

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X326

Date of Final Decision: 22 February 2023

Party Details

Customer: XX

Company: XX

Complaint

A drain on the customer's neighbour's property was damaged and caused flooding. The flood water then seeped underneath his neighbour's property and into his lower-lying property and caused damp. The company remedied the flooding by connecting the drain to the sewer. However, the company then replaced the manhole cover, and this has caused the damp to reoccur as the new cover stops surface water from going into the drain as it used to, so the water pools, flows under his neighbour's property, and seeps into his property again. Therefore, the customer would like the company to install a gully and S trap near to the new manhole cover.

Response

As a gesture of goodwill, the company connected the privately owned chamber to the sewer to prevent flooding and, following safety concerns, the company also replaced the manhole cover. While the company owns the chamber and the manhole cover, the company does not own and is not responsible for the area around the manhole cover, and it cannot install a gully pot on private land. Therefore, the customer is advised to raise this issue with the owner of the land on which the manhole is situated.

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 refusing to fit a gully pot on the customer's neighbours land. In view of this, the customer's claim does succeed.

Outcome

The company does not need to take any further action.

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Case Outline

The customer's complaint is that:

- He purchased his property in 1996 and it has suffered with a damp issue for approximately six or seven years. After a long battle, the company took responsibility for a surface and storm water drain in an alleyway between the next door neighbour's property and their neighbour's property, which had been flooding the alleyway and causing water to enter his property.
- The drain was damaged so the company connected it to the sewer pipe. This stopped the alleyway flooding, and the trench he had dug at the back of his property near the party wall stopped filling with water.
- However, the area around the drain is purposely sloped to allow surface water to drain through the manhole cover into the chamber, but the company replaced the manhole cover with a cover that stops surface water entering the drain, and this has caused the alleyway to flood again. As the water can no longer drain away, it goes under the next door property, and seeps into his property. Due to this, his property is suffering from damp again.
- The company says that the old manhole cover was dangerous and had to be replaced, but it was not damaged as the company claims, and the company has images on its system showing it was not damaged. These images also show the slope of the ground, the gap around the cover to allow water to drain, and photographs of the flooding.
- The company said it would get XX to inspect the problem, and the site engineer agreed that the drain was designed to take the surface water because the concrete is sloped towards it. The company refused to give him a copy of XX report, even though it had previously given him a copy of XX's report about next door neighbour's drains.
- Following a data request, he noticed that the company had incorrect job notes on its system, and he spent a long time getting it to change them.
- A further problem is that the other end of the alleyway has a surface water drain that goes directly into the manhole, but the company did not install a trap to prevent sewer smells from escaping. This was not a problem when it was a soakaway, but now the drain is connected to the sewer, a trap should be fitted.

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- The situation could be remedied by the company installing a gully pot with an S bend near to the manhole cover. However, the company says that installing a gully pot and making modifications to the surrounding area is not its responsibility, and he should change his assets to rectify the problem. However, as the manhole cover is not on his property, he is unable to do this.
- He has XX issues that have been aggravated by the damp issues at his property that have occurred over the last six or seven years. He has been an engineer for nearly forty years so understands how practical things work, but he has found it very difficult to deal with the company and its legal department, and he has found this complaint very complicated and time consuming.
- The damp in his home has had a XX and there have been times when they have been unable to use the main downstairs room due to the damp smell and the impact on their breathing. He also has concerns over possible subsidence at the front of his property due to water saturating the clay soil. His property is old and has shallow footings, so it is especially susceptible to damage from water underground.
- As the work carried out by the company has caused his property to become damp again, he would like the company to install a gully pot with an S trap to feed the surface water back into the drain.

The company's response is that:

- The customer says that he has experienced wet and damp in his property and, after a period of time, it took responsibility of a surface and storm water drain which was flooding a nearby alleyway and causing water to enter his property.
- The customer says there was flooding at both the front and back of his property.
- The issues the customer experienced at the rear of his property were found to be a private matter, and not related to any of its assets.
- The customer first raised concerns about the front of his property on 3 December 2020. This was determined to be a private matter on 19 January 2021, when it was found that surface water was entering a private chamber unconnected to the sewer, overflowing the chamber, and flowing into the customer's property.
- As the property and the neighbouring properties were built before it became a water company, it does not know why the chamber was not connected to the sewer. However, as the chamber was not connected to the sewer, the chamber was not its asset. As such, it had no obligation to resolve the customer's problem.
- Despite this, following further contact from the customer on 17 May 2021 and as a gesture of goodwill, it connected the chamber to the sewer on 22 June 2021, at a cost of £3,557.00.

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- Since this work was carried out, the pipework from the sewer back to the chamber, and the chamber itself, have become its assets.
- The manhole cover was also changed and raised, following safety concerns reported by a member of the public. The customer then reported that rainwater was collecting in the alleyway around the manhole. The customer said that this was causing water ingress in his property again as the new manhole cover has stopped surface water draining into the chamber like it used to.
- However, while it accepts that water may have entered the chamber through a gap around the old manhole cover, manhole covers are not designed to act as gullies, and the area around the manhole is privately owned.
- The customer wants it to fit a gully pot with an 'S' trap for collection of the surface water in the alleyway.
- While it is responsible for the disposal of surface water after it enters its network, it is not responsible for installing gully pots on private land. Any pipework or gully pots used for the removal of rainwater from a customer's property, property boundary or highway, are not its responsibility to install or maintain.
- It appreciates that the customer has concerns, but the level of water previously experienced was a result of the private pipework not being connected to the sewer, meaning that the surface water had nowhere to go. As this has now been connected as a gesture of goodwill and has become a company asset, there is nothing to suggest this level of flooding will occur again.
- Should the customer continue to have concerns about the water pooling in the alleyway and causing damp in his property, the customer should raise these concerns with the landowner responsible for the alleyway.
- The customer also says that it refused to provide him with a copy of a report from XX. Any request for information is taken seriously, and is managed by its Data Subject Access Request Team. Information shared as part of a data request is carefully evaluated to ensure that only data associated with the customer or the customer's property is provided, and it provided all the information it was able to when the customer made his request for data.
- The customer also says its job notes were incorrect. However, as above, the customer is only entitled to view information directly related to him and his property.
- Further concerns have been raised about a surface water drain at the other end of the alleyway, which connects to the chamber. The customer says that since the connection was made, smells come out of this surface water drain.
- The company had adopted responsibility for the chamber and the pipe leading to the sewer, but any private surface water pipework arrangements of neighbouring properties are not its

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responsibility. As such, it is not responsible for the surface water drain at the other end of the alleyway. In any event, there have been no concerns raised by the properties closest to this private surface water drain.

- In view of the above, it denies liability to carry out any further work with regard to the issues raised by the customer.

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 wants the company to install a gully pot and S trap at the lowest point near to the new manhole cover to stop the surface water from pooling in the alleyway and seeping under the next door neighbour's property into his property. The evidence shows that the surface water used to drain into the manhole chamber through a gap around the old cover, but the new higher watertight cover prevent this from happening.
2. The company states that it replaced and raised the manhole cover following safety concerns and, while it accepts that surface water used to seep through a gap around the manhole cover as the area around it is sloped, it says that manholes are not designed to be gullies and the construction of the privately owned land around the manhole is not its responsibility.

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3. In order for the customer's claim to succeed, the evidence must show on the balance of probabilities that the company has failed to provide its service to the expected standard by failing to accept responsibility to install a gully near the manhole, and that the company's failing has caused the damp issue in the customer's property.
4. However, I accept that while the company is responsible for the disposal of surface water after it enters its network, and for maintaining its assets to ensure that surface water is effectually drained, it is not responsible for installing gully pots or other pipework on private land for the removal of rainwater from a customer's property.
5. In view of this, the company's refusal to fit a gully pot near to the manhole situated on the customer's neighbour's property does not amount to it failing to provide its service to the expected standard.
6. I understand that the customer will be frustrated and disappointed by my decision, especially as the old manhole cover allowed the surface water to drain into the chamber and would have prevented the water from pooling. However, the manhole and its cover became the company's asset when the chamber was connected to the sewer and, therefore, the company was entitled to change the cover, regardless of whether it was broken or not.
7. The customer also complains about a smell coming from a surface water drain at the other end of the alleyway. However, I accept that the surface water drain is most likely privately owned and, therefore, any maintenance works are the responsibility of the landowner and not the company.
8. The customer states that the company has failed to provide him with a copy of XX's report, and the job note records were incorrect. The company states that it is unable to provide information to the customer that is not directly related to him or his property. On balance, I accept this is the case and is most likely the reason why the company did not provide the customer with the report relating to his neighbour's property, and may also be the cause of its records appearing incomplete.
9. In view of the above, while I appreciate that this is not the outcome the customer hoped for, especially in light of his health issues and the distress and inconvenience the damp has caused, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person, and the customer's claim does not succeed.

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10. Following the preliminary decision, the customer has made some comments.
11. The customer expresses concern that I have not considered all the evidence presented to me, such as the statement from the local Councillor. However, in accordance with the statement at the top of my decision, I reassure the customer that I considered all the evidence provided to me during my adjudication, even if I did not specifically refer to each piece of evidence.
12. The customer also expresses dissatisfaction that I concluded that the surface water drain at the other end of the alley is “most likely” privately owned, and says it either is privately owned, or it is not. I used the term “most likely” as the evidential threshold for a claim to succeed is “on the balance of probabilities”, and it is not necessary for me to come to definite conclusions in order to make a decision. In this case, as surface water drains are normally privately owned and I have been provided with no substantive evidence to show that the relevant surface water drain is not privately owned, I found that it is “most likely” privately owned. In other words, I found that on the balance of probabilities, having considered the evidence, the relevant drain is not owned by the company.
13. The customer also says that drains taking surface water from more than one property are owned by a water company. However, the company denies that the drain is its asset, and I do not accept that a drain on private property used for surface water drainage from more than one property is necessarily a water company owned asset.
14. The customer also expressed concern that I have not grasped the salient facts and requests a more technically-minded person to consider the case. In response, I must reassure the customer that I have understood all the issues raised, but I made no comment or determination on issues that are not relevant to the issue at the heart of the dispute or the remedy requested by the customer. For example, I made no determination on whether the slope of the land towards the drain means that it was designed to take surface water for two reasons. Firstly, as stated above, as the chamber and manhole are now owned by the company, the company was entitled to remove the original manhole cover and replace it with any manhole cover it deemed suitable. Secondly, as the company does not own the land around the manhole cover and is not responsible for surface water drainage arrangements on private property, I found that the company is not responsible for installing a gully pot in the privately owned alleyway. Therefore, even if the developer of the property intended for the surface water to drain down the sloped

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alleyway into the chamber as the customer claims, this has no impact on whether the company is liable to fit a gully pot in the privately owned alleyway.

15. The customer also says that the company has breached building regulations. However, this issue was not included in the customer's application and was only raised in the customer's comments on the company's response. The WATRS Scheme Rules do not allow a customer to raise new issues in their comments on the company's response as the company has no opportunity to defend them. Therefore, I did not address this issue in my adjudication.
16. The customer has also provided letters from a neighbour and from a person who used to work on the estate. However, the WATRS Scheme Rules do not allow a customer to produce new evidence at this stage in the process. In any event, the letters amount to witness statements and as this is a document based process, I am unable to test the reliability of this evidence through questioning. In view of this, such evidence carries little evidential value.
17. In view of the above, and while I appreciate that the outcome of this dispute is not what the customer hoped for, my decision remains unchanged.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 March 2023 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.

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K S Wilks

Katharine Wilks

Adjudicator

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