

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0559

Date of Decision: 21 August 2017

#### Complaint

Sewage flowed into the customer's garden from the company's surface water drain following a neighbour connecting a new bathroom into this. The company is responsible for the surface water drain and should compensate him for the damage caused and that he was unable to use his garden. The company acted poorly in respect of identifying the cause of the issue, communication and in resolving the issue.

#### Defence

Sewage flowed into the customer's garden due to a neighbour's contractor misconnecting foul waste into the surface water sewer. This is a private matter between the customer and the neighbour's contractor. It has nevertheless assisted the neighbour in rectifying the pipework to resolve the issue with both its customers.

#### Findings

The sewage flowed into the customer's garden due to an incorrect connection into the surface water drain; this connection is privately owned. The flooding was not caused by any issue with the company's asset and the company is not liable for the damage. The company did fail to follow its Good Practice Document relating to misconnections, causing the issue to recur for four months more than necessary. The company also fell below the standard reasonably expected of it in relation to its site visits and investigation. Its offer of compensation was reasonable to the company's failures.

#### Outcome

The company needs to take the following further action:

Pay the customer the sum of £612.96.

- The customer must reply by 19 September 2017 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0559

Date of Decision: 21 August 2017

## Party Details

Customer: [REDACTED]

Company: [REDACTED]

## Case Outline

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

- The customer noticed that raw sewage was accumulating on his patio in January 2016. After speaking to neighbours, the customer discovered that no one else had issues, but that the neighbour at number 24 had had a new downstairs bathroom fitted before Christmas 2015. The customer called the company on 12 February 2016 and an engineer was sent out. He soiled the customer's house with boots and dripping plunger rods. He also stated that the drain that the sewage was escaping from was 'private' and refused to investigate further. The customer re-contacted the company and the same engineer was sent on 7 March 2016. A third visit took place on 28 April 2016 which was very unprofessional. The company called him on 6 September 2016 and asked to forward his claim to a third party; the customer did not want to enter into any discussions with any third party but felt bullied to allow the company to forward the letter of claim. The customer received an email from the third party that accepted liability and offered £1500.00; the customer did not accept this as the situation remained open-ended. The company has emailed him stating that it is a private issue and that the company would not accept liability for any costs. The customer has been unable to use the garden throughout 2016 and one of the customer's cats died after being in regular contact with sewage. The company has resolved the bad connection from his neighbour and created new pipework in July 2017. The company has denied failing in its legal duties; it needs to accept liability and provide compensation to those affected the most.

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- The customer requests that the company resurface his patio and replace a damaged border fence panel, and that it pay £5222.96 in compensation.

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

- The customer reported an issue of wastewater backing up into his garden on 12 February 2016. The company attended, noted that there was a blocked manhole, and cleared this the next day. The issue in the customer's garden was from an incorrectly made connection to the surface water drain from a neighbour's bathroom. The company confirmed the location of the issue at on 6 June 2016. The company is responsible for the surface water sewer, however the connections to this are private. The customer agreed to have the claim sent to the third party contractor responsible for the incorrect connection; this third party then made an offer of settlement. The company admits some failures for which Customer Guarantee Scheme payments have been made. It has also made an offer of £612.96 to cover cleaning costs, a gesture for poor service provided by the company's contractor, the time taken communicating with it, and the overall time spent on the matter. The company has powers to disconnect a drain misconnection but not to reconnect this correctly; the most suitable powers for this belong to the Local Authority. The company has a Good Practice Document regarding the investigation and rectification of drainage misconnections. The company denies that it is responsible for the death of the customer's cat; it did not cause wastewater flooding at the customer's property and there is also no evidence that the death was related to this matter. The company has corrected the neighbour's pipework as negotiations between the neighbour and the third-party contractor broke down. It would not have been appropriate to liaise with the customer about work at another private property. The company was trying to do the right thing by both of its customers, despite having no legal obligation to become involved.

**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.

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If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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 customer has claimed that the company is the party responsible for the sewage flooding in his rear garden. The company denies this.
2. The customer has provided in evidence an email from a third-party contractor, [redacted] Limited, that states that they “have to admit that the root cause sits with our contractor and not [redacted] Water”. I am satisfied from this and the submissions of the parties that the reason for the flooding at the customer’s property was that a neighbour’s new bathroom and toilet was incorrectly connected to the surface water (SW) sewer and not the foul water (FW) sewer.
3. The customer’s claim that the company is liable for the costs rests on the company being responsible for the SW sewer. The company is responsible for the shared SW sewer. The pipework leading from a person’s individual property into the SW sewer is privately owned by that person. The connection from the private pipework into the SW sewer is the responsibility of the private individual and not the company.
4. Accordingly, when the neighbour’s contractor created a foul connection into the SW sewer, resulting in sewage flowing onto the customer’s land, this was a private matter. Whilst the route taken by the sewage involved the company’s SW sewer, there was no negligence on the part of the company, nor any failure to maintain the SW sewer in proper working order. I am satisfied that the entirety of the cause of the sewage flooding was caused by the customer’s neighbour and their contractor and that the company cannot be held liable for this, nor any damage caused.
5. Notwithstanding this, it is necessary to review the company’s customer service following the report of the sewage escape, in order to identify if the company may have fallen below the standard expected of a reasonable water and sewerage company.

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6. I am mindful that, on the first visit, the technician correctly advised that it was a private matter and that the customer was also aware that the only plumbing change in the local vicinity was the neighbour's new bathroom and toilet. I must find that, at this point, the customer had the correct information to pursue the neighbour in respect of the ongoing sewage leak.
7. However, the company has also referred me to the Good Practice Document in respect of the investigation and rectification of drainage misconnections. I acknowledge that the company only has the power to disconnect misconnections and that this would have been unsatisfactory as it would have rendered a private, residential customer's bathroom unusable with no solution in place, whilst the Local Authority were properly empowered to disconnect the connection, reconnect it to the FW sewer, and recover the costs of this. I am not persuaded that it is a failure of the company to meet the standard expected in that it did not unilaterally disconnect the neighbour's connection.
8. The Good Practice Document does state that the Water and Sewerage Companies (i.e. the company in this instance) will, following identification of the problem, spend up to two days investigation time to try to identify pollution sources. It also states that where a small number of misconnections can be easily identified within this timescale, actions to rectify the misconnections will be carried out by the company.
9. In this case, I must find that the company did not follow its Good Practice Document. Whilst it did identify that the issue was a private misconnection into the SW sewer and that the property in question was the customer's neighbour at number , it did not conduct and complete investigations to confirm this until 6 June 2016. It was only at this point that the neighbour was requested to stop using the toilet and take the matter up with his contractor. I find that the company fell below the standard expected of it by failing to follow its Good Practice Document in respect of misconnection, and that this resulted in the continued use of the toilet, and thus continued sewage escape, for a period of 4 months longer than was necessary.
10. In respect of the engineer visits, I accept that these caused the customer distress and inconvenience as they did not follow the Good Practice Document and, as acknowledged by the company, fell below the standard expected, in particular during the 28 April 2016 visit.

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11. I find that the company acted appropriately where, after it had identified the third-party contractor responsible for the misconnection, it requested permission to forward the customer's claim to that third party. The company has accepted that it could have explained the issue of liability in a clearer manner and I am therefore satisfied that the company did fall below the standard expected in respect of the manner in which it handled the involvement of the third party.
12. I acknowledge that the company has now rectified the pipework issue at the neighbour's property, removing the misconnection and properly connecting the bathroom and toilet up to the FW sewer. The customer was not specifically advised of this work and I must find that this was correct. The company conducted works on another customer's private property and this is a matter between the company and that customer. I am satisfied that the company was not legally obliged to assist the neighbour in resolving the pipework issue, and that it also had no obligation to proactively advise the customer that rectification works were occurring on the neighbour's property. The neighbour and his contractor were responsible for the misconnection and the rectification of this and I find that the party that actually conducts the rectification work will not necessarily be the party responsible for communicating the repair to the customer.
13. Accordingly, having reviewed the claim in full, I find that the issue of sewage escaping into the customer's garden was at all times a private matter between the customer and his neighbour and the third-party contractor. The company is in no way responsible for the misconnection, nor liable for the rectification of the issue or damage incurred.
14. Notwithstanding this, the company did fall below the standard expected as it did not follow the Good Practice Document, resulting in the issue recurring for a period of four months more than necessary. I am further satisfied that the site visit of 28 February 2016 fell below the standard expected.
15. The customer has requested that the company resurface his patio and replace a border fence panel. As above, the customer's neighbour and/or contractor would be responsible for the rectification of any damage caused by the sewage in line with the contractor's admittance of having caused the issue. I am also not persuaded that this request is proportionate to the company's failure to meet the standard expected of a reasonable water and sewerage company. I therefore make no direction in respect of this request.

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16. The customer has requested £2500.00 in compensation for inconvenience and distress, gross negligence, loss of enjoyment of land and unreasonable, deceitful and vexing behaviour, £2500.00 for the repeated failure of the company's legal duty of care, and £222.96 for loss and damage to property and cleaning costs.

17. As above, I find that the majority of these claims relate to the action of the third-party contractor in misconnecting foul pipework to the SW sewer. I am, however, satisfied that some compensation is reasonable for the distress and inconvenience caused by the company's failures to meet the standard expected of a reasonable water and sewerage company. I accept that the customer has incurred some additional cleaning costs that could have been avoided if the company had followed its Good Practice Document and investigated the misconnection in February 2016. The company made an offer to the company totalling £612.96, covering the cleaning costs, the poor service provided by the contractor on 28 April 2016, and the time spent communicating with the company and overall. I consider that this offer is reasonable and proportionate and, as it has not been expressly withdrawn, I find it fair to direct the company to pay the sum offered of £612.96 to the customer.

#### **Outcome**

The company shall pay the customer the sum of £612.96 in compensation.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 19 September 2017 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.

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- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.
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A handwritten signature in black ink, appearing to be 'AD', followed by a long horizontal line extending to the right.

**Alison Dablin**, LLM, MSc, MCI Arb

**Adjudicator**

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