

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X425

Date of Decision: 15/08/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer says that the company has failed to take responsibility for the impact on the Property of problems with its pipework.

He seeks an apology and unspecified compensation.

#### Response

The company denies that the remedies requested are appropriate, as it did not act negligently.

The customer has received goodwill gestures of £130.00.

#### 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 its response to evidence of a problem with its pipework.

#### Outcome

The company needs to take the following further action: It must apologise to the customer for failing to respond appropriately when presented with evidence that there was a problem with its pipework, and pay compensation of £200.00.

The customer must reply by 14/09/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X425

**Date of Decision:** 15/08/2021

## Case Outline

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

The customer's complaint is that:

- In June/July 2020, the customer experienced a blocked drain at the Property.
- He contacted the company, but the company insisted it was a private issue.
- The company ultimately inspected its own pipework on 17 July 2020 and found a blockage.
- Removal of the blockage on the company's pipework resolved the problems being experienced with the customer's pipework.
- The company nonetheless insists that the customer's problems were caused by drainage rods in his pipework.
- The customer requests an apology and unspecified compensation. The customer's comments on the company's response are that:
- His pipework showed no signs of defect prior to June 2020.
- The cause of the defect was standing water resulting from the problem with the company's pipework.
- The single drainage rod found in his pipework cannot have been the cause, as it was downstream of the blockage.
- Both tenants and the company's staff witnessed that when the problem with the company's pipework was resolved, the customer's pipework immediately began flowing freely.
- He suggests that the most likely cause of the March 2021 blockage, given the material that was removed, was the July/August 2020 work undertaken by the company.

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

The company's response is that:

- The customer's neighbour made contact with the company on 29 June 2020 due to flooding in their basement.
- The company attended that day and confirmed that the flooding was in the customer's private pipework. The customer was notified.
- The company attended again that evening to perform a CCTV survey of the customer's private pipework. Problems with the customer's private pipework were identified.
- The customer made contact on 2 July 2020 to dispute that his private pipework was responsible for the seepage into his neighbour's property.
- The company attended that day, but could not access the Property.
- When contacted, the customer requested that a CCTV survey be performed of his private pipework and the location of the interceptor chamber identified.
- This required a different crew and so the visit was rescheduled.
- The company attended on 3 July 2020, clearing a blockage on the customer's private pipework. Use of a high pressure water jet resulted in the neighbour's basement being flooded, confirming the existence of a defect in the customer's private pipework.
- After the arrival of a new crew, further investigation was undertaken, with drainage rods being identified stuck in the interceptor chamber.
- The

company attended again on 6 July 2020 and pumped water from the customer's manhole. Defects with the interceptor chamber, including the presence of drainage rods, were confirmed. • The interceptor chamber was confirmed to be located inside the front door of the Property, confirming that it was the customer's responsibility. • The customer made contact on 9 July 2020 and asked the company to attend and assist his contractor. This request was not prioritised as it related to private pipework. • The company spoke with the customer's son on 10 July 2020, confirming that the defects found were on the customer's private pipework, so were the customer's responsibility to resolve. • The customer made contact on 11 July 2020, to state that his contractors had identified a blockage downstream from the interceptor chamber, in the company's pipework. • The company attended that day, to clear the blockage from the customer's interceptor chamber, but it was unable to do so. • Another crew attended that evening and pumped out the customer's interceptor chamber. A potential defect was identified downstream, but as inadequate access had been created to the interceptor chamber, further investigation was not possible. • The customer made contact on 14 July 2020 to request that the company assist his private contractor. • The company attended the Property on 17 July 2020 to pump out the interceptor chamber, which had now been fully exposed. This allowed inspection of the company's own pipework. • A problem with the company's pipework was noted and permits for the required work were requested from the local authority. • This problem is located 7-8 meters from the Property, and 3 meters lower than the defective interceptor chamber, so the company argues that it cannot have been the cause of the problems experienced by the customer. • The repair was completed by 10 August 2020. • On 31 July 2020 it was confirmed that the problem with the company's pipework arose from the failure of a previous lining patch. • On 16 March 2020, further flooding was reported in the basement of a neighbour of the customer. The company cleared the blockage as a gesture of goodwill. • The customer has received goodwill gestures totalling £130.00. • The company has offered to perform dye testing on the customer's drainage to rule it out as the cause of seepage into his neighbour's basement, but this offer has not been accepted. • The company denies that the claimed remedies are owed.

### 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. In REDACTED held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
2. In the words of the court, “The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise.”
3. The Court of Appeal subsequently reiterated in REDACTED, that the “Marcic principle” applies broadly to exclude claims based on a water company’s performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
4. The consequence of the House of Lords’ ruling in REDACTED, then, as interpreted by the REDACTED, is that the customer’s claim can only succeed if the company has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company’s operation of its business would not suffice.
5. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence. To illustrate, if the argument was that the company was negligent in not inspecting its sewers more regularly, this raises regulatory considerations and so in accordance with the Marcic principle such claims must be addressed to Ofwat and cannot be resolved through WATRS. On the other hand, if the claim was that the company undertook an inspection, but did so negligently and missed a problem that should have been noted, this raises a question of standard negligence, and so can be resolved through WATRS.
6. In the present case, the company has presented a detailed narrative of its response to the problems experienced with the customer’s pipework, supported by evidence, and on the basis of the evidence provided I find that in most respects the

company has not been negligent. It responded quickly to the report of flooding and undertook reasonable investigations. The customer emphasises that there was a delay in identifying a problem with its own pipework, however given the problems identified by the company with the customer's pipework, I find that the company acted reasonably in attributing responsibility to the customer's pipework. In essence, problems with the customer's pipework masked the problem with the company's pipework, so that the company was only presented with reliable evidence of a problem with its own pipework after work was completed by the customer.

7. The customer has argued that the company relied on a theory of the cause of the problems in his pipework that was not reasonable, due to the location of the drainage rod in his pipework compared with the location of the flooded interceptor chamber. However, the notes from the company's engineers expressly refer to rods in the interceptor chamber itself, and no evidence has been supplied that would justify a conclusion that this observation was negligent.

8. The customer ultimately notified the company that his private contractor had identified a possible problem with the company's pipework on 11 July 2020, and I find that the company initially responded appropriately to this notification, sending engineers the same day.

9. However, when the company's engineers identified evidence of a problem with the company's pipework, but concluded that further investigation was not possible due to the size of the opening created by the customer, no evidence has been provided that the company offered its assistance to the customer in enlarging the opening, that the customer refused to allow the necessary work to be performed, or that the company followed up with the customer to confirm when the required work had been done.

10. If the evidence still indicated that the problem was exclusively with the customer's private pipework, then the company's approach would have been justified. However, at this time the company had evidence, produced by its own engineers, that indicated a problem with its own pipework. I find that it constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person not to have actively investigated the evidence it had received of a problem with its own pipework.

11. Nonetheless, I find that once the company returned to the Property, on 17 July 2020, it acted appropriately in its investigation and in its resolution of the problem identified with its pipework.

12. The customer has emphasised his belief that any problems with his own

pipework were caused by the problem with the company's own pipework. However, as explained above, due to the special liability regime applicable to water companies, even if this were accepted it would not make the company liable to the customer. The company must be found to have been negligent with respect to the cause of the problem or with respect to the actions it took once it was reasonably on notice of the problem, and no evidence has been provided that the company was or should have been on notice of the problem, or that the problem occurred because of negligent work previously undertaken by the company. As a result, even if the customer's argument on this issue were accepted, his claim in this respect still could not succeed.

13. Nonetheless, I have found that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in the period 11-17 July 2020. The customer has requested an apology, and given the efforts the customer had made to address the issue with his pipework and generate evidence of a problem with the company's pipework, I find that an apology would be appropriate.

14. The customer has also requested compensation, and in consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £200.00. This amount reflects the genuine distress that I accept the customer experienced at the company's inaction, as reflected in the evidence of his 14 July 2020 call to the company, but also that there is no evidence that the relatively short delay in question caused direct harm.

15. For the reasons given above, the company must apologise to the customer for failing to respond appropriately when presented with evidence that there was a problem with its pipework, and pay compensation of £200.00.

### Outcome

1. The company needs to take the following further actions: It must apologise to the customer for failing to respond appropriately when presented with evidence that there was a problem with its pipework, and pay compensation of £200.00.

### 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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**Tony Cole**  
**Adjudicator**