

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1238

Date of Decision: 13 March 2019

#### Complaint

The customer has a dispute with the company regarding the repair of his driveway which was damaged by floodwater flowing from an adjacent manhole owned by the company. The customer asserts that the manhole was blocked by a damaged pipe and that the company should have known of the damage as it had investigated the sewer network in the same road one year previously. The customer claims for the company to reinstate his driveway to the condition it was in prior to the flooding, and to pay him a proportion of his annual sewerage charges as a Guaranteed Standard of Service (GSS) payment.

#### Defence

The company asserts that it is only liable to repair the damaged driveway if it can be shown that it was negligent in its maintenance of the local sewer network, which it denies. The company further asserts that the investigation of the sewer network one year previous was on a different section of the pipe and not relevant to the problem that caused flooding to the customer's driveway. The company declines to reinstate the driveway. The company has not made any offer of settlement to the customer.

#### Findings

The company has no legal obligation to reinstate the driveway. The company states it has made a GSS payment to the customer who has yet to receive it, and I direct the company to ensure receipt. The customer has requested, and I find it reasonable, that the company provide confirmation that a problem with an illegal connection to the network has been satisfactorily addressed. Consequently, I find that the company has not failed to provide its services to the extent to be reasonably expected by the average person but shall address two minor issues.

#### Outcome

The company needs to take the following further actions:

- i) Issue a written confirmation of the closing of the illegal connection issue.
- ii) Ensure that the GSS payment has been received by the customer.

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The customer must reply by 10 April 2019 to accept or reject this decision.

## ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1238

Date of Decision: 13 March 2019

### Party Details

Customer: [ ]

Company: [ ].

### Case Outline

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

- He has experienced an ongoing dispute with the company regarding the repair and reinstatement of the driveway to his property that he claims was damaged by flooding caused by a damaged pipe belonging to the company. Despite his ongoing communications with the company and the involvement of CCWater the dispute has not been settled.
- The customer states that on 06 November 2018 he discovered flood water on his driveway and a partial collapse of the paved surface, and that after informing the company it sent a team to inspect the area. The company experts discovered a blocked manhole adjacent to the customer's property, the blockage resulting from a damaged pipe approximately 1.7 metres from the manhole. The customer asserts that the water coming from the damaged pipe and blocked manhole had caused the sand bedding of his paved driveway to be washed away and thus led to the collapsing and lifting of the driveway.
- The customer asserts that he was informed by the company flood inspection team that the damaged pipe was the responsibility of the company and that it would be quickly repaired. He further states, that after several days the pipe remained broken and despite very many phone

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calls the company still did not repair the pipe in a reasonable time. The customer claims that he was informed by a company representative that it would repair the pipe but would not reinstate his driveway because it had no responsibility to do so as it was unaware of the damaged pipe at the time of the flooding.

- The customer disputes that the company was unaware of the damaged pipe because approximately twelve months previous it had opened the same manhole when investigating another case of flooding nearby in the same road as his property.
- The customer asserts that water continued to leak from the damaged pipe while awaiting repair and that this water further undermined the paving on his driveway. The customer also states that the pipe remained unrepaired for a period of approximately five weeks until it was fixed on 08 December 2018.
- The customer also records that he was advised by a company representative that the reason for the pipe blockage was an illegal connection into it and that he should contact his solicitor to take measures against the party responsible for the connection. The customer responded by denying that it was his responsibility as the pipe belonged to the company. Additionally, he was also advised to contact his insurers regarding payment for the repairs needed to his driveway. The customer is unhappy regarding the company's attitude in regard to both these suggestions.
- On or around 06 December 2018, the customer escalated his complaint to CCWater who investigated the issues with the company on his behalf. Despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint.
- Consequently, the customer, on 20 January 2018, has referred the matter to the WATRS Scheme whereby he seeks to have the company reinstate his driveway to the same original condition it was in prior to the flooding and to refund his account with a proportion of his annual sewage charges as, he claims, was previously offered to him.

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

- The company, in its Defence document dated 15 February 2019, confirms that it was contacted by the customer on 06 November 2018 when he informed them of flooding on his driveway, and it sent a team to the property to investigate. The company further confirms that a defective pipe was the cause of the manhole blockage and resulting flooding, and that it cleared the blockage and initiated steps to repair the minor defect in the pipe.

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- The company relies on the decision handed down by the House of Lords in December 2003, in the case of *Marcic v Thames Water Utilities Ltd*, which found that a water and sewerage provider could not be held liable for the results of flooding unless it had in some way been negligent. The company asserts that as it has limited control over what is placed into sewers and, in this instance, it was a blockage caused by paper and rags snagged on a pipe defect of which it had no prior or existing knowledge of. Thus, the company denies being negligent or that the flooding was caused by any negligent act on its behalf.
- The company asserts that on 08 November 2018 it advised the customer that it had started the process to organise to repair the pipe, and on the same day advised him that he should refer the repair of his driveway to his own insurance company.
- The company refutes the customer's position that the delay in repairing the defective pipe allowed continuous water seepage which degraded the driveway further. The company states that the problem with the sewer pipe was rectified quickly.
- The company additionally confirms that it did access the manhole adjacent to the customer's property approximately twelve months earlier while inspecting a blockage, but this occurred on a separate section of the sewer downstream from the property. The company states that the inspection revealed the sewer flowing normally and as such no pipe damage was identified.
- The company confirms that an illegal connection was made to the defective pipe and that it has commenced procedures in accordance with its statutory powers to have the illegal connection removed.
- The company confirms that it advised the customer to contact his insurers regarding the reinstatement of his driveway. The company asserts that its representatives met with the customer twice, on 22 November 2018 and 18 December 2018, to discuss the flooding problem but advised him that the company was not liable to reinstate his drive as it had not been negligent in respect of the defective pipe. The company further asserts that it advised the customer he was eligible to claim for payment under the Guaranteed Standards of Service (GSS) scheme and that the applicable application forms had been sent to him but no such application has been received to date.
- The company notes that it has sent the customer a payment in the amount of £200.00 as a gesture of goodwill in recognition of the time and effort the customer made in contacting it on many occasions regarding the flooding problem. Additionally, despite not receiving an

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application for payment under the GSS scheme, an additional amount of £116.60 has been sent to the customer calculated as being 50% of his annual sewerage charges.

- Consequently, the company affirms that it has no obligation to reinstate the customer's driveway as it was not negligent regarding the defective pipe that caused the flooding. Additionally, it details payment to the customer in the total amount of £316.60, and thus declines to reinstate the customer's driveway to its condition prior to the flood incident and advises the customer to refer to his own insurance for remedy.

**The customer's comments on the company's response are that:**

- The customer responded to the company's Defence paper on 17 February 2019 and states that he has now referred the issue to his own insurers. He asserts that he has not received a refund of his sewage charges as detailed in the Defence paper, neither has he received confirmation that the illegal connection has been removed. He stresses that he requires this assurance prior to commencing the reinstatement works as he does not wish for a repeat of the flooding after he has repaired his drive.

**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 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. The dispute relates to the customer's unhappiness that the company has declined to reinstate the driveway at his property to the status it was in prior to a flooding incident with water emanating from a blocked manhole belonging to the company. The company asserts that it is not liable for reinstatement works or costs due to the water ingress not being caused by its negligence. Consequently, the customer requests that the company repairs and reinstates his driveway and pay to him a proportion of his annual sewerage charges as previously offered. The company believes the appropriate regulations set down in the Water Industry Act 1991 and the judgement handed down by the House of Lords in *Marcic v Thames Water Utilities Ltd [2003]* does not place on it the responsibility for rectification of flood damages and thus declines to so reinstate the customer's driveway.
2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. From the evidence submitted to me I am satisfied that the customer encountered flood water on his driveway on 06 November 2018, and that the water damaged the paving causing both sinking and lifting of the blocks. I am further satisfied that the customer immediately contacted the company to have them inspect the situation. The company sent a technical team who identified the water was escaping from an adjacent manhole blocked with paper and rags snagged on a nearby pipe defect. The blockage was removed by the company.
4. The company in its Defence paper affirms that two days later on 08 November 2018 it commenced its procedures to effect repairs to the defective pipe, but it wasn't until one month hence on 08 December 2018 that the defect was actually fixed.
5. The customer in his WATRS application seeks two remedies: the company to reinstate his driveway to the same condition it was in prior to the flooding; and, pay him as compensation some proportion of his annual sewerage charges. As the company has agreed to reimburse a proportion of the annual charges I believe the crux of this dispute is whether the company is responsible for the reinstatement of the driveway.
6. The customer has further asserted that the approximate five-week delay from 06 November to 08 December 2018 before the defective pipe was repaired permitted additional water to seep under his driveway and cause further deterioration to the paving block bedding layer. From the evidence submitted to me I am not satisfied that this position can be supported, and I find on a

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balance of probability that the damage to the driveway was caused by the original flooding from the blocked manhole overflowing and not from continued water seepage from the defective pipe which was some 1.7 meter's downstream from the manhole.

7. The customer has stated that he understands that the company investigated the sewer network in his road some twelve months previously when dealing with another flooding incident, and believes that it should have been aware of the damaged pipe and should have fixed it at the time. The company denies the customer's understanding and assert that the previous blockage was on a different section of the sewer downstream of the manhole and that it was not negligent as it could not have been reasonably aware of a defective pipe occurring in another section of sewer twelve months later. No supporting evidence has been submitted to me by either party to support their respective positions, and whilst I understand why the customer possibly believes that the previous remedial works may have highlighted a problem I am persuaded that had the company discovered such a defect it would have been preferential for it to proactively repair the defect rather than leave it to cause additional and potentially more expensive issues at a later date. I find, again on a balance of probability, that the company acted in a reasonable manner and were not negligent in their management of the local area sewage network.
8. The company, in its Defence document has relied on both reference to the Water Industry Act 1991 and to the judgement handed down by the House of Lords in the case of *Marcic v Thames Water Utilities Ltd [2003]*. I have taken account of both these sources and I am satisfied that the company does not have the legal obligation to reinstate the customer's driveway. The two sources confirm that only if the company has been negligent in its operations does it have the responsibility to repair damages caused by floodwater. I am satisfied on a balance of probability that the company was not aware and could not reasonably be expected to be aware of the damaged pipe which facilitated the blockage. Additionally, I am satisfied that it does not have control over what its customers allow into the sewage system. Thus, I find that the company was not negligent in its management of the local area sewerage system and hence I shall not direct that it reinstates the customer's driveway to its previous standard.
9. The second remedy claimed by the customer is that the company pay to him a proportion of his annual sewerage charges, a payment he asserts the company has previously proposed to him but not actioned. The company states in its Defence paper that it has refunded 50% of his annual sewerage charges in the sum of £116.60, and from the evidence laid before me and on a balance of probability I find this to be both reasonable and proportionate. The customer in his response dated 17 February 2019 to the company's Defence has stated that such payment has not yet been received, but as this was only two days after the date of the Defence paper I trust

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that the payment is being processed through the appropriate banking system. If the payment has not been received by the customer prior to the date of this award, then I direct that the company shall make the payment.

10. The company further asserts that it has presented the customer with the sum of £200.00 as a goodwill payment after it acknowledges that the customer spent time and effort in making many attempts to contact it for updates on the situation. The customer in his application has not requested compensation but I find anyway this to be a reasonable and proportionate payment by the company, giving a total compensation amount of £316.60. If the payment has not been received by the customer prior to the date of this award, then I direct that the company shall make the payment.
11. The customer has stated in his comments on the Defence document that he has not received confirmation from the company that the issue of the illegal connection has been rectified. I am satisfied that it is reasonable for the customer to be officially advised by the company that this problem has been satisfactorily concluded prior to him commencing the remedial works to his driveway. Thus, I direct that an authorised representative of the company provide the customer with written confirmation that the issue of the illegal connection to the sewer pipe has been finalised.
12. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person. However, there are two issues of a minor nature that the company is directed to deal with, and my decision is that the claim succeeds in part.

### **Outcome**

The company needs to take the following further actions:

- i) Issue a written confirmation that the problem of the illegal pipe connection has been satisfactorily concluded.
- ii) Ensure GSS payment in the sum of £116.60 has been received by the customer.

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## What happens next?

- 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.
  - 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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Peter R Sansom  
MSc(Law); FCI Arb; FA Arb; Member London Court of International Arbitration;  
**Adjudicator**

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