

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X439

Date of Final Decision: 11 April 2023

Party Details

Customer: XX
Company: XX

Complaint


The customer's balancing pool was contaminated with a large volume of raw sewage that escaped from the company's sewer due to a blockage. The company took over a month to complete the clear-up, and this caused the customer a great deal of distress and inconvenience. The company says that it will take action to ensure this never happens again; however, eleven months after the incident, the work is still in the planning stage so the customer would like an update. The customer also wants the company to apologise and compensate her for lost time and distress and inconvenience.

Response

When raw sewage contaminated the pond on the customer's property, the company attended the site as soon as it was made aware of the problem, located the cause, cleared the blockage, cleaned the pond and implemented short term solutions, and it has now found a long term solution to prevent it from happening again. Therefore, the company denies responsibility to acknowledge any failings, apologise to the customer, and pay compensation. However, it has offered the customer a goodwill gesture of £249.59, equivalent to the yearly sewage charge paid by the customer.

Findings

Part of 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 find on the balance of probabilities that the company acted negligently by not clearing the sewage in an acceptable timeframe, and failed to provide its service to the standard reasonably expected by the average person, and this exacerbated the distress



and inconvenience suffered by the customer. I therefore direct the company to pay the customer compensation for distress and inconvenience, issue an apology to the customer, and provide the customer with an update on the long term solution to the flooding.

Outcome

I direct the company to pay the customer £500.00 in compensation for distress and inconvenience, provide the customer with a written apology for its service failings and the distress and inconvenience caused to the customer as a result of its service failings, and a statement outlining the plans and timeframe for the implementation of the long term solution.

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Case Outline

The customer's complaint is that:

- On 11 April 2022, she contacted the company to report that her balancing pool had been contaminated. The company's operatives arrived that evening and quickly discovered that there was sewage in the pond, and advised that there were very high levels of ammonia in the inlet, middle and outlet of the pond, and the pool was bubbling brown at the inlet and smelt unpleasant.
- In the morning of 12 April 2022, she was advised that the blockage had been found and cleared, however, it rained heavily that day and a trail of sewage travelled the length of the pool towards the outlet, and there was no attempt to contain the contamination.
- She was informed that works would be undertaken to ensure that this could not occur again and was told that the sewage pipe had blocked and backed up to a joint cavity and contaminated the storm drain that entered the pool. She was advised that the only contaminant was liquid sewage, not solid sewage, but she was unable to see the level of contamination as the water had not settled from the rainfall.
- In order to assess what needed to happen, an ecologist visited on the 13 April 2022. He suggested that an aerator was needed and that suction should be used to remove the debris from the inlet end. In addition, he said that planting a reed bed at the inlet end should be undertaken by the company and that this may help with the on-going purification of the water.
- On the 14 April 2022, the company sent a contractor to assess the recommended pumps and aeration. Later that day pumps were delivered, however, they were not of the type suggested. The contractors were asked to deploy the crash pumps at the inlet end, but this did not work well and resulted in spreading the pollution and smell, so she told the workers to stop, and she rang the company to complain.
- On 15 April 2022, which was Good Friday, more workers arrived and placed a single aerator at the outlet end run by a generator, and said it had to be switched on in the morning and off at night. She asked them to advise the neighbours of this as it was noisy, but they did not.
- A contractor also undertook a litter pick of the water, and removed condoms, sanitary towels and floating wipes, all of which had been present since the 12 April 2022, so the contamination was clearly not just liquid.

- The aerator stopped working by lunchtime and she was told that the generator was faulty, so a new one was brought. Her neighbour then complained about noise and asked whether the machine could be switched on between 8.00 am and 2.00 pm only, so it was switched off, despite the stench and sewage piles that could be seen in the water.
- She had family to stay over Easter and the situation was embarrassing because they could see sanitary towels and wipes and smell the sewage.
- Her home is her family's 'forever home' and for the past eight years they have carefully tended and cultivated the grounds, including tidying and clearing brambles and self-set trees from around the pond. Both her and her husband had been in and around the water the previous weekend, unknowingly coming into contact with the contaminated water.
- On 16 April 2022, she sent a message to the company to say that the water had cleared but she was very concerned as she could see the bottom and there was debris, wipes, sanitary towels and faecal matter. The company replied and said that an ecologist's advice was needed again, and this would be arranged for the 19 April 2022. At this time, the neighbours were also in contact with the company to express their concern and disgust at the sewage just being left in the pool.
- All this time there had been two daily visits by two people to test chemical levels, and one visit in the morning by one person, and one visit in the afternoon by another, to turn the generator on and off.
- On 18 April 2022, the company's representative sent a message saying that he appreciated the impact the issue was having on her, but getting a tanker would be difficult due to access, and he suggested removing the sewage manually. By this point the sewage had been in the water for a week, probably much longer, and had turned into slurry, so it was not possible to dig it out from under water.
- On 19 April 2022, she sent an email to the company's Chief Executive asking for help. By this time thick green algae had grown all over the water so the company placed a boom in it to stop it spreading. Everyone seemed concerned about water egress as the pond feeds the lake in the local park.
- On 20 April 2022, she left a comment on the company's Facebook page and was asked to private message the details, so she rang the local councillor and the company's press office. She also had a meeting with the company's representative and the ecologists and was advised that the sewage could not be removed manually and the garden would take two to three years to get back to normal. She expressed her displeasure at this, and the second ecologist agreed that it was not tenable to leave the sewage in the pool, so they finally agreed it would be removed.
- On 21 April 2022, the daily visits were still happening and another contractor came and said that they would be back to start the removal the next day.
- On 22 April 2022, the workers arrived with an impeller pump and she was asked to sign an agreement to limit works to a specific part of the water when the full contamination was not known, so she refused. She was then told that if the agreement was not signed, no removal could take place. However, after she made it clear that she would not sign the agreement, the work started.

- On 25 April 2022, the workers came back but the water now green, so she messaged the company and said that pumping was ineffectual.
- On 26 April 2022, a new contractor visited and said that tankers were needed and this was arranged for the following day.
- On 27 April 2022, the tankers arrived and some progress was made. The tankers then returned on 11 May and 16 May 2022 and removed most of the waste from the inlet end of the pool and the smell improved, but there were still sanitary towels and wipes. The company committed to litter pick and observe the pool during the following months, and it planted some vegetation to filter the water, but the plants died two weeks after they were put in.
- The company also said it would take action to ensure that the sewerage flooding and pollution could not happen again. However, eleven months after the flooding occurred, the action to be taken is still in the planning and modelling phase.
- The company has admitted that there was a delay in clearing the pool of sewage, and other service failings, and has offered a gesture of goodwill of £240.59, the cost of sewerage charges for a year, but this is not adequate.
- The impact of this issue on her and her family, and their feelings towards the house they had considered to be their 'forever home', cannot be overestimated. It was extremely stressful, time consuming and tiring to make continuous phone calls and send messages to the company to try to get it to take responsibility. In view of this, she would like the company to apologise for the many shortfalls in their actions, and the disruption and upset caused by the incident and its handling of the matter.
- She would also like compensation for the distress and inconvenience she suffered, the time she spent engaging with the company, including the week of holiday she lost. Her net salary for a week of work is £1,010.00, but in reality both her and her husband spent other days and time dealing with the company.
- She also wants the company to provide reassurance that the measures taken to isolate the sewage pipe from the storm drain will be done as soon as possible.

The company's response is that:

- Raw sewage contaminated a pond on the customer's property. It attended and identified the cause of the problem and cleared the issue. While it carried out investigations, a short-term plan was put in place, with monthly inspections, litter picks and planting recommended by ecologists, and the customer was kept informed
- A permanent solution has now been found. This was complex as it needed to be sure that a permanent solution would not cause flooding elsewhere on the network. The plan is to cap sewer to prevent this ever occurring again.

- The customer wants it to acknowledge shortfalls in its service. However, it attended the site as soon as it was made aware of the issues and located the cause. The blockage was cleared and works began immediately to find a permanent solution.
- The customer would like an apology for its failure to take ownership of the problem, however, as above, it attended as soon as it became aware of the issue and immediately began to look for a solution, and the customer was updated by the relevant teams and told what steps would be taken to resolve the issue.
- The customer requests compensation for loss of earnings, but it does not compensate for loss of earnings. However, it offered £249.59 as a gesture of goodwill, which is equivalent to the yearly sewer charges paid 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. Sewerage undertakers are 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.

2. 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.
3. 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.
4. This also means that as an adjudicator operating under 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.
5. 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.
6. 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 customer suffered distress as a result of this, or the blockage then caused further flooding at the customer's property, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
7. The evidence provided does not clearly show whether the customer believes that the company has failed to maintain its sewers to prevent blockages. In any event, I am unable to consider whether the company's failure to maintain its sewer caused the flood of sewage in the customer's pool 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. This means that I cannot provide a remedy to the customer for the distress and inconvenience she initially suffered due to the flood of sewage into her pond.

8. However, the customer says that when the company attended, it failed to take ownership of the problem and there was a substantial delay in clearing the pool of raw sewage, even though she explained to the company how awful the smell was and how inconvenient and stressful the situation was for her and her family. As these complaints amount to allegations of standard negligence, I can consider them.
9. However, having reviewed the evidence provided by the parties, I find that the company attended after the issue was reported and immediately took action to identify the cause and clear the blockage in the sewer, so the evidence does not persuade me that the company failed to take ownership of the initial problem.
10. That said, despite the company's assertion in its response to the customer's claim that there had been no shortfalls in its service, the company took almost a month to fully clear the sewage from the customer's pool after being notified of the issue, and admitted that it could have cleared the sewage sooner, and was aware that the delay had a significant impact on the customer, in a letter sent to the customer on 8 July 2022.
11. In view of this, I find that the company acted negligently by failing to clear the sewage from the pond in a reasonable timeframe, and this resulted in the customer suffering further distress and inconvenience.
12. The customer also complains about the company's failure to respond to her communications and keep her up to date with regard to its plans to carry out a long term solution, and says this has cost her a great deal of time and further distress. Again, in the letter from the company to the customer dated 8 July 2022, the company admits that there was a two month delay in responding to the customer's complaint, other communications were not responded to in an acceptable timeframe, and the customer had not been kept up-to-date with its progress in finding a long term solution. While I do not consider these matters to be negligent, I do consider that the company failed to deliver its service to the expected standard in this regard, and I accept that these failures would have added to the distress and inconvenience suffered by the customer.

13. In view of the above, I find that the company should compensate the customer for the distress and inconvenience it caused.
14. After considering the statement provided by the customer and the level of upset the customer has suffered, I consulted the 'WATRS Guide to Compensation for Inconvenience and Distress' to see whether the £249.59 offered by the company is adequate in the circumstances. After reviewing this document, I find a top range Tier 2 compensatory payment is appropriate and, therefore, the amount offered by the company is not enough and I direct the company to pay the customer £500.00. I understand that this is not as much as the customer hoped for and she may be disappointed; however, I am satisfied that it is a fair amount of compensation for the company to pay in the circumstances.
15. The customer also requests an apology from the company for the shortfalls in its service and for the distress and inconvenience it caused her. I acknowledge that the company apologised to the customer in the letter dated 8 July 2022, but as the company failed to repeat this apology in its response to the customer's claim, I find it appropriate to direct the company to provide the customer with a formal written apology.
16. The customer also asks for an update on the plans for the long term solution. The company says that a long term solution has been found, but has not provided many details. Therefore, I direct the company to provide a statement to the customer outlining what the work will involve, when it will start, and how long it will take. I understand that all of these details may not be available, but I ask the company to provide any information that is available, and any further information when it becomes available.

Outcome

I direct the company to pay the customer £500.00 in compensation for distress and inconvenience, provide a written apology for its service failings and the distress and inconvenience caused to the customer as a result of its service failings, and a statement outlining the plans and timeframe for the implementation of the long term solution.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 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