

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X860

Date of Final Decision: 18 April 2022

#### Party Details

**Customer:** The Customer

**Company:** The Company

#### Complaint

The customer complains that the company did not take action to prevent a flood of sewage into his driveway, failed to provide any support and has refused to pay compensation. The customer asks for compensation in the sum of £11,600.00 for cleaning and replacing the stones on his shared driveway plus interest.

#### Response

The company says that it is not liable for this claim.

#### Findings

I find that the company is not liable under this Scheme for the consequences of strategic decisions and policies even if these led to sewage escaping from the sewer and entering the customer's property. The company did not, however, offer to disinfect the customer's property or give any explanation as to why no action needed to be taken. No timely explanation was given to him as to his position. This communication failure fell short of expected standards. The customer and his neighbours, however, decided to deep clean and replace stones on the shared drive rather than claim on insurance. The company is not liable for this. For the communication failure, I find that compensation of £40.00 is fair and reasonable.

#### Outcome

The company needs to pay compensation of £40.00 to the customer.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X860

Date of Final Decision: 18 April 2022

## Case Outline

### The customer's complaint is that:

- The customer's home is one of three properties at the end of (REDACTED)
- On or about 6 October 2021, the customer and his neighbours noticed that raw sewage was running down the lane into the front drives and up to the front doors of these properties. The customer could see sewage coming over the top of the manhole.
- The company contacted the company which attended about 4 days later. The company # said that the main sewer pipe was blocked due to roots. The company's contractors were there for many days and were working on and off for about eight weeks. The company had to cut out roots and reline the pipe. The customer says that these were not tree roots.
- The customer says that he and his neighbours asked the company to come and inspect their homes numerous times but to no avail. They had to walk through excrement to get in and out of their properties and after more than a couple of weeks the customer had no choice but to get contractors in to remove his stone driveway, decontaminate and replace the stone.
- He says that the company cleaned up and decontaminated virtually outside the houses and never bothered about him and his neighbours. They said that the customer and his neighbours should contact their insurers, which they were reluctant to do as this would lead to an increase in premiums. In the company's final email to the Consumer Council for Water (CCWater) the company mentions that it only offers the basic clean up to external areas involving the use of disinfectant and taking away any items it feels safe to remove. However, this was not offered to the customer.
- The company also says that although there have been reports of previous flooding the notes on the system do not suggest they have been due to roots. The customer says that this is not true because about 2 years ago the company had to cut out tree roots from the same pipe just a bit further down and reline it. The customer asks why the company did not, while it was there, inspect the rest of the line (the company only had to turn its camera the other way) to see if there was any root incursion; even the most cursory of inspections would have alerted the company to a potential issue.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

- The customer says that the manhole outside his house has now been raised but asks why the company did not raise the manhole at that point or visit the customer and his neighbours when they asked the company to attend.
- The customer asks for compensation in the sum of £11,600.00 plus interest.

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

- The customer contacted the company following a sewer flooding from the public sewer network to make the company aware of how long it took for his property to be attended. The customer wanted to claim for damages from the company as he felt it was responsible for the maintenance of the sewer network. The company advised the customer to make a claim via his own home insurance, as per the company's internal process. The customer also did not make the company aware of the flooding at the time of the issue; the company was contacted by a neighbouring property.
- The company attended and investigated the cause of the flooding, which it found to be some tree roots. The company initially attended on 6 October 2021 and the work was completed by 26 January 2022. Prior to this report of flooding, the company found no previous issues with root ingress in the sewer.
- The company is not liable for any flooding from the public sewer network and will not cover the cost of the work the customer has carried out on the driveway leading up to his home. The company works on a reactive basis when it comes to the repair and maintenance of the public sewer network.
- The customer has been through stages 1 & 2 of the company's complaints process and has also raised his complaint via CCWater.

**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 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.

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

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.

I issued a Preliminary Decision on 4 April 2022, but neither party has submitted any comments in response.

### How was this decision reached?

1. This case concerns, in particular, the company's liability for an escape of sewage in October 2021. There is no evidence that there had been a previous incident affecting the customer's property.
2. It is important to preface my further findings with a statement as to the law relating to a sewerage undertaker's liability for escapes of sewage. In particular, I comment that although the customer refers in a note attached to one of his photographs that he has been affected by "the company's sewage", the company has no ownership of the content of sewers.
3. The company has an obligation to repair and maintain sewers by virtue of the Water Industry Act 1991. However, sewerage companies are not generally liable for the escape of the contents of public sewers in the absence of negligence. The reason for this situation is that the intention of Parliament has been found by the UK's most senior court to have been that Ofwat, and not the courts, is responsible for reviewing the strategic decisions of companies in relation to improving or maintaining its network. This was found to be the situation in a case that concerned repeated escapes of sewage called *Marcic v Thames Water*, ([2003] UKHL 66).
4. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. This is because its function is to resolve individual disputes between customers and companies, not to undertake a strategic review, such as would be necessary when considering competing interests for investment or repair. The company says that it responds reactively to complaints and this is, I find, a strategic approach. I am mindful that in making changes to or reviewing or repairing the company's assets, the company is required to weigh up the relative merits and needs of all its customers. Ofwat may be well placed to review the allocation of priorities for intervention, but an adjudicator is not.

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

5. Against that background, I am mindful that the customer suggests that the company could two years earlier have taken steps to investigate the sewer for roots and/or raised the manhole cover outside his property. I find that these are examples of proactive actions which are not consistent with its strategic approach which is reactive. I am mindful that this is consistent with practice across this industry and takes into account the need to allocate resources amongst a vast number of customers. I do not find that the company fell short of expected standards in this respect.
6. Additionally, I draw attention to rule 3.5 of the Water Redress Scheme Rules (2020 edition) which states that WATRS cannot be used to adjudicate disputes which fall into one or more categories, including “any matters over which OFWAT has powers to determine an outcome”. Accordingly, in accordance with the WATRS Scheme Rules, any claims that the company’s policies were insufficient to protect the customer or to remediate the loss, distress and inconvenience associated with an escape of sewage cannot be adjudicated under the WATRS Scheme, on the basis that these are matters over which OFWAT has powers to determine an outcome pursuant to Section 94 and Section 18 of the Water Industry Act 1991. The Scheme Rules also have the effect that an adjudicator cannot decide that the company should have undertaken a more extensive camera survey of the sewer or proactively raised a manhole because the company says that this was not its policy.
7. However, the customer also says that the company has not engaged in clearing up the sewage on his drive following the flood in October 2021 and also says that the company did not carry out visits to affected households. These are not strategic matters but complaints that the company has not followed its own policies and also has not provided an appropriate standard of customer service. I can consider these matters.
8. The company has submitted its leaflet about sewer flooding and in particular the section headed “What Can We Do To Help?”. This explains that:
  1. Once a call is made explaining that flooding had happened, the company will aim to get to the customer within 12 hours for external flooding.
  2. In relation to cleaning up the company says that it will give practical advice and provide a basic clean up. This is to be done after the flooding has reduced and usually involves pumping out water, removing any sewage from an internal flood and disinfecting hard standing areas such as driveways. The company states that it does not offer a deep

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

clean service as these should only be done by professionals and is usually covered by home insurance.

3. The company also explains that it will investigate and identify the cause of the flooding to see whether there was anything that could be done to reduce the risk of it happening again.

9. In respect of the three steps that the company stated in its leaflet that it would take, the company has submitted documentation which I find shows as follows:

1. In relation to the customer's first contact with the company on 20 October 2021, the purpose of this was not to state that there had been a flood and that assistance from the company was needed. Rather it was a claim for compensation after the event. The customer complained that for four days gardens, driveways and properties were affected by sewage and that after about three days contractors came to unblock the sewer pipes.

*We have had to put up with raw sewage and possible contamination to our properties not to mention our health. In view of this I think all 3 house holders should be compensated together with a formal apology*

I find that at this stage, the question of whether the company should meet its declared service standard of attendance at the customer's home within 12 hours did not arise because the email already dealt with past events. It did not follow from this, however, that an average customer would have expected the company then to take no action.

2. In light of the leaflet referred to above, I find that the company's next actions fell short of the expected standard. The customer's email was treated like a complaint and the company replied on 21 October 2021:

*I'd like to assure you I'm investigating the issues you've raised with our waste team for the area and I'll be in touch with an update as soon as possible. In the meantime, if you have any questions, please let me know or if you would prefer to speak to me over the phone you can call me on REDACTED.*

Bearing in mind that the company's statement of "help" is that it will give practical advice and provide a basic clean up, I find that no offer of this assistance was given and no enquiry made as to whether this might still be needed. This was followed by a delay in dealing with the incident because on 28 October 2021, the company said that it could not deal with the email because the customer was not the account holder. This may have been relevant to the question of whether compensation of any description

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

should be made, but it was not, I find, relevant to the question whether any disinfection was needed. Whilst I acknowledge that the company may have taken the view that due to the lapse of time, no disinfection would be required, this was not explained to the customer.

On 5 November 2021, the customer wrote in an email:

*Can you please explain why we still haven't had a visit or at least a positive response from you. We feel let down and have had pay for the removal of our shared stone driveway as it was contaminated, new stone had to be delivered and laid.*

At this point, the customer had made clear that he had taken his own remedial steps and in due course the question of authority to deal with the account was resolved. It follows that at this point it was not necessary for the company to make further attendance. In due course, the company made an offer of compensation to one of the customer's neighbours. The customer appears to have told CCWater that he was offered £75.00 although in correspondence he referred to £25.00 in respect of his property although this was not accepted by the customer. The company has told CCWater that it has made no offer of compensation.

3. As for action taken to investigate the cause of the complaint, the company explained on 15 November 2021 that an engineer was due to attend to complete a cleanse of the sewer near his home but that due to the demand on the vehicle needed, there was not yet a confirmed date. The cause of the sewer flooding was due to the ingress of tree roots into the company's infrastructure and final follow on work for root cutting would occur. The customer was told that this was being monitored to ensure that it could happen as soon as possible. I find that this is consistent with stage 3 of the promised action.

10. It follows from the above that the company has failed to meet expected standards in respect of step 2, in that it failed to offer to take action to decontaminate by disinfection. Taking into account, however, the scale of the action taken by the customer and his neighbours to replace the surface of the shared drive, I find that it is improbable that an offer of mere disinfection would have been seen as sufficient, even if it had been made by the company. This was a deep-cleaning exercise that the company stated would be expected to be addressed by

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***



household insurance. The customer has not wished to make a claim on his policy, but it does not follow that the company must bear a liability for this.

11. It follows from the above that, although I find that the company has not met expected standards, the consequences of this were that the customer felt, as he explained in his email “let down” and unsupported. I accept that this would have caused distress and prompted entry into correspondence, including correspondence that reveals that the customer did not understand what action the company could reasonably be expected to take because the company did not clearly explain this to him at an early stage.

12. Compensation for this failure to meet expected standards, however, is, I find, modest. I find that a fair and reasonable sum for the company’s failure to meet its service standard is £40.00. The Scheme Rules do not provide for interest to be paid on a sum awarded in these circumstances and I do not direct this.

#### **Outcome**

The company needs to pay compensation of £40.00 to the customer.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on 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.

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***





*Claire Andrews*

Claire Andrews, Barrister, FCI Arb.

Adjudicator

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

[www.WATRS.org](http://www.WATRS.org) | [info@watrs.org](mailto:info@watrs.org)