

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X057

Date of Final Decision: 29 July 2022

Party Details

Customer:

Company:

Complaint

The customer states he first reported a sewer flood on his driveway to the company in August 2020; however, the company only capped the manhole after he complained to the company in January 2022. The customer says it should have taken this action at the outset, which would have avoided the need to replace his driveway three times in 18 months due to sewage floods. The customer seeks £18,200.00 in compensation from the company (plus interest) for the cost incurred to replace his driveway on three occasions due to sewer floods and an apology.

Response

The company states that it responded to the customer's reports of sewage floods on his driveway and found the root cause to be hydraulic overload. It carried out CCTV and found no blockages or defects on the sewer so no follow-on work was identified. It apologises to the customer for the length of time flooding was occurring; however, as the flooding reports were all recorded as hydraulic overload it cannot be deemed liable for any damages this may have caused and it has made it clear the customer that he needs to seek advice from his home insurance.

Findings

The company's liability for the customer's claim for the cost of replacement driveways rests on him proving negligence, therefore this aspect of the complaint falls outside of the scope of WATRS and the company's advice provided to make an insurance claim was appropriate. However, this review considered whether the company has met the standard to be reasonably expected when handling the customer's reports of sewer floods and his related complaint. Whilst this review found that the company met its obligations by attending and checking for blockages and defects on its sewer on each

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occasion the customer reported a flood, on balance, the company's failure to take steps earlier than it did, to seal the manhole on the customer's driveway to mitigate the risk of further floods, amounts to evidence of it failing to provide its service to a reasonably expected standard. It also did not respond to the customer's requests for a map of its sewers demonstrating that it failed to provide its service to a reasonably expected standard in this regard also.

The company did not make any settlement offer to the customer.

Outcome

The company needs to take the following further action:

- Provide an apology.
- Pay the customer £450.00 for stress and inconvenience caused by instances of where its service failed to meet the expected standard when handling the customer's reports of sewage floods.
- Respond to the customer's request for mapping data.
- Provide the customer with details of its insurers.

The customer must reply by 26 August 2022 to accept or reject this decision

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Case Outline

The customer's complaint is that:

- The customer states that he and his wife first experienced a sewage flood on his driveway in August 2020. The company did not respond quickly and only attended after three to four phone calls.
- The company, at that stage, could have installed a sealed cover to the problem sewer chamber. The company only took this action in February 2022 after further floods. Its failure to apply a seal cover sooner caused them to have to pay for three new driveways costing £8,300.00.
- The customer states they had no knowledge that this could be done. The company told them at that time the flooding was due to an "Act of God" and "hid" this solution from them for 18 months.
- They were only told the truth after they employed two independent drainage engineers who said they were not responsible for the sewer as their waste did not use the sewer, but the company was.
- It was only after he sent a letter to the company's Chief Executive on 6 January 2022 that a Manager visited within days and immediately said they would arrange for a permanent cover to be fitted that would avoid further floods.
- He sent two letters to the company asking for a map of the sewers, but did not receive a reply to his request.
- He requests an apology from the company for not resolving the issue in August 2020.
- He seeks £18,200.00 in compensation from the company (plus interest) comprising £8,200.00 to cover the cost incurred for replacing his driveway, which they state is inferior. On this basis, the customer requests a further £10,000.00 from the company for the cost of restoring the original block paving driveway.

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The company's response is that:

- The customer first called to report flooding on 17 August 2020 and its engineers attended 19 August 2020 and reported the block paving on the customer's property was lifted and wobbly. Further work was arranged for CCTV to be carried out to see if there were any issues on the sewer line.
- The customer then contacted it again on 20 August 2020 to report there was a blockage at the property.
- It attended the same day and found no blockage. Its engineers carried out a CCTV on the back of the first job and found no blockage on the sewer line and no defects. These jobs have been root caused as hydraulic overload.
- The customer contacted it again on 5 October 2021 to report a flooding the night prior and the customer wanted it to inspect if there were any issues.
- Its engineers attended the same day and found the manhole to be clear and free flowing.
- Following the customer's letter to it dated 6 January 2022, it raised a further job for an inspection. After this visit, it agreed to seal the manhole and this was completed on 4 February 2022.
- It has made it clear that the customer needs to claim damages through his home insurance as per their policy. As it cannot be deemed liable for such damages, it will not be reimbursing the requested £18,200.00.
- In response to the customer's request for an apology, the company says it apologises to the customer for the length of time flooding have been occurring for. As there were no issues found on the its sewer line, no follow-on work was identified.

Reply

- The customer reiterates that the company should have sealed the manhole in August 2020, which would have saved them 18 months of problems and expense.
- He reiterated that the company had not provided a response to his request for mapping of the sewers in his garden.

Comments on Preliminary Decision

- The parties did not submit any comments.

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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. The customer's claim concerns damage caused to his driveway as a result of sewage floods and the company's refusal to pay compensation for the cost incurred to replace his driveway. The customer has also raised concerns regarding the customer service provided by the company whilst handling his reports of flooding and his associated complaint.
2. It is noted from the customer's WATRS Application that he requests £18,200.00 in compensation for the cost of replacing his driveway on three occasions due to damage caused by sewage floods. Firstly, I remind the parties that in accordance with Scheme Rule 6.4, this amount exceeds the maximum limit for household customers under the Scheme, which is £10,000.00. As such any award made by WATRS is unable to exceed the £10,000.00 limit on this basis.
3. Secondly, in its Defence, the company denies that it is responsible to pay the customer compensation to cover the cost claimed. Legally, in order to prove that a water company is responsible to pay compensation for damage caused by a sewer flood, it must be shown that the

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company either acted or failed to act in a way that directly caused damage to his property. In other words, it must be proven that the company acted negligently. In its complaint responses dated 17 February 2022 (to the customer) and dated 5 April 2022 (to CCW), the company advised that any claim for damage to property, should be made by the customer, in the first instance, via his insurers as the usual process for such claims is that they are dealt with insurer to insurer. In the circumstance, this was appropriate advice provided by the company. Therefore, due to this and because negligence claims involve a complicated issue of law, in accordance with Scheme Rule 3.4.3, this aspect of the claim falls outside the scope of the Scheme in this basis.

4. Nonetheless, as previously stated this adjudication will consider whether the company has met the standard to be reasonably expected when handling the customer's reports of sewer floods and his related complaint.
5. Under the Water Industry Act 1991 ('the Act'), the company has a duty to maintain its sewers and to ensure the area is, and continues to be, effectively drained and to make provision for the emptying of these sewers. However, it cannot be held responsible for sewer flooding when caused by factors beyond its control; therefore, it has a reactive approach to the maintenance of its sewers and where there is a known issue it will act accordingly.
6. Therefore, in the event of sewage floods reported, in accordance with its obligations, the company is required to investigate the cause to identify if there is any immediate action it can take to stop or reduce the risk of further flooding, for example by clearing a blockage on the sewer network that may be contributing to the cause of flooding.
7. In this case, the records provided by the company confirm that the customer made reports of sewage flooding from the manhole on his driveway on 17 and 20 August 2020 and on 5 October 2021. In August 2020, the company carried out a CCTV survey to establish if there were any blockage or other issues with the sewer line. The company's job notes show that it told the customer at the time that it found no blockages and no defects/structural issues on the sewer line and that the root caused was hydraulic overload due to rain. On the next occasion the customer reported a sewage flood on 5 October 2021, the company attended and found the sewer pipe to be clear and free flowing concluding again that the cause was a hydraulic overload issue due to heavy rain the previous night.

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8. On 6 January 2022, the customer wrote to the company advising they had found brown marks on their new driveway that morning and that two independent drainage engineers said that the company “was definitely” responsible for the damage to his driveway that he had to replace on three occasions due to the three previous floods. The customer asserted that the floods were caused when the sewage inspection chamber overflowed due to excess sewage from the nearby estate. He requested that the company take action to stop it happening again. Following on from this, the company attended on 17 January 2022 to discuss his letter and agreed to seal the manhole. This work was completed on 4 February 2022.

9. I find that, therefore by carrying out CCTV surveys of its sewer in response to the customer’s reports of sewage flooding, the company was acting in accordance with its obligations. However, whilst it determined on each occasion that there were no blockages or damage to the sewer in the vicinity of the customer’s property that may be increasing the risk of hydraulic flooding from heavy rainfall, in this circumstance it is reasonable to expect that the company consider if there was any further action it could take to mitigate the risk of the issue reoccurring. As mentioned above, following the customer raising his complaint with the company on 6 January 2022, it attended again and arranged for its operational team to install a sealed cover to the manhole, which was completed on 4 February 2022. It is noted that in its response to CCW dated 5 April 2022, the company explained that due to its mitigation processes, it usually takes much longer to provide property level mitigation; however, because of the customer’s personal circumstances in this case including his ongoing health issues, it wanted to take this action more quickly in order to reduce the risk of further floods from the manhole on his drive. This step taken by the company to reduce the risk of further flooding was reasonable. Nonetheless, as there is no evidence of it considering or taking steps to provide property level mitigation sooner, on balance, I find this constitutes evidence of the company’s service not meeting the standard to be reasonably expected.

10. In his WATRS Application, the customer states the company did not respond promptly and only after he called it three or four times. The company’s records confirm that it took two days to attend the customer’s initial flood report of 17 August 2020 and this was after at least three calls from the customer. The company’s records indicate, however, that its operatives did try to attend on 18 August 2020, but there was an issue with locating the customer’s address. It is evident that the company attended the same day when the customer made further reports of a sewage flood on 20 August 2020 and 5 October 2021. Therefore, whilst the company took slightly longer than could

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be reasonably expected on the first report, I find that the length of the delay is not sufficiently serious that it constitutes evidence of the company's service not meeting the standard to be reasonably expected.

11. The customer also suggests that when the company attended in August 2020 and October 2021, its operatives told him he was responsible for the issue. Whilst private owners can be responsible for repairs in instances where sewer floods are caused by damage to a customer's private drain (or their neighbour's), there is a lack of evidence either in the company's notes or elsewhere that establishes that the company or its operatives advised the customer that he was responsible for the sewer floods. Therefore, I cannot uphold this aspect of the claim.
12. In regards to the customer's complaint that the company did not provide him with a map of its sewer when requested, it is clear that the customer requested this during a call with the company on 3 November 2021 and in his letter to the company dated 2 November 2021. As there is no evidence to show that the company responded to his request or provided the mapping data requested, I find that this constitutes evidence of the company's customer service not meeting the standard to be reasonably expected. Accordingly, I direct that the company respond to the customer's request for mapping of the sewer.
13. In light of the two instances of the company's service not meeting the standard to be reasonably expected, as set out above, I am satisfied that it is reasonable to direct that the company pay the customer a measure of compensation for stress and inconvenience caused. Bearing in mind the length of time the issue persisted and the severity of the impact, I assess that an appropriate amount to be £450.00 in compensation. This amount falls into the higher end of Tier 2 of the WATRS Guide to Compensation for Inconvenience and distress. I am satisfied this amount is fair and proportionate to the service shortfalls shown.
14. Whilst the company has provided an apology in its Defence for the length of time flooding have been occurring, I find it is reasonable in the circumstances to direct that it provide a further written apology directly to the customer. Further, in light of the customer telling CCW that his insurers told him it could not help as he was not responsible for the sewer that caused flooding, I direct for the company to provide the customer with details of its insurers, which I am satisfied is appropriate in the circumstance.

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Outcome

The company needs to take the following further action(s):

- Provide a written apology.
- Pay the customer £450.00 for stress and inconvenience caused by instances of where its service failed to meet the expected standard when handling the customer's reports of sewage floods.
- Respond to the customer's request for mapping data.
- Provide the customer with details of its insurers.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 26 August 2022 to accept or reject this 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 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.

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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)

Adjudicator

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