

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X348

Date of Final Decision: 23 February 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer claims that the company has failed to maintain its pipework since 2007, which has led to flooding within the boundaries of his property. Whilst the company has previously undertaken work to prevent further issues, it has failed to rectify the problem permanently. Furthermore, the company provided poor customer service once this issue was raised. The customer is seeking the company to apologise, rectify the issue permanently and pay compensation of £250,000.00 for the damage done to the property since 2007.

Response

The company says it has not at any time been negligent, as it has conducted various investigations into the reasons behind the flooding and carrying out work to prevent further flooding. The main cause of the flooding is due to works carried out by a private developer before the company taking responsibility for the sewer. Matters are complicated due to the split ownership between the company, the local council, and the customer. The company continue to perform six monthly checks on the sewer to prevent further flooding and has looked at various options, including relaying the sewer and reducing the height of the overflow so that the flooding is minimised. These options have not had funding approved yet as the work does not yet satisfy the criteria required for the financing to be awarded. The company has not made any further offers of settlement.

Findings

I am satisfied that the evidence shows that the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning maintaining its sewer pipework surrounding the boundaries of the customer's property. Concerning customer service, the evidence shows no other failings for which the customer has not been already adequately compensated.

Outcome

The company needs to take no further action.

The customer has until 23 March 2023 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The company has failed to maintain its pipework since 2007, which has led to flooding within the boundaries of his property.
- Whilst the company has previously undertaken work to prevent further issues, it has failed to rectify them permanently.
- Furthermore, the company provided poor customer service once this issue was raised.
- The customer is seeking the company to apologise, rectify the issue permanently and pay compensation of £250,000.00 for the damage done to the property since 2007.

The company's response is that:

- The company says it has not at any time been negligent, as it has conducted various investigations into the reasons behind the flooding and carrying out work to prevent further flooding.
- The main cause of the flooding is due to works carried out by a private developer before the company taking responsibility for the sewer.
- Matters are complicated due to the split ownership between the company, the local council, and the customer.
- The company continue to perform six monthly checks on the sewer to prevent further flooding and has looked at various options, including relaying the sewer and reducing the height of the overflow so that the flooding is minimised.
- These options have not had funding approved yet as the work does not yet satisfy the criteria required for funding to be awarded.
- The company has not made any further offers of settlement.

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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 another disadvantage as a result of a failure 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 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 dispute centres on whether the company has failed to maintain its pipework surrounding the boundaries of the customer's property and failed to install a long-term solution to the flooding.
2. The company must meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.
3. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of flooding, the company needs to investigate thoroughly if the company's assets are to blame and, if repairs are required, make such repairs to prevent further floods.
4. Furthermore, the company also has certain obligations regarding its customer services as set out in the XX Scheme and its own Customer Guarantee Scheme.
5. From the evidence put forward by the customer and the company, I understand the customer first originally contacted the company on 20 June 2007 to report a sewage flooding affecting his and other neighbouring properties. The company says it attended the property and undertook further investigations into the cause. However, it currently cannot provide the details as the information has been archived.

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6. I understand that between 2007 and 2011, the customer contacted the company on various occasions, usually coinciding with periods of extreme rainfall. On each occasion, the company investigated matters and found that the network was overloaded.
7. In 2011, once the company took over the responsibility for many private sewers across the county, a camera survey was carried out. The company established during that survey that the combined sewer showed no defects. However, the surface water sewer at the front of the customer's property showed severe overloading.
8. I understand that the company performed a desilt on the surface water sewer at the front of the customer's property to clear all debris from it and increase the flow capacity. In 2013, it was agreed that the company could install a non-return valve to try and prevent further flooding. In the response, the company says that it could not install the non-return valve before 2011, as the pipework at that time was private and not the company's responsibility to maintain.
9. In July 2014, the customer reported sewage flooding in his garage and garden. The company attended to the customer's property and found that the customer had block paved a large area of the property, which had removed any natural drainage. The customer had also installed an Arco drain and connected this to the foul sewer causing this to back up onto his section of pipework.
10. The company advised the customer that the block paving and Arco drain were increasing the risk of future flooding, and this risk could be reduced by re-routing the Arco drain to the surface water sewer at the side of the property. The company says in its response that it deemed this flooding as a private issue as it was caused by the work carried out by the customer and only affected his private section of the sewer.
11. I understand that in the same investigation, the company found that the highway gully outside the customer's property was silted up, and it reported this to the customer's local council in September 2014 as the silting of the highway gully is the responsibility of the council, not the company.
12. In October 2019, the customer contacted the company to report flooding in his garage following heavy rainfall. The evidence shows that the heavy rainfall saw the nearby beck break its banks and overload the local sewage pumping station and place the outlet of the combined sewer overflow under water. I understand that the company paid the customer a goodwill gesture of

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£500.00 towards any insurance excess or increase, despite the company not having liability for sewage flooding.

13. In February 2020, the customer once again contacted the company to report flooding in his garage following heavy rainfall. The company investigated and found the same issue had occurred again; the local beck broke its banks and flooded the sewage pumping station.
14. In March 2020, the company attended to the customer's property and conducted an in-depth camera survey of the sewer network surrounding the property. This survey found that all properties were on soakaways, and the company believed at this point that the issue was a highway drain and not the company's pipework.
15. I understand from the evidence that the customer was advised again that the Arco drain on his property connected to the foul sewer was causing issues leading to flooding, and the customer was advised to remove this connection.
16. In November 2020, after discussions with his local council, the customer contacted the company to advise that the council had informed him that the issue was not a highway drain fault but a public surface water drain.
17. The company undertook a joint investigation with the local council and found that the surface water sewer had been altered by a private contractor in 2007 further downstream from the customer's property. The evidence shows that a developer had changed the surface water sewer's layout before the company took ownership in 2011. The developer had capped the sewer creating a holding tank. Once this tank reached capacity, it then overflowed into a smaller tank. When both tanks were full and their capacity exceeded, surface water flooding then occurred, affecting the customer and his neighbours.
18. In March 2022, the company requested funding to carry out work on the surface water sewer, including the sewer re-lay, to reduce flooding at the customer's property. Unfortunately, this funding was refused as the company says the work does not yet satisfy the criteria required for funding to be awarded. I understand that the customer and his neighbour have been asked to ensure they report all instances of flooding, as this adds to fulfilling the criteria for future funding.

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19. I understand that the customer remained unhappy, as ultimately, despite the company's work, the issue with the flooding has not been resolved. The evidence shows that the customer remained dissatisfied and progressed the matter to CCWater on 17 July 2022 without result.
20. Regarding whether the company has failed to maintain its pipework surrounding the boundaries of the customer's property, as stated within the company's defence documents under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers. After careful analysis of the correspondence and evidence, I cannot find any indication the company has been negligent regarding the sewer.
21. As shown by the evidence, the company investigated the cause of the flooding, installed a non-return valve and instigated a six-monthly check of its pipework until it can relay the pipework surrounding the customer's property.
22. Whilst I appreciate the customer's position, I believe the company did investigate the flooding as best it could and acted appropriately according to the results of its investigations. The evidence shows that a developer had changed the surface water sewer's layout before the company took ownership in 2011, and the customer's own alterations to his property have all contributed to the sewer flooding. Furthermore, surveys were undertaken by the company that showed the sewers had no significant defects and were operating freely. As demonstrated by the evidence, the company investigated the cause of the flooding on each occasion and took appropriate action if cleaning or minor repairs were required.
23. I note that the customer has requested £25,000.00 to cover repairs, replacements and clean-up charges caused by the flooding. However, as above, I cannot find any indication the company has been negligent. Therefore, I find that the company is not liable for the customer's costs for repairs, replacements and clean-up charges caused by the flooding. Furthermore, despite not being responsible, the company has made various goodwill payments to the customer to cover damage to his property.
24. The evidence shows that the company has also investigated various scenarios to reduce the risk of flooding and wishes to undertake a sewer re-lay to reduce flooding at the customer's property. Whilst this does not eliminate the risk of future flooding, it does reduce the risk. Whilst I appreciate the customer's position regarding funding for a long-term solution, I find it reasonable for the

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company to balance the flooding events and risks at the customer's property against all the other company's operational risks awaiting resolution.

25. Concerning the above, I am of the view the company did investigate the flooding as best it could and acted appropriately according to the results of its investigations. I find there are no grounds to conclude the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the investigation of the source of the flooding at the customer's property and completing a long-term solution. Accordingly, this aspect of the customer's claim does not succeed.
26. The company has certain obligations in respect of its customer services. The evidence shows that, where appropriate, the company has made goodwill and Guaranteed Standards Scheme payments totalling £1,150.00. After carefully reviewing all the correspondence provided in evidence, I am satisfied that the company's various payments were fair and reasonable in the circumstances to cover the various flooding incidents, the complaint and any distress or inconvenience to the customer. I am therefore satisfied there have been no failings concerning customer service, which the customer has not been already adequately compensated.
27. The customer has made comments on the preliminary decision and having carefully considered each aspect of the customer's comments, I find that they do not change my findings, which remain unaltered from the preliminary decision.
28. Considering the above, I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning identifying any defects with the sewer and investigating a long-term solution to the flooding. Regarding customer service, I find no other failings for which the customer has not been already adequately compensated. Consequently, the customer's claim does not succeed.

Outcome

The company needs to take no further action.

What happens next?

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- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 23 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.



Mark Ledger FCIArb
Adjudicator

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