

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X016

Date of Final Decision: 19 July 2022

Party Details

Customer:

Company:

Complaint

The main sewer at the back of the customer's property was damaged and repaired by a developer, but the customer's garden was flooded with sewage when the repair failed and the sewer became blocked. The customer had the sewer surveyed after the flood and various serious faults were discovered. Despite this, the company has refused to replace the sewer and has only offered to repair a small section of it; this is inadequate as it will not protect the customer's property from future flooding. Therefore, the customer wants the company to replace the whole section of sewer pipe.

Response

The company says that the sewer pipe is serviceable and does not need to be replaced, but it has offered to reline the section of sewer that was damaged by the developer when it can gain access to the land. The company has also offered to pay the customer £100.00 as a gesture of goodwill as it recognises that some of the customer's emails were not responded to in the expected timeframe, but further liability is denied.

The company has not made an offer of settlement.

Findings

I find that the customer's complaint concerns the company's alleged breach of its statutory duty to maintain effectual drains and, in accordance with the WATRS Scheme Rules, this falls outside of the scope of this Scheme and, therefore, I have no jurisdiction to adjudicate on it. However, I am able to consider whether the company's response to the customer's complaint about the damaged sewer and the possibility of future flooding amounts to negligence

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or a failure to provide its service to the expected standard. Having reviewed the evidence, I do not find on the balance of probabilities that the company has acted negligently or failed to provide its service to the standard reasonably expected by the average person. In view of this, the customer's claim cannot succeed.

Outcome

The company does not need to take any further action.

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Case Outline

The customer's complaint is that:

- In April 2020, a development was started at the back of his property without planning permission, and work to raise ground levels along three residential boundaries continued uninterrupted until retrospective planning permission was granted in August 2021. The development involved sheet piling along two boundaries and making a four metre high retaining barrier on a third property boundary.
- The developer did not seek build-over permission and did not inform the company that the sewer had been severed with sheet piles and damaged further by heavy vibration compaction along the entire length of the pipe.
- During July 2021, heavy rains caused flooding in his garden and the manhole lid on his patio was lifted by a jet of sewage due to a back flow of highly pressurised water caused by a blockage in the damaged pipe. The blockage was caused by a failed repair completed by the developer and approved by the company after an inspection.
- After the flood, he commissioned an independent report into the condition of the sewer because the company would not respond to his communications. The survey showed that the pipe cannot be patched up with fibreglass as it is too badly damaged. If it is patched, it will collapse in time, so it needs complete replacement rather than a second attempt to repair it.
- From August 2020, he tried to contact the company via email and WhatsApp but got no response. Eventually, on 21 July 2021, he was contacted by the company's Building-Over Technician and was told that the works did not have building-over authorisation. It was agreed that the sewer needed to be replaced based on the independent inspection report's findings, and he was told that sheet piling and vibration compaction is forbidden near public sewers due to the damage it causes.
- Despite this, the company says that the damage can be resolved by placing a sleeve on the short section of pipe that was smashed and pushed out of alignment, and it will not accept that the independent drainage engineer advised against this because it will result in rapid collapse of

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the repaired length of pipework due to expansion forces exerted on the fractured and shattered clay pipe.

- One of the company's conditions is that the development includes a 140 m³ attenuation tank for surface water drainage. However, he questions whether the tank has been installed as there is no building control approval, no details of the tank have been published, surface water is being piped directly into the damaged sewer pipe, and the developer has not submitted a ground survey report to confirm the location of the existing pipes and the new network.
- The developer intends to use heavy vehicles, including plant equipment, directly over the damaged pipe, and the vibrations from the vehicles will weaken the already structurally damaged pipeline.
- The company does not seem to have made any effort to hold the developer accountable for the damage, and seems more concerned that he commissioned an independent drainage expert to do a CCTV survey of the sewer.
- The developer is now building a twenty-foot high brick structure on top of the location of the alleged attenuation tank. Again, the developer does not have planning permission but expects it to be granted when the structure is completed. This is important as there is a new and unapproved connection, which will need to drain into the attenuation tank to prevent further flooding.
- He is concerned that his garden is being used as a soak-away for raw sewage. Rats are now tunnelling into his garden and, during periods of heavy rain, he lives in fear of being made homeless by further flooding. He is also worried that his property is being devalued, and residents downstream of the damaged pipe have noticed their rear gardens are permanently wet. However, no one has checked to see how much effluent is leaking from the shattered pipes into the ground and water table.
- The customer service provided by the company has been very poor and the company has failed to provide timely responses to his communications throughout the complaint.
- In view of the above, he wants the company to replace the entire length of damaged pipe.

The company's response is that:

- The customer's complaint is about works undertaken by a private developer on land behind the customer's property which caused damage to the main sewer.
- The developer accepted responsibility and instructed a contractor to carry out the required repair, and it checked the repair to make sure that no further work was required.

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- The customer wants the sewer to be replaced but it has explained that the sewer is functioning as it should be and does not need to be replaced, despite the minor issues shown on the CCTV survey report the customer has provided.
- As a gesture of goodwill it has offered to reline/patch the section of sewer that was damaged, but it cannot gain access to the land until the development work has been finished. It has also offered to pay the customer £100.00 because it did not reply to the customer's emails within the expected timescale.
- In view of the above, it denies liability to replace the sewer.

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 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 the cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] it was decided that claims based on a water company's performance of its statutory obligations must be considered by Ofwat, the industry regulator, except where it is claimed that the company has, when undertaking these statutory obligations, done this negligently.
2. This means that a customer's claim to WATRS in relation to flooding/replacing sewers can only succeed if the customer is able to show, on the balance of probabilities, that the company has

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acted negligently when carrying out these duties, and a claim based solely on the argument that the customer has suffered damage or is likely to suffer damage in the future as a result of the company's performance of or breach of its statutory duties cannot succeed.

3. This also means that as an adjudicator operating under the WATRS, I do not have the authority to consider whether the company has breached its statutory duty to maintain its sewers to ensure that an area is effectually drained, as such matters must be addressed to Ofwat, the industry regulator, and I can only adjudicate on matters where the customer alleges that the company has acted negligently.
4. Further, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called 'standard negligence'. To explain this further, if the argument is that the company has been negligent because it has not been inspecting its sewers regularly enough, this raises regulatory considerations (as it is a regulatory requirement to inspect sewers regularly). This would mean that, in accordance with the decisions in the cases cited above, such claims must be addressed to Ofwat and cannot be resolved through WATRS.
5. On the other hand, if the claim is that flooding was reported and the company negligently failed to notice or remedy a problem, this raises a question of standard negligence, and so can be resolved through WATRS. To explain this further, if the argument is that the company was aware of a blockage or defect in its sewer that had caused flooding but did nothing to resolve it, and the blockage or defect then caused further flooding at the customer's property, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
6. The evidence provided suggests that the customer believes that the company has failed to maintain its sewers to prevent future floods. However, I am unable to consider whether the company has failed to maintain its sewers as this raises a question of the company's performance of its statutory obligations, which, as explained above, must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.
7. However, I am able to adjudicate on the customer's assertion that even though the company has been shown a survey report that identifies serious defects in its sewer that necessitate its replacement rather than its repair, it has refused to replace the defective section of pipework and this will cause sewage to spill into his garden in the future, as this amounts to an allegation of standard negligence.

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8. However, having reviewed the evidence provided by the parties, including the CCTV survey report provided by the customer and the call notes provided by the company, I cannot accept on the balance of probabilities that the company is aware of serious defects in the sewer that necessitate its replacement in order to prevent the customer's garden from flooding in the future. This is because I accept that the company inspected its asset after the flooding issue was reported by the customer and ensured the sewer was free-flowing and working as it should be. I accept that the customer's survey report identifies some issues and action points, but I find the company's view that the sewer does not need to be replaced more persuasive in this regard as I accept that the minor issues found during the company's investigations, and the issues noted in the customer's survey report, are not serious enough to require the sewer to be replaced. Further, I find that the company has offered to line the sewer, even though it is free-flowing and operational, as a gesture of goodwill. In view of this, I do not find that the company has failed to take action necessary to prevent future flooding.
9. In view of the above, while I appreciate that the situation has been very stressful for the customer, I accept that the company's refusal to replace the sewer is reasonable and does not amount to standard negligence. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person in this regard.
10. I appreciate that the customer will be disappointed and frustrated by my decision, but as I do not find that the company has failed to provide its service to the expected standard, the customer's claim for a replacement sewer rather than the repair offered by the company cannot succeed.
11. The company offers the customer £100.00 as a gesture of goodwill on the basis that it failed to respond to some of the customer's correspondence within the expected timescale. The customer has not made a claim for compensation and, therefore, I cannot direct the company to pay the customer the amount offered. However, I advise the customer to indicate whether he wishes to accept this payment in his response to the preliminary decision or by contacting the company directly.
12. For completeness, I add that the customer has also raised issues about the developer's planning permissions and building consents, and the working relationship between the

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company and the developer. However, in accordance with the Scheme Rules, I am unable to adjudicate on matters concerning a third party who is not party to this dispute and, therefore, I am unable to consider these issues.

13. Following the preliminary decision, the customer made further comments and I have considered them carefully. However, as this is an evidence based process and the evidence does not show that the company has failed to provide its service to the expected standard with regard to the issues relevant to the element of the claim I can adjudicate on, my decision remains unchanged.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 2 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.

K S Wilks

Katharine Wilks

Adjudicator

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