

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X000

Date of Decision: 05 July 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding an issue with legal costs incurred because of the actions of the company. The customer says that the company wrongly classified his private sewer pipe as being a company asset and following his removal of the pipe it lodged its intent to enter his property and reinstate the pipe. The customer says he was compelled to seek legal advice. The customer claims that despite ongoing discussions with the company the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to provide an explanation and plan of the diverted sewers, refund legal costs incurred, pay him compensation, and issue an apology.

#### Response

The company says it took responsibility for the customer's private pipe under water legislation enacted in October 2011. The customer's decision to remove the pipe caused inconvenience to neighbours and resulted in the company incurring very high costs to provide an alternative run of sewer pipes. The company says the customer chose to seek legal advice, but this does not obligate the company to refund the costs thereof. The company has not made any formal offer of settlement to the customer and denies that compensation is due.

#### Findings

The claim does not succeed. The WATRS Scheme does not permit claiming for the reimbursement of legal costs. I find that the company has supplied a map of the new sewer layout that the customer can access through the WATRS portal. The evidence supports on a balance of probabilities that the customer's claimed loss of use and enjoyment of his garden was in part caused by his own actions and thus I find compensation is not appropriate. I find that the evidence shows that the company has provided its services to a reasonable level and has managed the customer's account to the level to be reasonably expected by the average person.

#### Outcome

The company does not need to take further action.

The customer must reply by 02 August 2022 to accept or reject this decision.

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**ADJUDICATOR'S DECISION**  
**Adjudication Reference: WAT-X000**  
**Date of Decision: 05 July 2022**

**Case Outline**

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

- He has experienced an ongoing dispute with the company concerning issues with the recovering of legal fees he has incurred because of the company's actions.
- He purchased his property in 2018.
- Subsequently, he discovered under his garden a waste pipe originating from two properties in an adjacent road. The pipe came under his boundary wall, across his garden, and connected into his private drain.
- He contacted the company who advised him that as his drain now served more than just his property it was now classed as a public sewer and fell under the control of the company. The customer says the company informed him that as such he could not interfere or remove the pipe coming from the neighbouring properties.
- Ongoing discussions with both the company and the owners of the two properties did not achieve any meaningful progress and so in 2020 he removed the section of pipe at the point from where it entered his property.
- The company issued him with a land entry notice stating it would enter his land to reconnect the pipe and would charge him with all costs involved. At this point the customer sought legal advice and ultimately it was shown that the pipe did not belong to the company, and he was legally entitled to remove it.
- Throughout the ongoing period the company advised the neighbouring properties to continue to use the pipe even though it was disconnected at his property boundary. This resulted in raw sewage being continually pumped onto his land. The customer says this caused the loss of use and enjoyment of his garden.
- Believing the company had not properly addressed his concerns he, on 18 March 2022, escalated his complaint to CCWater.
- On 04 April 2022 CCWater advised him that it was unable to assist him because it does not offer legal advice. CCWater did approve him escalating his complaint to the WATRS Scheme.

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- Continuing to be dissatisfied with the response of the company he has, on 16 May 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to provide a detailed explanation and plan as to how and when the drains were redirected, pay him compensation in the amount of £18,000.00, and issue an apology.

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

- It provided its response to the claim on 30 May 2022 in its submission dated on 17 May 2022.
- It confirms that the sewer pipe under the customer's garden was designated as a public sewer because it had transferred to company responsibility under the Water Industry (Schemes for Adoption of Private Sewers) 2011 Regulations.
- As private sewers were private assets, in many instances their existence was not known to the company when the transfer occurred on 01 October 2011.
- In 2018, it became aware that the customer had removed a section of a sewer where it crossed his land as he claimed it was his private sewer. The removal of the pipe had a detrimental effect on neighbouring properties. The company notes that the customer had removed the pipe prior to contacting it.
- It made many attempts to explain to the customer that the pipe had not been his private pipe since October 2011.
- It acknowledges that the customer sought legal advice and confirms that correspondence was exchanged between the legal representatives of the parties. It notes that following these exchanges it issued a land entry notice to the customer so that it could reinstate the removed pipe. The customer then sought additional legal advice.
- The status of the sewer was not resolved between the parties, and to avoid a protracted dispute the company decided to install an alternative sewer run that did not affect the customer's property. The company laid approximately 97 metres of new sewer at an approximate cost of £140,000.00.
- It believes any loss of use by the customer of his garden resulted from his own actions in removing the sewer pipe. The company says it was never made aware that the customer was unable to use and enjoy his garden.
- It recognises the customer is entitled to retain legal advice, but refutes that this obligates the company to refund any associated costs. The company says it was a unilateral decision by the customer to take legal support and thus he accepted to pay the costs thereof.

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- In summary, it records that it was the customer that disconnected and removed the section of pipe and that all resultant actions derived from this original deed. The company states it will not refund the customer's legal fees nor pay compensation.

### 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.

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 relates to the customer's dissatisfaction that the company's actions have caused him to incur considerable legal costs. The company has declined to reimburse the costs.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I accept that the company has established its right under the Water Industry (Schemes for Adoption of Private Sewers) 2011 Regulations to take over responsibility for private sewer pipes.
4. I can see that the parties have submitted considerable amounts of evidence in support of their positions.
5. The company, by reference to the Water Industry (Schemes for Adoption of Private Sewers) 2011 Regulations, has stated that it took over responsibility for the pipe as from 01 October

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2011. The company has stated that it had no knowledge of the pipe until the customer contacted it in August 2018.

6. Additionally, the company has stated that the fact that the pipe serves more than one customer further establishes its status as a public pipe.
7. The customer, through his legal advisors, disputes the company's understanding and position.
8. I note that the differing positions of the parties has not been tested in a court of law.
9. I refer to the Rules of the WATRS Scheme and note the following :-

WATRS may reject all or part of an application to the Scheme where it considers that:

3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute; or

3.4.3 in exceptional circumstances, the dispute raises a complicated issue of law.

10. I am thus satisfied that the WATRS Adjudication Scheme is not the vehicle to perform such a legal test, and I shall not do so.
11. However, I find that the remaining elements of the customer's referral remain within the scope of the Scheme, and I shall address them hereunder.
12. The customer has requested three remedies, the first of which requests the company provide "*a detailed explanation of how the drains were redirected into REDACTED, a map of where they lay and dates of when this was completed*".
13. In its Response document the company includes an updated plan showing the line of the newly laid pipe run that does not impact the customer's garden. The plan is annotated to show that it was current as at 28 January 2022. I am satisfied that this plan reasonably exhibits the information sought by the customer, and that he can reasonably access it at the WATRS portal where he submitted his claim.
14. The second remedy sought by the customer is for the company to pay him compensation in the total amount of £18,000.00, split into three heads of claim.
15. The first head of claim is in the sum of £13,000.00 and is for reimbursement of legal fees. However, I refer to Rule 7.2 of the Rules of the WATRS Scheme that states :

*A customer may include (subject to proof of loss) claims for incidental costs as part of their claim but the adjudicator has no powers to make an award of costs to any party in respect of professional and/or legal costs associated*

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*with the provision of advice and/or other services in relation to the making of an application to the Scheme.*

16. Thus, I find that this head of claim does not succeed, and I shall not direct the company to refund the customer's legal fees.
17. The second and third heads of claim are in the combined amount of £5,000.00 and are claims for compensation for distress and inconvenience.
18. Rule 6.4 of the Scheme states :

*Under the Scheme there are maximum limits for awards. The total value of an adjudicator's award for compensation and/or the cost or value of any action to be taken and/or the cost or value of any service to be provided cannot exceed the maximum limits. These are £10,000.00 per customer for households, and £25,000.00 per customer for non-households. These limits include any amounts awarded for non-financial loss which is limited to £2,500 per award.*

19. Thus, the maximum that can be considered for distress and inconvenience compensation cannot exceed £2,500.00.
20. The customer, it seems, has requested compensation for the loss of use and enjoyment of his garden because of raw sewage entering upon it. I am satisfied that the sewage was coming from the pipe that he severed prior to advising the company of his intentions.
21. Subsequently, I can see that the company raised land entry orders to access the customer's land to repair and reconnect the pipe, but the customer proceeded to have his legal representatives question the validity of the orders. As a result, I am satisfied that the customer contributed to the delay the rectification of the broken pipe issue and whilst I accept his right to take legal advice, I cannot award compensation to recompense him for the effects of his own actions which were not directly caused by a failure on the company's part.
22. Thus, I am satisfied that the evidence does not establish that any act or omission on the part of the company contributed to any distress or inconvenience that the customer may have experienced.
23. It thus follows that I find that compensation is not appropriate, and I shall not direct the company to pay compensation to the customer.
24. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person.

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## The Preliminary Decision

- The Preliminary Decision was issued to the parties on 23 June 2022.
- The customer has, on 27 June 2022, submitted comments on the Preliminary Decision.
- The customer reiterated his previous position that the company acted in an illegal and incorrect manner, and that the pipe laid across his garden was also installed illegally. However, the customer does not submit any additional evidence in support of his position.
- The company responded to the Preliminary Decision on 28 June 2022 but did not submit any additional remarks.
- I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the response of the parties I am satisfied that no amendments are required to the Preliminary Decision.

### **Outcome**

The company does not need to take further action.

## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 02 August 2022 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.

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## Adjudicator

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