

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X082

Date of Decision: 25 August 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding an ongoing issue with a moving wall at his property. The customer says he has needed to call the company to his property on several occasions since 2017, but it did not provide correct remedies to the problems. The customer says that in April 2021 he identified that a wall at the property was bowing and moving away from his driveway because of a leaking sewer pipe that the company had not repaired correctly. 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 repair the wall and a sewer pipe and pay him compensation.

Response

The company refutes that it is liable to repair the wall. The company says under OFWAT regulations it is only responsible to repair the pipe but not the wall. The company further asserts that the customer has not established that its actions caused the wall problem. The company says it only received a complaint from the customer in April 2021 and has since taken reasonable steps to rectify the issues identified. The company has not made any formal offer of settlement to the customer and confirms it does not agree to replace or repair the wall.

Findings

The claim does not succeed. The evidence does not establish that the company has been negligent in its dealings with the customer, and I can see that the company has no statutory obligation to accept liability for the wall. 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 22 September 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company concerning issues with a retaining wall adjacent to the driveway at his property.
- Since moving into the property in 2017 he has had the need to contact the company on several occasions regarding various problems with both water supply and wastewater services.
- There is a wall adjacent to and running parallel to his driveway that acts as a retaining wall to the driveway between his and a neighbouring property.
- In March 2021 he complained to the company that the wall was moving and bowing and was in danger of collapse. The customer says that the company inspected and acknowledged that there was a broken sewerage pipe close to the wall, but it refused to accept liability for the wall.
- In April 2021 the company referred him to its insurers in respect of his complaint about the wall and the insurers had a surveyor inspect the wall. The customer asserts that the surveyor identified that the leaking pipe was the cause of the bowing issue at the wall.
- The insurers stated that the company was only obliged to repair the pipe and not the wall, unless the customer could prove it had been negligent.
- He subsequently made a SAR and received all records of his dealings with the company, and has identified numerous complaints to the company and the various activities the company had undertaken at his premises.
- He believes the information he has examined shows that the company has been negligent in its work and dealings with him over a number of years, and that had the company performed adequately from the outset the problem with the wall would not have occurred.
- Believing the company had not properly addressed his concerns he, on 31 January 2022, escalated his complaint to CCWater. The records show that CCWater contacted the company on 03 March 2022 requesting its explanation of events.
- The company responded with its letter of 10 March 2022 but CCWater issued a pre-investigation letter on 05 May 2022 as the company response was deemed insufficient.
- On 28 June 2022, CCWater advised him that it had received a detailed response from the company dated 23 June 2022. CCWater had concluded that the company had submitted an

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adequate response and 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 08 July 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to repair a sewage pipe, repair the wall, and pay him compensation.

The company's response is that:

- It provided its response to the claim in its submission dated on 22 July 2022.
- It acknowledges having visited the customer's property in 2017, 2018, and 2019 to investigate complaints from the customer. The company says this included it repairing free of charge a damaged privately owned gully pot.
- In April 2021 it was contacted by the customer concerning one of the two manhole chambers located on the driveway at the property. The company acknowledges that the customer raised a concern that a broken sewer pipe was leaking and undermining an adjacent wall.
- It attended the property, identified a damaged joint where water was seeping under the pipe, and a repair was affected. The company says it advised the customer that it did not accept any liability for the wall because the damaged joint was over one metre from the wall and at a depth of 0.3 metres below the base of the wall.
- It advised the customer to contact his insurers in respect of the wall but states he informed it that his insurers would not consider any claim for the wall.
- It referred the customer to its insurers who in turn had a surveyor inspect the property and produce a report dated 26 April 2021. The company notes that the report states the wall had shown signs of damage prior to the sewer leak being reported. The report also confirmed that legally the company has not strict liability for sewer assets.
- In June 2021 it undertook additional testing that confirmed that no water was escaping from the sewer system in proximity to the wall. The company states that the final works to repair the sewer were completed on 22 November 2021.
- It has no statutory liability in respect of wastewater assets unless it has acted negligently. The company asserts that it believes the customer has not presented any evidence to show negligence.
- In summary, it says that all concerns raised by the customer were thoroughly investigated and all necessary repair works were completed in a timely manner. The company also reiterates that

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it repaired the customer's private gully pot free of charges. The company does not accept the customer's claim.

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

- On 24 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 disagrees with the company's interpretation of the surveyor's report and believes it points directly to the fact that a pipe leak only inches from the wall is the cause of it moving and bowing. The customer reiterates his belief that had company engineers fully corrected earlier issues then the wall problem would not have ensued.

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?

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1. The dispute relates to the customer's dissatisfaction that the company's purported negligence over several years has ultimately led to the failure of a wall at his property.
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 a wall between the customer's driveway and his neighbour's driveway has bowed, and a gap has appeared between the wall and the customer's driveway.
4. The company has noted that it first received a complaint from the customer on this particular problem on 13 April 2021 when it attended the property in response to the customer's notification of a leaking sewer pipe.
5. The customer has identified several previous occasions, prior to April 2021, that necessitated the company attending his property, viz :-

December 2017

January 2019

March 2019

6. The customer has acknowledged that company engineers attended the property and carried out tests and did some repair works.
7. The customer asserts that he believes that if company engineers had done the investigations "correctly" then the ensuing problem with the wall could have been avoided.
8. The customer has provided copies of e-mail exchanges between himself and the company's insurers. However, these exchanges commence from 16 April 2021 onwards and thus do not substantiate negligence on the part of the company in 2017, 2018, and 2019.
9. The customer also entered into evidence two files entitled "x Job Notes". The file ending in 4425 is, again, details of exchanges between himself and the company since April 2021 and I do not find that the entries therein are providing substantiation of any company negligence in preceding years.
10. The file ending in 1722 commences as from December 2017, and initially concerns water supply to the property and rodent ingress. However, my review of the file shows actions were taken by the company and I have to take into consideration that the customer at no time retained any third-party independent professional advice to identify if the company's action were in any way incorrect or deficient. I am not able to identify from the file the efficacy of the measures taken by the company and if they can be construed as negligent.

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11. Overall, my review of the evidence submitted by the customer does not support his contention of negligence on the part of the company in respect of “correctly” identifying any serious pipe leakage.
12. Similarly, I am not satisfied that the customer has linked the incidents prior to April 2021 to the fact that the wall now exhibits a gap between it and the asphalt driveway. In other words, I do not find that the customer has established on a balance of probabilities that any act or omission on the part of the company has caused the gap between wall and driveway.
13. I acknowledge that the customer has given his opinions as to what measures he believes the company should have taken, but I note that none are supported by any independent third-party professional study and report.
14. In regard to the report produced by the surveyor retained by the company’s insurers, I take note that the parties have differing opinions as to the conclusions expressed by the survey following his site inspection. The customer contends that the surveyor identified that the wall problem was caused by a leaking sewer pipe, whereas the company assert that the pipe is too remote from the wall to have affected it.
15. I am provided with a copy of the report and have studied it. I draw attention to the following entries :-

The claimant advised there was no issue to the driveway in the past, however he noticed 3 months ago that the wall holding his drive up was moving away and leaving a clear gap.

16. I am satisfied that this supports my finding that the incidents recorded in 2017, 2018, and early 2019 cannot be reasonably linked to the gap identified in Q1 of 2021. The customer has not submitted any technical proposals to challenge the company’s position that its assets have not caused the gap.

17. Further,

We do wonder if the proposed work as suggested by X to fix/replace the pipe will involve removal and rebuilding of the wall. We therefore wait to see the method x use to fix the drain.

18. I am not satisfied that this statement in any way recommends or directs that the company takes responsibility/liability for the wall issue and rectifies the gap.

19. Additionally, the report says :-

In our opinion the wall has been damaged by a recent event and as the drain is only inches away we cannot see it being damaged by any other cause.....

20. I am not satisfied that the opinion of the surveyor is supported by evidence as it seems he undertook no testing and he has not established, even on a balance of possibilities, that water leaking from a broken pipe 1.3 metres away from the wall and 0.3metres below the wall flowed to the wall.
21. Overall, I do not find that the surveyor's report identifies any negligence on the part of the company.
22. I accept that the company has established its statutory responsibility in respect of wastewater and sewerage assets, insomuch that it is responsible for reactive and not proactive maintenance.
23. Thus, the legal position 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 purportedly suffered damage as a result of the company's operation of its business would not suffice.
24. Moreover, any negligence displayed by the company must not raise regulatory issues but must instead reflect what might be called standard negligence.
25. In the present case, I do not find that the evidence establishes that the company acted negligently. Thus, it follows that I shall not direct that it repairs or replaces the customer's wall.
26. The customer has requested that the company be directed to repair a sewage pipe. From the evidence submitted it is not clear as to which pipe or location the customer refers to. I note that the company has stated that it completed all works to the sewerage system at the property in November 2021. Thus, I am unable to direct the company to undertake repairs to any additional pipework.
27. In his application to the WATRS Scheme the customer has requested that the company be directed to pay him an unspecified amount in compensation.
28. The customer has not submitted any substantiation for compensation. I do not find that he has established any financial losses caused by any act or omission on the part of the company and whilst I sympathise with his position, I am not satisfied that compensation is applicable.
29. Thus, I find that the claim for compensation does not succeed, and I shall not direct the company to pay such compensation.
30. 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.

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- The customer has, also on 15 August 2022, submitted comments on the Preliminary Decision.
- The customer reiterated his previous position that he believes the company was negligent inasmuch that it had not repaired the broken pipe at the time he submitted his application to the WATRS Scheme.
- On 18 August 2022 the company issued comments on the Preliminary Decision and responded to the customer's comments of 15 August 2022.
- The company confirms that it completed repairs to the broken pipe on 20 November 2021
- I can see that the customer has uploaded additional photographs on 21 August 2022, and remains of the opinion that the pipe still requires repairing.
- I cannot accept that the photographs support the customer's position.
- 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 22 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.



Peter R Sansom
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Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Adjudicator

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