

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X453

Date of Final Decision: 24 April 2023

Party Details

Customer: XX

Company: XX

Complaint

A builder poured concrete down the company's sewer and caused a blockage. The company took nine months to resolve this problem, during which time the customer and his family were unable to bathe, shower, cook, clean or use their garden, the customer's bathroom was damaged by flooding, and his kitchen had to be excavated. The customer and his family suffered severe distress and inconvenience as a result of the company's service failings. The customer would like the company to pay him the maximum amount of compensation available, including £10,000.00 for the damage to his bathroom, and cancel his bills.

Response

A water company will only be liable for damage or inconvenience caused by a blocked sewer if it has been negligent. As the blockage was caused by sewer misuse, not negligence, and the company responded to the customer's report of the blockage quickly, put a mitigation programme in place to ensure that the customer's property was not flooded, cleared the blockage, replaced the customer's private pipework free of charge, and paid the customer £500.00 as a gesture of goodwill, the company denies liability to compensate the customer further.

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. In view of this, the customer's claims do 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 26 April 2022, the water in his kitchen sink was draining very slowly. After plunging the sink with no success, he called the company. An engineer attended his property to investigate but found no issues.
- The following night, his toilet and shower overflowed, and sewage came up from the drains. He called the company again, and the engineer said it was most likely a drainage issue and a specialist team would be needed to locate it.
- The following morning, the manhole located in his back garden was overflowing. He called the company again but the person he spoke to did not seem to understand the severity of the situation, even though he had called multiple times previously. An engineer attended again but said he was unsure what was causing the problem.
- By this point, he was getting very frustrated by the company's lack of understanding that this was a serious health and safety issue, and one of the engineers advised him to raise a complaint. Therefore, he submitted a complaint and was told that he would receive a response within ten days.
- While waiting for the complaints team to get back to him, his house was constantly flooded with sewage.
- During this time, the company pumped out his neighbour's manhole every day but did not pump out his. He discovered that was because the engineers had been given incorrect information, which was not corrected even though he informed the company of the problem many times.
- The situation had an impact on his mental health and the general wellbeing of his family, and he had to take multiple days off work so he could explain to the engineers that they had to pump out his manhole and not his neighbour's. If he was not at home to explain to the engineers, the engineers did not listen to his family, possibly due to racism and sexism.
- Even when his manhole was pumped out, his kitchen sink remained blocked and could not be used, so he put a bucket underneath the sink and had to empty the buckets into the drain. He suffers from Tremor and other health issues, and this exacerbated them. The physical strain

was extremely hard to bear, and, on some occasions, his family would go a day without eating because their kitchen was not functioning.

- They had to purchase takeaway food, or ask neighbours, family and friends to make them food, which added to the stress and caused his family's mental wellbeing to further deteriorate.
- When the senior complaints team finally responded, they said that the issue had been caused by his neighbour's builder who had poured concrete down a drain. However, by that time the concrete had set and further work was required to remove it. If action had been taken earlier, the concrete would not have fully hardened and the issue could have been resolved much earlier than it was.
- When the company organised the concrete cutting team to attend, his wife had to wake up every morning at 7 a.m. to give them the keys for the side gate, but sometimes the team would not arrive until 9 a.m. or 12 p.m., and sometimes they would not turn up at all. The communication was appalling and the company did not let him know when they were going to attend, so his wife had to wait at home and was unable to carry out her normal tasks.
- When the team did attend, the engineers would spend hours sleeping in their van, or not do anything at all and leave early in the afternoon. On countless occasions, the engineers said that the machine had stopped working due to the high grade of the concrete. On other days, they would say that their work had been ruined because water had been used in his house. The team regularly told him that they would complete the work in a few weeks, but the work lasted more than nine months.
- Eventually, the company realised that the problem could not be resolved by cutting the concrete in one pipe, and they needed to dig up his kitchen extension. This was a very difficult time for him and his family; not only did their home become a health hazard due to the awful smell and work being undertaken, but it was full of loud and rude builders.
- He finds it hard to explain the extent of the emotional damage this situation caused his family. His youngest daughter has very bad eczema and has to bathe regularly, however, using water caused the manhole to overflow and the house to flood so she could not bathe; as a consequence, her eczema became substantially worse. She was also suspended from university because she was unable to attend due to being unable to shower or brush her teeth. His second daughter's wedding was in June 2022, while this was happening, and this situation impacted the family's enjoyment of the occasion immensely. The whole family was severely affected by being unable to shower, bathe, cook and clean for so long.
- The work was completed on 10 January 2023, and the company offered a settlement of £500.00. This is an embarrassingly small amount of money for the huge amount of stress and inconvenience suffered, and he and his family feel offended by it. Furthermore, the company has refused to repair his downstairs bathroom that was damaged by the flooding.

- He would like the company to pay him the maximum amount of compensation available under WATRS, and he would like the company to take ownership of the service failings.
- He also wants the company to waive his bills for 2022-2023 and 2023-2024.
- He would like the company to pay him £2,500.00 for distress and inconvenience, £1,000.00 for lack of communication, £1,000.00 for the impact on his family's mental well-being, £1,000.00 for emotional damage, £1,000.00 for the physical impact, £1,000.00 for the impact on his livelihood, and £10,000.00 for damage to his bathroom.

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 states that he wants it to take ownership of its service failings, and pay for the damage caused to his downstairs bathroom. Therefore, the customer is alleging that his wastewater service was interrupted due to its negligence, and its negligence also caused damage to his bathroom, and this means that it did not comply 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.
- In any event, 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 concrete deposited by a third party. The customer has never provided evidence of internal flooding, but it accepts that the customer's wastewater service required pumping out during 2022 and the problem was not rectified until January 2023 due to the actions and negligence of a third party.
- 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 first received reports of drainage issues from one of the customer's neighbours and when it attended, it found concrete had been placed into the sewer by a third party. To prevent flooding in the properties connected to the sewer, it quickly put a mitigation system in place and started routinely pumping out the sewer.
- It accepts that on some days it was unable to carry out the pumping due to access issues, but it did the very best it could in the circumstances. The timeline provided in its defence provides details of the frequency it was able to gain access to pump the sewer out.
- The quickest way of repairing a sewer that has been filled with concrete is to excavate the section of pipework, remove it, and replace it with new pipes. However, all of the properties in the customer's row have built over the sewer, so excavating it would have involved digging up the floors in the private properties, which was out of the question. Therefore, it had to try and break the concrete down from inside the sewer. This work required specialist skills and tools, so it employed a contractor to do the work but they were unable to begin straight away. However, it continued with the mitigation programme and routinely pumped the sewer out to provide the customer and his neighbours with a continued wastewater service that operated as best as it could in the circumstances.
- Once the contractor started to remove the concrete from the sewer, it became clear that the work was going to take a long time because the concrete was a very high grade variety used for building property foundations, and was so dense that the diamond cutting tools kept failing. In one week alone, its contractor went through four cutting heads. Also, because the concrete had to be cut out from inside, it had to be done slowly to ensure no irreparable damage was caused to the clay sewer pipe that could not be excavated due to private properties having been built over it. When damage was accidentally caused to the sewer pipe, it had to reline the sewer before the weight of the ground around the pipe made the damage worse and caused a collapsed pipe, and this meant the concrete cutting had to be paused.
- The concrete cutting exercise took place from June 2022 to January 2023 and cost a considerable amount of money. It is still calculating the final costs to claim back from the third party who was responsible for allowing concrete to enter its asset.
- While it worked to restore a full wastewater service for the customer and his neighbours, it discovered that the concrete had flowed into the customer's privately owned lateral drain that connects his kitchen, and possibly his downstairs bathroom, to its sewer. This meant that once it had cleared its sewer, the customer would still have had a loss of wastewater service.
- It is not responsible for privately owned drainage assets but, despite this, it instructed its civil engineering contractor to excavate in the customer's kitchen and replace his lateral drains at no

cost to him at all. This is excellent customer service because the customer was responsible for rectifying the damage himself by either pursuing the third party responsible for the damage, or by approaching his insurance company. Therefore, it took the inconvenience and expense of arranging and paying for this work away from the customer.

- In view of the above, it has no liability for this matter and the customer is making his claim against the wrong party.
- In terms of the customer service the customer received, the customer fails to see that the stress and inconvenience caused to him was as a result of a third party's actions, and it is not liable to pay him the £2,500.00 claimed for distress and inconvenience.
- Additionally, the customer makes a claim of £1,000.00 for a lack of communication. However, the timeline in its defence and the document entitled '230205-000027 – XX Notes' details the regular updates the customer received from his Senior Case Manager. The notes also show that whenever the customer raised any concerns, his Senior Case Manager escalated those concerns to provide him with the information or answers he needed.
- The customer also claims £1,000.00 for the impact on his mental wellbeing, £1,000.00 for the emotional impact, and another £1,000.00 for the impact on his health and physicality. However, as it did not pour concrete into the sewer and provided good customer service, it cannot be held responsible for the impact on the customer and his family while it repaired the damage caused to its asset by a third party.
- The further claim of £1,000.00 for the impact on the customer's livelihood has not been substantiated and, therefore, it cannot consider this claim either.
- Finally, the customer makes a claim of £10,000.00 for damage to his bathroom, but he has provided no evidence to show his bathroom was damaged. However, even if the claim had been substantiated, it is not liable because it did not cause the drainage issues.
- The customer has been paid a goodwill gesture of £500.00 to recognise the fact that its contractors failed to always attend when planned and because the remedial works caused inconvenience, but all further liability is denied.

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. Having considered the evidence provided by the parties, I must start my adjudication by stating that I accept that sewerage undertakers are obligated to comply with the Water Industry Act 1991, and 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. I also accept that 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. The company states that sewerage undertakers cannot be held liable for damage or distress and 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.
3. 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.
4. 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.

5. 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.
6. 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.
7. 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 an inconvenience to the customer, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
8. The evidence provided indicates that the customer may believe that the company has failed to maintain its sewers. 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.
9. However, the customer says that if the company had found the blockage sooner, the concrete would not have set, and the length of time it took the company to clear the blockage caused him and his family a great deal of distress and inconvenience. The customer also implies that the delay caused damage to his bathroom. As these complaints amount to allegations of standard negligence, I can consider them.
10. Having reviewed the evidence provided by the parties, I accept that the blockage was caused by sewer misuse and I do not find any evidence to justify a conclusion that the company should or could have found the blockage before the concrete had set. Also, the company states that water

companies operate a reactive policy towards sewer maintenance and I accept that this is correct and reasonable.

11. With regard to the time the company took to clear the blockage, I accept that the company took nine months to clear the cement from the sewer and complete the work in the customer's kitchen, and that this was a very long time for the customer to be without a full wastewater service. However, the evidence shows that the company put a mitigation programme in place to ensure that the blockage did not cause flooding in the customer's property while the work was undertaken, the customer's garden and the garden belonging to his neighbours had to be excavated, and the work involved specialist contractors and special equipment. The evidence also shows that during this time the company excavated the floor in the customer's kitchen to replace his lateral drains, even though the company is not liable to carry out work on a customer's private pipework. On balance, I find that the company completed the complex work in a reasonable timeframe.
12. The customer suggests that his bathroom was damaged by flooding that occurred during the remedial works. As above, I find that the company completed the remedial work within a reasonable timeframe but, in any event, there is no evidence to show that the customer's bathroom was damaged by a flood, or that negligence on the company's part caused it.
13. The customer also suggests that the company's engineers may have been racist and sexist, and says its contractors were rude. While I understand that it would have been very upsetting if the company's employees behaved in this way, and would have increased the level of distress the customer and his family felt, I note that no evidence was found to show that the company's employees acted in a discriminatory way when the company investigated.
14. 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 or the distress and inconvenience suffered by the customer and his family, and there is no evidence to show that the company failed to provide its service to the standard reasonably expected by the average customer. While I appreciate that the customer will be disappointed by my decision, especially as I accept that the long interruption to the customer's wastewater services must have been most inconvenient and distressing for the customer and his family, the customer's claims cannot succeed.

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 8 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.

K S Wilks

Katharine Wilks

Adjudicator