

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0808

Date of Decision: 25 October 2018

#### Complaint

The customer complains that following works in his garden he found that the sewer is in an unsatisfactory condition and in an unsatisfactory place because it is at or very close to ground level. He says that the sewer is leaking and causing damage to a retaining wall. He also complains about the manhole. He seeks a direction that the company should renew and lower the pipe below ground level including providing a new manhole and backdrop from the upstream properties. He also complains of poor customer services.

#### Defence

The company says that it has investigated the customer's complaint, carried out root cutting, relined the sewer, adjusted the tee connection in the manhole to a swept connection and concreted over part of the pipe that is exposed. The company says that it is not required to undertake work to move the sewer because this is serviceable and there is no evidence of leakage. It states that it has not provided poor customer service although it has given a gesture of goodwill of £100.00 for delay in carrying out dye-testing.

#### Findings

The customer has not shown that the company has failed to supply its services to the standard that would reasonably be expected by an average customer. The customer has not proved that the sewer or manhole is leaking nor has he shown that the company gave sub-standard customer service. The company has compensated the customer for delay in carrying out dye-testing, which is adequate compensation.

#### Outcome

The company does not need to take any further action.

- **The customer must reply by 22 November 2018 to accept or reject this decision.**

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## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0808

Date of Decision: 25 October 2018

### Party Details

Customer: [ ]

Company: [ ]

### Case Outline

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

- The customer complains that there is an existing sewer in his front garden. In part, this lies at the level of exposed ground, now partly protected by coating of concrete protection and next to a retaining wall. This is leaking and has damaged the retaining wall and the concrete protection that is over the sewer is cracked and broken.
- Because of its age and condition the customer wishes the company to move the sewer at the company's expense.
- He says that:
  - from the point of discovering the sewer, he has been treated poorly by the company's staff in terms of proactive interest and concern. He was told that he needed to make an application to build over the sewer pipe, despite his assurances that he was not intending to build anything.
  - the company continues to state that the sewer pipe has not been leaking contaminated waste water onto his drive, whereas it is clear that discharge through the retaining wall is due to pipe joint failure. This caused the company to undertake structural lining of the pipes. The customer states that while the lining has helped, there is still evidence of water ingress through the retaining wall which must be getting between the lining and the existing pipes.
  - the attitude of the company is a "sticking plaster" minimal cost approach. The company has estimated the cost of lowering the sewer pipe at £1000.00 per metre

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and the length of the pipe is more than 10 metres. The customer says that he is not willing to pay this and nor is he willing to construct a further retaining wall to support the asset.

- The customer also complains about the condition of the manhole on his property. He says that a makeshift tee has been constructed and nothing has been done to address the underlying issue of the steep gradient of the upstream pipework. He says that when he purchased his property he did not know that the pipe was two and a half inches below the top of the retaining wall.
- The customer seeks a direction that the company should renew and lower the pipe below ground level including providing a new manhole and backdrop from the upstream properties so as to prevent sewage from spilling out.

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

- The company says that it is not liable for this claim, which concerns a sewer acquired in 2011 under the private sewer transfer Regulations.
- It points out that the cost of the works that the customer would like to be undertaken would exceed the maximum monetary limit for claims under the WATRS scheme.
- It argues that it has, in any event, responded appropriately to the customer's complaints:
  - It has inspected the sewer;
  - It has carried out root cutting work on two occasions;
  - It has tested the sewer for leakage and found none; and
  - It has relined the sewer to provide reassurance to the customer
- The company says that the sewer is serviceable and, as such, it is under no obligation to replace it or to alter the upstream gradient or replace the manhole.

#### **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. Although the company contends in its response to the customer's comments in reply to its defence that the customer has raised new issues in that reply, I find that the issues which were identified in the initial complaint by the customer were as follows:

- a. The sewer is incorrectly located at surface level and should be lowered;
- b. Sewage is leaking from the pipe/manhole in consequence of:
  - i. Water penetration between the liner and the pipe; and
  - ii. surcharge from pipes at higher gradient leading from neighbouring properties;
- c. The concrete protection for the sewer pipe is broken and inadequate;
- d. Discharge of sewage has caused damage to the retaining wall;
- e. The customer has received poor customer service.

It follows that I find that the customer has not raised new issues. Nor, as the photographs submitted were very similar to the photographs supplied with the customer's application, has new evidence been submitted. I therefore deal with the above complaints.

2. As for the company's complaint that the customer's claim falls outside the WATRS scheme rules because the value of the claim exceeds £10,000.00, I find that this is a restriction on the level of award that can be made, but not on eligibility of the customer to use the scheme. It follows that, even if the value of the customer's claim exceeds £10,000.00, I have jurisdiction to determine this dispute but not to award redress exceeding a value of £10,000.00.

### The background of the dispute

3. From the documentation submitted by the parties, I find the following to be the case:

- a. The sewer in question was adopted by the company in 2011 following the introduction of the private sewer transfer regulations (Water Industry (Schemes for Adoption of Private Sewers 2011)). The sewer therefore had to be adopted regardless of its location or condition.

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- b. The sewer is situated very close to a retaining wall which appears to be about half a metre in height. The customer says that he has been trying to clear and excavate that land in order to create a place in his garden to park his caravan and the sewer was discovered in the course of that activity. Photographs show that he has cleared away part of his lawn on the other side of the sewer to a depth of about 500cm in order to create a designated off-road parking area.
- c. The company submits that the first contact that the company had from the customer was on 28 June 2016 when an online “contact us” form informed the company that he had noticed a “fairly big wet patch” on the tarmac adjacent to the sewer pipe. He asked for an engineer’s visit. On 25 August 2016 a CCTV inspection was carried out of the sewer. In consequence of this a team attended and agreed to cut roots that had grown into the sewer. Root cutting was carried out on 13 September 2016.
- d. On 15 September 2016 the customer was asked whether he was happy with the work undertaken. He confirmed that he was, but said that he also had a problem with the shared drain from the property upstream because it had a backdrop that was causing a blockage. He asked if the company could take a look. He also said that his connection into the sewer was a straight T connection instead of a swept connection. He thought that this was causing a problem and he believed that the connection was substandard.
- e. The company explains that at first it had been willing to send a team to investigate but it was then discovered that the sewer had been surveyed on 13 September 2016. The company says that the CCTV images had shown the sewer to be serviceable with no evidence of leaks. The company therefore agreed to undertake another survey in six months’ time and the customer is said to have expressed his agreement to this.
- f. On 2 March 2017, a further CCTV survey was completed. The company says that, apart from some further root growth there appeared to be no issues with the sewer. On 12 April 2017 a further root cutting exercise was carried out.
- g. On 18 April 2017, the company then spoke to the customer who said that he was unhappy with the manhole in his garden. He was advised that the company would not undertake further work to the sewer or manhole as they were both clear and in a serviceable condition.

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- h. On 11 September 2017 the customer complained that in addition to the unsatisfactory set up of the manhole, there were seepage points in the sewer near to the retaining wall where the joints of the sewer pipe were located. The company replied on 25 September 2017. The company said:

*On checking our records, I can confirm that we previously attended to investigate on two occasions on 1 August 2016 and 2 March 2017. During each visit I see we jetted the drain, along with conducting a root cut following the more recent incident. Upon completion we checked the drains which were confirmed to be operating normally with no further issues. Following our latest visit on 14 September 2017, we have also conducted a thorough review of the CCTV survey footage and I can confirm that the line is operating normally with no defects. With regard to seepage from the wall, I can also confirm that this isn't emanating from an asset. However we have identified that the manhole cover on your property has some minor defects and needs replacing...*

- i. On 30 September 2017, the customer repeated his complaint about the construction of the manhole and the tee connection and repeated his concern that the drain was leaking at the joints.
- j. A site meeting was arranged on 20 October 2017 between the customer and the company's staff members. The company says that to reassure the customer it was agreed that it would arrange for the sewer to be viewed again with a CCTV camera with the intention of structurally lining it as well as checking the benching of the manhole and adding concrete protection to a section of the uncovered sewer pipe which would be at risk of vehicle damage. During this meeting the customer explained to the company that he could not fund the lowering of the sewer pipe and company should pay for this as sewer is in very poor condition. The customer followed this up with an email dated 27 October 2017, referring to certain works that the company had agreed to undertake to the manhole and he also wanted the company to fund lowering of the manhole. He referred to what he called the company's "initial denials and push backs" and said that the foul water drainage from the pipe joints on to his driveway was becoming worse.
- k. The customer sent further emails on 2 November and 6 November 2017 expressing his concern that no response had been provided. On 6 November 2017, the company

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contacted the customer to confirm that the work discussed at the meeting on 20 October would take place. On 9 November 2017 the customer was advised that the company's contractors were on site and were undertaking work to re-line the sewer. The customer said he was not happy with this and in an email of that date said that the issues would only be resolved if the sewer were to be moved underground as he could not park its caravan, although he expressed gratitude that the connection in the manhole had been changed to a swept tee. The customer stated that the company was patching up its asset rather than carrying out a satisfactory repair.

- l. The company says that the customer was contacted by phone on 16 November 2017 to tell him that his case was being reviewed by the director of wastewater networks and a full response would be provided in writing. On 23 November 2017, the customer was advised that the company had concluded that the damp patches on the driveway were not coming from the sewer and it had sought an external legal opinion which had confirmed that the company was not liable to move the sewer.
- m. The customer remained dissatisfied and contended that the company was financially motivated. In a letter dated 19 December 2017, the company indicated that it has a duty of care to try to avoid increased prices to its consumers. The company stated its belief that the leakages through the retaining wall were caused by groundwater and informed the customer that the reasons for re-lining the sewer had included a concern that the sewer was no longer supported by earth because of the customer's excavation works. The company also stated that it had considered the customer's complaint about its own customer care and concluded that it had carried out its responsibilities adequately.
- n. In January 2018, however, the company informed the Consumer Council for Water (CCWater) which had by this time become involved, that it would carry out further investigations. Following delays caused by emergency situations, the company attended the customer's property on 21 March 2018 to undertake a day test to see whether the sewer was indeed leaking waste water through the retaining wall. The company explains that the sewer was bunged at one end and the line was charged with dyed water and left for over an hour. The company records that there was no leaking from the sewer. The bung was removed four hours later but it was found that no leakage had occurred subsequently. The company's communications with CCWater indicate that the customer was shown on that date that there was no leaking water. On 25 April 2018, the company

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told the customer that it was arranging for a goodwill payment of £100.00. The customer said that he found this offensive and would be making the payment to a charity.

4. I turn now to the specific issues raised by the customer.

Incorrect location at surface level

5. I find that the location of the sewer is inconvenient and is not ideally located so close to the current ground level, particularly as it has been exposed by the construction of a parking space and one end of this, which descends sharply to pass under a road or other hard-standing, has become exposed and has had to be covered by concrete “haunching”. However, it does not follow from this that the company is under an obligation to take steps to lower the sewer further below the soil. I reach this conclusion for the following reasons:

- a. I find that the customer’s request that the company should finance the lowering of the height of the sewer as a part of his overall contention that the sewer is in an unsatisfactory condition and it is also causing him inconvenience in that he cannot easily park his caravan where he wishes without the risk of damaging the sewer. Section 94 of the Water Industry Act 1991 imposes on a sewerage undertaker the responsibility to maintain the sewers and to keep them cleaned and repaired. This duty is enforceable under the Act by way of a procedure (under section 18) which enables the regulator, OFWAT, to issue an enforcement order in an appropriate case.
- b. Even if the customer is correct that the sewer is substandard, however, I find that it does not follow that I have jurisdiction to direct that the company should move it. First, I do not find that moving the sewer amounts to maintaining, repairing or cleaning it and therefore I find that it does not fall within the scope of section 94.
- c. Secondly, even if I were to have concluded that moving the sewer could in this case amount to work undertaken to maintain etc., I find that I have no jurisdiction to decide that this is what the company should do. In Marcic v Thames Water [2003] UKHL 66; [2004] 2 A.C. 42, a customer who complained of breach of duty because sewage repeatedly overflowed into his garden did not succeed in showing that the defendant sewerage undertaker was in breach of duty or had committed nuisance (a civil wrong). The House of Lords decided that the sewerage undertaker was subject to the scheme of regulation under section 18 of the 1991 Act that enabled a procedure for making complaints to OFWAT that, in the absence of negligence, precluded action by the court. The court also made clear that it is for the statutory undertaker and not a court to decide on its priorities and to balance the interests of its customers as a whole.

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- d. Although the issue that I am to consider is whether the company has supplied its services to the standard that an average customer would reasonably expect, rather than breach of duty or nuisance, I find that the same reasoning should govern my approach. The company has made clear in its correspondence that in deciding that it will not undertake lowering of the sewer, it has taken into account whether this is a justifiable expenditure, considering the interests of other bill-payers. I find that this is a decision that it is for the company to take and not for me or the customer.

It follows from the above that I find that the customer has not shown that the company has failed to supply its services to the standard reasonably expected of it.

#### The concrete protection for the sewer pipe

6. There are two sets of photographs of the concrete protection that has been placed over the pipe. One set of photographs appears to have been taken when the work had been newly undertaken, although the photograph itself is not dated. It shows a relatively thin “hump” of concrete lying over the sewer pipe as it descends at an angle towards the road or hard standing. At this point, it is not clear whether the pipe is protected or fully protected by the retaining wall. This concrete “haunching” was explained to the customer on 20 October 2017 and would have been undertaken on 9 November 2017. The second set of photographs shows the same haunching, now cracked, crumbling and broken. In one place, a section of the concrete has been removed to expose the pipe underneath. Although the company says that “excessive force” has been applied to the haunching, I find that it is more likely that the concrete haunching was not sufficiently robust to enable the customer to cross this in his caravan, an event against which the haunching was in part intended to offer protection. Although I find, however, that it is more probable than not that the concrete haunching was insufficient to protect the sewer, it does not follow that the company is under an obligation to take further steps. The customer has pointed to no legal provision that indicates that this situation would give rise to such a duty and the company states that it has taken legal advice that has confirmed that it is under no duty to take additional steps either to move the sewer or to protect it. I find that an average customer would not reasonably expect that a sewerage undertaker should provide further protection or move a sewerage pipe at its own cost following the exposure of the sewer by ground works undertaken by a customer.

#### Leakage

7. The customer argues that sewage is leaking from the pipe/manhole in consequence of both water penetration between the liner and the pipe and due to surcharge from pipes at higher

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gradient leading from neighbouring properties which causes flooding at the manhole. The evidence put forward in support of this argument is that (a) there are areas of damp visible in three places near joints of the pipe and (b) there is evidence of excrement in the manhole. I accept that the photographs do raise a question as to why the wall appears to be damp at points near the junction with the sewer, but I find that it does not follow that the damp areas are caused by leaks as opposed, for example, to cracks and voids in the integrity of the wall, which at one point is shown to have a large crack. The company suggests that the damp is caused by ground water which is making its way through the retaining wall. I find that this is a more likely explanation than that of a sewage leak. First, there is no evidence that the damp involves any foul water: the customer has not complained of odour and has not carried out any tests of the damp. The company, on the other hand, has inspected the sewer pipe with CCTV imaging and has carried out a dye test which has not resulted in evidence of leakage. I find that as the customer has not proved that the sewer is leaking, the company would not reasonably be expected to carry out further repairs.

8. As for the manhole, the situation is similar. The customer complains that a surcharge of water causes overflow and excrement into the manhole, but there is no evidence of this. No tests have been done. Accordingly, I find that the customer has not shown that the company has fallen short of the standard of service that would reasonably be expected of it.

#### The retaining wall

9. The customer argues that discharge of sewage has caused damage to the retaining wall, but I am unable to find evidence of this. The images of the wall do not show that this is newly built and there is no evidence at all about its stability or foundations. Although the retaining wall is adjacent to the sewer, it has formed a boundary between higher ground in which the sewer is placed and a lower roadway or hard surface. As such, it is probable that it is susceptible to movement in the ground, including that caused by the swelling and contracting of ground due to water penetration and changes of temperature as well as the pressure associated with its retaining function. The fact that roots were found in the sewer also suggests that roots are in the location of the wall. These also may be a precipitator of change to the wall. I find that the fact that a crack has occurred in the wall near to the manhole does not prove that the damage has been caused by an escape of foul water and, correspondingly, I find that the customer has not proved that the company has failed to supply its services to the standard that would reasonably be expected of it.

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### Customer service

10. Although the customer complains of poor customer service, I accept that the company took an undue time before carrying out a dye test, not because other work had to be prioritised, but because it initially failed to investigate the customer's contention that there were leaks at the pipe joints even following re-lining in November 2017. The company has, however, given the customer a goodwill gesture in relation to its delay in carrying out this investigation in the sum of £100.00 and I find that this is sufficient compensation. I am unable to find that this has been unsatisfactory service in other respects. I find that the company has in other ways responded within a reasonable timeframe to the customer's complaints and enquiries, has carried out investigation, root cutting, re-lining, reconfiguration of the connection in the manhole and has provided some protection for the sewer by concreting over the slope down to the hard surface. I find that the company would not reasonably have been expected to supply its services to a higher standard.

### Conclusion

11. It follows from the above that the customer has not shown that the company has failed to supply its services to the standard that would reasonably be expected. It follows that I find that the customer has not shown that he is entitled to redress.

#### **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 22 November 2018 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.

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A handwritten signature in black ink, appearing to read 'Claire Andrews', is positioned in the upper left quadrant of the page.

Claire Andrews, Barrister, FCI Arb

**Adjudicator**

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