

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X447

Date of Final Decision: 27 April 2023

Party Details

Customer: XX

Company: XX

Complaint

In February 2021, the customer noticed that the water from her kitchen sink was backing up through the floor. The company visited but the customer was not told that the problem had not been resolved following the visit. As a result, the customer installed a new kitchen only to discover that the problem remained. The company was contacted again and investigated. She was then informed that her pipe was not connected to the company's assets. She believes the company's investigation to be incomplete. She also complains that she was not told about this issue in legal searches, that the company has not communicated with her adequately and that its complaints process has been confusing. The customer wants the company to conduct an extensive investigation to prove whether its assertion that the customer's drain is not connected to its assets is correct.

Response

The company says that its investigation shows that the customer's pipework is not connected to its assets and that the blockage she is experiencing is a private matter. It argues that it has carried out adequate investigations and communicated the results to the customer. The company says that the customer was present at the time of the company's visits and was informed that the matter was private. The company denies that its communications are inadequate and does not believe its complaints system to be confusing.

Findings

The company has provided its services to the expected standard. There is no evidence that the customer's pipe from her sink was connected to the company's assets. Although she says that further investigations could be carried out, I find that this would be to eliminate a possibility. The company has carried out investigations and established its view. Under this Scheme I have to consider the position of an average person in the customer's position (see below). I find that an average customer would not reasonably expect the company to use its resources to establish the absence of a possibility for which there is no supporting evidence. Also, the customer was told that the drainage was a private issue and given other assistance by the company. The company is not responsible for the customer's decision to install a new kitchen without investigating the private drain. The company has taken various steps to assist

the customer and its complaints procedure is explained on its website. As for the accuracy or otherwise of the searches used within the customer's purchase process, this issue falls outside the scope of this Scheme.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S PRELIMINARY DECISION

Adjudication Reference: WAT X447

Date of Preliminary Decision: 13 April 2023

Case Outline

The customer's complaint is that:

- In December 2020, the customer purchased the property and noticed that the water from her kitchen sink was backing up through the floor. The company was contacted and visited. However, the customer says that she was not informed that the problem had not been resolved following the visit. As a result, the customer installed a new kitchen only to discover that the problem remained.
- The company was contacted again and investigated. The customer was informed that her pipe was not connected to the company's assets. She is dissatisfied with the company's investigation and believes it was incomplete.
- She also complains that she was not told about this issue in legal searches, that the company has not communicated with her adequately and that its complaints process has been confusing.
- The customer wants the company to conduct an extensive investigation to prove whether its assertion that the customer's drain is not connected to its assets is correct.

The company's response is that:

- The company says that its investigation shows that the customer's pipework is not connected to its assets and that the blockage she is experiencing is a private matter.
- It contends that it has carried out adequate investigations and communicated the results to the customer.
- The company says that the customer was present at the time of the company's visit and was informed that the matter was private.
- The company denies that its communications are inadequate and does not believe its complaints system to be confusing.

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 have also carefully considered the customer's comments on my Preliminary Decision, in which she makes clear that she does not agree with this. The company has not made a substantive comment on my Preliminary Decision.

How was this decision reached?

1. This dispute concerns two substantive issues and some customer service concerns. The first of the substantive issues is as to the status of a drainage pipe leading from the customer's kitchen sink at **XX**. The customer's view is that there has been inadequate investigation into the location of the pipe because her house is one of two properties, and it is improbable that these would have been constructed in a manner such that only one of the properties (her neighbour's) drained into the public sewer. She says that the company stopped investigating when it was found that her pipe had collapsed under the adjacent footpath and therefore has not adequately informed itself.
2. The second issue concerns the company's communications with the customer. The customer also says she was not told that following the company's attendance the matter had not been resolved and therefore she installed a new kitchen in 2021, which then flooded again.
3. The customer also says that the company's assertion that the drain from the bathroom (at the rear of the property) is a private drain is also incorrect because the neighboring property also joins the manhole in her garden. I find, however, that this issue is only of relevance to the customer's opinion that the company's maps and information regarding its assets are not reliable. The customer does not report an issue regarding foul water from her bathroom, but there is no challenge to the company's contention that the pipework from the rear of her property in due course drains into the company's sewerage. The customer does raise a question about the

information provided to the customer on legal searches associated with her purchase. However, I am mindful that even if the customer is correct that there have been errors in the search information (and I make no such finding or suggestion), I do not have jurisdiction to consider this. I therefore do not reach any findings about the detail of this aspect of the customer's complaint, although I do observe in a general way, however, that legal searches are not binding promises by the company that a certain state of affairs exists, but a description of the information that can be obtained by looking at the company's records. There is always a possibility that this is not the same as the situation on the ground.

4. The company, on the other hand, says that it has carried out investigations since 2019 (before the customer owned the property) into the drainage from the sink and the physical dig and dye tests both show that the drainage is not into the public sewer. The company says that it may be that there is a private soakaway for grey water, but it is not responsible for this. It also says that it told the customer that the issue was a private matter and did not suggest to her that the matter had been resolved.

5. I find that the documentation submitted by the parties and by the Consumer Council for Water (CCWater) shows that the following events occurred:

a. In January 2019, the company attended the customer's address. Although the customer says that her complaint does not concern this visit because she was not the resident at that time, I find that the company carried out fact-finding activities. The investigation feedback report states:

*No RTU – checked unmapped T2011 assets red lined on **XX** all found clear. Camera surveyed up and down stream, no problems found. The customer states he's got a 1 ¾ inch lead pipe serving the sink and washing machine under the floor in the kitchen at the front of number **XX** which is blocked. Homeserve advised **XX** Dye tested the kitchen sink, test negative in any of **XX** assets. The customer private drain had no connection from the lead pipe. Undetermined if the grey water goes to a soak away. Private issue.*

b. In February 2021, the customer, who had been unaware of the previous event, reported a blockage in her kitchen sink. The company attended on 25 February 2021. A job note of the technician states:

25/02/21 - Job 24884647

**** Spoke to customer on-route and on-site. Customer advised the kitchen sink waste pipe is blocked. A private drainage company has already attended and could not clear. Sea snake used in the inch and half lead waste pipe into the footpath at the front of the prop, approximately 6", could not get any further due to condition of pipe. CCTV ran from chamber TA17683004 upstream, no issues or access to pipe present. Raised follow on work for dig to determine if a gully is under tarmac at front. Determination: Unclear

- c. A further job note for the same date shows that a sewer had been located in the footpath, but this was again determined to be a private issue.
- d. On 18 March 2021, the company dug in the vicinity of the sewer. The investigations feedback for that date states:

*Arrived on site. No customer. located and checked excavation found to be 95% silt. Removed as much silt as possible. unable to CCTV due to high levels of silt in 4" brick culvert. Dye tested with citiflex hose (full power). Checked, manhole no TA17681001 found to be running freely. No dye came through section of sewer. Culvert not backing up, water running somewhere. No dye found in any **XX** assets in the area. Spoke to **XX** to advise. private issues, all **XX** assets clear.*

The customer says that the company cleared away silt and her drain worked for a year without further issue. The customer's concern is that these limited excavations were not extensive enough to tell the difference between a completely blocked or broken / damaged drain and an absent drain. She complains that the cost is simply being "pushed onto the householder".

- e. The company's notes for 25 March 2021 state "Private issue customer aware"
- f. The company attended again at the request of the customer in August 2022 because her kitchen sink was again backing up. The investigation feedback states:

Attended site spoke to customer. Kitchen sink backing up. Lifted manhole no TA17682005. CCTV upstream 10m to find private drains all clear rear of property. Kitchen front of property. No access from outside property. We attended last year, raised a dig front of property to look for a possible buried gully. Dug on the pipe, silt

*was found, dye tested but no dye seen on any downstream assets. Deemed private even though in footpath. Advised customer to have plumber attend to access the internal private drainage, if issue is outside, call **XX** back.*

The customer criticises this because she says that the report simply says 'deemed private even though in footpath'. She says that the technician said that he deemed it private because someone in 2021 did - not because he believed that to be the case and that the technician had said orally that he did not think that the company had investigated far enough but he did not have the power to contradict the company.

- g. A telephone conversation took place on 7 October 2022. The company's internal note of this states:

*Customer should be referred specifically to feedback from job 24955494 which was the resolution unit that attended the excavation. A full investigation has been carried out and we have concluded this is private because her drains do not connect anywhere into the public sewer. The technician that attended this job, flushed dye through customers private drain and visually confirmed the water was getting away but no dye seen in any **XX** system which confirms it is getting away but not into the **XX** sewer. Customer needs to resolve this herself. We will not look into this any further unless she can provide evidence her private drain is connected into the public sewer.*

*The job previous to this (job no.24884647) which attended in Feb 2021, CCTV'd from manhole TA17683004 which is the manhole at junction of **XX** and **XX** and went upstream but found no connection from property no2. Customers private drain is at grid reference 517278.56 468071.41. Sent to xxxxx at CCW 08/02/2023 again as did not receive.*

- h. In an email dated 7 October 2022, the company advised:

*Your private contractor would need to investigate where the water is draining to. As this is a grey water outlet (kitchen sink, no solids) it could well be possible that this just went to a soakaway historically but this is not something that **XX** could investigate for you. As there is no connection to a public sewer, this would not have fallen under the adoption process in 2011.*

- i. An investigation feedback note for 8 October 2022 states:

No restricted toilet use - issue with grey water front of XX , advised the customer private issue as per previous findings in 2021 also spoke to N.O.S no further work to be raised , the customers is not happy with findings in 2021 as she was told the problem had been resolved and was never told a private issue (new kitchen fitted 2021) the customer states the problems worse (photo's taken of the excavation shows a drain system) the customer wants to know was it just back filled blocking up the drain system ? the customer states the property was built in the 1800 and for many years the kitchen has been in the same place so does not except she's connected to a soak away , the customer also states the drain may have been silted and with possible tree roots but when dye testing was done public sewer ref 34576001364 was not checked? customer is not happy with previous investigations and will make a complaint.

6. In reaching my conclusions I bear in mind that the test that I have to apply is whether the company has supplied its services to the standard that would reasonably be expected by an average person. The customer would not be able to succeed in a claim under this Scheme unless the evidence, taken as a whole, suggests that the company should have done more to determine the manner of drainage from the customer's sink.
7. On balance, although I accept that the customer may feel frustrated and disappointed that the company has not been able to provide the customer with further assistance, I nonetheless conclude that the company has supplied its services to the expected standard.
8. I approach the dispute regarding the company's investigation in the following way.
 - a. As a general principle, the company, which has a vast number of customers and which has a network of assets to maintain, would not reasonably be expected to apply its resources to matters that fell outside its responsibilities, because this would not be fair to the interests of its customers as a whole. It therefore follows that if it is correct that the pipe from the customer's kitchen sink is not part of its network, it has no responsibility for this.
 - b. The test for whether pipework is private or not is defined by law and also set out in a diagram on the website of Ofwat. I find that the following principles apply:
 - i. Any pipework within the boundary of the property that serves only the property is considered to be private.

- ii. Any pipe work beyond the boundary of the property that connects into the public sewer then is the responsibility of the company.
 - iii. If pipework serving only one domestic property crosses the boundary of that property but does not connect to the company's sewer, the company is not responsible for this.
 - c. The issue, then, I find, is whether the pipework from the customer's sink does now or has ever connected to the public sewer. I find that if the situation were to be that there once was a connection but that the connection has failed due to blockages or silt or fractures, there would be, for these purposes, a connection to the sewer that would render the company responsible.
 - d. I find that the state of the available evidence is as follows:
 - i. There is no direct evidence that the customer's drain was connected to a public sewer either at the point of construction to her property (1800) or subsequently.
 - ii. Both the customer's property and the sewer are of some age, with the possibility that the sink and pipe were installed before the sewer was constructed, although there is no clear evidence as to this. (Both events are likely to have occurred, before the company took on responsibility for sewers or lateral drains in that area.)
 - iii. Although the customer says that flooding issues have not occurred before and if her kitchen pipe did not connect to the mains, there would have been prior problems, I cannot draw this inference. There is no evidence about where the pipe might lead if not to the sewer and no evidence about the relative volumes of water discharged into it now and historically. Moreover, there is evidence that the customer's pipe, wherever it leads, is now fractured and broken and that may not always have been the case.
 - iv. The company has carried out dye testing on 2 occasions – in January 2019 and March 2021 - and on both occasions, the dye has not shown in the public sewer. In the testing done on 18 March 2021, the dye was discharged into the drain at full power.

- v. No blockages or disruptions have been found in the company's sewer, which was checked in February and March 2021 and no connection point has been found with CCTV footage.
 - vi. The company has dug down in March 2018 but not found a connection. In following the course of the discharge pipe from the customer's kitchen, the dig stopped at a point within the public footpath where the pipe was found to be broken and tree roots prevented further progress.
- e. I find that the above does not provide evidence that the customer's pipe has ever connected to the footpath or is the responsibility of the company. Although the customer says that the reason for the lack of evidence is that the company stopped investigating in March 2018 at the point at which it discovered the broken pipework and argues that therefore the company has prevented itself from finding the connection and the connection may be there but it is blocked or crushed, especially as a tarmacked road would have been built over it, there is no supporting evidence for her position.
- f. I am mindful that in order for her position to be correct, the pipework would have had to have become so broken and damaged that it would have been impossible for any dye to pass through to a connection point. I find that this is possible, but in all the circumstances, especially if it is a relevant (or accurate) factor that no problems with flooding were reported before 2019, I find that it is not probable.
- g. The question then, I find, is whether an average customer could reasonably expect that the company, having already undertaken extensive investigations that it would have envisaged would establish the situation and it believes that it has, should be persuaded to take further action in order to rule out a possibility that its conclusions to date are incorrect? The company has told the customer that if she engages a private plumber and a connection to the company's sewer is found, then it will reimburse her.
9. I find that the company's position on this is as would be reasonably expected. The company has already undertaken repeated and costly work to try to establish the position but has not found any supporting evidence for the customer's position. It has not ruled out that she may be right but it does not consider this likely. I find that an approach that informs the customer that if she can prove that the company is wrong it will review its findings is consistent with the view that an average person would reasonably take in these circumstances.

10. As to its communications with the customer, I find that the company made clear to the customer from the outset that it would need to investigate. Following the dig in March 2021, the customer was aware from March 2021 that the company considered it to be a private matter – that is to say – the company had concluded that it was for her to deal with. If the customer then took steps without investigating the extent of the consequent responsibilities, this, I find, was not due to any misinformation or omission by the company. This is all the more so because, as the customer points out, following the clearing of silt from her private pipework, the water then drained somewhere and that continued for several months, but I find that there is no evidence that the company told the customer that this was a permanent solution. I find that the communications by the company about the liability for drainage met reasonable expectations.
11. As for subsequent communications, the company also addressed the customer's further concerns raised on 22 August 2022 and 7 October 2022 and the customer was given advice that she would need to find a contractor to investigate and contacting developer services to discuss connection to the sewer. The company also supplied the customer with non-return valves that she could fit to prevent the backing up of water into her kitchen. I do not find that the company failed to provide its services to the expected standard.
12. As for the customer's complaint that the company's complaints procedure was not transparent, the company explains that customers can raise complaints either by phone or in writing and the procedure is set out on its website. The company apologises if the customer did not understand the process but points out that the customer spoke to a number of agents who could have advised her as to this. While I note the customer's concern, I do not find that the customer has been prevented from making her complaint. She says that she would have liked an opportunity to liaise more closely with the company before it attached itself to its findings, but I do not find that this is an issue concerning the company's complaints process. Again, I do not find that the company failed to provide its services to the expected standard.
13. It follows from the above that I do not find that the customer is able to succeed in her claim for a remedy.

Outcome

The company does not need to take further action.

Claire Andrews

Claire Andrews, Barrister, FCI Arb

Adjudicator