

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X449 Date

of Final Decision: 21 April 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer states that as the company acknowledges ownership of the sewer network and cleared the blockage it found that had caused the sewage flood at his property, it should accept responsibility for the cost of replacing the gravel on his driveway which was damaged. The customer requests that the company accepts liability, take ownership and provide a resolution for the damage cause by the sewage flood.

Response

The company states it attended the property on the same date the customer reported a sewage flood and identified a blockage. Further, the cause was sewer misuse as it found a mass of fat, oil and grease in the sewer line, which it subsequently removed. It says it is unable to replace the customer's gravel or contribute towards any potential costs incurred as it is not liable for sewer flooding from public sewers unless it has been negligent. The company does not accept responsibility for the damage caused to the customer's property.

The company made no offer of settlement.

Findings

Following the customer reporting an external sewage spill, the company promptly attended the property and cleared the blockage it identified as the cause of the flood on the driveway at the customer's property. Therefore, I am satisfied that the company acted in accordance with its obligations in this regard. As the cause of the sewage flood was sewer misuse; oil, fats and grease being deposited in the sewer network, I find that the company is not responsible for the cost of replacing the damaged gravel on the customer's driveway. I am satisfied that its advice provided to the customer to contact his insurers to make a claim in respect of the damage, was appropriate in the circumstances.



Outcome

The company does not need to take any further action.

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

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT/X449 Date of

Final Decision: 21 April 2023


Case Outline

The customer's complaint is that:

- On 5 September 2022, there was a sewerage spill which prevented him from using his front door from the main drive.
- The customer says that despite the company acknowledging its ownership of the sewer network, it is refusing to take responsibility for the complete clean up and replacement of the infected gravel.
- The company advised him that any replacement of the gravel must be dealt with by his home contents insurance. His solicitor told him he should not have to make a claim on his insurance for this, therefore, he disputes the company's advice.
- The company claims that the main gully on the main A road which was blocked, is maintained by it on a regular basis, however, the customer states he nor his neighbours have seen any road closure to inspect the drain, therefore, he disputes the company's claim.
- The customer states the company has denied responsibility for the overflow as they are not responsible for clear water drains although they inspect and maintain them.
- Different caseworkers have informed him of what the company's responsibilities are with one stating "off the record" that the all the gravel is going to be removed and replaced and may be tarmacked depending on the cost.
- The customer states he is very unhappy with the company's service provided as it has not resolved issues he has raised concerning the smell and large areas of the gravel having "detritus" coating. This is despite it sending out its clean up team on three occasions.
- By sending clean up teams, this also demonstrates that the company acknowledges ownership and that it has a duty of care.
- The customer requests that the company accepts liability, take ownership and provide a resolution for the damage caused by the sewage flood.

The company's response is that:

- The customer called to report an external sewage flooding on his driveway on 5 September 2022.

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- It attended his property on the same date and identified the cause of the flooding was sewer misuse as they found a mass of fat oil and grease in the sewer line, which was subsequently removed.
 - Flooding can be caused by several things, some of which are outside of its control such as tree root ingress, sewer misuse and extreme weather events. The company states that wastewater companies are not deemed legally liable for damage or loss caused by sewer flooding from the public sewer network, unless they have been negligent in their actions. It says this is in line with its regulatory commitments and ensures it provides a fair and consistent approach to all its customers.
 - As the customer was affected by an external flooding, he was entitled to a payment under the Guaranteed Standards Scheme (GSS) of 50% of their annual sewerage charges. The sum of £75.00 was credited to the customer's water services account on 30 September 2022.
 - Any payments made under GSS do not form an admission of liability. The customer wants it to replace the gravel on his driveway or contribute towards any potential costs incurred. The company states that it is unable to replace the gravel or contribute towards the costs as it is not liable for sewer flooding from public sewers unless it has been negligent.
 - The customer has been advised to contact his insurance company to make a claim. If his insurance company feels that it has acted negligently they would raise a claim against it. The company states that its representative has offered to remove the gravel from the customer's driveway as a gesture of goodwill, though this offer was declined.
 - It has advised the customer that the sewer in the main road is on its planned cleansing programme and during a cleanse completed in April 2022, no defects were found.
 - It does not agree to provide the remedies requested by the customer.

Reply

- The customer states he does not recall the company ever offering to remove the gravel although one of the company's managers said during a visit that it was going to remove the gravel and replace when it had all been "satisfactorily cleansed". The customer says this did not happen.
- The customer reiterated that he had received legal advice that as the company has admitted liability he should not have to use his insurance company to fund the cost of replacing the gravel. The customer says that claiming against his insurance company could potentially raise the cost of payments. Rather than go through insurance, the customer believes that the company should pay him directly.

Comments on Preliminary Decision

- The customer reiterates the main points of his claim including that despite its goodwill gestures, the company left his drive covered in hazardous sewage waste.
- He says sadly water companies “are getting away with” contamination to properties, rivers and the environment despite acknowledgement that they are responsible.

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 complaint concerns the company’s refusal to accept liability and replace the gravel on the customer’s driveway at the property that was damaged by a sewage flood.
2. In accordance with the Water Industry Act 1991 (the Act), I find that the company is responsible for maintaining its sewers and to ensure the area is, and continues to be, effectively drained and to make provision for the emptying of these sewers. However, I find that it cannot be held responsible for sewer flooding when caused by factors beyond its control; as such it has a reactive approach to the maintenance of its sewers. Therefore, in response to a report of a



blockage, I find that the company is obliged to investigate in order to identify the cause and address the issue if found on its assets.

3. It is agreed between the parties that the company attended the property on 5 September 2022 to clear a blockage that had caused an external flooding at his property. Therefore, by undertaking works to its sewer in order to clear the blockage, I am satisfied that the company acted in accordance with its obligations.
4. I acknowledge and accept from the evidence in the company's 'Defence pack' including job notes, that the cause of the blockage was sewer misuse, i.e. a build up of fat, oil and grease being deposited in the sewer. I find that this indicates that the sewage spill was caused by factors beyond the company's control. In light of this and as there is a lack of evidence to demonstrate that the company has been negligent in its actions, on balance I accept that the company is not responsible for any damage caused by the sewer spill.
5. I can see that in response to the customer's request for it to replace the gravel on his driveway which was contaminated by the sewer spill, the company advised him to contact his home insurance to make a claim. I find this is usual practice across the sector, therefore, the company's advice given to the customer in this regard, was appropriate and does not indicate any failure in the service provided by the company.
6. However, I consider it is reasonable to expect sewerage company to provide a basic clean up following a sewage spill on private property. I find this is echoed on the company's website which states that after a flood, it can help with an initial clean although also states that it cannot provide a deep clean or pay compensation for loss or damage cause to property. In the customer's case, it is clear that the company attended the property on more than one occasion to complete clean ups of the area. I am therefore satisfied that the company acted reasonably in this regard and in accordance with the information on its website.
7. I note that both parties' submissions indicate that during a site visit, one of the company's representatives offered to replace the gravel. I find that in its email to the customer dated 4 October 2022, the company apologised for any advice given during a site visit that it says may have given him the impression that it would replace the gravel. In the same email, the company explained why it was not responsible for costs of replacing the gravel. Therefore, by subsequently apologising to the customer for any misadvice provided and clarifying its position on this matter, on balance, I am satisfied that the company responded reasonably in the circumstances.

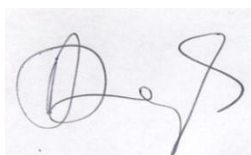
8. I note that the company has confirmed in its Response that it provided the customer with a £75.00 GSS payment which it states he is entitled to due to the external sewage flooding (this equates to 50% of his annual sewerage charges). I am satisfied that the company acted in accordance with its obligations in this regard.
9. In summary, I find that there is no evidence to demonstrate any instances of the company failing to provide its services to the standard to be reasonable expected when responding to the customer's report of a sewage spill. Therefore, I find that the company is not required to provide the remedies sought for it to: "accept liability, take ownership and provide a resolution for the damage caused by the sewage flood". I acknowledge the customer's comments on the preliminary decision however, after careful consideration, I find these do not affect my above findings.

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 23 May 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.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)

Adjudicator