

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X435

Date of Final Decision: 3 April 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint


On 8 April 2022, pressure from the company's blocked sewer caused the soil pipe in the customer's bathroom to break and the customer's bathroom was flooded as a result. The company has refused to pay for repairing the damage on the basis that the blockage in the sewer was caused by circumstances outside of its control, and the damaged pipe is private. The customer believes that the company's failure to periodically clean the sewer allowed the blockage to occur and, therefore, the company has been negligent. In view of this, the customer wants the company to pay him £3,178.00, the cost of repairing the damage.

#### Response

A water company will only be liable for damage caused by a blocked sewer if it has been negligent. As the blockage was caused by tree roots and sewer misuse, not negligence, and the company responded to the customer's report of the blockage quickly, the company cannot be held responsible. In any event, the company is not responsible for repairs to the customer's internal pipework. Therefore, the company denies liability to pay for the repairs to the customer's bathroom and pipework.

#### Findings

I find that the customer's complaint concerns the company's alleged breach of its statutory duty to maintain effectual drains and, in accordance with the WATRS Scheme Rules, this falls outside of the scope of this Scheme and, therefore, I have no jurisdiction to adjudicate on it. However, I am able to consider whether the company acted negligently or has failed to provide its service to the expected standard. Having reviewed the evidence, I do not find on the balance of probabilities that the company has acted negligently or failed to provide its service to the standard reasonably expected by the average person with regard to finding and clearing the blocked sewer. In view of this,



the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

# ADJUDICATOR'S FINAL DECISION

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## Case Outline

### **The customer's complaint is that:**

- On 8 April 2022, the company's blocked sewer caused his ground floor property to flood as pressure from the blockage broke the soil pipe in his bathroom.
- When the company attended, it did not diagnose the problem and left his property flooded, so he had to employ a third party contractor to find and repair the collapsed soil pipe.
- He asked the company to pay for the necessary repairs, but the company refused on the basis that the blockage in the sewer was caused by circumstances outside of its control and the damaged pipe was internal.
- However, he believes that the company's failure to periodically clean the sewers allowed the blockage to occur and, therefore, the company has been negligent.
- The repairs to the customer's property cost £3,178.00, and he wants the company to take responsibility for the flooding and pay this in full.

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

- It is obligated to comply with the Water Industry Act 1991. Section 94 of the Act places a general duty on sewerage undertakers to provide, improve and extend a system of public sewers to ensure their area is, and continues to be, effectually drained, and to make provision for emptying and dealing with the contents of the sewers. This duty is only enforceable by Ofwat, the Water Industry Regulator, using Section 18 of the Act. As such, this duty is not something that individuals can try to enforce or make a claim under.
- In his application, the customer requests compensation for damage to his property on the basis that the company failed to clean the sewer on a periodic basis. Therefore, the customer is effectively alleging that it is at fault for the blockage and, as such, it has not complied with its duty under Section 94 of the Act.
- WATRS Rule 3.5 states that the Scheme cannot deal with "any matters over which Ofwat has powers to determine an outcome" and WATRS rules 3.4.1 and 3.4.3 state that WATRS may reject all or part of an application to the Scheme where it considers that a customer should be referred to a more appropriate forum or the dispute raises a complicated issue of law.

- It is not responsible for damage caused by blocked sewers when the cause is outside of its control, unless it has acted negligently. This means, if damage is caused by a blockage in the sewer and the blockage has been caused by inappropriate items being placed in the sewer, or debris in the sewer which it has no ability to control, it is not liable. This was confirmed in the case of *Marcic v Thames Water [2003]*.
- The sewer blockage was caused by debris, tree roots, scale, tarmac and silt, and this was cleared on 9 April 2022, the day after it was reported. The tarmac was most likely deposited by a third party.
- An engineer attended the customer's property on 25 April 2022 and explained that the company was not liable for internal pipework, and it suspects that the customer's internal pipework may have needed maintenance anyway and the sewer blockage simply exacerbated the issue.
- A GSS payment was sent to customer's tenant, the bill payer, as a result of the sewer flooding.
- Part of its customers' water services charges contribute to the cost of maintaining its network of clean and wastewater pipes. However, it is widely recognised that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater undertakers to adopt, and this is what happened in this case.
- It denies liability to pay compensation to the customer as it has not been negligent.

### **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 company states that sewerage undertakers cannot be held liable for damage or inconvenience caused by blocked sewers unless they have been negligent, and that this means that it cannot be held responsible for problems caused by misuse of the sewer network system, as this does not indicate that it has been negligent in the carrying out of statutory duties.
  
1. I accept that this is correct because in the cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] it was decided that claims based on a water company's performance of its statutory obligations must be considered by Ofwat, the industry regulator, except where it is claimed that the company has, when undertaking these statutory obligations, done this negligently.
  
2. This means that a customer's claim to WATRS in relation to problems caused by blocked sewers can only succeed if the customer is able to show, on the balance of probabilities, that the company acted negligently when carrying out these duties, and a claim based solely on the argument that the customer has suffered damage or inconvenience as a result of the company's performance of or breach of its statutory duties cannot succeed.
  
3. This also means that as an adjudicator operating under the WATRS, I do not have the authority to consider whether the company has breached its statutory duty to maintain its sewers to ensure that an area is effectually drained, as such matters must be addressed to Ofwat, the industry regulator, and I can only adjudicate on matters where the customer alleges that the company has acted negligently.
  
4. Further, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called 'standard negligence'. To explain this further, if the argument is that the company has been negligent because it has not been inspecting its sewers regularly enough, this raises regulatory considerations (as it is a regulatory requirement to inspect sewers regularly). This would mean that, in accordance with the decisions in the cases cited above, such claims must be addressed to Ofwat and cannot be resolved through WATRS.
  
5. On the other hand, if the claim is that a blockage or flood was reported and the company negligently failed to notice or remedy a problem, this raises a question of standard negligence, and so can be resolved through WATRS. To explain this further, if the argument is that the company was aware of a blockage in its sewer that had caused flooding or damage but did nothing to clear it, and the blockage then caused flooding at the customer's property or other problems at the customer's property, this raises issues of standard negligence that can be considered by a



WATRS adjudicator.

6. The evidence provided shows that the customer believes that the company has failed to maintain its sewers to prevent blockages and has allowed debris and other matter to accumulate in them. However, I am unable to consider whether the company has failed to maintain its sewers as this raises a question of the company's performance of its statutory obligations, which, as explained above, must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.
7. However, the customer says that when the company attended, it did nothing to find the cause of the internal flooding, and seems to imply that the company should have known that the sewer could be blocked. As these complaints amount to allegations of standard negligence, I can consider them.
8. However, having reviewed the evidence provided by the parties, while I find that the blockage was most likely caused by sewer misuse and natural debris, I do not find any evidence to justify a conclusion that the company should have known this sewer was blocked before 8 April 2022 as there is no evidence to show that a blockage had been reported before this date and was not investigated and/or remedied by the company. Also, the company states that water companies operate a reactive policy towards sewer maintenance and I accept that this is correct and reasonable.
9. With regard to the time the company took to clear the blockage, the evidence shows that the company attended to clear the blockage the day after it was reported and I therefore find that the company investigated and cleared the blockage within a reasonable timeframe.
10. The customer complains that the company did not identify that his soil pipe had been damaged and he had to engage the services of a private contractor; however, I accept that the company is not responsible for either finding faults on internal pipework or repairing them. I also note that the company paid the customer's tenant a GSS payment for the internal flooding.
11. In view of the above, there is no evidence to show that the company acted negligently and that this resulted in damage to the customer's property. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer in this respect and, while I appreciate that the customer will be disappointed by my decision, especially as I accept that the internal flooding must have been most inconvenient and unpleasant, the customer's claim cannot succeed.

12. Following the preliminary decision, the customer made some further comments about the company making no effort to find the cause of the flood, failing to clear up his bathroom, and his plumber confirming that the soil pipe was cracked through pressure. However, I reassure the customer that I considered these issues during my adjudication, so 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 17 April 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.

*K S Wilks*

Katharine Wilks

**Adjudicator**