause of the flooding was the high rainfall. The company states that there was not negligence found on the company's side even though the flooding was caused by having two 225mm surface water sewers connecting to a single 225mm sewer downstream. The company states that the sewer was fit for purpose and observes that there were not previous reported flooding incidents in the property.
6. The company states that the company cannot be held responsible for exceptional high rainfall and capacity issues of the sewer network system. The company refers to the House of Lords decision in *Marcic v Thames Waters* (2003) where it was held that under the Water Industry Act 1991 water companies cannot

be held liable to pay compensation when the damage was caused by capacity issues as long as there is no negligence on the part of the company. This is because when the sewers were built, they were fit for purpose, and therefore the company cannot be held liable in negligence in respect to the damage caused. I find that there is no evidence to sustain that the company breached their duty of care to the customer with regards to the circumstances leading to the flooding given that there were no previous reported cases in the property. In view of that, I find that the company is not required to compensate the customer for the damage caused by the flooding in their driveway.

7. However, I note that the company has made mistakes that led to delays in the repair of the pipe. For instance, on 22 July 2020, the company was unable to authorise work due to the poor quality of CCTV provided by their contractor. I also note the company admitted that there was confusion with the address that their crews needed to attend as well as access issues at the customer's neighbour's property and missed appointments. As a result, the customer had to contact the company many times about these issues.

8. The company acknowledged that there has been failures in the customer services provided to the customers, and after receiving the complaint from the Consumer Council for Water (CCW) on 27 April 2021 it offered the customers a goodwill offer of £250.00, which was not accepted by the customer as they considered it insufficient. I note that the customer has requested £3,000.00 in compensation as a contribution to the cost of fixing their driveway, for the service failures, and for the inconvenience caused. However, it has not broken down their claim for each of the headings.

9. With regards to the amount in compensation for stress and inconvenience caused by the company's service failings, I take into consideration the non-binding guidelines used in the WATRS scheme. The guidelines have four tiers, which reflect the different levels of inconvenience and distress. The guidelines, which are available online on the WATRS website are capped at £2,500.00. The scale recommends for cases falling within Tier 1 compensation up to the value of £100.00; for Tier 2 between £100.00 and £500.00; for Tier 3 between £500.00 and £1,500.00; and for Tier 4 between £1,500.00 and £2,500.00. I am mindful that the company had difficulties in accessing the pipes and that it kept the customers updated, however, in view of the very long time it took to resolve the issue and the service failures, I find that the customer ought to be compensated in accordance with the top range of Tier 2. Accordingly, I direct the company to compensate the customers with £500.00.

10. Finally, the customer requests an apology for the poor services. I am mindful that the company apologised to the customer in the defence, but in view of the

above findings, I direct the company to issue a written apology to the customer

Outcome

1. I direct the company to apologise to the customers and to compensate them with £500.00 for the inconvenienced caused.

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.

Pablo Cortes
Adjudicator