

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X159

Date of Final Decision: 17 October 2022

#### Party Details

Customer:

Company:

#### Complaint

On 7 February 2022, the customer's toilet became very hard to flush. The customer tried to unblock his private drains but this did not remedy the problem so, on 11 February 2022, he reported the issue to the company. The company sent an engineer to investigate and a blockage in the main sewer was found, but the blockage was not cleared until 15 February 2022. The company says that the blockage was caused by sewer misuse; however, as the company knows that people misuse sewers, it should check for blockages more often. The customer would like the company to cancel his bill to compensate him for the stress and inconvenience his family suffered by not having a working toilet for fifteen days.

#### Response

A water company will only be liable for damage or inconvenience caused by a blocked sewer if it has been negligent. As the cause of the problem experienced by the customer was sewer misuse, not negligence, and the company responded to the customer's report of the blockage quickly, the company cannot be held responsible for any inconvenience caused. Therefore, the company denies liability to cancel the customer's bill.

#### Findings

The evidence shows that the blockage was most likely caused by sewer misuse, and I find no evidence to show that the company acted negligently. As the evidence does not show that the company has failed to provide its service to the standard reasonably expected by the average customer, the customer's claim does not succeed.

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Outcome

The company does not need to take any further action.

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# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X159

Date of Final Decision: 17 October 2022

## Case Outline

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

- On 7 February 2022, he found that his toilet was very hard to flush so he thought that his private drains were blocked. He tried to clear the blockage by pouring barrels of water down the manhole and rodding the drains, but this did not work.
- He was told that a few other houses in his street had the same problem so, on 11 February 2022, he contacted the company and an engineer was sent to investigate. The engineer said that the main sewer was blocked and this was causing the problems.
- The company claims that the blockage was cleared within twenty-four hours but this is not correct. His toilet could not be flushed until 15 February 2022 and the job card left by the company shows that the company cleared the drains on 4 March 2022.
- The company says that the blockage was caused by people misusing the sewer; however, as the company knows that people misuse the sewer, they should check for blockages more often.
- As he believes that the blockage was caused by the company's failure to maintain the sewer, he raised a complaint and asked the company to cancel his bill to compensate him for the stress and inconvenience his family suffered due to not having a working toilet for fifteen days, but the company refused.
- To make matters worse, the company failed to reply to his letters and emails.
- In view of the above, he would like the company to waive his water bill.

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

- On 11 February 2022, it received an email and a telephone call from the customer who said that his toilet was blocked and he needed assistance.
- Later that evening, its contractors attended the property and noted that a manhole downstream of the customer's home was full. They tried to clear the blockage by using a high pressure water jet but were unable to. They checked another manhole further downstream which was also full, but they were unable to set up their jetting equipment on this manhole as it is in the middle of a

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busy main road. The engineers noted that it would need to re-attend during the the night with a larger tanker and higher pressure equipment.

- On 14 February 2022, a case manager from its Customer Relations Team called the customer with regards to his email and confirmed it was aware of the issue and was looking into it.
- In the early hours of the morning, its contractors re-attended and used four tankers full of water to try and clear the blockage unsuccessfully.
- On 15 February 2022, its contractors attended again and carried out a CCTV survey and cleaning of the local sewer, and found it to be clear and free flowing. It suspects that the blockage it had been unable to clear in the early hours of the day before had cleared itself due to the line being clear and free flowing. Its CCTV survey found that there were no defects in the sewer, meaning that the blockage must have been a result of inappropriate items, such as fat, oil and grease, having been placed in the sewer.
- On 4 March 2022, following another report that the customer's facilities were not draining properly again, its contractors attended and noted that the manhole in the customer's garden was full, but they checked the manholes downstream and in the road and found no blockages. The contractors then used a high powered jet from the manhole in the customer's garden and jetted downstream to clear a blockage of fat and grease.
- It is obligated to comply with the Water Industry Act 1991. Section 94 of the Act places a general duty on sewerage undertakers to provide, improve and extend a system of public sewers to ensure their area is and continues to be, effectually drained and to make provision for emptying and dealing with the contents of the sewers. This duty is only enforceable by Ofwat, the Water Industry Regulator, using Section 18 of the Act. As such, this duty is not something that individuals can try to enforce or make a claim under.
- In his application, the customer requests a gesture of goodwill for "the stress and hard time his family and 3 children had during Thames Water sewer blockage." Therefore, the customer is effectively alleging that it is at fault for the blockage and, as such, it has not complied with its duty under Section 94 of the Act.
- WATRS rule 3.5 states that the Scheme cannot deal with "any matters over which Ofwat has powers to determine an outcome" and WATRS rules 3.4.1 and 3.4.3 state that WATRS may reject all or part of an application to the Scheme where it considers that a customer should be referred to a more appropriate forum or the dispute raises a complicated issue of law.
- It is not responsible for damage or inconvenience caused by blocked sewers when the cause is outside of its control, unless it has acted negligently. This means, if issues are caused by a blockage in the sewer and the blockage has been caused by inappropriate items having been

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placed in the sewer, which it has no ability to control, it is not liable. This was confirmed in the case of *Marcic v Thames Water [2003]*.

- It is correct that part of the customer's water services charges contribute to the cost of maintaining its network of clean and wastewater pipes. However, it is widely recognised that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater undertakers to adopt, and this what happened in this case.
- It is unable to consider cancelling the customer's water services charges as it has not been negligent and the customer continues to receive water and wastewater services.

### 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 company states that sewerage undertakers cannot be held liable for damage or inconvenience caused by blocked sewers unless they have been negligent, and that this means that it cannot be held responsible for problems caused by misuse of the sewer network system, as this does not indicate that it has been negligent in the carrying out of statutory duties.
2. I accept that this is correct because in the cases of *Marcic v Thames Water [2003]* and *Dobson v Thames Water Utilities [2009]* it was decided that claims based on a water company's

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performance of its statutory obligations must be considered by Ofwat, the industry regulator, except where it is claimed that the company has, when undertaking these statutory obligations, done this negligently.

3. This means that a customer's claim to WATRS in relation to problems caused by blocked sewers can only succeed if the customer is able to show, on the balance of probabilities, that the company acted negligently when carrying out these duties, and a claim based solely on the argument that the customer has suffered damage or inconvenience as a result of the company's performance of or breach of its statutory duties cannot succeed.
4. This also means that as an adjudicator operating under the WATRS, I do not have the authority to consider whether the company has breached its statutory duty to maintain its sewers to ensure that an area is effectually drained, as such matters must be addressed to Ofwat, the industry regulator, and I can only adjudicate on matters where the customer alleges that the company has acted negligently.
5. Further, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called 'standard negligence'. To explain this further, if the argument is that the company has been negligent because it has not been inspecting its sewers regularly enough, this raises regulatory considerations (as it is a regulatory requirement to inspect sewers regularly). This would mean that, in accordance with the decisions in the cases cited above, such claims must be addressed to Ofwat and cannot be resolved through WATRS.
6. On the other hand, if the claim is that a blockage or flood was reported and the company negligently failed to notice or remedy a problem, this raises a question of standard negligence, and so can be resolved through WATRS. To explain this further, if the argument is that the company was aware of a blockage in its sewer that had caused flooding or inconvenience for customers but did nothing to clear it, and the blockage then caused flooding at the customer's property or other problems at the customer's property, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
7. The evidence provided shows that the customer believes that the company has failed to maintain its sewers to prevent blockages and has allowed fat deposits to accumulate in them. However, I am unable to consider whether the company has failed to maintain its sewers as this raises a question of the company's performance of its statutory obligations, which, as

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explained above, must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.

8. However, I am able to adjudicate on the customer's suggestion that the company was aware that customers misuse sewers so it should have known that there could be a blockage and its failure to check caused his toilet to stop flushing, and that the company failed to remedy the problem within an acceptable timeframe, as these complaints amount to allegations of standard negligence.
9. However, having reviewed the evidence provided by the parties, while I find that the blockage was most likely caused by sewer misuse, I do not find any evidence to justify a conclusion that the company should have known this sewer was blocked before the customer's report on 11 February 2022 as there is no evidence to show that a blockage had been reported before this date and was not investigated and/or remedied by the company. Also, the company states that water companies operate a reactive policy towards sewer maintenance and I accept that this is correct and reasonable.
10. With regard to the time the company took to clear the blockage, the evidence shows that the company attended to investigate the issue the day it was reported and found the blockage; however, it was unable to clear it as access to a manhole situated on a busy road was needed. The company then re-attended at night time on 14 February 2022, but were unable to clear the blockage. When it returned on 15 February 2022 to try again, the blockage had cleared itself. On balance, I do not find that the timeframe for clearing the blockage was unreasonable. I accept that a further issue was reported at the beginning of March 2022 but, again, the company investigated and cleared the blockage within a reasonable timeframe.
11. In view of the above, there is no evidence to show that the company acted negligently and that this resulted in damage to the customer's property or inconvenience to the customer. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer in this respect and, while I appreciate that the customer will be disappointed by my decision, especially as I accept that not being able to use the toilet must have been most inconvenient for the customer and his family, the customer's claim for his bill to be cancelled cannot succeed.

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12. For completeness, I add that the customer complains about the company's failure to reply to his communications. However, the evidence provided by the customer does not clearly show that the company failed to provide its service to the expected standard in this regard, and the response provided by the company shows that the customer sent some correspondence to the wrong email address and sent other letters to the company after the complaints process had been exhausted; therefore, I find it reasonable that the company did not reply to the customer at these times.
13. Following the preliminary decision, the customer has made further comments, some of which raise new issues. Under the WATRS Scheme Rules, I am unable to adjudicate on new issues raised in the comments on the preliminary decision at this stage of the process. Other comments provided by the customer refer to the company's failure to maintain its sewers but, as I have explained above, I am unable to adjudicate on whether the company has failed to carry out its statutory duty to maintain its sewers.
14. However, the customer's comments suggest that he believes the blockage was not fully cleared when the company inspected the sewer on 15 February 2022, as a further blockage occurred at the beginning of March. This amounts to an allegation of standard negligence but, as stated above, the evidence indicates that the sewers were free flowing on 15 February 2022 and when the second issue was reported to the company, it attended and cleared the problem within a reasonable timeframe. Therefore, there is no evidence to show that the company failed to provide its service to the standard reasonably expected by the average person in this regard.
15. The customer also asks why the company was allowed to change its version of events from that provided to CCW. Both parties are entitled to add to, change or refine their submission and evidence when a dispute is referred to WATRS, and this is one of the reasons the customer is given an opportunity to comment on the response provided by the company.
16. In view of the above, while I appreciate that the outcome of my decision is not what the customer hoped for, my decision remains unchanged.

#### **Outcome**

The company does not need to take any further action.

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## 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

**Adjudicator**

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