

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X028

Date of Final Decision: 9 August 2022

Party Details

Customer:

Company:

Complaint

The customer complains that the condition of the sewer has caused a number of blockages and she has had to have this cleared on several occasions. She says that the use of jet-washing inside the sewer has caused the content of the sewer to be pushed into her driveway and the surface of her driveway has become severely cracked and dangerous. The customer would like the company to re-lay the pipework and asks for £10,000.00 compensation comprising £2,500.00 for inconvenience and distress and £7,500.00 towards the cost of repairing her driveway.

Response

The company says that it is not liable for this claim. Blockages have occurred due to the use of wipes in the sewer and to the presence of tree roots and the company has cleared the sewer and repaired the manholes when needed. It has also agreed to reline the sewer, which took place in May 2022, but it does not intend to relay the sewer and is not liable for damage to the customer's driveway. It has investigated her complaint that the sewer content could be pushed out into the ground under the driveway during jet washing but has not found a defect that would make this possible. It has relined the sewer which it believes to be a satisfactory remedy for the customer's experiences of repeated blockages.

Findings

Although this is an old sewer with a shallow fall which the company acquired in 2011, it is not open to me to direct that the company should upgrade this beyond the steps that have already been taken. The company has carried out an investigation into the circumstances affecting the customer and the management and maintenance of the company's network is a matter for the courts and Ofwat. An adjudicator has no jurisdiction to direct that the company should allocate its resources differently. As for the customer's concern that jet-washing the sewer has caused excrement to leak out and damage her driveway, I find that this is improbable. The driveway is 54 years old and is agreed to have already been cracked where it passes over the sewer before the jet washing in March 2021, which gave rise to the customer's first complaint. There is no evidence that the customer's allegation that solid

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contents are being exuded from the sewer during jet washing is possible or could have caused the conditions that the customer describes.

Outcome

The company does not need to take further action.

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Case Outline

The customer's complaint is that:

- The customer says that the pipework under her driveway at her home at REDACTED which serves two properties and is connected to a sewer which also serves a third property, is defective and has therefore been affected by blockages for a number of years, the most recent being at the time of the application, in January 2022.
- Repeated high-pressure jetting by the company to clear the blockages through the defective pipework has caused sewer water and detritus to be pushed up through the driveway.
- The driveway is now uneven and dangerous as a consequence and the customer would like the company to pay for a new driveway.
- Despite her own efforts, no private contractor will look to replace or repair the customer's driveway because of the lack of depth or fall to the sewer pipe and the poor state of repair of the pipework.
- The customer would like the company to re-lay the pipework and asks for £10,000.00 compensation comprising £2,500.00 for inconvenience and distress and £7,500.00 towards the cost of repairing her driveway.

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The company's response is that:

- The company agrees that there have been a number of instances of flooding of the sewer in the customer's driveway.
 - On 9 March 2015, the manhole at her property was said to be full. No external flooding was reported. On the same day, the Company attended and jetted the sewer to remove any blockages.
 - On 8 December 2019, the customer reported that the manhole at the property was full. No external flooding was reported and on 9 December 2019 the company jetted the sewer to clear any blockages.
 - On 14 March 2021, the customer reported that the manhole was full. The company flushed the sewer on the same day and wipes were removed from the sewer which had caused the blockage. No flooding was reported.
 - On 5 April 2021, the customer reported an issue with the condition of the driveway. She referred at that time to excrement flooding on the driveway in the incident that had occurred on 14 March 2021. The company's job notes state that the manhole was half full and no flooding occurred at that time of the company's visit. The company arranged to undertake CCTV investigations of the sewer.
 - On 22 April 2021, the sewer was jetted, and CCTV footage identified roots in the sewer which were removed on 26 April 2021. A further job was raised for the benching to be repaired on the manhole at the top of the driveway which was completed on 21 May 2021.
 - On 13 July 2021, the customer reported further blockages in the sewer. The company jetted the sewer on 18 July 2021.
 - On 2 November 2021, the customer reported a full manhole. The manhole at the top of the driveway was found to be full and the company jetted the sewer on the same day. No external flooding was found or reported by the customer.
 - On 20 January 2022, the customer reported loss of toilet facilities and a full manhole. On 21 January 2022, the company attended and found both manholes on the driveway to be full. The sewer was jetted, and any blockages were removed.
 - On 21 January 2022, the customer reported that the manhole was overflowing into the neighbour's garden. It appeared that the neighbour's manhole was blocked which caused issues and blockages at the customer's manhole.
 - On 25 January 2022 further CCTV investigations were undertaken, the flooding was cleaned up and a further job was raised for a repair to the manhole cover outside

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REDACTED. It was noted that the sewer had blocked and had overspilled from the chamber in the front garden of REDACTED and no issues with the sewer were identified that could have caused the cracking to the customer's driveway. The customer was referred to her own insurance company in respect of the cracking to the driveway.

- On 8 March 2022, the customer reported loss of toilet facilities. It was noted that the manhole at REDACTED was full which was rodded, and the system was flushed
- On 22 April 2022 further CCTV footage of the sewer was taken which found further roots in the sewer which were cleared.
- On 4 May 2022, the sewer was relined from manhole REDACTED to manhole REDACTED.
- The company says that:
 - It cannot be held liable for third parties depositing debris into the public sewer.
 - It has dealt with the customer's complaints in accordance with its own, and Ofwat's, policies. Where it has failed to do so adequate compensation has been provided in the form of Guaranteed Service Standard (GSS) payments. This includes compensation for the incident of flooding in January 2022.
 - The company has undertaken reasonable investigations and kept the customer informed at all stages.
 - The customer has not submitted any evidence in support of the heads of loss claimed.
 - The customer has failed to prove that the company has failed to meet correct standards in maintaining its assets.

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

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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.

I also make clear that in reaching my Final Decision, I have taken into account the customer's comments on my Preliminary Decision.

How was this decision reached?

1. The customer says that she would like the company to re-lay the foul sewer that lies under her driveway which involves two manholes at each end of approximately 82 feet of driveway. She also complains that her driveway has become dangerously cracked above the sewer and she says that this is attributable to the company. She asks for £10,000.00 compensation comprising £2,500.00 for inconvenience and distress and £7,500.00 towards the cost of repairing her driveway. In her comments in reply to the company's defence, the customer also makes comments about certain other matters including mis-spelling her name and late payment of GSS credits, these did not initially appear in her application form and I have not commented on these.
2. The customer's main complaints are, therefore:
 - a. First, she is concerned that despite several floods from 2015 onwards, the company did not detect that the sewer under her driveway was in disrepair. She says that the re-lining work that has now been carried out in May 2022 was "a sticking plaster job", hence her claim that the pipe should be re-laid.
 - b. Secondly, the customer says that as the work done by the company to jet-wash her sewer has caused her driveway to crack, she should be compensated for this damage, especially as two tradesmen have stated that they are unwilling to lay a new drive due to the proximity of the sewer to any new surface.
3. I find that the two complaints give rise to different considerations, and I discuss these separately below.

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4. I also make clear that I have considerable sympathy with the position in which the customer has found herself, particularly during 2021 when there was an escalation in the number of incidents and in 2022 when, following a significant incident in January, she has perceived that she has been affected by ongoing problems of odour from the sewer or from, in her view, a lack of adequate cleaning. This has involved a high level of contact with the company and with the Consumer Council for Water (CCWater) in an attempt to find a resolution. However, it does not follow from this that the customer is able to succeed in her claim against the company.
5. In relation to the first complaint, I am mindful that the evidence suggests that the company did not design or install this sewer and it has had no involvement in setting the angle of its fall or the manner of its construction. The only available evidence is that this was acquired by the company in 2011 and I find that the likelihood is that it was converted from a private sewer (for which the customer may have been solely responsible) to a public sewer in 2011 by operation of law, namely under the Transfer of Private Sewers Regulations 2011. Since acquisition, the sewer has ceased to be a responsibility of the customer and become part of the company's network and therefore is subject to the overview of Ofwat and within the scope of the Water Industry Act 1991.
6. It does not follow from this that the company is liable to rectify problems in the sewer's design or construction. Nor, in the absence of evidence that the company has failed to supply its services to the expected standard, will the company be liable for escapes of sewage. As the company explains in its response to the customer's application, under the Water Industry Act 1991, sewerage companies are not generally liable for the escape of the contents of public sewers in the absence of negligence. The rationale is that sewer flooding can occur as a result of actions beyond the control of the water companies. Household discharges such as grease, fat and domestic waste can all lead to unforeseen blockages and surcharges can occur due to exceptional weather. Ofwat also notes that "sewers may overflow from time to time during periods of exceptional weather". Instead, when escapes of sewage occur, companies are required to make guaranteed payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.
7. Also under the Water Industry Act 1991, decisions relating to the provision and maintenance of a sewerage network are matters that are overseen by Ofwat. In a case that concerned

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repeated escapes of sewage called *REDACTED*, the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving the network. The reason for this decision was that overview of the company's decision-making in this area was found to be, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts. It is reviewable under the process referred to in the company's submission to this adjudication as specified in section 18 of the Water Industry Act 1991.

8. This means that it is for Ofwat and the water companies to decide how they will manage the network and what resources and priorities should be applied to any one customer, bearing in mind the interests of customers overall. The courts cannot review this and decide that a company should have reached a different repairing or investment decision in any particular case.
9. 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. I am mindful that in making changes to the company's assets, the company is required to weigh up the relative merits and needs of all its customers. This is a matter that Ofwat may be well placed to undertake, but an adjudicator is not.
10. 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 determinate an outcome".
11. Even though, therefore, I accept that the evidence shows that the customer has been affected by escapes of sewage into her garden or high levels of foul water in her manholes in 2015, 2019, 2021 and 2022 and even though there is a low fall in the sewer and this is close to the surface of the drive and the pipe has been affected by tree roots and blockages, I have no jurisdiction to direct that the company should re-lay this pipe rather than reline it, which it has done, and which in the company's judgment is sufficient.
12. I also find that, although the customer complains that the company has not always cleaned up to the standard that she would wish, the job notes indicate that the company has

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attended following complaints made by the customer or her husband, has inspected the sewer pipe, including with CCTV cameras, has cleared roots and made repairs, has reported on whether further work was necessary and, in 2022 when there was an escalation of problems from January 2022 onwards has cleaned and reported and acted on the need for further works. This has led to re-lining the sewer in May 2022. I do not find that the evidence supports that the company failed to provide its customer services to a satisfactory standard.

13. In relation to the second issue, the customer says that the company has caused damage to the sewer and to her environment by the use of high-pressure jet washers in the sewer.
14. Her first complaint about this was first made in respect of jetting undertaken on 14 March 2021. The job note for the attendance of the company's contractors on 14 March 2021 states that the company had flushed and removed wipes. Two tanks of water had been used and after the work was done the customer was happy and was informed about the wipes, I note that the customer and her neighbour both deny putting wipes in the sewer, and I do not say that the customer has herself deliberately introduced wipes or something that would have appeared similar when the sewer was unblocked. However, I find that the company's contractors would have had no reason to say that they had found wipes in the sewer if they were not there, so that it is probable that, for whatever reason, a blockage had been caused by some content that looked like wipes and this needed to be cleared on 14 March 2021 so that the sewer could function.
15. The company says that this was a short length of sewer and even though it has jet washed the sewers locally, it has not jet washed the pipe between the two manholes using the level of pressure suggested by the customer (3000 psi) because of the short distance between the manholes. The company points out that the driveway was cracked before any work was undertaken.
16. I have considered the competing arguments with care. As indicated above, I do not find that the mere fact that the drive may be subject to stress where it crosses the sewer due to the presence of an underground structure is a reason why the company is liable to replace it. The evidence of the customer is that the drive is made of concrete and is 54 years old. The customer also agrees with the company that the drive was cracked in the area of the drain before the company undertook jetting work in 2021, but, she says, not so badly. The claim,

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therefore, is made in respect of a driveway that was already old and compromised and in which fracturing had started.

17. I am mindful that fracturing of concrete can occur for very many reasons, including breakdown of the composition, changes in temperature and in atmospheric moisture, movements in the ground and physical damage. That this process had begun before jetting in March 2021 indicates that some or all of these factors were already in play. The evidence includes a photograph taken at some point after March 2021 but there is no evidence of the condition of the drive before the work was undertaken.
18. The customer's hypothesis is that after jet washing, tissue and excrement is present in the cracks on her driveway and therefore she believes that the sewer contents have been forced through cracks or abutments of the sewer into the ground. Moreover, the customer says that she has been able to see excrement and tissue paper in the cracks in the driveway, which would mean that solid matter was passing out of the sewer into the ground. This, she says, explains the increased heave to the driveway surface and the unpleasant odour. Although one engineer has suggested that in some way the jet washing can open the joints in the sewer, this seems unlikely because, if so, it is a problem that would have been familiar to the company on every occasion that a sewer is jet-washed, whereas I am mindful that this is an unusual allegation, and another engineer has told the customer that this is not possible. The company's position also is that this is improbable, but it has investigated the interior of the sewer with CCTV cameras on 25 January 2022 and found no defects in the sewer that would give rise to the presence of leaked sewer contents. I find that this makes the customer's hypothesis unlikely, and it is notable that the customer has not put forward any expert opinion in support of her view.
19. I find that it is significantly more likely that consequence of jet washing has been "blowback" at the manhole (as described by the customer on one occasion) and the sewer contents thus released at a manhole have settled into the cracks in the driveway. I find that the customer's description in her comments on my Preliminary Decision of the eruption of material from the manhole on 21 January 2022, confirms rather than challenges this explanation of events.
20. Moreover, I would add that the use of jets in a sewer is a customary method of clearing a sewer, which operation was, for the comfort and safety of the customer and her neighbours, essential.

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21. It therefore follows, that although I recognise that, as the customer says, no part of this situation is her fault and the customer has experienced significant difficulties in respect of the sewer and I recognise also that the state of her driveway is deteriorating, I do not find that the company has failed to deliver its services to the expected standard.

22. I find that the customer is not able to succeed in her claim for a remedy.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- 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.

Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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