

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X864

Date of Final Decision: 23 June 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer says the company failed to take action to maintain its sewers following flooding in 2016, resulting in further flooding to his property in 2021. He seeks that the company apologise due to lack of action and not learning from past mistakes.

#### Response

The company says the customer alleges it has been negligent but it is not within the scope of WATRS to make such a finding. The flooding in 2016 occurred due to heavy rainfall. It found no defects on the customer's sewer and no need for regular maintenance. The 2021 flooding also occurred following heavy rain. It denies the claim.

#### Findings

The evidence shows the company provided its services to the standard to be reasonably expected.

#### Outcome

The company does not need to take any further action.

The customer must reply by 21 July 2022 to accept or reject this decision.

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## Case Outline

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

- His property flooded in 2021 because the company was negligent in failing to properly maintain its sewers following flooding in 2016.
- There were also tonnes of silt in the sewers which would have contributed to the problem.
- The company has blamed excessive rainfall for the 2021 flooding without supporting this with evidence.
- He seeks the company apologise due to lack of action and not learning from past mistakes.
- In comments on the company's response the customer says he warned the company his property would flood again if it did not carry out regular maintenance. He believes the silt reduced the network capacity by greater than 5% and refers to evidence showing a 40-tonne deposit reduced capacity in another sewer system by 80%.
- In comments on a preliminary decision the customer provided an estimate from a third party as to the cost of identifying flood prevention measures. He says he would like WATRS to take into account this cost and other ongoing financial implications to him.

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

- Only Ofwat can decide if it has been negligent in failing to maintain its sewers in accordance with the Water Industry Act 1991.
- It received no reports nor found any evidence to show that the sewer serving the customer's home was defective or had any operational issues.
- Its sewers became overloaded in July 2021 due to the sheer volume of rainfall which far exceeded the capacity of the pipework. It has provided information and data from the Met Office in support.

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- It has no control over and so is not responsible for inappropriate items being placed into sewers or the silt that is washed from the roads into the sewer network during heavy rainfall.
- It removed 34 tonnes of silt from the sewer in July 2021 but this amount would only have reduced capacity by 5%.
- Due to the size, natural gravity and the amount of water flowing through the trunk sewer, it would naturally self-cleanse. This means there is no current requirement to place it on a regular cleaning programme. That being said, it is not cost effective for it to clean all sewers on a regular basis.
- It has been as open, honest, and transparent as possible, in providing information to the customer in accordance with the UK GDPR and the Data Protection Act 2018 (DPA 2018).
- The property flooded in 2016 due to heavy rainfall. It found silt but no defects. It cleaned the sewer and no further action was needed.
- It denies the claim.

### 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.

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### How was this decision reached?

1. The company has referred to statute law which makes clear that WATRS has no role in determining whether the company has met its regulatory obligations in respect of servicing and maintaining its sewers. That is a role for the Secretary of State or Ofwat. I accept the company's position in this regard.
2. While WATRS cannot find the company has breached its statutory duty or find it to be negligent, we can consider whether it has provided its services to the standard to be reasonably expected.
3. The company has provided a copy of its work records following the 2016 flooding. This shows the company found the cause was heavy rainfall and hydraulic overload. There is nothing to suggest the company had reason to believe there was any defect in its sewer or that any regular maintenance was necessary.
4. While I acknowledge the customer warned the company that his property would flood again if it did not take action, it does not follow the company was then under any obligation to take action. The company does not have unlimited resources and it is not reasonable to expect it to carry out regular maintenance unless a specific defect or problem is identified.
5. The evidence does not show the company had any reason to carry out regular maintenance following the 2016 flooding. I therefore cannot say the company failed to provide its services to the standard to be reasonably expected in this regard.
6. The company has evidenced that the customer suffered flooding in July 2021 due to heavy rainfall. There is a lack of evidence the flooding arose due to any failure by the company to maintain its network. I therefore cannot say the company did not provide its services to the standard to be reasonably expected in this regard.
7. In accordance with WATRS rule 5.4.3 I must disregard any new evidence provided in the customer's comments on the company's response. I therefore will not comment on the customer's evidence regarding the impact of deposits on another part of the network. However, by way of a general observation, I note that the company's sewer network has varying pipework and capacity. Therefore, the size of a deposit and the impact on capacity in one part of its network will not necessarily reflect the impact of the same on another part of its network.

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8. I acknowledge the flooding will have negatively impacted the customer and I appreciate he will feel aggrieved this occurred again. However, I have been unable to find the company failed to take action or learn from past mistakes. Therefore, the customer's claim for an apology for such is unable to succeed.
9. As I have not found any failing by the company I cannot consider any remedy. Therefore, the evidence of costs provided by the customer in comments on a preliminary decision have no bearing.

#### **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 21 July 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.



J Mensa-Bonsu LLB (Hons) PgDL (BVC)  
**Adjudicator**

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