

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X128

Date of Final Decision: 4 October 2022

Party Details

Customer:

Company:

Complaint

The customer would like the company to take responsibility for damage to her cellar, which she says has been caused by leaks from the company's sewer and which the company has not repaired adequately in the past. She asks the company to pay for the damage caused, rather than causing her to claim on her insurance again.

Response

The company says that it is not liable for this claim. It suggests that water may be entering the customer's cellar through a defective private asset. The company says also that it has carried out repairs when necessary and there is no evidence that it has provided a substandard service.

Findings

I have taken into account the customer's comments on my Preliminary Decision. I nonetheless find that the company is not liable for this claim. Even if the customer is correct and flooding has been caused by defects in the sewerage, I find that the evidence shows only that these have arisen from time to time. There is no evidence that the company was aware of defects in the sewer that it failed to repair and the company was not required to take proactive action or carry out repairs to prevent leaks from occurring. The company was entitled to decide the extent to which it would undertake repairs and the performance of its obligations under the Water Industry Act 1991 to repair and maintain the sewers are not within the scope of this Scheme.

Outcome

The company does not need to take further action.

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'S FINAL DECISION

Adjudication Reference: WAT X128

Date of Final Decision: 4 October 2022

Case Outline

The customer's complaint is that:

- The customer says that she has lived at her property since 2006 and for ten years she had no issues at all with the property or with the company's sewerage services. She converted the basement into an additional room with electrics, et cetera.
- In 2014, she started to experience ingress of foul water flooding into the property. A section of pipework between her property and the main sewer collapsed. The company replaced a section of pipework but not its entirety, and the pipe again collapsed. The customer experienced flooding to her cellar in February 2022.
- The company then agreed to reline all pipework around the property. This took place in March 2022.
- The customer has confirmed that on the first two occasions that this occurred, she has claimed on her household insurance policy, but on the third occasion the damage is estimated to cost up to £7,000.00. The customer explains that if the company had replaced the pipework in the first place the later floods would not have happened.
- The customer complains that the company has said that there is nothing to suggest that the company's asset has caused the ingress into the property and will not accept liability, even though, following repairs, the problem has now come to an end and there is no evidence that there is anything wrong with her basement.
- The customer would like the company to take responsibility for the damage by paying for the damage caused, rather than causing her to claim on her insurance again.

The company's response is that:

- The company has attended the customer's property when required and undertaken works as needed but has never been able to identify an issue that would cause foul water ingress in the cellar of the customer's home. The volume suggests the main must have surcharged but if water then leaks through a private defect, then this will be for the customer to resolve.

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 company has fixed any fault found and now lined assets just to safeguard and give reassurance that its assets are sealed. The company adds that the last incident only occurred as a result of hydraulic overload to the network, which is something outside its control.
- The company believes that there must be an issue with the seal/tanking in the cellar to allow ground water and sewage to enter.
- The company has offered the customer a goodwill payment of £500.00 but denies liability.

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.

How was this decision reached?

1. The customer would like the company in this case to take responsibility of the cost of flooding that has occurred in her cellar on a number of occasions. The customer's position is, broadly, that the repeated instances of flooding have been a chain of events in which the company has failed to take sufficient action on several occasions.
2. The company accepts that the customer's cellar has flooded and that evidence of foul water has been present although the company does not accept that this has inevitably come from the company's sewers, rather than from other land drainage issues. It points out that there is no

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.

company pipework leading through the customer's cellar and that it is more probable that the problem being experienced by the customer is due to the presence of a private pipe, for which the company has no responsibility, or the tanking of the cellar is admitting groundwater including evidence of sewage. The company also argues that leakage from the sewer in the absence of negligence by the company does not mean that the company is liable for the costs of rectifying flooding damage inside the customer's cellar.

3. I bear in mind that adjudication is an evidence-based process and an adjudicator under the WATRS Scheme cannot find that the company is liable to provide a remedy to a customer unless the evidence supports that the company has failed to provide its services to the expected standard.
4. I am also mindful that a company is not necessarily liable to pay the cost of rectifying damage caused by flooding from its assets. This is because:
 - a. A sewer may flood without there necessarily being a defect in the structure of the sewer. Discharges such as grease, fat and domestic waste can lead to unforeseen blockages and a surcharge of rainwater can also cause sewers to flood. The company says that the most recent flood was caused by a surcharge of rainwater.
 - b. 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 Water Industry Act 1991 has been interpreted in the case of *Marcic v Thames Water*, ([2003] UKHL 66) (a case that concerned repeated escapes of sewage) to mean that decisions relating to the provision and maintenance of a sewerage network are matters that are overseen by Ofwat. The courts were found have no power to review the strategic decisions of companies in relation to maintaining or improving the network. The same case decided that companies are not required pro-actively to ensure that there is no defect and it is for the company and not customers or adjudicators to decide whether and what repairs should be undertaken. The primary protection for householders, therefore, against an event of this type is recognised to be household insurance to assist customers in meeting repair costs when these arise.
 - c. 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

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.

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. This position is underlined by rule 3.5 of the WATRS Scheme rules which exclude such issues from the scope of the Scheme.

5. Although, therefore, I empathise with the position of the customer, I find that the company will not be liable for this unless the company has failed to supply its services to the expected standard. (Decisions under the WATRS Scheme do not address whether or not a company has been negligent, which is a decision to be taken by a court, but adjudicators may find a company to be liable if, taking into account their legal obligations, they provide a sub-standard service.) I now turn to whether the company has provided its service to the expected standard.

6. The documentation shows that the following has occurred:
 - On 23 May 2014, an internal flood to the customer's cellar was reported. A standard sewer repair of 3 metre length was undertaken to relay the sewer from the transferred manhole to the main. This did not involve the connection to the main sewer. On 4 August 2014, an internal repair took place to the transferred manhole which the customer says caused a blockage so that a further flood happened. It is denied by the customer that the repair to the manhole had caused the further flood.

 - On 9 August 2014 an internal flood to the cellar occurred. On 1 September 2014, the company raised the buried manhole on the combined sewer. The company says that this was to ensure that there was no camber that could cause the asset to leak when surcharged. On 16 October 2014, a repair was undertaken and on 3 November 2014, the sewer was cleansed.

 - On 21 January 2021, an internal flood occurred again. On 14 June 2021, the company undertook a repair of a lateral connection. The company says that this was because this was found to be poorly connected and I therefore accept that, despite the company's denial, there was at that time a failure in the pipework. It does not follow from this, however, that a poor connection had been made in 2014.

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.

- On 27 February 2022, a further flood occurred. The customer has submitted photographic evidence of the damage caused by this flood and has submitted also CCTV images of cracks in the pipe. The company says that no obvious fault was found but that this work was done as a matter of goodwill. On 14 March 2022, the company lined the connection of transferred lateral, previously repaired in 2021 and from 13 June 2022 onwards lining of all charted surrounding assets commenced.
7. I accept that there is no evidence that there is any asset of the company that is causing direct flooding, such as a broken pipe within the customer's property. It is less clear whether there has been an escape of sewage from the company's assets into the ground close to the customer's property, which has then affected the customer's cellar.
 8. The company points to an absence of effective tanking in her cellar that has admitted groundwater and that may also have permitted this to occur. I consider now, therefore whether the company would be liable to the customer on the basis that contaminated groundwater had entered her cellar.
 9. Although the company says that there is no evidence that any of the floods have been caused by the company's assets, the customer says that there has been a correlation of timing between incidents of flooding and discoveries by the company of a defect in the sewer. She suggests that if the company had lined the sewer in 2014, she would have experienced no further floods. The customer has complained:

A point I do not understand as surely if the pipework was all the same age, it was obvious that this un-replaced section would remain a 'weak link' in the pipe and as such have greater chance of failure in the future. This is exactly what occurred.

10. For the reasons given above, however, I find that the company would not reasonably have been expected to have undertaken pro-active repairs in 2014. Again, for the reasons given above, I do not have jurisdiction to reach a finding that the company should have carried out a more exhaustive repair by relining the sewer in 2014 than the more limited repairs that it took following the first complaints of floods. The extent to which the company undertook repair work was a matter for the company to decide based on its resources and other priorities, and not for me 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.

determine. I am, moreover, mindful that the fact that a repair to a sewer has been undertaken by the company does not mean that the sewer will remain undamaged indefinitely. Following the work undertaken by the company in 2014, there was no further occurrence of flooding to the customer's cellar for nearly seven years, despite a number of extreme weather events in that time. I do not draw from this an inference that a lateral connection that had become poorly connected in 2021 was also poorly connected and in need of work in 2014 and I do not, therefore, find that the company failed to provide its services to the expected standard in 2014.

11. In 2021, when a further problem occurred, the company undertook repairs to the lateral connection, even though it describes this as a private asset.
12. In February 2022, the company says that any flooding from the sewer was caused purely by a surcharge. If this is correct, it is not, I find, evidence of a failure by the company to provide its services to the expected standard, although I note that the company has now relined the sewer and offered the customer a goodwill payment of £500.00. Even if it is not correct, as the customer argues, and there were cracks in the pipework in 2022, it does not follow that the company did not previously provide its services to the correct standard. I take into account that the customer has submitted photographs of damage to the sewer in 2022, although I also note that some of the damage is stated in those photographs to have been caused by digging down to the sewer in 2022. I accept that the customer's photographs show damage to the sewer and I do not find that the company is correct to say that the relining work was purely protective. I find that this was also to put right problems in the sewer pipe, which by this stage appeared to be arising increasingly frequently. However, there is no evidence that the company was aware of any cracks to the sewer in 2021 when the repair work was done to the lateral connection, or, indeed, that the cracks had been present at this point, and, for the reasons given above, it is no part of my jurisdiction to reach a finding that the company should previously have taken proactive repair work as suggested by the customer.
13. I note that the customer says in response to the Preliminary Decision that there is no evidence that the defects in the pipework were not present previously, but I cannot proceed on this basis. Adjudication is an evidence-based process and, before a customer can succeed, the evidence submitted by the parties must show that her arguments are correct. I do not find that the customer's case has crossed this threshold: the evidence does not support that there were known defects in the sewer before 2022 which gave rise to the flooding in 2022. It follows from the above that I do not find that the company failed to supply its services to the expected

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.

standard and therefore the customer is not able to succeed in her claim that the company should meet the cost of repairing her cellar. Accordingly, I do not direct the company to take further action.

14. For the avoidance of doubt, I make clear that nothing in this decision prevents the company from making the £500.00 gesture of goodwill that was previously promised to her and that the company told the Consumer Council for Water was still on offer. In light of my findings I do not direct this, however, and it is therefore for the company to decide whether this sum is paid to the customer or not.

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

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.