

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X619

Date of Final Decision: 3 November 2021

#### Party Details

Customer:

Company:

#### Complaint

The customer claims that the company has not maintained or accepted responsibility for the sewer at his property and has not sufficiently investigated the issue. The customer is seeking the company to maintain and take responsibility for the sewer and maintain updated and accurate sewer records.

#### Response

The company says it has conducted sufficient investigations to confirm that the customer's property is not connected to the public sewer network. The 'sewer' the customer has highlighted is, in fact, a private overflow from the customer's septic tank, which discharges to a culvert, then into a watercourse. The customers' responsibility is to maintain and repair their private pipework, which includes septic tanks and any overflow drainage. The company has not made any offers of settlement.

#### Findings

I am satisfied the evidence does not prove the company failed to provide its services to the standard to be reasonably expected by the average person concerning the septic tank and its overflow. Furthermore, I am satisfied there have been no failings regarding customer service for which the customer has not already been adequately compensated.

#### Outcome

The company needs to take no further action.

The customer must reply by 1 December 2021 to accept or reject this decision

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# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X619

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## Case Outline

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

- The company has not maintained or accepted responsibility for the sewer at his property and has not sufficiently investigated the issue.
- The customer is seeking the company to maintain and accept responsibility for the sewer and maintain updated and accurate sewer records.

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

- It has conducted sufficient investigations to confirm that the customer's property is not connected to the public sewer network.
- The 'sewer' the customer has highlighted is, in fact, a private overflow from the customer's septic tank, which discharges to a culvert, then into a watercourse.
- The customer's responsibility is to maintain and repair their private pipework, which includes septic tanks and any overflow drainage.

## How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or another disadvantage as a result of a failure 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

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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 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 dispute centres on whether the customer's property is connected to the public sewer network and whether the customer's septic tank overflow is to be considered a "sewer" for the purposes of the Transfer of Private Sewers Regulations 2011.
2. The company must meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a leak report, the company needs to thoroughly investigate if the company's pipework is to blame and if repairs are required, make such repairs to prevent further leaks.
3. The company also has certain obligations regarding its customer services as set out in OFWAT Guaranteed Standards Scheme and its own Customer Guarantee Scheme (CGS).
4. From the evidence the customer and the company put forward, I understand that the customer contacted the company in July 2019 as he wanted to understand the sewer and pipework responsibility for his property.
5. The customer believed that as his property was built in 1931 and shared a single sewer outfall with his immediate neighbour, the 'sewer' would have been legally adopted by local authorities under the Public Health Act 1936. Accordingly, the company should be responsible for the maintenance and upkeep of the sewer.
6. The evidence shows that the company then undertook various investigations into the pipework surrounding the customer's property. After various dye tests and CCTV investigations, it was established that the customer's property had its own septic tank from which an overflow connected to a private highway culvert. The culvert then joined a local watercourse and was not connected to the company's sewer pipework network. Therefore, the overflow could not be considered a sewer as it did not connect to the public sewer system and as an overflow performs a different function to a sewer which is in daily use.

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7. The customer disputed this and remained dissatisfied with how the company had handled his complaint and, in November 2020, progressed his complaint to CCWater to resolve.
8. I understand that during the company's dialogue with CCWater, it was explained that pipework that connects to a private treatment works, connect to a septic tank, or carry water directly to a watercourse were not transferred under the Transfer of Private Sewers Regulations 2011. This is because none of the properties are connected to the public sewerage system, as with the customer's property. The overflow pipe was not an adopted sewer because it does not and never has been connected to a public sewer. The customer remained unhappy and, on 6 September 2021, commenced the WATRS adjudication process.
9. As to whether the customer's property is connected to the public sewer network and whether the customer's septic tank overflow is to be considered a "sewer" for the Transfer of Private Sewers Regulations 2011, on a careful review of Appendix 1 of the company's response, I find that after all the various investigations, including dye tests and CCTV, carried out by the company the evidence shows that the customer's property is not connected to the public sewer network. The customer has a septic tank from which an overflow connects to a private highway culvert. The culvert then joins a local watercourse and is not connected to the company's sewer pipework network.
10. The customer says that the septic tank overflow should be considered a sewer, and it would have been legally adopted by local authorities under the Public Health Act 1936. Furthermore, as the pipework was installed before 1 October 1937, the Public Health Act 1936 provides that the local authority continues to be responsible for it and subsequently the company under the Transfer of Private Sewers Regulations 2011.
11. The company says within its response that under the Public Health Acts of 1875 and 1936, a sewer was any pipe that served more than one premises, not within the same curtilage. In the customer's situation, the customer's property and the neighbouring property are served by their own private septic tanks. What differentiates the overflow pipe from being considered a sewer is that it is an overflow pipe from a septic tank. An overflow from a septic tank should only take flows if or when the tank is full or not functioning correctly, or during periods of heavy rain. An overflow should not be running daily. Therefore, a septic tank overflow pipe performs a different function to

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a sewer that is in daily use and, if used daily, would suggest that the septic tank needs to be serviced, which is the customer's responsibility.

12. After careful consideration, I find that I agree with the company's position that the overflow from the septic tank is not a sewer under the Public Health Acts of 1875 or 1936. On review of all the evidence, I find that for pipework to be considered a sewer adopted by the Transfer of Private Sewers Regulations 2011, it must connect to the public sewer system. As shown by the pipework map in Appendix 5 of the company's response, the customer's pipework is not connected to the public sewer system. Accordingly, I find the evidence does not prove the company failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the septic tank and its overflow.

13. The company has certain obligations in respect of its customer services. As evidenced by the timeline within the company's defence documents, I am satisfied that by the end of the company's dialogue with the customer, the company had adequately explained why the overflow from the septic tank is not a sewer under the Public Health Acts of 1875 or 1936 and why the customer's pipework is not connected to the public sewer system. This is shown by the correspondence put forward by the customer and company as evidence.

The customer has made comments on the preliminary decision concerning whether the septic tank overflow should be considered a drain to a sewer and therefore be adopted by the company. The customer says that the culvert into which the septic tank overflow is connected to a publicly adopted sewer defined by the Public Health Act 1936 and it is not required to connect to other parts of the company's sewer network because it was legally adopted prior to 1937. I note that the Public Health Act 1936 does not require a Local Authority to adopt all private pipework and there is no evidence to show the culvert was adopted and no longer private. Having carefully considered each aspect of the customer's comments I find that they do not change my findings as for the culvert to be adopted by the company it must be connected to the public sewer network, which it is not. The culvert is private pipework which connects directly to a watercourse. Therefore, my decision remains unaltered from the preliminary decision.

14. Considering the above, I find the evidence does not prove the company failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning chasing its outstanding balance.

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### Outcome

The company needs to take no further action.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 1 December 2021 to accept or reject this 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.



**Mark Ledger FCI Arb**  
**Adjudicator**

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