

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X013

Date of Final Decision: 17 October 2022

#### Party Details

Customers:

Company:

#### Complaint

The customers' septic tank and soakaway have been irreversibly damaged by a series of floods caused by the company's failure to maintain its pipework and its failure to efficiently deal with the escaped water on the customers' land. The company accepts that the septic tank was flooded by water that escaped from its pipework, but disputes that the water caused permanent damage. The flooding and the way the company has handled the customers' complaint has caused extreme stress and, in view of this, the customers would like the company to apologise and pay £18,480.00 for a new septic tank and soakaway, £50.00 for wild flower seed, £5,000.00 for loss of the amenity of the drainage system, £3,600.00 for loss of amenity of the land, £1,000.00 for a data breach, £2,500.00 for writing reports to support their complaint, and £2,500.00 for five days of facilitating access to, and dealing with, the company. The customers also claim an unspecified amount of compensation for further distress, anxiety and inconvenience.

#### Response

The company accepts that the flood water from its asset entered the customers' septic tank and soakaway, but there is no evidence to show that the septic tank or soakaway were damaged as a result, and the independent survey report commissioned by the company shows that the septic tank had not been maintained or emptied in line with the required standards, and the soakaway had reached the end of its useful lifespan. Therefore, the company denies liability to compensate the customer for a new septic tank and soakaway. The company has offered the customer £2,500.00 in full and final settlement for all other matters.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

## Findings



The evidence does not show that the company has failed to provide its service to the standard reasonably expected by the average person by damaging the customers' septic tank and soakaway, or by refusing to pay for their replacement. In view of this, the customers' claim for compensation for a new septic tank and soakaway cannot succeed. The evidence does not support the customers' claims for compensation for a data breach, wild flower seed or loss of amenity of the drainage system. However, the evidence shows that the company's assets caused the customers' property to flood and this caused considerable distress and inconvenience to the customers. Therefore, I direct the company to compensate the customers in the amount of £2,000.00.

### Outcome

I direct the company to pay the customers £2,000.00 in compensation for distress and inconvenience.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

**[www.WATRS.org](http://www.WATRS.org) | [info@watsr.org](mailto:info@watsr.org)**

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-x013

Date of Final Decision: 17 October 2022

## Case Outline

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

- The company's pipework runs across their property. Since February 2019, it has burst four times and on each occasion their septic tank has been flooded with thousands of litres of water causing the septic tank to become irreversibly damaged.
- The first flood was so excessive that it created a body of water fifty metres long and a foot deep, and the pipe failed again a week later.
- On each occasion, the company made matters worse by failing to bring the equipment needed to pump the water off their land and, instead, pumped it elsewhere on their land and caused more damage.
- They accepted a small payment of compensation following the first two leaks, so this complaint refers to the subsequent water escape events, and they would like each one to be considered as a separate matter.
- Following the leak in February 2019, they asked the company to replace the cast iron pipework as it was likely to be approaching one hundred years old and there was a high risk it would keep failing. The company failed to do this and the pipework continued to fail and caused significant damage as their land was further saturated with flood water.
- On 18 November 2020, the third flooding event occurred and the company attended to repair the pipe after the flood water became extensive. For some time prior to this date, they had suspected that the pipe was leaking due to ground saturation and continual flooding.
- However, the company did not bring a sufficient length of hose to pump the flood water from their land, despite a specific request to do so. Instead, the thousands of litres of flood water were pumped onto another area of their property causing further damage.
- The company did not identify the precise location of the failure and instead guessed where the leak was. This resulted in a fifteen metre trench being needlessly excavated in the garden of their property, which then took the company around six months to restore, substantially affecting the amenity of their property. The company then dug a second excavation within two metres of the septic tank and found the leak. It is possible that this leak had been on-going for over six

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

months within close proximity to the septic tank and would have contributed to the extent of the saturation of the soakaway.

- Despite paying to empty thousands of litres of water from the septic tank, the company has refused to acknowledge that the water entered the septic tank system and caused damage to it. Instead, the company created what they claim was an 'independent report'. After months of correspondence, the company finally admitted that the report was not independent at all and had been produced by one of its service partners. Unsurprisingly, the findings were in favour of the company, even though the findings are based on assumptions rather than evidence. When presented with evidence to dispute the report's findings, the company refused to engage and suggested they should take legal action.
- They have made subject access requests to the company and its service partners which have revealed evidence of a cover-up in dealing with this matter.
- The company eventually agreed to undertake the overdue maintenance of its pipework and replaced the stretch of pipe across their land. Despite being supplied with a Code of Practice for this process, the company did not adhere to most of it and the job they were told would take two weeks took seven. This again limited the amenity of their property and they had to be available during that time as workmen required access.
- In order to enable access for the workmen, they had to relocate their chickens to a new location away from the area where the company proposed to lay the pipe. This is another example of the issues that dealing with the company has caused over the last three years.
- They expected and accepted a degree of disruption, but they did not expect the extent of littering from PPE and other waste that was thrown away on their property by the workmen.
- The fourth event occurred following the completion of the pipe replacement scheme. On 25 February 2021, they were talking to their neighbour about the very high-water table and noticed a dome of water being forced from a manhole cover on his property. It became apparent that a valve had been leaking for months, undetected by the company despite concerns being raised, and its location was within metres of the pipe from their septic tank to the soakaway. Much of the water from this fourth escape will have caused even greater saturation to the soakaway, causing even greater damage to the septic tank.
- The extent of damage to their garden and land was extreme but the company only restored the land in 2021.
- They are not seeking to claim for the damage to the driveway or trees as the company has admitted liability for these and they will be recovering damages through the courts.
- However, the avoidable series of water escapes has adversely affected their amenity of their property and caused enormous amounts of stress.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

- They would like each flooding event to be considered as a separate event as grouping the unique events into a single claim only benefits the water company as it is able to limit its liability to a much lower claim limit.
- They would like this experience to be escalated so that water companies can be properly held to account and consumers and land owners can be better protected.
- In view of the above, they would like an apology and £18,480.00 for a new septic tank, £50.00 for wild flower seed, £5,000.00 for loss of the amenity of the drainage system, £3,600.00 for loss of amenity of the land, £1,000.00 for a data breach, £2,500.00 for writing the document entitled 'CCW\_reply\_14.01.22.docx', and £2,500.00 for five days of facilitating access to, and dealing with, the company. They would also like to claim an unspecified amount of compensation for further distress, anxiety and inconvenience.

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

- A water main running through the garden of the property burst on 16 February 2019. It repaired a leak the next day but there was evidence of a further leak still on-going. This was repaired on 18 February 2019 by placing a clamp on the main.
- It emptied the customers' septic tank on five occasions as it had filled up as a result of the leak. The septic tank was emptied on 20 February 2019 and 4, 18, 21 and 26 March 2019.
- Compensation was discussed with the customer, who agreed to a payment of £400.00 as a full and final settlement. This payment was made on 13 September 2019.
- It visited the customers' property on 26 October 2019 following a report of a further leak. A leak was not detected as it was unable to hear any noises on the pipe or fittings to indicate a leak was present. It believed it may be a land drain issue as the water was not draining from the land as quickly as usual. It agreed to monitor the situation and the customers agreed to call if the issue got any worse.
- The customers then made contact again on 18 November 2019 to advise that the main was leaking and was causing their water supply to be discoloured and cloudy. It attended the property on the same day and found a leak on the main. A repair was carried out overnight and was completed on the morning of 19 November 2019.
- The customers said that they believed the excessive water ingress into the septic tank system had caused damage. To investigate the customers' claim further, it commissioned REDACTED to carry out a survey on the septic tank and produce a report of their findings.
- This report found that the septic tank did not appear to have been emptied or maintained in accordance with EA recommendations. It also suggested that the soakaway was not built to BS6297:2007 standards and would need replacing as it had reached the end of its natural life.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

- The customers dispute the contents of this report and claim to have evidence proving the findings to be fabricated.
- To avoid further leaks on this pipe, a new water main was laid on 20 October 2020.
- The customers reported a further leak on 25 February 2021. It attended the same day and found a leak on a communication pipe and a repair was completed on 26 February 2021.
- It has not refused to acknowledge that water entered the septic tank, and it arranged for the septic tank to be regularly emptied to remove any water lost when the pipe burst, but it does not agree that this water caused irreparable damage to the septic tank system, as there is no evidence to show that it did.
- The report by REDACTED stated that the system was outdated and did not conform to British standards. The customers claim to have evidence that they were told otherwise by the person who inspected the septic tank. It has asked the customers to provide this evidence for consideration as, without it, it has no reason to doubt the report. The customers have not provided any evidence, only their own, written opinion.
- Its technicians use a wide variety of equipment when investigating and repairing issues within the network. It is not cost effective for technicians to carry all equipment to each job, and it would cause delays for customers.
- In the customers' case, further equipment was deemed to be required after the initial investigation as its technicians do not routinely carry the equipment needed to pump water from a property.
- Following a report from the customers that the land remained waterlogged, it dug excavations on the property and placed pumps in these excavations in May 2021. These pumps were in place for two weeks to remove any water that remained in the ground from the leaks.
- There was no overdue maintenance of the pipe in question. It usually considers replacing a water main if it has burst five times within a five-year period. As the pipe had only burst once at this point, it would not qualify for funding for a complete replacement. After the subsequent bursts, it replaced the water main, despite the pipe still not meeting the usual criteria for funding to be granted.
- It accepts that the work took longer than initially planned as the technicians were unable to find a connection to a private pipe. This connection was not in the expected location, and as it does not keep a record of private pipework, it was unable to pinpoint this connection quickly. It communicated with the customers during this time, but the customers were not required to be at the property whilst the work was on-going.
- During investigations, there was a good top noise on the main and visible evidence of a leak. From experience, this would indicate the location of the leak in most cases, and it was

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

reasonable to believe this was where the burst had occurred. This is standard practice when locating a leak.

- The report on the septic tank was carried out by a third-party contractor, REDACTED. REDACTED have been involved with its work for around fifteen years and in addition to tankering, they do compile reports on septic tanks/soakaways both on its land and on private land. The report was commissioned on an independent basis.
- The customers' complaint was being handled by members of the Clean Water Department, as the main issue was a burst on a clean water main. The employees in question were not knowledgeable on Waste Water work practices; as such they were unaware of its prior involvement with REDACTED. It has apologised to the customer for this misunderstanding and explained that this does not mean that the contents of the report carried out on the septic tank were incorrect or fabricated in its favour as the customers have claimed.
- A degree of disruption is expected when work is carried out, but it aims to keep this to a minimum. However, PPE and other waste should not have been thrown away on the property as the customers claim. The customers reported this, so it arranged for a jet-wash and general clean-up to take place.
- The customers reported the third leak on 25 February 2021. It attended the same day and raised the work necessary to repair the leak. The repair was completed on 26 February 2021.
- The customers requested details around how long this leak had been on-going, which it sent on 4 June 2021. The data it has showing the flow of water in the area suggests that the leak was only on-going for approximately 30 hours.
- It has apologised to the customers repeatedly for the leaks that occurred at the property and would like to reiterate this apology.
- It has offered the customers compensation of £2,500.00 in full and final settlement; unfortunately this has not been accepted. This offer is intended to cover any loss of amenity, inconvenience, tree damage and a driveway repair.
- It will not pay any compensation relating to the septic tank as there is no evidence of any damage caused by the ingress of water. The evidence confirms that the septic tank has not been properly maintained by the customers and does not conform to British standards.

### 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.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*



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. Before I begin my adjudication, I must address the customers' request for the four flooding incidents to be viewed as separate events as the request is based on the customers' belief that the compensation claim limit will then be applicable to each separate incident of flooding.
2. However, Rule 6.4 of the WATRS Scheme Rules states, "Under the Scheme there are maximum limits for awards. The total value of an adjudicator's award for compensation and/or the cost or value of any action to be taken and/or the cost or value of any service to be provided cannot exceed the maximum limits. These are £10,000.00 per customer for households, and £25,000.00 per customer for non-households. These limits include any amounts awarded for non-financial loss which is limited to £2,500 per award. Nothing in these Rules prevents a customer from making a claim for an amount in excess of the maximum limits but the adjudicator cannot make an award or direct that any action and/or service be undertaken or provided the cost or value of which would be in excess of the maximum limits. Where multiple customers are residing or working at the same address, the limit applies across the group unless they are separate bill payers." This means that even if I view the four flooding incidents as separate events, any awards I make cannot exceed the maximum compensation limit of £10,000.00 and, therefore, if the customers' claim is successful, I will not be able to award in excess of this.
3. I shall begin my adjudication by considering the customers' claim for compensation for a new septic tank and soakaway. As the adjudicator of this dispute, I can only direct the company to

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

pay the customers such compensation if the evidence shows, on the balance of probabilities, that the company has failed to provide its service to the standard reasonably expected by the average person by causing damage to the septic tank and soakaway that necessitates their replacement.

4. The parties agree that a large quantity of water from the company's leaking pipework entered the septic tank and saturated the soakaway. The customers have requested further information regarding the amount of water that escaped but, having considered the information already provided, I do not find further information necessary for the purposes of my adjudication. In any event, as the parties agree that a large volume of water entered the customers' land and this amounts to a failing on the company's part, I do not need to further consider the evidence that relates to this. However, the parties do not agree that the water caused permanent damage to the septic tank and soakaway.
5. The company states that the septic tank and soakaway are not performing properly because the septic tank has not been maintained and emptied in line with the required standards, the soakaway does not comply with British standards, and the soakaway has reached the end of its useful lifespan. The customers say that the septic tank's compliance to British standards is irrelevant as the septic tank and soakaway worked perfectly before the flooding incidents but have not done so since, so it is clear that the flooding caused damage. The customers have provided links to various websites that provide information on flood damage to septic tank and soakaways for my consideration.
6. The evidence shows that the company commissioned a septic tank survey by an independent company and its view that the septic tank and soakaway were not damaged by the flood water is based on the report. The customers question the validity of this report on the basis that the report is biased as the company that surveyed the septic tank and soakaway are service partners with the company.
7. I have considered the customers' concerns, however, even though I accept that the two companies have previously worked together, there is no evidence to suggest that the survey was not carried out in a professional independent manner and the report does not reflect genuine findings. Also, having considered the evidence, I accept that the surveying company has the necessary skills and expertise to survey the septic tank and draw the conclusions set

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

out in the report. In view of this, and in the absence of further or better evidence, such as an alternative survey report, I accept that the report is reliable.

8. The report states that the surveyor had looked at the tank and its condition and “would suggest” that it had not been emptied or maintained in accordance with EA recommendations, and that the soakaway could not be surveyed with CCTV without breaking a pipe but the surveyor “suspects” that the soakaway was not built to the applicable British standards and is a pit style soakaway that had come to the end of its natural life. The report does not note any damage.
9. The customers state that the survey report is based on assumptions rather than facts and I understand that the way it is phrased suggests that the conclusions are not definite. However, I find that the report is the best evidence available to me to demonstrate the condition of the septic tank and soakaway. Also, the evidential threshold is ‘on the balance of probabilities’ and, therefore, even though the report does not draw definite conclusions, it is useful in assessing whether it is more likely than not that the flood water damaged the septic tank and soakaway. I also note that the company suggested that the customer commission a further independent expert report and offered to pay for it, which would have provided further reliable and persuasive expert opinion, but no further report has been provided.
10. Having considered the report carefully, along with the customers’ statement, photographs, videos and further evidence, and the company’s response to the customers’ claim, I cannot find on the balance of probabilities that the flooding caused damage to the septic tank or soakaway. This is because there is no evidence to show actual damage and, further, I find the conclusions of the surveyor’s report reasonable and the report more persuasive and reliable than the other evidence I have been presented with.
11. In view of this, I cannot find that the company has failed to provide its service to the standard reasonably expected by the average person by causing flooding that damaged the customers’ septic tank and soakaway. I appreciate that the customers will be extremely disappointed by my decision but, as I have found no failing on the company’s part in this regard, the customers’ claim for compensation for a new septic tank and soakaway cannot succeed.
12. With regard to the customers’ other claims, the customers have provided a document, entitled ‘CCW\_reply\_14.01.22.docx’, which was supplied to CCW in the course of their investigation into

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

the customers' complaint, and this outlines the customers' further claims. However, although the document includes a claim for damage to the customers' driveway and trees, the customers have stated on several occasions that they do not wish to claim for damage to their trees and driveway through WATRS.

13. Therefore, the further claims made by the customers, as stated in the REDACTED document, are £50.00 for wild flower seed, £5,000.00 for loss of the amenity of the drainage system, £3,600.00 for loss of amenity of the land, £1,000.00 for a data breach, £2,500.00 for writing the document entitled REDACTED, and £2,500.00 for five days of facilitating access to, and dealing with, the company. The customers also refer to a further claim for an unspecified amount of compensation for distress, anxiety and inconvenience.
14. The company has admitted liability for damage and distress caused by the last two floods and has offered the customers £2,500.00 in full and final settlement for "any loss of amenity, inconvenience, tree damage and driveway repair". The customers have not accepted the offer in full and final settlement of their claim but the company states that the offer remains open should the customers wish to accept.
15. I have considered all of the evidence presented by the parties in relation to the claims above, and find that there is no substantive evidence to show that the company breached data protection laws by discussing the customers' situation with a neighbour. Therefore, I cannot accept that the company's service fell below the expected standard in this regard. Also, as I have not found that the company damaged the septic tank and soakaway, the claim for the loss of amenity regarding the drainage system cannot succeed, and there is no evidence that the company is responsible to pay for wild flower seeds. However, I consider the other claims made by the customers can all be considered together as a claim for compensation for distress and inconvenience.
16. The customers have described the inconvenience and distress they have suffered, including that they spent two nights supporting the engineers who were fixing the pipes, they spent seven weeks dealing with the pipe replacement scheme, they had to be available to oversee emptying the septic tank on over twelve occasions, they had to be available for numerous site visits, they spent hours on the phone to the company, they spent days writing reports for consideration by

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

CCW and WATRS, and they have been unable to use their land as they would have liked for many months.

17. In view of this, I fully accept that the flooding of the customer's land caused the customers to suffer considerable distress and inconvenience over a long period of time and, as the company accepts that its assets caused the flooding, I find that the company has failed to provide its service to the standard reasonably expected by the average person and it should compensate the customers for the distress and inconvenience they have suffered as a result.
18. Having reviewed the WATRS Guide to Compensation for Inconvenience and Distress, I find that the customer's claim falls within the 'Tier 4' category on the award scale due to the high level of stress and inconvenience caused to the customers and the duration of their suffering. In view of this, I direct the company to pay the customer £2,000.00 in compensation. I understand that this award is considerably less than the customers hoped for and they may be disappointed, however, I find it reasonable in all the circumstances of the case.
19. The customers also ask for an apology for the company's "dubious business practices" and for the impact the flooding had on their lives. The company accepts that it caused the flooding and states that it has previously apologised to the customers for the trouble and inconvenience caused, and the company restates their apology in the response to the customers' claim. However, having considered the evidence, I cannot accept that the company engaged in dubious business practices. In view of this, I find that the company has sufficiently apologised to the customers and there is no need for me to make a further direction to the company in this regard.
20. I also add that the customers have asked me to refer this matter to a higher authority; however, under the WATRS Scheme Rules I have no authority to do so.
21. Following the preliminary decision, the customer has made additional comments. Most of the comments made by the customer do not raise new issues and have already been considered, and all of the evidence provided by the parties was carefully reviewed before the preliminary decision was made. In view of this, I do not find it necessary to address these issues again, provide further evidence to back up my decision making process as requested by the customer,

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

or answer the list of specific questions provided by the customer in order to ensure the safety of the decision.

22. However, to provide further clarity, I must explain that my decision was made on the basis that I found no evidence to show that the survey report relied on by the company was not reliable and independent, the report was the best available evidence to show the condition of the septic tank and soakaway, I did not find the ten internet sources of information provided by the customer more persuasive than the independent report, and the undated video provided by the customer did not show that the septic tank or soakaway were damaged. Crucially, no alternative expert evidence was provided, despite the company offering to pay for an independent survey commissioned by the customer. I acknowledge that the customer says that they did not trust that the company would pay for the report; however, this does not change the fact that no expert evidence has been provided to support the customer's claim that the septic tank and soakaway were damaged by the company. In view of the above, my decision remains unchanged.

#### **Outcome**

I direct the company to pay the customers £2,000.00 in compensation for distress and inconvenience.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 31 October 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.

*K S Wilks*

Katharine Wilks

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***



## Adjudicator

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*