

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0872

Date of Decision: 30 August 2018

#### Complaint

The customer submits that, following a severe rain event on 22 June 2016, the basements of his property and that of his neighbours' were flooded due to a blocked communal drain. The company has been given evidence that the drainage pipe under public property has dislodged pipe segments with root ingress. However, the company has refused to accept responsibility for the matter and is unwilling to address the root cause of the issue to prevent flooding recurring in the future. The customer requests that the company rectify or replace the communal pipe.

#### Defence

The company acknowledges that there is a displaced joint and root ingress in the sewer line that falls under its responsibility. However, the company refutes the customer's submissions that these caused the blockage and the subsequent flooding. The company states that the sewer is fully operational. The company states that only inappropriate items, which it has no control over and no liability for, will not breakdown and will become entangled in tree roots causing a blockage. The company states that it will not be carrying out any follow on work to the sewer.


#### Findings

It is not in dispute that there is a displaced joint and root ingress in the section of the sewer line that falls under the company's responsibility. However, I find that there is no evidence to show what caused the build-up in the sewer in June 2016 and that responsibility for the blockage and flood lies with the company. Although the customer's own private survey report confirms that there is a displaced joint and root ingress, the report itself only recommends that the line is cleaned and debris removed to allow the free flow of waste water. There is no evidence to show that the line requires repair or replacement. In addition, the customer's report suggests that the debris, which is to be removed, is within the private pipework. The company is not responsible for private pipework and any work required to this.

#### Outcome

The company does not need to take any further action.

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The customer must reply by 27 September 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0872

Date of Decision: 30 August 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- Following a severe rain event on 22 June 2016, the basement of the customer's property and that of his neighbours' were flooded due to a blocked communal drain, which had to be restored, at a six figure cost, through their respective insurers in a year-long refurbishment effort.
- The company has refused to accept responsibility for the matter and is unwilling to address the root cause of the issue to prevent flooding recurring in the future.
- The company has been given evidence that the drainage pipe under public property has dislodged pipe segments with root ingress, which needs to be regularly attended to by way of pressure cleaning. This has been done at the initiation and expenses of the owners of the three neighbouring properties, which the owners feel is inappropriate for them to carry out.
- The residents would like the communal pipe to be rectified or replaced. This is something that they are powerless to do themselves as the pipe segment in question is not on their property but under a public road/pavement. Waiting for the next event is neither a wise nor cost effective strategy for either side.
- The customer requests that the company rectify or replace the communal pipe to ensure the risk of future flooding incidents is removed.

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

- The customer contacted it on 21 October 2016 requesting that a wastewater pipe running from his home to the main sewer be replaced as a flooding incident had occurred at his home in June 2016. It informed the customer that it had had no reports of flooding and had checked its records for the previous three years and could not find any other reports either. It advised the customer that unless there was a blockage causing flooding it would be unable to attend and investigate. The customer stated that he had employed a private contractor who had carried out a CCTV survey of the sewer and had found tree roots in the sewer line. It requested the details of the survey.
- On 2 November 2016, it received details of the private CCTV survey. Within five working days, its own contractors visited the customer's home on 9 November 2016. It found the sewer line from within the property boundary and into the main sewer to be clear and free flowing.
- Following the customer's continued dissatisfaction with its response, on 9 December 2016 it was agreed that it would arrange its own CCTV survey and clean the sewer line from within the property boundary and into the main sewer. On 14 January 2017, it attended and cleaned the sewer line.
- No major defects were found with its assets and it was determined that no follow-on works were required. This was again confirmed in July 2017.
- It considers that the flooding was a one-off event caused by an exceptional amount of rain that had exceeded the capacity of the sewers in that road. This is known as hydraulic flooding. A combination of an unprecedented amount of rainfall and a blockage in the sewer caused the internal flooding incident.
- The customer's private CCTV survey shows the root ingress to be 10%, possibly 15%, of the drain capacity. It expects that even if these roots were not there, the flooding event would have occurred in any case. The tree roots in the sewer line were not affecting the sewer's operational ability.
- The suspected misplaced joint is on the sewer line just before it enters the main sewer and may be due to a change in the angle entering the main sewer, this is where the tree root ingress is. Despite this being the case, it is confident the sewer is fully operational.
- It has no record of what material caused the blockage, it will never know if it had been caused by sewer misuse e.g. cooking fat, rags or wet wipes. It should be borne in mind human waste will break down in a sewer just as toilet paper will, thus meaning human waste and toilet paper will not cause blockages. However, inappropriate items disposed of in sewers such as, nappies, wet wipes or cooking oils will not breakdown and will cause blockages. It has been alleged by

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the customer that the existence of tree roots in the sewer has caused items to become entangled and cause a blockage. This may be the case, but it can only be inappropriate items that will become entangled on tree roots.

- In addition, during its investigations, concrete was seen in the private pipework on 14 January 2017 and 3 July 2017.
- It escalated the customer's concerns correctly through its complaints process and responded to each contact. As part of this process, although it is confident there was no follow-on work needed from its first visit, it has cleaned the sewer line from within the property boundary and out to the main sewer, it has carried out a camera survey on site and carried out a full CCTV survey for review by a Technical Specialist.
- For these reasons, it will not be carrying out any follow-on work to the sewer that the customer's waste and surface water drains into as it is fully operational.
- The Water Industry Act 1991 does not contain any legislation to state that a sewerage undertaker has a strict liability for damage caused by sewer discharge. Any liability is entirely dependent upon proof of negligence.
- Prior to the unfortunate flooding event of 22 June 2016 and, since, it has had no other reports of flooding. The cost of carrying out the works requested is not proportionate to the risk of flooding from its asset in [            ].

### 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.

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### How was this decision reached?

1. I am mindful that property owners and/or occupiers are legally responsible for private pipes that run from the boundary of a property into the property. Therefore, this adjudication cannot consider any pipework/apparatus that are not part of the company's assets, and that fall under the responsibility of the customer.
2. In addition, I accept the company's submission that under the Water Industry Act 1991, companies are not generally liable for sewer flooding unless the flooding was caused by negligence.
3. The papers show that when the flooding occurred, on 22 June 2016, a private contractor was contacted. The private contractor attended the properties and cleared a blockage in the sewer on 23 June 2016. The company was not informed of the flood until October 2016; some four months later. I note the customer's submissions that the company was not informed as at the time it was believed that the resolution of the flood was the residents' responsibility. However, following a private CCTV survey in July 2016, a misplaced joint and tree roots were found on the company's section of the sewer and so the company was contacted.
4. The customer submits that the tree roots and displaced joint caused items to become entangled and caused a blockage that, in turn, caused the flooding. The customer requests that the company rectify or replace the pipe.
5. The company does not dispute that there is a displaced joint and root ingress in the sewer line that falls under its responsibility. However, the company refutes the customer's submissions that these caused the blockage and the subsequent flooding. The company states that only inappropriate items, which it has no control over and no liability for, will not breakdown and will become entangled in tree roots causing a blockage. The company asserts that the sewer is fully operational.
6. I accept the company's submission that it is not liable for any inappropriate items disposed of by third parties in its assets. I am also inclined to accept, on a balance of probabilities, the company's submissions that only inappropriate items would cause a blockage and get entangled

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in the roots. It is reasonable to accept that appropriate items would breakdown. There is no evidence to show what caused the build-up in the sewer in June 2016 and that responsibility for this lies with the company.

7. Further, I am mindful that, although the customer's own private survey report states that there is a displaced joint and root ingress, the report only recommends that the line is cleaned and debris removed to allow the free flow of waste water. There is no evidence to show these issues caused the flood, nor is there any evidence to show that the line requires repair or replacement, as requested by the customer.
8. In addition, no evidence has been submitted to this adjudication to support the customer's submission that the section of the sewer that falls under the company's responsibility must be regularly pressure cleaned.
9. Importantly, I am also particularly mindful that the report suggests that the debris that is to be removed is within the private pipework, as it is stated that "*settled deposits [are] at 0.94 and 1.30 linear metres*". As discussed above, property owners and/or occupiers are legally responsible for private pipework and any work required to these.
10. I acknowledge that the flood was an extremely distressing and unpleasant experience for the customer. However, in view of the above, having carefully considered the matter, in the absence of any substantive evidence showing otherwise, the customer has not shown that the 22 June 2016 flood was caused by the company's negligence and/or that the company is required to repair or replace the part of the sewer that falls under its responsibility.
11. Consequently, the customer's claim does not succeed.

**Outcome**

The company does not need to take any further action.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
  - The customer must reply by 27 September 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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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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