WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X256

Date of Final Decision: 16 January 2023

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer complains about the company's offer of compensation in respect of damage to his shower and foundations and inconvenience which came to light when the company cleared a blockage and later constructed a new manhole outside his property. He says that the offer is insufficient and does not take into account either that he has suffered repeated exposure to odours in his home for a number of years when blockages were cleared or the company's poor customer service. The customer asks for compensation of £892.00 for damage to his shower tray and £2,500.00 for distress and inconvenience.

Response

The company says that it is not liable for this claim. The customer has not submitted persuasive evidence of damage to his shower tray or foundations and the company had a legal obligation to remove an obstruction from the sewer and create a new manhole chamber in an inaccessible area of the sewer repeatedly affected by blockages. The company has offered reasonable compensation for inconvenience and poor customer service in the form of a payment by its contractors, a goodwill payment by the company and a Guaranteed Service Standards scheme payment.

Findings

The evidence does not support the customer's claim that a blowback or other works during which the company was trying to remove obstructions and / or blockage from its sewer has damaged the customer's shower tray or foundations. I have no jurisdiction to determine that the company should have taken action to repair / maintain its sewer earlier due to escapes of foul odour when blockages were cleared. The customer has received compensation of £804.41 from all sources for inconvenience and damage. I find that this is fair and reasonable compensation for the events and inconvenience in question.

Outcome

The company does not need to take further action.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X256

Date of Final Decision: 2 January 2023

Case Outline

The customer's complaint is that:

- The customer complains about the company's provision of compensation in respect of damage and inconvenience regarding repeated blockages, a flooding incident on 7 July 2021 and later construction of a new manhole outside his property. He says that the company's offer is insufficient and does not take into account the entirety of the circumstances and the company's poor customer service.
- The customer says that the company's offer does not include any compensation payment for:
    - The damage caused to the downstairs shower by work done to remove an object (a plunger) from the sewer and assessed at £840.00 by XX Insurance.
    - Damage to the foundations of the property (which the company has denied) due to shaking caused by the machines used.
    - The loss of use of the downstairs shower which has caused inconvenience to his wife who has mobility issues.
    - Payment of compensation for the countless times in the three-year period in which the company attended to unblock the neighbour's drains at XX. The customer says that mealtimes and social occasions have been ruined due to the sickening, foul smells that filled the entire home and lasted for hours. There was no knowing how long the task of unblocking drains would take, and these smells linger after the drain has been unblocked.

- The payment of £340.00 for inconvenience is solely for the flooding incident of 7 July 2021 and does not include anything for the numerous times in the 3-year period in which the customer would be visited by representatives of the company asking to use his manhole for unblocking the neighbours' drains.
- The inconvenience and disruption caused to his family when the manhole was constructed commenced on 28 March 2022 and lasted for approximately two weeks. There was a dispute with the workmen over his car being parked in the driveway as an emergency due to his wife's heart condition and the company had assured the customer that access to the driveway would not be affected. The workmen said that if the car was not moved it would be blocked in until the work was completed.

- The customer also says that although he has been informed that his property is on a high-risk register for blowbacks and would be contacted before work is done in future, on Good Friday (15 April 2022), as the customer and his family were getting ready to go to the coast for the day, workmen turned up and started cleaning the drains. The customer cancelled his plans and workmen spent all day clearing the drains and, on several occasions, used the high-power jet so that water was blown out of the downstairs toilet again. The customer says that because he was present, he was able to prevent flooding.
- The customer asks for compensation of £892.00 for damage to his shower tray and £2,500.00 for inconvenience and distress.

The company's response is that:

- The company carried out work to try to remove a plunger from the sewer which was causing a blockage outside the customer's property. This caused a slight blowback of water and silt into the customer's shower tray and the company has apologised for this. They have also entered the customer's property on a blowback register so that he will be given notice of further work. However, the company says that the machine used to clear the blockage would not have caused such damage as to make his shower tray or flooring unsafe.
- The company has also carried out work to construct a manhole in the street because the only manhole giving access to that area is under the customer's home.
- The customer has received compensation as follows:
  - The claims team made a £392.00 goodwill gesture that has been paid to the customer:
    - £52.00 for replacement items

        - £340.00 for the inconvenience caused by the blowback and subsequent works
    - A further £120.00 goodwill gesture was paid in relation to customer service:
        - £10.00 for the number of calls/emails
        - £90.00 for the time taken (9 months)
        - £20.00 for the incorrect information given regarding blocking driveway access.
    - A Guaranteed Service Scheme (GSS) payment has also been credited in respect of the blowback and late payment of this amount.

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.

I make clear that in reaching this Final Decision, I have also taken into account in full the customer's comments on my Preliminary Decision, whether I have referred to these below or not. The company has noted the Preliminary Decision but has not commented on it.

How was this decision reached?

1. The customer has raised a complaint about a number of concerns that crystallised on 7 July 2021 when an instance of blowback occurred at the customer's property due to work done on behalf of the company to clear a blockage and remove an obstruction from the sewerage.

2. Although, initially, the company was under the impression that the customer's complaint was that damage had been caused to his shower tray and foundations by the company's contractor, "XX" on 7 July 2021 (which the company challenges), the customer has confirmed his view that at least some of the damage preceded this. In his correspondence of 10 October 2022 to the company, the customer stated:

> *It appears that XX are under the impression that we are claiming that their jetting machine caused the damage to our shower base and tray. This is not so. XX started attending callouts from No. XX for several years before the flooding on 07/07/2021. Calls were regular but not so frequent then. However, during one such callout, the XX crew lost a plunger inside a section of the sewer system, making the problem much worse than before. Following this, we noticed a great increase In the number of callouts, sometimes as many as 3 callouts in a week. When I asked the crew why they were attending so frequently, I was told about the plunger being stuck and the need for them to get the plunger out as a matter of urgency. In their attempts to retrieve the plunger, they used a number of different machines but one stood out more than the others for us. It was so powerful it actually caused our kitchen floor to vibrate and shake beneath our feet. We couldn't help thinking that it was going to cause the sewer system to collapse completely at any minute. It is inconceivable then that repeated use of this machine during this period had caused our shower base to weaken and collapse, rendering it unsafe to use. (nb. the shower room is located right next to the kitchen}….*

3. It follows from the above and from the customer's other submissions and correspondence, therefore, that the damage and disruption about which the customer complains has gone on for a number of years. The customer says that this is from approximately 2019 but having regard to the information provided by the company, the period of difficulties associated with the relevant sewer may have existed for longer.

4. The company also makes the point that there is a manhole inside the customer's home and the company has no record of a build-over agreement for this, but there is no indication that the customer has undertaken any unauthorised work. The customer says that he has given the company access to this manhole in the past to facilitate clearance of local blockages and this forms part of his claim for inconvenience.

5. The documentation submitted by the parties shows that the following has occurred:

a. 11 March 2015 – The company received an email from one of the customer's neighbours informing it that their private contractor, whilst attending to unblock their drains, had found a plunging disc from a set of drainage rods stuck in the sewer. The neighbour asked the company to provide an asset map so they could determine if the plunging disc was stuck in the private drainage or in the company's asset. The company informed the neighbour that the problem was in their private drain.

b. In 2016, the company received further information that there were two drainage rods stuck in the sewer. The company's contractors attended and found that excavation would be needed to extract these. The company raised a work order for excavation. This was done in 2017.

c. On 5 January 2021, the company responded to a report from the customer's neighbour that their facilities were not draining. The company cleared a blockage using a high-pressure water jet and used an onsite camera to check for any defects in the sewer. It found a four inch plunger wedged in the sewer. The team was unable to retrieve this.

d. On 19 March 2021, contractors attended to try to remove the plunger but, as all of the interceptor chambers at the rear of the properties are privately owned and pipework from these connects without a manhole into the sewer which runs in a different direction, access to the area proved problematic. In April 2021 a survey was carried out and it was decided to try to access the area via an inspection chamber at the rear of the properties.

e. On 19 May 2021 'blowback' and 'cone off' letters were sent to the company's office based technical specialists to be sent to the residents who might be affected by works to remove the plunger.

f. These were hand delivered on 22 June 2021 in advance of work to be undertaken on 7 July 2021. Although the customer says that work was done in June 2021 to try to remove the plunger, the company's records do not record this happening in June 2021. I find that it is more likely that the customer's concern about noise and vibration from machines used in June 2021 related to the attempts made in January or March 2021.

g. On 7 July 2021, the company's contractors attended to carry out the work. It found that the plunger had caused a blockage but it was not able to retrieve the plunger. Notices under section 159 of the Water Industry Act 1991 (stating the company's intention to access private land) were served on residents.

h. On 21 July 2021, a neighbour requested clearance of a blockage. When the company attended, the position of the plunger had moved. On the same day, the company received a message from the customer complaining about the number of occasions when he had experienced unpleasantness due to blockages in the sewer. The message complained about a blowback on 7 July 2021 and complained also that his shower tray had been stained. He stated that someone had been to inspect and wanted to know when he would receive compensation. No reference was made to any damage to foundations or instability or unsafety of the shower tray.

i. The company responded to the customer on 5 August 2021 explaining that further work was being planned and telling the customer that he might be eligible for a Guaranteed Service Standards (GSS) payment.

j. On 23 August 2021, the Case Manager for the customer's complaint called the customer to apologise that the company not yet been able to arrange a visit due to a series of higher priority flooding events. On 10 September 2021, a voice message was left for the customer and on 30 September 2021 one of the company's engineers attended with contractors and carried out a survey to determine the best way to remove the plunger from the sewer. The company says that it was noted that the only access to the company-owned sewer is from inside the customer's home and therefore the company should install a new manhole at the location.

k. On 23 November 2021, a contractor attended to mark up the location at which the new manhole chamber would be installed.

l. On 6 January 2022, the customer was advised to make a claim for damage to his bathroom to his insurer. The company says that this is standard advice.

m. On 24 January 2022, the customer's Case Manager sent him an email advising that the company was provisionally planning to install a new manhole chamber from 28 February 2022.

n. On 7 February 2022, the customer explained that due to the amount of the excess under his insurance policy, he would prefer to settle the claim directly with the company. The company responded on 15 February 2022.

o. On 25 February 2022 the company's Planning Team called the customer and the other parties involved to advise that the works would be likely to take place on or after 28 March 2022.

p. On 15 March 2022 the customer was advised that the works were due to commence from 28 March 2022.

q. On 30 March 2022, the customer advised that the contractors had asked him to move his car off of his driveway so that he wouldn't be blocked in, but he didn't want to do this. The customer also said that the contractors on site were being rude to him.

r. The company investigated this complaint with the contractors who reported that the customer was told that his driveway would be accessible after the working day and that there was plenty of on-street parking outside the customer's home.

s. On 1 April 2022, the customer's Case Manager sent the customer an email apologising for any misunderstanding about access to his driveway. Amongst other matters, the customer was also told that he needed to complete the claims form he had previously been sent and to provide substantiation of his losses for the company to consider.

t. The customer sent in a claim on 12 April 2022 and on 13 April 2022, the company replied. The reply also warned the customer that further works would be undertaken in the sewer.

u. On 15 April 2022, the company carried out a clean of the sewer and removed the plunger and some builder's rubble.

v. Following these events, the company and the customer (including with the assistance od the Consumer Council for Water (CCWater)) have discussed the appropriate level of compensation for the above matters.

6. The documentation also shows that the company's contractors assessed the customer's bathroom for damage after the blowback but found none. The company states that a goodwill gesture of £392.00 has been provided by cheque by XX, and the company has explained that this breaks down as £340.00 for stress and inconvenience caused by the blowback and subsequent works to install a new manhole chamber, and £52.00 to reimburse him for the bathroom items (excluding the shower tray) that he said he needed to replace after the blowback. Additionally, the company sent the customer a goodwill gesture of £120.00 by cheque. The company explains that this breaks down as £90.00 for delay in resolving his complaint at £10.00 per month between July 2021 (when the company received the customer's complaint) and April 2022 (when the company finished work to install a new manhole chamber), £10.00 for any calls and emails the customer made or sent and £20.00 for confusion caused regarding the access to his driveway whilst the contractors carried out the work. The customer has also on 8 December 2022 received the statutory GSS payment of £292.41 for the internal sewer flooding event at his home on 7 July 2021. £20.00 of this was a GSS payment for late payment.

7. The customer says that only £381.00 was received from XX, but it follows from the above that, overall, in respect of the incident and inconvenience and delays, the customer has received £804.41 (or, according to the customer £803.41).

8. I turn to the specific matters which have caused the customer to say that the compensation paid as above is insufficient. In reaching my conclusions below, I bear in mind that adjudication is an evidence-based process and that a party cannot succeed in a claim or argument unless the evidence taken as a whole supports that position.

Alleged damage to the shower and foundations

9. The customer says that there has been damage to the shower tray and to his foundations as a consequence of the various efforts to remove obstructive objects from the sewer. He relies on his account of noise and vibration when the company was taking action in the sewer, on certain photographs that he has taken, on the willingness of the insurer, XXX, to accept that £842.00

damage had been caused and he says that in respect of the inspection carried out by the company's contractors approximately five days after the event on 7 July 2021 that the customer had removed the base rail so that the contractors could look under the shower and see the damage, but they did not do this. The company, on the other hand, says that there is no evidence of damage.

10. In respect of the customer's belief that the shower tray had been stained, I find that the position is as follows.

11. I find that the photographs submitted by the customer and the company show that there had been a blowback which had affected the shower area, the floors and the walls of his downstairs shower room. It is clear from photographs also, that following the blowback there was foul contamination and stains in the shower tray. I accept the customer's submission that this was very unpleasant and that it damaged some items in his bathroom. I have considered the further evidence submitted by the customer in response to my Preliminary Decision, including further photographs of the condition of his shower tray following cleaning. Unsurprisingly, there is no photograph of the condition of the customer's shower tray before the blowback incident occurred.

12. Having considered these photographs, I accept that there is a stain to the customer's shower tray which the customer acknowledges in his response to the Preliminary Decision might be removed with professional cleaning, but which he does not propose to undertake because he says the tray is unstable. I am mindful, however, that there is no very obvious reason why a shower tray if in previously good condition, being a non-porous object, should have become stained following a blowback incident. If the shower tray was in a previous defective condition, this would significantly reduce the amount of compensation that could reasonably have been claimed by the customer.

13. It follows from the above that I do not find that the evidence shows that the blowback in July 2021 was responsible for staining of the customer's shower – and even if staining did occur due to previous wear and tear of the surface of the tray, there is no evidence as to the tray's value or the cost of replacement. Accordingly, I do not find that an average customer would reasonably expect the company to provide compensation over and above that already provided by "XX", which would, I find, have covered the cost of professional cleaning if the customer had chosen

to undertake this, but, as indicated, the customer explains that he did not in any event use this shower because of its instability. .

14. In respect of the incident in June 2021 (or earlier), however, I find that there is no evidence that any damage has been done by the company to the foundations or under the tray:

    a. I note that the customer did not allege this when he first complained following the blowback. I find that if the customer then had reason to suspect that damage to his foundations and to the underside of the tray had been caused, he would reasonably have been expected to complain about this at the first opportunity and certainly when there had been a subsequent adverse incident affecting the shower on 7 July 2021. I find that this is particularly the case as the customer says that he had stopped using his shower before the incident of 7 July 2021 because he believed it to be unsafe.

    b. Moreover, if, as the customer alleges, there was some damage to be seen under the shower tray, I find that it would reasonably have been expected that the customer would have taken photographs under the shower tray to show any cracks, etc. that he said had been caused. I do not find that an average customer would reasonably expect that proof of an issue of this severity would be dependent on an inference drawn from the company's contractor's failure to look under the base rail of the shower.

    c. It follows, I find, that although the customer says that the shower tray moves, there is no evidence that this has been caused by the company's machinery

15. It follows that I find that the evidence taken as a whole supports the company's position that there has been no damage rather than the customer's claim that damage has been caused which prevents the use of his shower. It follows also that I do not find that the customer's wife has been prevented from using the downstairs shower, save in respect of the time that would have been needed to clean up after the blowback. I find that as the company's contractor has compensated the customer in the sums of £340.00 for stress and inconvenience caused by the blowback and subsequent works to install a new manhole chamber and £52.00 to replace damaged items, this is a fair and reasonable amount.

16. I do not find that the payment of further compensation would reasonably be expected and I find that the company has not fallen short of expected standards in declining to make any further compensatory payment for damage to the shower or foundations.

Compensation for repeated foul smells

17. The customer says that he should be compensated for the work undertaken by the company to the sewer which has released foul smells on a repeated basis over a number of years. The company has explained that it is under a statutory duty to carry out repairs to the sewer and to remove obstructions that prevent the sewerage from operating correctly. In his comments on the company's response to his application, the customer accepts this, but he also says that there have been more calls out to the sewer than are listed above (which I accept may not have been listed because they affect other individuals). He argues:

> *We accept that XXX have a legal obligation to their customers to attend to resolve any wastewater issues but I'm certain that the law also requires that this should be done in a reasonable manner and within a reasonable length of time. Does XXX really believe that they resolved the neighbour's problem with blockages in a reasonable manner or within a reasonable time ? We're talking 5+ years from start to finish. The neighbour's problems seemed to be never-ending so we would have been very happy if XXX had contacted us directly in the early stages of the crisis & explained the situation to us fully so we could discuss other options. However, XXX never contacted us until we lodged a complaint about the flooding and damage caused to our property following the blowback incident of 07/07/2021.*

18. I am mindful that the obligation of the company to maintain, repair, etc., its network is under section 94 of the Water Industry Act 1991. Under these provisions, sewerage companies are not generally liable for the escape of the contents of public sewers (which includes odour as well as solid matter) in the absence of negligence, because the carrying out of such work means balancing resources and priorities across its entire customer-base and also taking into account all available information. Instead, companies are required to make guaranteed payments under the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 but compensation is not provided under this regulation when there is merely a foul smell.

19. I find that it is for the company and not its customers to decide upon the priority of work to be undertaken in its network. In a case that concerned repeated escapes of sewage called *Marcic v XXX*, ([2003] UKHL 66) the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving or maintaining the network. The reason for this decision was that overview of the company's decision-making in this area was found to be, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts. I find that the position of an adjudicator under this Scheme is similar to that of a court. Moreover, I am mindful that rule 3.5 of the Scheme rules prevents me from reaching decisions on matters that are the responsibility of Ofwat, which I find to be the situation here.

20. The customer says that there has been negligence and I have considered whether the evidence shows that the company has not supplied its services to the expected standard. I find, however, that the company has provided its services as would reasonably be expected. There is no evidence that the company was responsible for causing the obstruction in the sewer, but there is evidence that the items were causing problems and therefore I find that an average customer would reasonably expect that these should be removed. There is no evidence that the company used machinery other than that which would reasonably be expected in the circumstances in order to perform that task, albeit that it was not initially possible to achieve this.

21. The customer appears to accept this, although he says that the company should have taken action to address the repeated blockages in the sewer before the problems escalated in 2021. For the reasons given above, however, I have no jurisdiction to make such a finding and I cannot award compensation because attempts at repair resulted in escapes of odour prior to the blowback in July 2021.

22. The customer has received compensation for the blowback in accordance with the 2018 Regulations and the company's own policies but it follows from the above that I cannot direct further compensation to the customer on the basis of his upset over the three-year period for which he claims, even though I recognise that he and his family is upset about their poor experiences which the customer has explained further in response to my Preliminary Decision..

<u>Disruption caused by work to create the manhole</u>

23. As for the disruption caused by construction of the manhole, I find that the evidence shows that the customer was notified that work would be undertaken and, while I also note that it resulted in

an unfortunate argument between the customer and the company's contractors regarding access to his drive, the customer has been compensated in respect of the lack of communication about this.

24. Although I recognise that the customer may have been upset about this incident – and I take into account that there is a reference in the correspondence provided to me by XXX to the customer having to be helped inside by his wife following a confrontation with workmen - I find that this was work that the company was entitled to do in connection with its statutory duties and in the interests of the greater good of the customer's neighbourhood. The customer had been given appropriate notice and I do not find that an average customer would reasonably expect any further compensation than that offered by the company (£20.00) and part of the £340.00 paid by XX.

Conclusion

25. It follows from the above that I find that in respect of the matters that the customer says should lead to an increase in his compensatory payment, including his claim for distress and inconvenience, I am not able to find that the evidence and circumstances supports this. As the evidence indicates that the payments totalling £804.41 have already been provided to the customer by cheque or credit, it follows that the company is not required to take further action.

a.

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