

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X075

Date of Decision: 28 August 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding an ongoing issue with a compensation claim in respect of a damaged driveway following work by the company. The customer asserts that the company unduly delayed repairing a damaged pipe resulting in standing water/sewage on the driveway that now requires full replacement. The compensation offered by the company is insufficient. The customer claims that despite ongoing discussions with the company, and the involvement of CCWater, the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to pay him compensation in the amount of £9,000.00.

#### Response

The company acknowledges causing a small area of cracking at the driveway but says its compensation offer is proportionate to the damage done. It denies that it was in any way negligent, states that it carried out ongoing mitigation measures, and that it repaired the pipe within reasonable time. The company has made a formal offer of settlement to the customer and confirms it has also offered £250.00 as a goodwill gesture.

#### Findings

The claim does not succeed. The evidence does not establish that the company has been negligent in dealing with the repair of its asset at the customer's property, and I do not find that the evidence supports the customer's claim for compensation. I find that the evidence shows that the company did provide 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 any further action.

The customer must reply by 25 September 2022 to accept or reject this decision.

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**ADJUDICATOR'S DECISION**  
**Adjudication Reference: WAT-X075**  
**Date of Decision: 28 August 2022**

**Case Outline**

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

- He has experienced an ongoing dispute with the company concerning compensation for damage it caused to the driveway at his property.
- On 07 October 2021 he became aware that sewage was pooling on the driveway at his property, and thus he contacted the company.
- On 11 October 2021 the company attended the property and identified that its main sewer pipe was blocked, but advised him that it needed a seven day period to organise the repair works.
- He acknowledges that the company cleared the drain every other day, and lifted the manhole cover to inspect inside the drain, but records that it did not affect the repair until 03 November 2021.
- The driveway is of resin bonded construction, and that during the period between 07 October 2021 and 03 November 2021 there was standing water and sewage on the driveway,
- Following the repair works to the main sewer he contacted the company to advise it that the driveway was damaged, and he believed the long period of standing water/sewage was responsible. The customer requested the company cover the costs of repairing the drive.
- The company responded and stated that it had no responsibility or liability for problems caused by sewer flooding, only if it could be shown that it was negligent.
- Believing the company had not properly addressed his concerns he, on 21 November 2021, escalated his complaint to CCWater. The records show that CCWater contacted the company on 16 December 2021 with a pre-investigation letter requesting its explanation of events.
- Following the intervention of CCWater the company inspected the driveway on 08 March 2022 and accepted that it had caused damage around two manholes on the driveway and invited him to obtain two quotations for repairing the driveway.
- He was unable to find a specialist company willing to undertake repairs and on 20 May 2022 he submitted to the company a quotation in the amount of £11,000.00 for full replacement of the driveway.

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- The company responded by saying it accepted that it had damaged approximately only 10% of the surface of the driveway, and thus it offered him £1,100.00 being 10% of the quoted price.
- On 27 June 2022, CCWater had concluded that the company had submitted a reasonable response and CCWater stated that it could not take any further measures to have the company change its position and was thus closing his case.
- Continuing to be dissatisfied with the response of the company he has, on 13 July 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to pay compensation in the sum of £9,000.00 to cover the cost of repair works to the driveway.

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

- It provided its response to the claim in its submission dated on 18 July 2022.
- It acknowledges that the customer contacted it on 08 October 2021 to complain of a leaking sewer pipe at his property.
- On 11 October 2021 it attended the property and undertook a camera inspection and identified that part of a sewer pipe required lining with a plastic insert.
- It attended the property every day to mitigate the leakage and raised the manhole covers to inspect the conditions inside the system. The company states that on 03 November 2021 it completed the required remedial work.
- Following complaints from the customer of damage to his resin bound driveway it attended the property again on 08 March 2022 and accepted that the regular lifting and replacing of the manhole covers had resulted in cracks adjacent to the manholes.
- The company states that the cracking occurred over approximately 10% of the entire surface of the driveway, and it requested the customer to secure two quotations from specialists to repair the cracked areas.
- It also acknowledges that the customer informed it that he could not get any specialist resin contractor to undertake crack repair work and thus submitted a quotation to have the full 48M2 area of the driveway re-laid at a cost of £10,999.20.
- It confirms that it offered the customer the amount of £1,100.00 that is equivalent to 10% of the quoted price for the repairs.
- It acknowledges that the customer has rejected the offer and seeks the sum of £9,000.00. The company confirms that it believes its offer is generous and it declines to increase it.

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- Photographs taken on the day on 11 October 2021 show that cracks were already visible around the corner edging of a manhole.
- In summary, it says that the compensatory offer made is in line with the amount of damage it caused.

**The customer's comments on the company's response are that:**

- On 29 July 2022, the customer submitted detailed comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer says that he does not agree that the driveway exhibited cracks on 11 October 2021. The customer reiterates that the whole driveway has sunk because of the standing water and sewage and that the company's offer of compensation is inadequate because the entire drive has to be replaced. The customer repeats that he wants the driveway returned to the condition it was in prior to October 2021 and reiterates his belief that the delayed action by the company caused the problems.

**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 has failed to offer sufficient compensation to cover the cost of re-laying his driveway following a leakage from the company's sewerage assets.
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 can see that the parties agree that the customer contacted it on 07 October 2021 to complain of a leaking pipe that resulted in water and sewage ponding on his driveway.
4. The parties further agree that the company attended on 11 October 2021 and identified that remedial works were necessary and subsequently repaired the leak on 03 November 2021.
5. The parties are also in agreement that during the period between 11 October 2021 and 03 November 2021 the company regularly attended the property to mitigate the effects of the leak and to raise the manhole covers to check the status of the pipe system.
6. The customer contends that the company was negligent in not identifying and repairing the leaking pipe more quickly, and that the delay caused the cracking of his driveway.
7. In the case of REDACTED, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
8. In the words of the court, "*The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise.*"
9. The Court of Appeal subsequently reiterated in REDACTED, that the REDACTED applies broadly to exclude claims based on a water company's performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
10. The consequence of the House of Lords' ruling in REDACTED, then, as interpreted by the Court of Appeal in REDACTED, is that the customer's claim can only succeed if the company has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company's operation of its business would not suffice.

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11. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence. In other words, the company is only responsible for reactive maintenance of its sewerage and wastewater assets and not proactive maintenance as is the case with water supply assets.
12. In its e-mail to the customer dated 04 November 2021 the company explained that it has to prioritise its reactive work and give preference to those suffering internal flooding or pollution. The company stated that it carried out the repair at the property as quickly as it was possible to do so.
13. Also, in its paper dated 23 December 2021 the company explained that it has an internal SLA that permits it a seven-day window to organise repair works and identify needs in respect of resources, permits, etc.
14. Additionally, the company provides a chronological list of events that shows it visited the property on an almost daily basis to mitigate the effects of the leaking pipe and its records show that there were no additional flooding events between 11 October 2021 and 03 November 2021.
15. In its e-mail of 15 June 2022, the company accepts that its repeated lifting of the manhole covers may have caused cracking adjacent to the manholes, but to an area not exceeding 10% of the total paved area. However, the customer has not submitted any evidence to show that the company was negligent when removing the covers, and I am not satisfied that it has been established that the cracking is not simply a result of numerous liftings and refitting's of the covers. This is not the same as negligent working.
16. I am not satisfied that the company's acceptance that its mitigation activities may have caused the cracking around the manholes is an acceptance of negligence.
17. In the present case, I do not find that the evidence establishes that the company acted negligently. I am satisfied that it took the customer's complaint seriously, that it complied with its own repair procedures, and followed up the customer's concerns after completing the repair works.
18. I take note that the company made a goodwill gesture to the customer in the sum of £250.00 and a further offer of £1,100.00 towards the cost of the repair works. Both offers were rejected.
19. In terms of the WATRS Scheme I am not bound to repeat the company's offers and as I have found no negligent activity by the company then it follows that I find that compensation is not appropriate.
20. Thus, I find that the claim for compensation does not succeed, and I shall not direct the company to pay such compensation.

21. My conclusion on the main issues is that the company has provided its services to the standard to be reasonably expected by the average person.

### The Preliminary Decision

- The Preliminary Decision was issued to the parties on 15 August 2022.
- The customer has, also on 15 August 2022, submitted comments on the Preliminary Decision.
- The customer reiterated his previous position that he cannot find a contractor to repair just the damaged portion of his driveway and therefore must have the entire area re-laid. The customer confirms that the amount offered by the company is insufficient to cover the cost of a full re-lay.
- The company submitted comments on the Preliminary Decision on 22 August 2022 and noted the contents thereof.
- I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged. No new evidence has been submitted.
- Having read the responses of the parties I am satisfied that no amendments are required to the Preliminary Decision.

#### **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 25 September 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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