

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X438

Date of Decision: 26/07/2021

Party Details

Customer:

Company:

Complaint

The customer's claim relates to a public sewer that runs through her garden. The customer has problems with a river that causes flooding in her garden and is eroding its banks, and has asked the company to take responsibility for the sewerage pipe and to carry out works to reinforce it. The company has been slow to respond and ultimately refused. The customer asks for an apology and for an order that the company carry out these works.

Response

The company contests the customer's claim. It explains that it will not carry out the work itself, as it has surveyed the sewer and has not found any defects or concerns. It does not consider that it was slow to respond to the customer's request, but it says that it has apologised to the customer for any delay caused. It does not consider that it should be liable for compensation or to carry out the works she requests.

Findings

I find that, given the urgency of the situation caused by the erosion of the customer's garden, the company did not respond to the customer's queries within a reasonable time. It took some months to provide her with a clear explanation of who was responsible for any works to the land surrounding the pipe, and to provide a quotation for the cost of temporarily removing the pipe to allow the customer to reinforce her garden. To this extent I find that the company has been responsible for a service failing which has caused the customer distress and inconvenience. However, I find that the company cannot be held liable for the cost of the works themselves.

If the customer accepts this decision, the company must, within 20 working

Outcome

days of receipt of the acceptance, pay the customer the sum of £100.

The customer must reply by 02/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

The customer's claim relates to a sewerage pipe that runs through her garden. The customer has problems with a river that causes flooding in her garden and is eroding its banks. She wishes to carry out works to reinforce the river bank and thus contacted the company in January 2020 to find out who is responsible for the pipe. She says that the company initially said that the pipe was not its responsibility, but eventually accepted that it was responsible for the pipe. The customer says that the delays caused her prejudice because the reinforcement works can only be done between April and October due to the weather, and feels that the company's actions caused her to miss the window of opportunity for the works. The customer has referred to section 185 of the Water Industry Act 1991 which she says means that the company is required to move the sewerage pipe to allow her to carry out the works. The company has now provided the customer with a quotation for moving the sewerage pipes, but the customer feels that the company should do these works for free. In her application form the customer requested an apology from the company, but in her comments on the company's defence she made clear that she is also asking for the company to be required to carry out works on the sewerage pipe, as well as compensation.

The company's response is that:

The company contests the customer's claim. The company says that it has apologised to the customer for any delay that it might have caused, but it does not believe that it should be responsible for paying compensation or for carrying out the works to the sewerage pipe on the customer's property for free. The company explains that after the customer contacted it on 29 January 2020, it visited the customer's property on 30 January 2020 and confirmed that the pipe was a public sewer and so fell within its responsibility. The customer contacted the company again in February 2020 to raise concerns about the stability of the sewerage pipe, given that the river bank was eroding. The company explained that it was not responsible for the river bank, which was the responsibility of REDACTED or of the customer herself. The company explained that if the customer wanted to carry out works to reinforce the riverbank or relocate the sewer, she would have to do so at her own cost and would have to liaise with the company's Developer Services Team to obtain permission. The company provided the customer with a quotation for the works to move the sewerage pipe in August 2020. It explains that it will not carry out the work itself, as it has

surveyed the sewer and has not found any defects or concerns. It explains that it is the riverbank that needs to be rectified and not the public sewer, and it is not responsible for this. It believes that it has replied to the customer in a responsive and timely way although it repeats its apology for any delay.

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 has complained that the company has been slow in dealing with her requests regarding the sewerage pipe running through her garden, and also says that the company should pay for the costs of works to this sewerage pipe.
2. I have therefore considered the history of the interactions between the customer and the company, as it appears from the CCW papers and the "job notes" attached to the company's defence.
3. I understand that the customer contacted the company on 29 January 2020 to ask who was responsible for the pipe running through her garden. On 30 January 2020 the company carried out a dye test that showed that it was connected to the customer's sewerage chamber. However, it is not clear that the company told the customer at this stage that the pipe was a public sewer under its responsibility.
4. The customer then contacted the company again in February 2020 to say that she was concerned about the stability of the sewer. The company visited her property and inspected the sewer, and concluded on 21 February 2020 that although the riverbank was eroding, the sewer was fine. Once again, it is not clear

from the company's job notes what was communicated to the customer about who was responsible for the sewer and for the riverbank.

5. In May 2020, the customer contacted the company again to discuss reinforcement works on the sewer. She raised the possibility that the company might be responsible for these works under the Water Industry Act 1991. On 2 June 2020 and again on 10 June 2020, the company contacted the customer and explained that it would not carry out works on the sewerage pipe as it was not necessary to do so.

6. On 30 June 2020 the company sent the customer an email attaching a letter, which I understand to be a letter dated 12 June 2020. From the papers it seems there is some dispute as to whether the letter was sent at an earlier date. In any event it appears that the customer did not receive it before 30 June 2020. In the letter, the company explained that it had surveyed the sewer and found that the pipework and supporting structures were in acceptable condition. As a result, it would not move the pipe but it advised the customer to contact its Developer Services department if she herself proposed to carry out work near the pipe.

7. I therefore find although the customer first contacted the company in January 2020 to query the situation about the pipe, and stated in February 2020 that she was worried about the stability of the pipe, the company took until the end of June 2020 to tell the customer clearly and in writing that it considered that the pipe was in a satisfactory condition and that the company therefore did not intend to take steps to reinforce it or the riverbank supporting it. Given that the company was aware that the customer's garden was flooding causing erosion to the riverbank, I find that the company should have been aware that there was an urgency to the situation. The customer needed to know rapidly where she stood regarding the company's intentions to reinforce the pipe or the surrounding ground, in order to make her own plans to deal with the problem. I find that the company delayed in responding to the customer with a clear statement which allowed the customer to understand the company's position and decide what steps she herself should take.

8. The customer replied to the company's letter on the same day, 30 June 2020, to say that she believed that under section 185 of the Water Industry Act 1991, the company was required to move the pipe out of the way in order to allow her to reinforce the land underneath it. She wrote again on 3 July 2020 chasing a response to her previous email. She then wrote again on 26 July 2020, saying that she had still not received a reply, despite the company's promise on the telephone to respond by 24 July 2020. She pointed out again that there was a short window of opportunity for the works to be done, which was drawing to a close.

9. The company replied on 4 August 2020. It explained that it would be able to

temporarily remove the work so that works could be done, and that it would provide a quote for how much this would cost the customer. It also explained that section 185 of the Water Industry Act 1991 does indeed provide for the alteration or diversion of public sewers to allow works to be carried out on a customer's land, but that this could only be done with a legal agreement in place to ensure that the works are completed satisfactorily, and that the costs of the works can be recovered from the customer. On 16 September 2020, the company provided the customer with a quote of £2954.13 for works to temporarily stopper and move the pipe.

10. There were then some further exchanges between the customer and the company, in which the customer said that she was not happy with this response and considered that the company should carry out the works at its own cost.

11. On 2 October 2020, the company wrote to the customer again to explain the situation. It said that it had carried out a survey of the pipe and found that both the pipe and its supports were in acceptable condition and did not pose a risk to customers or to the environment. As a result, it said that there was no responsibility on the company to carry out any repair or reinforcement works. If the customer wanted to carry out such works, she would be responsible for the costs. The company also pointed out that the customer would need a flood risk assessment permit from REDACTED before she started the works.

12. I find that once again, the company took longer than was reasonable to respond to the customer's request for clarification about the application of section 185 of the Water Industry Act 1991 and to provide a quotation for works to temporarily move the pipe, as would be necessary in order to allow the customer to reinforce the riverbank in her garden. As set out above, the company should have been aware that there was an element of urgency, given the ongoing erosion of the customer's garden. I therefore find that the company's service, in this respect, fell below the standard reasonably to be expected by the average person.

13. I do not accept the customer's argument that the company's actions caused her to miss the "window of opportunity" for carrying out the works (which could only be done between April and October due to the weather), because the customer will also need a permit from REDACTED to carry out the works. The need to obtain this permit would probably have meant that she would have missed the window in 2020 in any event.

14. However, I do find that the company's slow response meant that the customer was not in a position to understand where she stood for some considerable time. It is clear from the papers before me that the company's slow response caused the customer distress and inconvenience. Even if the customer has not expressly

asked for compensation for distress and inconvenience, under Rule 6.6 of the Rules I have the discretion to award more compensation than has been claimed by the customer. I therefore order that the company should pay the customer £100 for distress and inconvenience.

15. I note that the company has already apologised to the customer for any inconvenience that the delay has caused her, so I do not make any further order in this regard.

16. I note that the customer has continued to argue that the company should be liable for the cost of carrying out the works to the pipe in her garden, and/or that I should order the company to carry out these works at their own cost. However, I note that the company has carried out a survey of the pipe and its supporting structures and concluded that they are in an adequate condition. I can see nothing in the papers to suggest that this conclusion is incorrect. As I understand it, the customer's position is rather that the riverbank surrounding the pipe is in a poor condition and is eroding. I note that although the company is responsible for maintaining the pipe, which is a public sewer, it is not responsible for the surrounding riverbank, which is on the customer's land. The company was therefore entitled to reach the conclusion that it would not carry out any works on the pipe at its own cost.

17. Finally, I address the customer's arguments about section 185 of the Water Industry Act 1991. The customer considers that under this section, the company should be required to carry out works to move the pipe at its own cost.

18. While section 185 does impose on the company a duty to move pipes that are on private land where this is reasonably necessary to allow a private landowner to carry out works on that landowner's property, I note that this is subject to section 185(5) which says that where the company carries out works, it "shall be entitled to recover any expenses reasonably incurred in carrying out those works". I therefore do not accept the customer's argument that the company can be required to move the pipe at its own cost. If it moves the pipe in order to allow the customer to carry out her reinforcement works, the company is entitled to charge the customer the reasonable expenses it incurs.

19. In her comments on the Preliminary Decision, the customer complains that the Preliminary Decision does not take into account the plans that she had ready to submit to REDACTED's permitting department. I should clarify that my decision is based on the papers that have been submitted to me by the customer, the company, and the Consumer Council for Water. I have taken all of these documents into account, although I was unable to take into account documents that were not provided to me.

necessary in order to enforce the decision.
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20. However, under Rule 5.5.3 of the Rules, following the Preliminary Decision, the customer may submit additional evidence relating to points already raised in the case. The customer has now submitted a sketch by her contractor, dated 3 June 2020, which I understand shows REDACTED plans for how the riverbank could be reinforced. The customer says that she was ready to send this to REDACTED in order to apply for a permit for the works in July, but that had to wait for the company's input in order to submit her application, because she needed to be able to show that the company's pipe could be moved. The customer therefore argues that the company's delays did in fact cause her to miss the window for the works to be carried out (which, as explained above, ran from April to October).

21. The customer has also submitted some additional photographs, showing the erosion under the company's pipe. She says that the situation has got worse in recent years because of the warmer, wetter winters.

22. I have considered the documents carefully but I have concluded that, on balance, they do not change my decision. As explained above, I consider that the company has been responsible for some delays in the way that they handled the customer's queries. I should underline, however, that the company was entitled to take a certain amount of time to deal with the customer's requests and to provide her with a costing for the works she had requested. On the papers before me, I do not have enough information to be sure that the delay by the company in responding to the customer caused the customer to miss the window for her works, which closed in October. The customer has not provided me with information about the permit application that she planned to make to REDACTED, sufficient to show that it was ready to be submitted to REDACTED but was held up due to the company's delays. In addition, even if she had made her application to REDACTED for a permit in July, I do not know how long REDACTED would have taken to deal with her application.

23. In any event, I do not consider that the documents submitted by the customer change my decision that the company cannot be required to do the works required by the customer, for free.

24. I therefore award the customer £100 for inconvenience, but I find that there are no grounds to award any further remedy to the customer.

Outcome

1. If the customer accepts this decision, the company must, within 20 working days of receipt of the acceptance, pay the customer the sum of £100.

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.

Natasha Peter
Adjudicator