

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0904

Date of Decision: 26 July 2018

Complaint

The company has supplied inadequate services in respect of repeated blockages and flooding at the manhole on the boundary of the customer's property. The customer states that this has caused her great distress and inconvenience (for which the customer also blames her neighbour). The customer complains of poor customer service. She seeks resolution of the problem, an apology and compensation.

Defence

The company submits it has investigated on every occasion prior to the customer's report of flooding on 27 May 2018 and has found no flooding. It did find blockages, but these had been caused by the disposal of inappropriate items in the sewer for which it was not responsible. It has cleared blockages, investigated with CCTV cameras, removed roots and repaired benching. It has also set up a system of six-monthly inspections. In respect of the report of 27 May 2018, there was extreme rainfall and the company states it had to deal with other priorities where flooding had in fact occurred. The company said it had already compensated the customer in respect of her complaint about poor service standards.

Findings

The customer has not established that the company failed to reach the standard to be reasonably expected of it. I find the company was not responsible for blockages caused by inappropriate use of the sewer and, in the absence of further evidence, would not reasonably be expected to take action against the customer's neighbour. An agreement had been reached in respect of the customer's complaints of poor service standards and so no further remedy is due in this regard. In respect of the rise in the sewer level on 27 May 2018, I accept that it is likely that this was due to exceptionally heavy rainfall and the company was entitled to prioritise complaints of flooding that had occurred.

Outcome

The company does not need to take any further action.

- The customer must reply by 23 August 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0904

Date of Decision: 26 July 2018

Party Details

Customer: [],

Company: [].

Case Outline

The customer's complaint is that:

- Since 1 December 2017, she has repeatedly experienced instances of blockage and flooding from the sewer outside her house. The company has blamed the neighbour for disposing of unsuitable items in the sewer. The customer agrees that the neighbour acts in this way but contends that this is not the complete explanation for the blockages/flooding.
- She contends that the company has carried out inadequate investigation and/or repair works and she has been the subject of poor customer care including: rudeness; inadequate and poor quality workmanship; unprofessional conduct; unauthorised entry onto her land; failure of workman to turn up when promised; and, being told that her job was not a priority. She also had to use HomeServe to unblock the sewer when the company failed to attend on 26 and 27 May 2018.
- Further, she says that the company has refused to recognise that there has been flooding, partly because she was not asked to provide additional photographs and partly because she has cleared up any flooding in order to protect her grandchildren.
- This is causing considerable stress, she had been ill previously, she now has to visit a psychotherapist and the disruption is affecting her daughter's baby, for whom the customer is temporarily the carer.
- The customer seeks:
 - A resolution of the blockages/flooding affecting her property including the extension of the sewerage system if necessary;

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- An apology; and
- Compensation of: £50.00 for calls (a Guaranteed Service Standard payment); £97.14 reimbursement of the customer's HomeServe annual subscription; reimbursement of water bills totalling £543.76; payment of a babysitter (£40.00); compensation for non attendance in the sum of £30.00 (Guaranteed Service Standard); and, compensation for days off work.

The company's response is that:

- The customer has contacted the company on four occasions since December 2017 to report sewer blockages or external flooding in the shared sewer between 1 and 2 [] Road. Each time the company attended, if a blockage was found it was cleared – although on occasions no blockage was found and the sewer was running clear.
- The company states that any blockages have been caused by unsuitable items that are being disposed of into the public sewerage system. Leaflets providing information and advice on what can and cannot be disposed of into the sewerage system have been given to the two properties that connect in to the shared sewer where the issues are occurring.
- The sewer has been checked and a CCTV survey completed. This has shown there is no defect with the sewer that could be the cause of the blockages. The sewer is now on a regular maintenance programme and will be checked every six months in an effort to reduce the risk of any further blockages.
- The company has already acknowledged a number of customer service failures. In consequence, the customer has been given:
 - a payment of £20.00 on 15 January 2018;
 - a further payment of £40.00 on 5 February 2018.
 - in order to bring this dispute to an end, the company made a further gesture of goodwill offer to the customer of £100.00 in full and final settlement. The customer accepted the offer and agreed she was happy for the case to be closed.

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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.

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 documents submitted by the parties show that the events giving rise to the customer's application were as follows:
 - a. The customer experienced a sewer blockage on 1 December 2017, which affected the operation of her toilet. The customer says that "there was a spillage of excretion, sanitary towels and baby wipes, floating on my drive". She complained about the adequacy of the clean-up operation by the company's contractors and said that flooding had been found later in the afternoon by Dyno-rod. The company gives a slightly different account. It agrees that it was asked to attend and states that a private contractor which had been instructed by her insurer had attended initially at the incident. The company reports that it found all of its assets to be running well and the customer was advised that if the problems were to continue, she would need to contact her insurer again to check the private drainage pipes. The customer complains that the company's contractors who attended were rude to her and did not complete the job and she made a complaint, in consequence of which she was promised a compensatory payment of £20.00.
 - b. The customer called the company on 2 January 2018. She said that she had been expecting to receive the payment of £20.00 in relation to her complaint about the company's contractors. She was told by an agent in the call centre she would receive a further £20.00. Both sums were, in due course, paid to the customer by BACS transfer into her bank account on 15 January 2018.

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- c. On 3 January 2018, the company received a call from its contractors, who explained that they were calling on behalf of the customer because there was external flooding in the rear garden. A team attended the same day. When the team arrived, the company says that no flooding was found but a manhole under the fence between 1 and 2 [] Road was full of waste and wipes. The company says that there was a blockage due to a misuse of the system from 1-2 [] Road. Both customers were given a leaflet about sewer misuse and advice explaining what cannot be disposed of in the public sewers.
- d. On 7 January 2018, the customer informed the company that she had now experienced a similar incident on a number of occasions and she asked for a sewer investigation.
- e. On 8 January 2018, the customer requested the company to send a further letter to her neighbours advising on what can and cannot be disposed of into the sewer network. The company responded to this by sending identical letters to the two properties served by the shared sewer. The letters advised of the recent incidents and explained what should and should not be flushed down toilets and poured down sinks.
- f. On 27 January 2018, the customer complained of a further blockage. (The customer's correspondence suggests that this may also have happened on 21 January 2018 but there is no reference to this in the company's documentation.) The company attended on 27 January 2018. A manhole to the side of the property was found to be full. High pressure water jetting was used to clear a blockage. The company says that this was approximately five metres downstream under the customer's extension and that a look/see CCTV survey upstream showed the sewer to be running freely.
- g. The company then called the customer or her daughter on 28 and 30 January 2018. Due to the customer's complaint of misuse of the sewerage system by her neighbour, the company arranged for a sub-contract site agent to investigate. The company says that following a visit, which occurred later that day, a CCTV survey and cleanse of the sewer was arranged. The customer says that she was promised a visit on 30 January 2018, but no-one attended. A specialist sub-contract team attended the following day, however, although they were unable to complete the planned work. The company explains that this was due to the length of the sewer and the equipment they had with them. A further visit was to be arranged. The company then advised the customer on 1 February 2018 that a team would be attending that day between 12pm and 3pm. The team arrived and were able to gain access to a manhole at the front of 10 Oak Road. They cleansed the section of sewer towards the properties in [] Road that they were able to reach and a CCTV survey confirmed it was clear with no issues.

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- h. The customer complained that the sub-contract crew had entered her garden without her permission. She also complained of delay in making the earlier promised payment of £20.00. In recognition of this and as a further gesture of goodwill, the company states that it made a further credit to her water services account that was processed the same day.
- i. On 6 February 2017, contractors attended to carry out further cleansing work. There was no access available and no-one was in at the properties. Cards were left for the customers.
- j. On 8 February 2018, the company received a letter by recorded delivery. It was a copy of an email that the customer had sent on 27 January 2018 but to an incorrect email address. A conversation occurred on 9 February 2018 to confirm receipt of her correspondence and to say that her complaint was being investigated. The customer told the company that she was upset with how she had been dealt with and that she had only been offered £20.00. She said that she had asked for call transcripts of her conversations with the contractors, but these had not been provided.
- k. A further visit then took place on 10 February 2018. A high pressure jet was used to cleanse the sewer and some roots were removed. The company records that a CCTV survey for 12 metres upstream showed all was clean and clear, a look/see CCTV survey downstream to the main showed all running clear. The customer was informed and an email sent to the customer on 14 February 2018.
- l. Following contact from the Consumer Council for Water (CCWater), a further visit was arranged for 20 February 2018 to check the manhole at the side of the customer's property. The company says that a CCTV survey confirmed that no issues were found at the manhole between 1 and 2 [] Road and the sewer was clear. It was noted, however, that toilet paper kept appearing at the bottom of the manhole due to splashing in the manhole. The company recorded that the manhole was "very shallow". A work order was raised for some remedial work to the manhole chamber. This was carried out on 22 February 2018.
- m. The customer raised concerns about the company's complaint handling through CCWater and on 29 March 2018, the customer confirmed that she would accept the £100.00 gesture of goodwill that had been offered. A letter and cheque were sent the same day.
- n. On 27 May 2018, the company received a report that the manhole cover at the front of the property had lifted and was close to flooding; it was also causing restricted toilet use. The customer says that this was so serious that, when the company indicated that it

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would not attend that day, she had to arrange for HomeServe to attend and she went to stay with her daughter, which was very inconvenient. The company explains by making reference to extreme rainfall in the area at the time and states that it had received a large amount of calls from customers. It acknowledges that those calls where properties had flooded internally and then externally would have been prioritised over the customer's complaint. The company said that it had hoped to attend to the customer on 27 May 2018 but, due to the large number of calls received and number of visits needed, this was not possible.

- o. The customer then called the company's contractor directly, sending a photograph of benching that had become detached. She explained that she had called out HomeServe as the company had not attended.
- p. On 29 May 2018, the company found that the shared manhole at the side of the property and pipe work at the rear of the property was clear.
- q. A team then attended on 8 June 2018 to repair the manhole benching that had broken away. This was not convenient for the customer, but she did permit the repair to go ahead. In a telephone call on that date, the customer stated that she expected a Guaranteed Service Standards payment for each of the days when the company did not attend and for the inconvenience of the situation on 8 June 2018.
- r. On 14 June 2018, the customer complained that she had not had a response to her emails, but no emails were found to have been received by the company. The company says that on receiving the WATRS application form and supporting documents, it became apparent that the email that the customer sent to the company on 27 May 2018 was sent to an incorrectly spelled email address so it had not been received.

2. Against this background, I find from the records submitted by the company as well as from the documentation and some photographs submitted by the customer and by CCWater as follows:

- a. At least four incidents concerning the manhole on the boundary of 1 and 2 [] Road were reported to the company; on 1 December 2017, 3 and 27 (and/or 21) January and 27 May 2018. On 20 February 2018, the company also carried out an investigation into a possible sewer blockage and found that the sewer was clear:
 - i. On each occasion prior to the events of 27 May 2018, I am satisfied that the company attended promptly. I find that the attendances prior to 27 May 2018 were, at least initially, on the same day as the incident report. When the company did attend at the customer's address, from the evidence, I accept that the sewer was flowing normally.

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ii. Although the customer suggests that there was flooding at her drain, I find there is no clear supporting evidence of this.

1. On 1 December 2017, it would appear that the work in question was undertaken by a contractor called by the customer, but there is no supporting report or photographs which make clear that there was “flooding”, as opposed to a blockage within the drain.
2. On 3 January 2018, the company’s subcontractor called on the customer’s behalf to report “external flooding in the rear garden, it is coming from the manhole and is at a steady trickle”. When the company attended, however, it states there was no evidence of flooding. The company’s reports indicate that waste and wipes had caused a blockage and on 20 February 2018 it was noted that these may become visible due to the shallowness of the manhole, but this is equally, not evidence of a flood.

On 21/27 January 2018, there is similarly no evidence of “a flood”. I bear in mind that adjudication is an evidence-based process in which it is for the customer to prove that the company has fallen short of the standards to be reasonably expected of it. The customer states that on at least some of the occasions she cleared up evidence of flooding prior to the arrival of the company, but this would have had the consequence that evidence of flooding (as opposed, merely to blockage) was and is not available. I take into account that some of the customer’s photographs and those of the company show that the stones around the manhole cover are slightly wet but I am not satisfied that these show a “flood”.

iii. I do accept that there have been a number of blockages that appeared, on each occasion prior to 26/27 May 2018, to have been due to improper use of the sewer. The company has formed the view that the cause of the blockages was sewer misuse. The company has issued a leaflet to the customer and to her neighbour in relation to items that can be disposed of into the sewer but it is notable that the documentation submitted by the parties does not establish clearly that the source of the problem is due to the actions of the customer’s neighbour. At one point, the documentation submitted states that both neighbours blame each other and their relationship is poor. The company argues that this is something the company has no control over and that it has taken such action as it can, namely:

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1. Clearing the blockages;
2. Providing advice to the customers as to what can and cannot be disposed of into the public sewerage system;
3. Investigating the sewer with CCTV cameras to try to identify any defect. CCTV cameras were also used on a “look/see” basis as well as in connection with more formal investigatory and remedial activity.
4. Clearing roots and repairing the manhole and (after 27 May 2018) also repairing the benching in the manhole to try to eliminate problems in the future.
5. Putting the sewer on a regular maintenance programme so that it will be checked every 6 months; and
6. Making goodwill and Guaranteed Service Scheme payments to the customer for alleged failings in its customer care (see the following subparagraph).

I find that the above was a reasonable response to the customer of repeated blockages and the company was entitled to take the view that there was no further action that it should or would take at this stage. From the perspective of the company, there is no clear evidence as to the source of the inappropriate sewer contents and I find that an average customer would not expect that the company would be drawn, without clear evidence, into a dispute between two of its neighbouring customers. I therefore find that the customer has not shown that the company has fallen short of the standards that would reasonably be expected of it.

- b. Between the incidents of 27 January and 26/27 May 2018, the company and the customer reached a compromise as to the customer service issues about which the customer had raised concerns. These were finally resolved in a further payment to the customer of the sum of £100.00 together with some apologies and on 18 April 2018, the customer confirmed that she had received the further cheque payment and that she regarded the matter as closed. She also said, however, that there must not be any more incidents. I find therefore that the customer has agreed that the company has offered suitable recompense for the customer service issues referred to above, although the customer did not expect further incidents of blockage/flooding. I find that, the parties having reached an agreement at this stage, it would not be fair and reasonable to re-open that agreement, although I do consider the events that arose subsequently.

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- c. On 26 and 27 May 2018, there was a further incident and the customer again complained on 27 May 2018 of waste rising at the manhole. I note that:
- i. The customer's complaint focuses on the fact that she was unable to use her toilet and had to go to her daughter's house.
 - ii. The report made to the company on 27 May 2018 indicates that the initial information given was that the drain was "close to" flooding.
 - iii. The photographs taken by the customer bear a manuscript statement, "damage after flooding", but I am mindful that they do not specifically show a flood.
 - iv. The photographs taken by the company indicate some marks around the manhole cover that I find are suggestive of grease and/or paper but I am conscious that there is no evidence of how these marks were made or that there was in fact a flood.
- I find, on balance and having regard to the documentation submitted that it has not been proved that there was a flood.
- d. The customer also complains that the company did not attend until 29 May 2018 because her call was not prioritised and therefore she had to take steps herself. The company's records show that the customer's property was treated as one where there was a flooding risk, but flooding had not then occurred. The company says that its attendance was delayed due to other priorities caused by "extreme" rainfall across the area of its responsibility. The customer has not suggested that there was no heavy rainfall, so I find that it is probable that exceptional environmental conditions existed that, inevitably, had an effect on the operation of the sewerage. I accept that this meant that the company's ability to provide immediate services were over-stretched and the company was entitled to set its own priorities to deal first with instances of internal and external flooding. I find that the setting of priorities is indicative of the performance of good standards of service towards the company's customers as a whole and I further accept, against that background, that the company struggled to meet the hope expressed to the customer that it would be able to attend on that day. Nonetheless, I find that, overall, the company performed to the standard that would reasonably have been expected of it in exceptional weather conditions.
- e. When the company did attend at the customer's address, the company's evidence is that the sewer was flowing normally and the customer has not submitted evidence to the contrary. Although some benching was found to be damaged, I am satisfied that there is no evidence that this contributed to the previous incidents. The company has subsequently repaired damaged benching in the manhole.

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- f. I find further that (consistently with cases decided by the Courts), where a customer wishes to raise a complaint about the policies of the company giving rise to, for example, repeated escapes of sewage, these are matters that must be dealt with by OFWAT rather than the courts or WATRS. I conclude, therefore, that I cannot reach a finding as to the adequacy or otherwise of the priorities adopted by the company.
- g. In these circumstances described above, I further find that the customer is not entitled to compensation under the Guaranteed Service Standards scheme, in respect of the events of 26/27 to 29 May 2018.
3. Accordingly, while I accept that the customer is considerably distressed by the circumstances affecting her drain, it does not follow that the actions of the company have fallen below the standards that would reasonably be expected of a water company. Consequently, I find that the company has supplied its services to the customer (save in respect of those matters that have already been addressed by the company and agreed by the customer on 18 April 2018) to the standard that would reasonably be expected of it. In consequence, I find that the customer is not able to succeed in her claim for 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 23 August 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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Claire Andrews, Barrister, FCI Arb

Adjudicator

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