

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X253

Date of Final Decision: 18 November 2022

Party Details

Customer:

Company:

Complaint

The customer states he experiences blockages on his drain every 12 to 24 months but has paid private contractors in the past to clear these. When he reported a blockage to the company, it did not attend that day to investigate as promised. He disputes its suggestion that the cause of the blockage is misuse; the company did not carry out a thorough investigation rather, its engineers briefly looked in the manhole. The customer requests compensation of £600.00 from the company to cover the cost of private contractor visits and for distress and inconvenience.

Response

The company states it attended the property in response to the customer's report of a blockage, which its crew then cleared. Its engineers deemed the likely cause of the blockage was misuse and no issues or defects were found on its assets. As it was not made aware of any previous blockages experienced by the customer, it did not have an opportunity to clear these as such it is not responsible for the cost of private contractors used by the customer to clear blockages at that time. It acknowledges however that it did not attend to the blockage within the timescale advised to the customer and therefore it offered him a £25.00 payment in recognition of this. Further, it paid £25.00 GSS payment for a late complaint response. The company denies that it is responsible to pay any additional compensation for stress and inconvenience. The company has not made any settlement offer to the customer.

Findings

By attending the property to clear the blockage and investigate the cause, the company acted in line with its obligations. However, whilst the company has said it believes the likely cause of the blockage is misuse, there is no evidence

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of it carrying out an in-depth investigation by way of a CCTV to establish this or that there are no issues or defects on its assets. As this was the first occasion the customer reported a blockage, the lack of an extensive investigation is not evidence of the company not meeting the expected standard as it is usual and reasonable for companies to take this action after recurring blockages are found/reported. As the customer did not report previous blockages, the company is not required to pay the cost he incurred for private contractors to clear the blockages. As the company has offered £25.00 for failing to attend within the timescale advised and paid £25.00 GSS for a late response, it is not required to pay any further compensation to the customer.

Outcome

The company needs to take the following further action.

- Pay the customer the £25.00 payment offered for not attending the blockage within the timescale agreed, if it has not already done so.

The customer must reply by 16 December 2022 to accept or reject this decision.

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Case Outline

The customer's complaint (submission by the Consumer Council for Water on the customer's behalf) is that:

- Since the customer moved into his property in 2013 the drains have blocked every 24 months.
- The company advises the public how to prevent blockages on their website and the company is paid to deal with waste water and therefore it is a reasonable assumption that the company keeps the main drain clear at all times.
- The customer has been paying private contractors to clear the drains under the assumption the blockage had to be on his land and each and every time the powerjet was used and the contractors felt that the blockage was far from the manhole and more towards the street.
- As this became an ongoing issue the customer reported the blockage this year to the company. and the crew attending confirmed the blockage was not on his land and the powerjet was used to clear the blockage.
- The customer believes the company has never cleaned the main drain in the road and have been negligent. As a result, the customer requests the company to compensate him for the times he has paid private contractors and wants mitigation put in place.
- The customer is unhappy that when he reported the leak, he was told to make himself available between 8am - 10pm. He was told the crew could call to advise of their arrival within ten minutes and therefore he should not go out. The crew did not arrive that day and after chasing this the customer was told the crew would come the following day first thing in the morning. They did not and after chasing this again the customer was told the crew could arrive between 8am and 10pm. The crew did arrive late morning.
- A new blockage occurred not long after the initial blockage was cleared indicating that there was a problem with the main drain under the street.

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- The customer requests that the company pay him £600.00 in compensation comprising: £300.00 for reimbursement of private contractor visits and £300.00 for distress and inconvenience.

The company's response is that:

- The customer contacted it on 18 February 2022 regarding blockages at his home, none of which had ever been reported to it before his call of 18 February 2022.
- Its contractors carried out investigations into the blockages and found no defects on its assets. They advised the issues were most likely sewer misuse and no problems were identified on private assets.
- On 30 March 2022 it received the customer's stage one complaint which it acknowledged on the same date.
- On 6 April 2022, its Customer Support contractor attempted to call the customer.
- On 6 April 2022, it provided a stage one complaint response to the customer. It offered the customer £25.00 for the delayed arrival of its engineer after a job was raised following his call of 18 February 2022.
- On 7 April 2022, the customer emailed stating he was unhappy with its response. The company acknowledged his escalation request and advised it would review his complaint at stage two and advised it would provide a response within ten working days.
- It provided a stage two response to the customer on 5 May 2022. Within its response it acknowledged that the customer had experienced blockages in the past which he paid a private contractor to clear however its records show these instances were not reported to it. It explained it was important to report blockages to it as it will attend on a reactive basis and carry out a full investigation on site at the time of a blockage. It said this also ensures properties are highlighted should they experience frequent issues and builds up a history against specific areas or properties.
- In acknowledgement of the delayed reply, it made a Guaranteed Standards Scheme (GSS) £25.00 payment to the customer.
- Following contact from the Consumer Council for Water (CCW) on 8 June 2022, it provided a response on 21 June 2022 responding to the queries raised in regards to the customer's complaint.
- Regarding the customer's request for reimbursement of charges (£300.00) for private contractor works in relation to sewer blockages at his home, it will not pay private contractor costs as no

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issues have been identified on its assets. The issues the customer has experienced are a result of misuse.

- Regarding the customer's request for £300.00 for distress and inconvenience, it has carried out investigations into the cause of the problems. No issues have been detected on its assets. It has paid £25.00 GSS payment for late reply and its offer of £25.00 for a missed appointment still applies.

Reply

- The customer refers to the company's assertion that it believes the cause of the blockages was misuse; the only investigation done by the company was a brief look in the manhole. He states that this is not sufficient to diagnose the cause of the recurrent blockages as they have always been deep down the pipes.
- He does not use wet wipes, food and fat goes in the compost bin so he is confident the blockages are not due to misuse on his part.
- It is the company's policy that if blockages are identified on private property and misuse is diagnosed, the customer is given the option of having the blockage removed by the company which will be billed or to use a private contractor. The customer states that he did not pay and was not given the option of using a private contractor indicating that the blockage was not on his land.
- He waited 36 hours for the company to come out and remove the blockage. Further, for each recurrent blockage he had to wait for a contractor to come out and set time aside. He feels that £300.00 is the minimum it should pay him.
- The company use customers "as a monitoring system" instead of a paid employee to identify any issues in its network should pay him compensation for the inconvenience caused.

Comments on Preliminary Decision

- The customer asserts that if there is no legal justification for the reimbursement of the out of pocket expenses he has incurred due to the neglect of the maintenance of the main drain pipe, he requests that the company is required to undertake a "proper" investigation of the cause of the recurrent blockages and that it starts a regular maintenance program of the main drain.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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's claim concerns blockages of drain pipes at his property. The customer has also raised concerns regarding the customer service provided by the company whilst responding to his report of blockages and its refusal to pay costs he incurred for private contractors to clear blockages in the past.
2. The customer first reported a blockage to the company on 18 February 2022 when it raised a job for its engineers to attend to investigate. The company's engineer attended at some point the next day and cleared the blockage. In its 21 June 2022 response to CCW, the company advised "we've been unable to pinpoint the cause" however said that its crew that attended believe the cause to be "most likely" down to misuse. The company has repeated this position in its Defence, adding no defects were found on its assets.
3. Under the Water Industry Act 1991 ('the Act'), the company has a duty to maintain its sewers and to ensure the area is, and continues to be, effectively drained and to make provision for the emptying of these sewers. Therefore, in response to a report of a blockage, it is reasonable to expect the company to make reasonable endeavours to identify if the cause of a blockage stems from any issue or defect on its sewer network in case it requires addressing to stop or reduce the risk of further blockages. In the customer's case, whilst the company has said that the cause is misuse and that there are no defects on its assets, it has not provided any substantive evidence

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to support this for example, contemporaneous job notes or the results of a CCTV survey of its assets in the vicinity of the customer's property.

4. At the time of the customer's complaint raised with the company, he had only reported one instance of a blockage to the company (18 February 2022). The customer has alluded to a further report but I have not been provided with any further information about this. It may be that the company intends to carry out a more thorough investigation in the event of further reports of blockages from the customer, which is usual and reasonable in the circumstance.
5. As previously mentioned, because there has been only one blockage reported, the company not undertaking a more extensive investigation for example by way of a CCTV survey of the drains and assets, at this stage, does not constitute evidence of it failing to provide its service to the standard to be reasonably expected. However, in the event of receiving further reports from the customer of blocked drains, the company may take action to further investigate for example by way of a CCTV to ensure there are no issues or defects on its assets that are contributing to the cause of the blockages. I acknowledge the customer's request made in his comments on the preliminary decision for the company to arrange for a "proper" investigation and put in place a regular maintenance program of the main drain. However, as explained above, as "recurrent" blockages have not been reported to the company, I find there is insufficient evidence to require it to take this action at this time. Nonetheless, should further blockages occur, the company is under a duty to further investigate to identify the cause and address any issues or defects with its assets if found.
6. The customer has raised a concern that the company did not attend his property on 18 February 2022 following his of the blockage despite telling him it would. In its stage one response, the company acknowledged and apologised to the customer for the standard of its communication in this regard and offered him a £25.00 payment. In light of the apology and compensation offered by the company in its complaints process, on balance, I am satisfied that the company has demonstrated that it has provide reasonable redress in relation to this instance of its service not meeting the expected standard.
7. In regards to the customer's request for the company to pay him £300.00 for the cost incurred for private contractors to clear blockages in the past, the customer has confirmed that he did not report these blockages to the company. The company explained in its response to CCW that: its approach to maintaining and repairing its assets is reactive as such it deals with problems as they

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arise and; as it was not made aware of any previous blockages, it did not have an opportunity to clear them. It said for this reason it is unwilling to reimburse the customer for payments made to private contractors to clear blockages. As the company was not provided with any opportunity to clear past blockages, I find no basis to direct that it reimburse the customer for any such cost incurred.

8. In his Reply, the customer disputes the company's above mentioned position in regards to the company taking a reactive approach to the repair and maintenance of sewers. Due to the vast size of the sewer network, I accept that it is reasonable for companies to take a reactive approach to the repair and maintenance of sewers. This reflects the historical legal position and recognises that sewerage undertakers unconditionally adopted private sewers in 2011, irrespective of their condition and without knowledge of where many of these sewers lay. As such, I do not accept the customer's suggestion that companies must take a proactive approach and any failure on the part of the company to do so in his case, does not establish a failure in the service provided nor justify the request for compensation.

Outcome

The company needs to take the following further action:

- Pay the customer the £25.00 payment offered for not attending the blockage within the timescale agreed, if it has not already done so.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 16 December 2022 to accept or reject this decision
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.

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- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

A handwritten signature in black ink, appearing to read 'A. Jennings-Mitchell', with a stylized flourish at the end.

A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)
Adjudicator

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