

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WATX409

Date of Final Decision: 10 April 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer complains about leakage from the manhole in her driveway (the MH). She says that the company has not provided a response to show that a connection into the customer's manhole from her neighbour at number **XX** is a legal connection or that authority had been granted for the pipework from the direction of number **XX** to be in her drive. She says she has no written assurance that the pipework under her drive is safe, or fit for purpose, and there is no documentation in case problems develop again. An assessment survey states that there is sewage entering the manhole from a down and up road direction and the customer has been told that it is not surprising that there has been backflow into her home. She asks for compensation of £5,000.00.

#### Response

The company says that it has investigated and taken actions as appropriate in respect of the customer's complaints of backflows and odours from the MH from January 2022 onwards. It has also provided compensation to the customer in respect of its customer service of £435.00 and a payment of £120.00 under its Customer Guarantee Scheme. It says that no further action is required.

#### Findings

I have taken into account the customer's comments on the Preliminary Decision and I find that there is no reliable evidence that the lateral drain from number **XX** into the MH on the customer's drive is illegal, unauthorised or unsafe. The company would reasonably be expected to have a sewer map of the lateral drains that it acquired in 2011 if this had been accurately mapped at that time or if there had been previous issues affecting the sewer. This has not been the case. The company has taken action in response to the customer's complaints of backflow and odours and made goodwill gestures where it has found service failures. In one respect only I find that the company has not provided its service to the expected standard, namely it has not explained its opinion to the customer about the layout of the MH.

#### Outcome

The company needs to explain its opinion to the customer in writing as to whether the layout of the MH is causing backflows and odours in her home and, if so, whether any steps should be taken either by the company or by the customer to alleviate this.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X409

Date of Final Decision: 10 April 2023

## Case Outline

### The customer's complaint is that:

- The customer complains about the construction of the manhole in her drive. She says that she has raised two complaints about this, the first of which (WAT XX) was not understood by WATRS to relate to the company. She asks that this complaint be continued.
- She explains that she experienced a backflow of sewerage at her home (XX) as a result of a "sewer blowout" on 10 January 2022. This was sufficiently serious for sewage to be running down the street, but the company did not attend for several hours. This caused her pet fish to die and the problem was not resolved. The company said that the problem was due to misuse of the sewer.
- Sewage was still blocked in the manhole and photos were sent to the company to prove this. Meanwhile, the company made several site visits but could not determine how or why there was a pipe on the left towards number XX or why the water was flowing backwards, and the pipework did not tally with the company's plans. There was also root growth and broken sides to the manhole. The customer says that she reported some broken and plastic pipework hanging on the wall of the manhole. The company initially denied that there was any pipework hanging on the wall of the manhole coming from the direction of number XX, and then when shown a picture, could not say whether this was a lawful connection or not. The company did not take any steps in respect of the broken areas.
- Initially, the customer and her daughter claimed compensation for damaged clothes, a discoloured drive, and lack of use of her drive for the past month but heard nothing. In due course the company made a compensatory payment of £310.00 and £120.00 under the Guaranteed Service Standards (GSS) Scheme in March 2022 but the problems continued. The customer says that she had a "cess pit" on her drive because of the backflows.
- Other steps were taken to try to resolve problems with the manhole. Since the involvement of the Consumer Council for Water (CCWater), the customer has raised a number of concerns:
  - The company's allegations about sewer misuse (baby wipes, toys, cooking oil, dead rat, and branches), have caused local disputes. Also because the company's subcontractors

- did not have the **XX** logo on their vans her neighbours accused her of having private work done to the manhole.
- A camera was inserted into the drains of the customer's home by the company without notice on Tuesday 26 April 2022 without notice and scared the customer and her daughter. The camera came up to the shower and the toilet and there was some forceful tapping in the shower room.
  - The customer had been told that the company could come and do this unannounced and without ID because residents at number **XX** called them to do so, and because the company own both the manhole and the private inspection chamber on the drive. The company then said it would issue a letter stating that the 'asset' concerned (the private inspection chamber) was the customer's and that this should not have happened.
  - Someone from the company had been "prodding at" the sewer which caused a backflow into the customer's house. Two people then knocked at the door saying that they were from the company but could not provide ID. The customer called the police and said that she had not given consent to the work and needed to know what would be done. She says that the police accused the company of harassing the customer.
  - The company carried out repairs on 26 April 2022 by removing the interceptor trap and rebuilding the manhole as well as removing tree roots, but blockages were occurring at number **XX** and the company suggested that the problem had been caused by the workmen. They wanted to construct new pipework into the manhole.
  - The customer asked for a report on the adequacy of the new sewer connection fitted on 29 April 2022 coming from no **XX** direction into the manhole.
  - There are a number of scratches and now white blotches on the drive which the customer understands is sewage fungus in the brick tiles.
- The customer says that the above problems have occurred because the company does not have correct sewer maps, in particular in respect of the connection from number **XX**. One **XX** from the company tried to update the sewer map on 29 April 2022 but he could not do so.
  - The customer was given an assessment of the manhole in May 2022. Further work was then carried out in May 2022. The customer has clarified the nature of her complaint in an email dated 22 February 2023 (in reply to the company's response to the application). She says:
    - . *A copy of the assessment survey was sent to you earlier and you will see from this that there are 4 openings in this manhole – one on each of the 4 sides. This complaint is about the opening on the south side which comes from downroad ie property **XX** direction (I am property **XX**). The reason I am making this very clear is because correspondence I have received in the past has not clarified what was talked about and resulted in meaningless exchange. This opening was found at the beginning of 2022 when the manhole was opened, and a picture was sent to you.*

*I was told that the connection must have been put in before XX took over. XX said that XX Council was the authority that approved the sewage works to home XX that included sewage works under my drive. I asked for the paperwork showing that it is a legal connection and also showing that authority has been granted for the pipework in my drive from home XX direction. I have received no response about this, and nor has any written reference been made to this downroad opening into the manhole by XX. As it is, I have no written assurance that the pipework under my drive is safe, no written assurance that it is fit for purpose, and no documentation in case problems develop again. Please note from the survey sent to you that there is sewage entering the manhole from a down road and an uproad direction and that I have been told that it is not surprising that there has been backflow into my home.*

- The customer says she has not received an answer and she ask for compensation of £5,000.00.

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

- The customer claims compensation because a lateral drain from a neighbour's property travels underneath her driveway and connects into the company owned sewer via a manhole chamber (the MH) located in her driveway.
- The basis of the compensation claim is that the customer is upset that she has not received paperwork showing that the neighbour's lateral connection is legal and, because she never gave permission for the lateral drain to run underneath her driveway. This information has not been set out clearly in her application form under reference WAT-XX but has been in the application under reference WAT-XX.
- The amount of compensation claimed is not clear. On her application form under reference WAT-XX the customer has stated that she is claiming £5,000.00, and on her application form under reference WAT-XX the customer makes a claim of £10,000.00. On either basis, the company says that it disputes the customer's entitlement to compensation.
- The company says that it has always responded to the customer's reports and carried out the relevant work required to resolve her drainage issues. On all occasions, these have been as a result of sewer misuse where inappropriate items had blocked the sewer.
- The company's contractors re-rendered and re-benched the manhole (MH) chamber on the customer's driveway in an effort to prevent future root ingress. As blockages and odour reports continued to be a problem, it removed the interceptor trap and replaced it with a straight section of pipework so that wastewater could flow straight to the main sewer in the road and there is now no u-bend.
- The company sent the customer a goodwill gesture of £310.00 in March 2022 and a further £125.00 in goodwill on 11 May 2022, making a total goodwill gesture of £435.00

- The customer has received the statutory payments that she is entitled to under the terms of the Customer Guarantee Scheme (CGS). £120.00 in total has been sent by way of cheque for the following email complaints received and not substantively responded to:
  - 12 January 2022 - £30.00
  - 14 January 2022 - £30.00
  - 21 January 2022 - £30.00
  - 24 January 2022 - £30.00
- The company points out that the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 meant that all previously privately owned drainage in the **XX** region became the responsibility of the company. There has been no application from a neighbouring property to join the main sewer the company believes it likely that the disputed connection was made prior to 1 October 2011 and possibly even when the property was originally built. The company comments that no planning permission application for the neighbouring property can be found in the public domain. In addition, to make the connection that exists today, it is likely that some sort of excavation would have been required on the customer's driveway and she has not mentioned that she remembers this, so the likelihood is that the connection was made prior to her owning the property.
- In any event, the company is confident that the lateral drain from the neighbouring property was made at a time prior to the company becoming responsible for it (1 October 2011) and probably before the privatisation of the Water Industry in the UK in 1991 before which the company did not exist.
- Moreover, when the company acquired privately owned shared drainage in 2011, some mapping updates from Local Authorities were available but the majority of drainage and pipework had been put in place by developers and builders and had never been mapped. The task to survey every property was not cost effective and mapping is updated as and when information becomes available. Prior to the customer's complaint, only one other report of a drainage issue had been raised in her road and that was in 2003 and on the other side. The company had therefore not inspected the drainage prior to January 2022.
- In summary, the lateral drain that the customer is unhappy about did not need approval from **XX** as it was made at a time prior to **XX** being responsible for it or most likely and was made at a time prior to **XX** existing.

### 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 also make clear that I have carefully considered the customer's comments on my Preliminary Decision. The company has made no substantive comment.

#### **How was this decision reached?**

1. The documentation submitted to me shows that there has been a lengthy and complicated dispute in this case, in which a number of issues have been raised. I find that the following has occurred:
  - a. On 10 January 2022 the customer called the company to say that a MH on her driveway was overflowing. And that there was sewer flooding in her back garden too. Although the customer says that the company was slow to attend, the company's records show that the call was received at 13:51 and the customer was told that the company would be with her before 21:51 hours. The contractors arrived later that afternoon at 16:43.
  - b. The engineer on site called the company's planning team to advise that there was no evidence of a sewer flood inside the property. The customer had employed her own plumber who had cleared a blockage from the company's sewer and removed some tree roots. The company's engineer used a camera and confirmed that the sewer was clear and free flowing, and he also washed the driveway with disinfectant.
  - c. On 12 January 2022 the customer reported odours in her home coming from the sewer and waste flowing away slowly. The customer also reported that her private plumber had told her there was root damage in the sewer and the planning team therefore requested that contractors take pictures of its condition when they attend. A 72-hour timescale was provided.

- d. Later that day, the customer sent five emails raising a complaint about the ongoing problem of escape of sewage from the sewer into her driveway, the presence of tree roots, the location and design of the sewer, cracks in the sewer and inappropriate use of the sewer by her neighbour and presence of foreign objects including a dead rat. She asked for compensation for her and her daughter's damaged clothing. She wanted to see CCTV images of her neighbour's sewer.
- e. The customer sent a further email on 13 January 2022 explaining that she had been advised by her plumber that the problem would continue until the cracks and breaks in the sewer were resolved. She said that there was too much pressure in the sewer and that if she did not get a positive response, she would open up the sewer to resolve this.
- f. Later that day, a company Case Manager called the customer to discuss her emails. In relation to the design and location of the sewer, the Case Manager advised it would not be possible for the sewer to be moved to a different location, that the company had not laid the sewer as it is, and that it had inherited the previously privately owned drainage in 2011. It confirmed that the company is not responsible for inappropriate items that are deposited into the sewer network which commonly cause blockages and advised also that it had sent its 'Bin it, don't block it' leaflets to the local residents to educate them on what should and should not be flushed down the drains. The company agreed to send the customer a claims form and a form to claim a Customer Guarantee Scheme claim form.
- g. On 14 January 2022, contractors attended the customer's home. She informed the company that there had been a flood a week before and the Local Authority (LA) had removed tree roots from the sewer. The company's records state that the contractors used a camera to check the condition of the sewer and it was clear and free flowing with no defects noted. This is supported by photographs taken of the manhole and camera images. The company called the customer to discuss its findings, although later that day it received six emails from the customer, including one raising a complaint that the contractors had not dealt with the odour issue and could not have done so because they had not been in her house. She raised a complaint. The customer also wanted to know which properties' drainage passed through the MH on her driveway and she asked the company to check in other locations in her road for blockages due to the odour and on 15 January 2022, the customer emailed the company stating:

*I have been advised that I should report to you that there are two opposite flow inlets on the lateral drain serving my home and that I want the problem rectified so that there is no backflow indoors again. The inflowing houses are no XX and no XX both flowing to no XX. I have already reported the ongoing foul odour in sink and shower.*

- h. On 16 January, the customer sent a further email and pictures, stating that she had been advised that the sewer from number XX ran backwards from the lateral sewer flow whereas she had been advised that number XX should flow to number XX and then join the main sewer at number XX. She said that the sewer capacity and odour needed to be assessed and she had been in touch with XX Council.
- i. On 17 January 2022 the customer called the company to report a blockage which was preventing her facilities from draining away. She complained of a bad odour and gurgling sounds. The company's contractors attended and cleared a blockage and sent a request to the Planning Team to arrange for a Network Engineer (NE) to attend with contractors to investigate the concerns further. The sewer had been blocked with mass paper (thick kitchen type) and rags (wet wipes etc) that do not break down in the sewer. On the same day, the customer contacted the company to say that she had been advised by the Council to contact the company immediately to find out whether number XX had joined the sewer inappropriately and then to rectify the situation. On the following day, the Case Manager informed the customer that the sewer would be further investigated.
- j. On the following day, the customer said that the plastic pipe above the soffit (from number XX) was "not permitted". She had contacted Ofwat and in the meantime was still experiencing backflow for which she would be claiming compensation.
- k. On 21 January 2022, the customer sent a further four emails enclosing photographs of the sewer from 17 January 2022 and contrasting this with images from the company's brochure, complaining of the white patches on her drive (with images) and referring again to her damaged clothing.
- l. On 22 January 2022, the company's contractors attended again and removed some tree roots.
- m. On 24 January 2022, the customer emailed that she had not heard anything back about her compensation claim and in a later telephone call complained of odour, that water in her toilet was rising, as was wastewater in her downstairs shower although her kitchen



sink was draining but gurgling. Later than afternoon, contractors attended at 5pm and found no evidence of a blockage.

- n. On 25 January 2022, an NE attended, carried out dye tests and found no defects. When this was reported to the customer by the Case Manager on 26 January 2022, the customer asked which of her neighbouring properties were connected into the same section of sewer as her and was unhappy because of the residents misusing the sewer. She was unhappy with the company's position being that the sewer was operating as it should be and so the company offered to escalate her complaint for a review by another Case Manager. The customer sent a further email relating to the "second part" of her claim including a picture showing sanitary products in the manhole. In a further email that day the customer said that she wanted to know in writing whether her neighbour's use of the sewer was acceptable and whether it was true that nothing could be done. She complained that no maintenance had been carried out since the sewer was built in 1930 and the problem had been caused by tree roots. She said that company had not investigated properly why she was experiencing backflow. On the following day she asked for details of the sewers flowing into the manhole on her drive under the Freedom of Information Act.
- o. On 28 January 2022, the customer wrote:
- 1) *I am still waiting for confirmation in writing how many sewer outlets flow into your manhole on my drive.*
  - 2) *According to your engineers, the 'above soffit' sewer from direction of home **XX** has not been given permission but you have not done anything.*
  - 3) *Tree roots are penetrating the manhole and the walls need to be repaired. The walls have not been cleaned and disinfected after the sewage flowed out. Tree roots have a high level of penetration under the soffit by my sewer pipe outlet and also by the side of the 'above soffit' outlet. It is unreasonable for you to expect me to keep calling you to come and clear the cesspit in the manhole and I ask for a reasonable level of repair so that I can have a reasonable sewage service and use my drive.*
  - 4) *I request you redirect my sewer away from that for other properties as I have experienced backflow from neighbouring properties for 3 weeks.*

Later that evening, the customer advised that her toilet was not draining away and asked for assistance.

- p. In the early hours of 29 January 2022, the company's contractors attended and found that the MH was clear and free flowing. A camera was used to check from this MH and out to

the main sewer in the road to confirm that it was all clear and free flowing. This is supported by pictures.

- q. On 31 January 2022 two emails were sent by the customer asking about her complaint and about a reference number for her Freedom of Information request.
- r. On 2 February 2022, the customer complained of toilets backing up and sewage entering through her shower and sink. Contractors attended and cleared a blockage in the interceptor chamber of the MH but noted that there was no evidence of an internal flood. This is supported by images taken by the contractors.
- s. On 3 February 2022, another Case Manager from the Customer Relations Team began to review the customer's complaint and called her to discuss her concerns. The company sent a further email.
- t. The customer replied on 4 February 2022 stating that an officer from **XX** Council had come to see the situation today and said that the company needed to supply her with the CCTV footage and findings "including usage of the pipe that appears to be going to property **XX**" as well as recommendations and an action plan.
- u. As all the blockages had been caused by sewer misuse, the Case Manager handling the matter sent the customer an email on 10 February 2022 an email confirming its position which was that there was nothing further it could do for her, and the company signposted the Consumer Council for Water (CCWater).
- v. Meanwhile on 17 February 2022, the company's insurer's meanwhile refused the customer's claim.
- w. On 10 March 2022, a manager from our Chief Executive's Office responded to CWater's referral of the customer's complaint. Following their review of the matter, the customer had spoken with one of the Technical Specialists who re-reviewed the CCTV survey carried out on 25 January 2022. Whilst this review enforced the original decision that there was nothing wrong and no defects in the local network, they did advise they would arrange for the MH chamber to be re-rendered in an effort to try and prevent future tree root problems. The company also indicated that it would send a gesture of goodwill for £310.00 and a CGS payment of £120.00. Rebenching of the MH occurred on 11 March 2022.

- x. On 21 March the customer advised that her toilet was not draining and there was an unpleasant odour and on 22 March 2022, contractors attended and found the MH on her driveway to be clear and free flowing. They also tested the customer's facilities which were working fine.
- y. On 23 March 2022 the manager from our CEO's Office called the customer and then wrote to her in reply to an email of the day before, sending the customer a copy of the company's asset mapping as it was at this date. On 30 March 2022, the customer questioned if the asset mapping was correct.
- z. On 31 March 2022, the customer again complained of odour and a blocked toilet. Later that afternoon, contractors attended and found the MH on the customer's driveway to be blocked with inappropriate items and cleared the blockage with rods and a plunger. The company says that due to the number of odour and blockage reports, it was decided to raise follow on work to remove the interceptor trap and replace it with a straight section of pipework.
- aa. On 1 April 2022, the company served a notice to carry out works.
- bb. On 13 April 2022, the customer again complained that her toilet was draining slowly but due to other priorities the company was not able to attend until 16 April 2022 when a blockage of inappropriate items was found in the MH.
- cc. On 22 to 24 April 2022, contractors fitted the new section of pie and removed the interceptor trap but on 24 April 2022, neighbours complained that there was an external wastewater flood at their home when they used their facilities which were draining away slowly. A 48-hour timescale for attendance was provided.
- dd. On 26 April 2022, contractors attended to the neighbour's property. The company says that the reports of the contractors show that the lateral connection to the MH had been concreted over and this is supported by a copy of that entry. Although the customer denies this, I find that it is improbable that this entry would have been made by the contractors if this was not their finding. In the meantime, the company set up daily tankering from a MH on the neighbour's driveway until contractors could complete the repairs required. There is no evidence as to who carried out the concreting.

- ee. The company attended at the customer's home but she said that she would refuse consent for the carrying out of this work. She referred to the person who had been prodding at the MH, the fact that she did not believe that the contractors who had repaired the MH had concreted the outlet, that she had been blamed for having private work done due to e attendance of an unliveried van and that she wanted all work to be done to an appropriate standard. She also expressed the view that her neighbour's outlet should not travel to the MH. On 27 April 2022, the customer complained about the use of a camera that entered inside her home when she and her daughter were using its facilities.
- ff. The customer was informed that the company did not need her consent, but she said that she would call the police if contractors attended. The customer was nonetheless given notice of the company's attendance on 29 April 2022. On the morning of 29 April 2022, the manager of the CEO Team who had been handling this matter tried to call the customer. A Police Officer answered saying that he was on site to prevent a breach of the peace, who then liaised with one of the Customer Representatives who arrived on site to manage the attendance. The contractors removed the concrete plug that had capped off the lateral drain from a neighbouring property into the MH and reconnected the lateral drain.
- gg. On 1 May 2022, the customer wrote a letter of complaint about the events on 29 April 2022 and previously, including that she had asked for reassurances that the MH would be working appropriately after the reconnection. She was unhappy that these had not been provided. She complained again that she had not been provided with accurate mapping and that no attention had been paid to plastic piping that had been introduced into the sewer.
- hh. On 2 May 2022, the customer again complained of surges of sewage and on 3 May 2022 the customer complained that there appeared to be a broken sewer pipe and on the following day, the customer sent an unsigned but detailed "Assessment survey of Sewer Manhole" as at 3 May 2022. This stated:

*Inlet on north side supplies sewage removal for 4 or more houses from uproad direction. Slip for discharge appears to be raised, uneven concrete instead of trough claywork.*

*Inlet on south side comes from downroad direction and is a drop inlet. The bottom of the outlet hole is more than 4 inches higher than the tops of the 3 other pipes. It is fitted with a downward pointing short pipe covered in cement and then there is a clay slide over the benching, making rodding extremely difficult.*

Inlet on east side supplies sewage removal from **XX**. The end of the pipe is broken and it is difficult to see if a fracture extends up the pipe in the direction of the home. The clay trough of the inspection chamber is broken at the end coming from the east and there is a visible gap where sewage is seeping into soil underneath the drive.

Flow direction Sewage of 4 or more properties from the north gives sewage movement down the road. There is sewage movement upstream coming from the drop inlet of the east side with solids and water flowing at different rates and clashing with water coming from the south inlet. The resident of the home on the east side said that she is experiencing back flow surges and smell. This is to be expected from the layout.

There is a manhole on the drive of **XX**. This manhole is about a metre higher than the **XX** manhole. The length of pipe run from this private manhole to the **XX** manhole is about 4 metres. The drop is therefore about two feet in 4 metres with a further 12 inch drop or so at the outlet in the manhole. This indicates a drop rate of 6 inches per metre of pipe, assuming an even drop rate per metre pipe.

Design of manhole It is unlikely to meet current building standards or standards for sewage discharged. The understanding is that new pipework forming a new connection, with new slide trough was put in at the south inlet on 29.4.22.

The report went on to consider the health implications of this.

- ii. On 11 May 2022 the company replied to the emails of 26 and 27 April, 1, 2,3 & 4 May 2022 confirming its final position on this matter and explaining recent events. The company confirmed that the lateral connection in question had always been there prior to the company becoming responsible for what was previously privately owned shared drainage in 2011. It also confirmed that the lateral connection is legal. The company carried out a further service review and this led to a further goodwill gesture of £125.00 being sent to the customer by way of a cheque. A copy of the company's updated asset mapping was included with this email.
  
- jj. On 17 May 2022, the company received an email from the customer stating that following the works on 29 April 2022 she was experiencing periodic sewer surges and back flow and that when her sink tap was running normally, the water does not flow to the main sewer in the road. Only when the taps were turned full on did some water flow into the main sewer. The customer also referred to the agent report stating that the inlet to the manhole should not have been constructed in this way and also reporting on the broken pipe work.

kk. On 20 May 2022 the local authority an email to the company advising that he had visited early in the morning, but no issues were evident at that point. The company was also asked to investigate the cracked pipe in the MH.

ll. On 25 May 2022, a NE and a Customer Representative met the customer and raised follow on work to carry out a small repair to the sewer line at the point where it leaves the MH on her driveway. The company says that the crack that had been identified would not have affected her facilities draining away.

mm. On 31 May 2022, contractors used quick set clay to fill in the crack.

nn. On 8 June 2022, the customer sent a further email complaining that works undertaken at number **XX** in 2011 were in breach of planning permission and stating:

*there are discharges from home **XX** to no **XX** property that have not been rectified, including sewer work.*

*the planning application had stipulated that no openings should be present on the flank wall as this is a boundary wall (PO270.97) On that wall there is:*

- *grill which serves discharge from a bathroom and kitchen of home **XX** directly onto **XX** property.*
- *two overflow/discharge pipes/overhanging **XX** property - one probably from a cistern and one probably from a boiler or burner.*

*No planning approval was given by **XX** Council for the sewer pipe from **XX** onto no **XX** property, nor was planning approve given for the connection to the **XX** manhole at no **XX** property.*

***XX** Council believe all the discharges into property no **XX** to be the responsibility of **XX** to rectify, along with the buildup of debris in the gap between the properties due to the making of holes and fitting of overhanging pipework which is a health hazard*

oo. On 10 June 2022 the company responded that it was not responsible for any drainage pipework above ground and will not become involved in matters of this concern and that her neighbour's extension had nothing to do with the company. The company stated that it is happy with the condition of its asset and that all of the lateral drains connecting to it are legal.

pp. On 21 June 2022, the company received an email from the customer challenging the legality of the drain from number **XX**.

qq. At that point, the company concluded that it had responded to all relevant challenges by the customer and. Although it has engaged with Ofwat and CCWater, it did not believe that the customer's further points needed to be answered.

2. I bear in mind that adjudication is an evidence-based process, and it follows that if the customer is to succeed in her claim, the balance of the evidence taken as a whole must indicate that the company has not provided its services to the expected standard.
3. There are two principal strands to the customer's complaint. The first is as to the customer's belief that the connection into the company's manhole located in her drive is unlawful and dangerous. As to that, I find that there is no evidence. The customer has made reference in her email of 8 June 2022 to problems that arose in 2011 when the residents of the property at number **XX** constructed an extension. A number of concerns were then raised by one **XX** , as to "discharges from home **XX** to no **XX** property that have not been rectified, including sewer works". It is not clear whether these words are a formulation by the customer or by the Council, but if by the Council, it would be inappropriate language to describe the construction of a sewer pipe, and, it is therefore more likely that this is an expression by the customer of her understanding.
4. In response to my Preliminary Decision, the customer has resubmitted evidence that she says shows that a sewer extension was built in 2011, but I do not find that to be the correct interpretation of the Council's correspondence. I find that a possible construction of the Council's letter to the customer is that a lateral drain could have been built in 1997 – but this is not clear from the correspondence, which is more concerned with other complaints about encroachment and damage. However, if the neighbours at number **XX** had at some point before December 2011 built a sewer connection without consent of number **XX** , it would have been highly likely that **XX** or the customer would have taken action to prevent this. The customer has suggested in response to my Preliminary Decision that the drain could have been constructed secretly while she or he were away from the property, but I find that, as the construction of a drain would have been likely to have disrupted the surface, this is very improbable. Even if it did happen, I find that it would not have been the fault of or within the knowledge of the company, which had no responsibility for private lateral drains at that point. If the alleged connection occurred after 1 October 2011 (when private lateral drains transferred to the company), it is likely that the company also would have been notified and taken action to prevent the connection or at least to supervise its construction. It would equally have been evident to the company that this had occurred. I find that there is no reliable evidence of either of these matters.

5. The customer complains that at the point of construction of the neighbour's extension in 2011 there had been an encroachment by the property at number **XX** over the customer's boundary and she complains about the impact that the construction may have had on her own property. Although, however, the customer says that these issues are something that the company would have been required to rectify, I can see no basis on which the Council could have come to that view. I find that this is likely to have been a misunderstanding on the customer's part.
6. Although the customer has put forward some information that no planning approval was given as part of this planning application for a sewer pipe from **XX** to the manhole at number **XX**, the clear inference, from this, I find, is that the private sewer pipe was already in situ under previously agreed arrangements between residents or developers of that area. Although in her response to the Preliminary Decision, the customer challenges this observation by reference to the company's sewer map that did not show a connection to number **XX**, I find that it does not follow that a connection was made in 2011. For the reasons given above, I find that it is very unlikely that the sewer connection was constructed in or after 2011.
7. I am therefore unable to find that there is clear evidence that the sewer connection from number **XX** is unlawful or unauthorised, especially, as the customer points out, her property is approximately 100 years old. She says that she has lived in her property since 1984 and has never consented to a connection but it does not follow that there was no previous connection, even if this was not optimal. Significantly more likely, I find, is that a connection was authorised at a point when the connection was made (whenever that might have been) and that the company acquired this in 2011 when it became responsible for lateral drains.
8. Moreover, the company would only have been able to provide an accurate sewer map of the lateral drains if it had been provided with information by the local authority or previous owners as to the location of the lateral drains. The company could not reasonably have been expected to carry out a widescale mapping exercise when it acquired a very large number of additional meters of pipework constructed in areas where sewerage undertakers had previously had no responsibility because this would have been disproportionate. Compulsion to do this would have needed to have been applied by Ofwat and there is no evidence that Ofwat has made any such direction.
9. Furthermore, I do not find that the presence or absence of an accurate map of the lateral drains has any bearing on the backflows and difficulties that the customer has experienced in 2022 and there is no evidence that the lateral drain from number **XX** is unsafe.



10. It follows from the above that I do not find that the company has omitted to provide its services to the expected standard merely because it has not accepted the customer's position on this. The customer says that the company has produced no paperwork for the sewer and still has not recognised this in writing, but there is no evidence that the company would reasonably be expected to reformulate its sewer map and provide a copy to the customer at this stage for use in future third party transactions (such as on house sale). I am mindful that information of this sort is usually provided as a consequence of conveyancing searches. I therefore do not direct the company to provide the customer with an updated sewer map – and I also comment that even if provision of a map could be required of the company at that stage, I find that the company would reasonably be entitled to raise a charge against the customer for this additional service.

11. The second strand to the customer's complaint relates to the performance of the MH. The customer complains of a number of problems that began in January 2022 and have led to backflow and to odours, and incrementally changes have been made to the MH, including most recently the company undertaking repairs to cracks that the customer discovered as a consequence of her own inquiries and investigations. I am unaware whether this has brought the problem to an end, because this work was only undertaken in May 2022.

12. I find that the company has taken a significant number of steps to assist the customer, including attending at her property when complaints have been raised within, I find, a period that would reasonably have been expected, and has taken remedial action to improve the operation of the sewer.

13. The documentation submitted to me shows that the company has:

- explained the works they've completed at the property to prevent any further issues
- investigated the root ingress into the sewer and the backflows and found that these were due to blockages caused by misuse
- posted reminders to residents in the local area to warn them of the potential flooding risks if inappropriate items are placed in the sewer.
- provided a map for the sewer system to the extent that the company judges to be consistent with GDPR and offered to explain the diagram in more detail,
- given advice about how best to contact and communicate with the company in the event of a further incident
- confirmed the MH is not at a low point and undertaken and checked camera surveys
- re-rendered the manhole chamber, which the company believe will prevent root ingress in the future.

- made a goodwill gesture of £310.00 due to the service received
- applied an additional credit of £120.00 for delayed responses under the CGS.

14. The company has also re-opened the drainage arrangements into the MH for number **XX**, which had in some way become obstructed. In relation, therefore, to the history as set out above, I find that the company has supplied its services to the expected standard and where it has not, it has reviewed its files and provided substantial compensation. No further action is required, save only in one respect. I find that the company has not provided explanations to the customer in answer to her concerns about the layout of the MH.


15. The customer has put forward an argument in May 2022 as to why she might be experiencing backflows and odour, namely that there is sewage movement from both up and down the road and foul water is clashing in the MH, causing the customer to experience the unpleasant but possibly transitory consequences she has described. The “agent” who prepared the assessment said that unpleasant consequences are therefore to be expected from the layout of the MH. There is no evidence that the company has provided a clear explanation to the customer as to whether this is a potential issue or what the company thinks should be done about it (if anything). In all the circumstances of this dispute, I find that an average customer would reasonably have expected an answer to be given to the customer as to this. I find that it is fair and reasonable to direct that the company should explain its opinion to the customer in writing as to the layout of the MH, but I do not direct any further redress.

#### **Outcome**

The company needs to explain its opinion to the customer in writing as to whether the layout of the MH is causing backflows and odours in her home and, if so, whether any steps should be taken either by the company or by the customer to alleviate this.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- 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.
- 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.

## Claire Andrews

**Claire Andrews, Barrister, FCI Arb.**

**Adjudicator**