

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1393

Date of Decision: 12 June 2019

#### Complaint

The customer moved a sewer in order to build an extension after being incorrectly advised by Building Control that it was a private pipe. There are issues of standing water in the sewer. The company has requested works be carried out to rectify the issue; the customer submits that these will not work and that the entire pipe is not fit for purpose and should be relaid.

#### Defence

The customer carried out works on its sewer pipe without authority. It is reasonable for the customer to cover the cost of rectifying these works. Its survey shows that it is possible for the diverted section of pipe to be relaid with sufficient fall, and an issue of standing water would be rectified with the installation of a brick/concrete manhole. The sewer pipe has no history of blockages or flooding. The cost to relay the entire sewer pipe would be around £35,000.00.

#### Findings

The customer carried out unauthorised works on the company's sewer pipe. It is entitled to require that the pipe is put back into the same condition, or as near as possible, that it was in before the works were carried out. The company did misinterpret the survey as this showed displaced joints and standing water upstream of the works, thereby being unaffected by the customer's actions. However, there was no history of issues with the sewer. The customer is responsible for completing the works necessary to restore the sewer to its previous level of function. However, the evidence indicates that the company may have overlooked the severity of issues with the existing pipe that may need to be addressed in any event.

#### Outcome

The company needs to take the following further action:

Review the suitability of the original sewer pipe and identify if the pipework is fit for purpose. Should it identify that works are required to the original pipework, the company shall review whether this work can be completed in such a manner as to also improve the function of the diverted section of pipework.

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

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# ADJUDICATOR'S DECISION

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Date of Decision: 12 June 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer built an extension to the rear of her property. The neighbour's drain runs across the customer's garden and was located where the foundations would need to be placed. The customer was advised by Building Control that it was a private pipe and that she should obtain permission from the neighbour to make changes. After the work was completed, Building Control advised that it was the company's sewer and the company should have been contacted. The pipe has insignificant fall gradient and water is pooling inside. The company has instructed the customer to make changes, including constructing a manhole with clay and concrete. The customer has asked the company to make sure that the drain is fit for purpose, but the company has only responded that it would leaflet the neighbour's house about not putting fats down the drain. The customer had a professional quote for the requested works but his first response was that they would not work. The company's Clerk of Works stated only that the company wanted the work done.
- The customer requests that the company consider relaying the whole sewer pipe, with the customer's favoured option being for the company to provide drainage to the properties within their own land.

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

- The company states that the private sewer was transferred to it in October 2011. The customer diverted a section of sewer around her new extension. The new section of sewer is not compliant

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with the Sewers for Adoption standards, as required by the company. The customer must seek approval from the company before carrying out building works that require the diversion of a section of the company's sewer. The company has no record of such an application and it is an offence to undertake work's to the company's apparatus without consent. The company accepts that the customer was incorrectly informed by Building Control that it was a private sewer. The company accepts that the extension works have been completed and there is no opportunity to return the sewer to its previous location.

- Remedial works are required to rectify the condition of the pipe as currently laid. These works include the installation of a new manhole with a concrete chamber. The CCTV survey of the entire sewer identified no standing water in the section of pipe that was not replaced by the customer, upstream of the new pipe. The company has no evidence of previous flooding. There is very little fall over the whole length of the newly laid section of pipework which the company attributes to the additional length of the diverted portion of sewer. Although the sewer may not comply fully with the latest requirements of gradient, they can still operate to an acceptable level provided customers do not misuse them.
- The CCTV survey identified a number of displaced joints within the newly laid diverted pipework and a slight lip where the new plastic pipe connects to the existing clay pipe. This is causing standing water; a new manhole with a brick/concrete chamber would rectify this issue. The customer has requested a feasibility study; this is a survey carried out where a detailed analysis of existing pipework is required in readiness for a new development. It would not be appropriate to conduct a feasibility study in this circumstance. The company's survey has concluded that it is possible to relay the diverted section of pipe to an acceptable gradient.
- The cost to relay the entire length of the sewer would be in the region of £35,000.00. Undertaking remedial work, at the company's expense, to apparatus that has been affected by work completed without appropriate approval, would place an additional financial burden on the company in addition to its existing duty to provide and maintain public sewers. It is reasonable for the company to expect that the cost of rectifying unauthorised works should be met by the customer and the party carrying out the unauthorised works. Once the remedial work has been carried out by the customer and approved by the company, full responsibility for the sewer will transfer to the company.

### How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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.

### **How was this decision reached?**

1. The customer has lived at her property since November 1996. Before the customer moved to her property, it had been owned by the owner of Red House to the rear of the customer's garden. The previous owner had installed a drain from Red House to the sewer in the road to the front of the customer's property, running through what is now the customer's garden.
2. The customer built an extension to the rear of her property. When preparing the foundations in Spring 2018, the customer found that the drainage pipe ran across the area where the foundations were to be laid. The customer was advised by Building Control that the drain was private, and that she should speak to the neighbour about adjusting it. The customer followed the advice of Building Control when making changes to the pipework.
3. Once a Building Control officer came out to inspect the works, he advised that standing water in the pipe was not acceptable, that the drain was a public sewer owned by RST Water, and that the customer should have contacted the company about the pipework before making any changes.
4. The company notes that it is an offence, under Section 174 of the Water Industry Act 1991, to make changes to its pipework without its consent. However, the company accepts that the customer was wrongly informed by Building Control that the pipe was a private sewer pipe. I am mindful that disputes concerning allegations of criminal activity cannot be determined under WATRS; however, I am satisfied from the evidence that, whilst changes to the pipework made

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without permission may constitute a criminal offence, the company is not intending to pursue this and no criminal aspect exists in respect of this dispute.

5. At this point, it is helpful to set out the background in respect of the adoption of sewers and the transfer of responsibility for sewer pipes that took place in October 2011. In October 2011, under the Private Sewers Transfers Regulations 2011, shared sewer pipes and sewer pipes that travel over a third party's land, were transferred to the relevant sewerage undertaker for that area. The transfer affected all shared sewer pipes, irrespective of their condition. The result was that sewerage undertakers became responsible for a large number of pipes that were in an unknown state of repair, may not meet current standards, and which may not have been known to the company where they were privately installed and owned.
6. In respect of the adoption of sewers, the company has made reference to the present guidance of Sewers for Adoption. This relates to the current requirements that must be met for newly installed sewers, such as those installed as part of a new-build estate; it is not definitive for other construction works, such as rehabilitation of existing sewers.
7. In the customer's situation, the privately-owned sewer serving Red House became the responsibility and property of the company in October 2011. At this point it was transferred to the company; unlike a newly installed sewer, it was not necessary that it meet any standard in order to be eligible for transfer.
8. It is also helpful to set out my role as adjudicator. As adjudicator, I have experience in determining disputes under the Water Redress Scheme and have legal training. However, I am not a technical expert and do not conduct any site visit or investigation. My decision will be made from a full review of the evidence provided by the parties, however I am limited in directing the company to review its requirements in respect of the pipework by reference to certain factors. I am not able to direct the company to accept the pipework in its existing condition unless there is clear technical evidence that it should do so; nor am I able to direct the company to take action that exceeds the monetary limit of the scheme, namely £10,000.00.
9. The customer made changes to the company's sewer in 2018 when building the extension, these changes being made without the company's knowledge, advice or agreement. As above, it is accepted that the customer took action without contacting the company on the basis of incorrect advice provided by Building Control. However, as changes were made to the company's sewer

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pipe, without these changes being agreed and confirmed as satisfactory, the company is entitled to require the customer to 'make good' the changes in order to put the sewer back in the position it had been in prior to the works being completed. This may leave the sewer below the standard of newly built sewers; however, once the sewer is put back into its initial condition, or an alternative that is acceptable to the company, the company will be responsible for any subsequent repairs or maintenance, including considering alternative routing for the sewer should it prove unfit for purpose.

10. The evidence shows that the pipe was moved to travel around the foundations of the extension. This was completed by diverting the sewer pipe, replacing a section with plastic pipework.
11. I note that, following the works, the customer was visited by a representative from Building Control. The customer states that the representative advised that the standing water in the new pipework was not acceptable, in addition to advising that the pipe was actually the company's sewer.
12. I am therefore mindful that, whilst the company is requiring the customer to make further changes to the sewer pipework, the evidence indicates that Building Control would also have required changes before they would have signed off on the works.
13. The company has requested the customer complete various changes to the pipework, after which it will accept the diversion. I acknowledge that these changes do not comply with the company's current regulations and do not resolve all issues with the sewer pipe. However, as above, the purpose of the changes is to put the sewer pipe back into the same condition, or as close as possible, to before the changes were made. This is because, as the extension has been built, it would not be possible to merely remove the deviation and put the pipework back as it was. The works are not to improve the condition and function of the sewer pipe generally, but are required by the company to ensure that it is only taking on the obligations of repair and maintenance that were present prior to the works, and not any additional obligations created by the customer's diversion.
14. The customer disputes these requested works on the basis that there is a fundamental issue with the pipe as currently and previously laid, namely that there is insufficient fall. The customer suggests that the pipe would require re-laying to address this issue and that the works suggested by the company would not resolve the issue and are therefore unnecessary.

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15. The company has addressed various points made by the customer in its defence. In respect of the gradient of the pipe, it states that the survey, from IC5 to MH6701 (the manhole in the land of Red House to the company's sewer in Green Road), a distance of over 87 metres, found no standing water in the section of pipe upstream of the new pipework, indicating no issues with the gradient of the sewer as originally installed.
16. The customer has provided the full site report and this is also contained in the CCWater documents. I note from the map that IC5 is outside of the customer's property to the rear, in the land of Red House. The pipe then travels downstream to IC1, IC2, IC3 and IC4 before entering the sewer in Green Road. The replacement pipework commences a short distance upstream from IC1, and travels downstream a greater distance.
17. The report provides details of the survey and findings between the various sections, with the direction of flow indicated. The first section of the report is from IC1 to IC5, i.e. from around the start of the new pipework, travelling upstream until the pipe leaves the boundary of the customer's property to the rear. This section of the report shows that, in the section of new pipework, the sewer "deviates left" before changing material. There was a displaced joint 2.84 metres from IC1, over 2.5 metres after the sewer material had changed to the original vitrified clay. There was then water sitting in the sewer at 2.95 metres and 3.68 metres from IC1, with a further displaced joint found at 4.32 metres. Two more displaced joints are recorded, and water was found in the sewer at a further four points. The report indicates that there was standing water immediately upon entry at IC1, downstream from the start of the new pipework.
18. I therefore find that the report completed by [ ] Surveys indicates that there are issues with the original pipe, including displaced joints and standing water. This is in contradiction to the company's statement that there were no issues found with the gradient of the sewer as originally installed.
19. The report then surveys downstream between IC1 and IC2. Standing water was found 0.3 metres from IC1, with the sewer deviating to the left at 0.44 metres. Water was present 2.48 metres from IC1 and the sewer material changed to the original vitrified clay at 6.10 metres from IC1.
20. The report for the area from IC2 to IC3 found that there was standing water in the manhole of IC2. There was also standing water at the manhole of IC3 and IC4, before the sewer deviated down

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and to the left before joining the main sewer in the road. The total distance surveyed, between IC5 and IC4, is 52.61 metres.

21. I note that the parties appear to be in agreement that there is a lip between the clay pipework and the new plastic pipework. However, there is no reference to a lip or joint displacement on the report where the material of the pipe changes. It follows that, whilst there may be a lip where the material of the pipe changes, this is minor in nature and less significant to the operation of the sewer than the displaced joints upstream to the clay pipework.
22. In view of the findings of the report, I do not accept the company's comments that there was no standing water in the section of pipe that was not replaced, as this is clearly recorded at various sections upstream from IC1 and after the material of the pipe had changed to vitreous clay.
23. Notwithstanding this, as above, the sewer pipe does not need to meet current standards to operate at an acceptable level. It is sufficient that the pipe is functional for its current use requirements, albeit that it may be particularly susceptible to issues in the event of misuse of the sewer. The company has no record of previous flooding to the pipework. I acknowledge that this may be due to the owner of Red House dealing with blockages privately; however, where issues are not reported to the company, it is unable to take these into consideration when determining the efficacy and suitability of an existing sewer. I accept that no reports of blockages or flooding have been made to the company and that there is no alternative evidence to demonstrate that the pipe was materially unsuitable prior to the diversion works being implemented.
24. I also acknowledge that, by diverting the pipe, additional length has been added to the pipework, reducing the fall. However, it is clear from the report that there are issues with standing water in untouched areas of the pipe, with water being recorded at a greater depth than found in the new section of pipework, suggesting that the additional length of pipe has not reduced the fall to a materially significant degree and in any event it remains consistent with the fall seen elsewhere in the original pipe.
25. In respect of the displaced joints, the company states that there is a slight lip where the new plastic pipe connects to the clay pipe. As above, this is not recorded on the survey report. The company states that the lip is causing a collection of standing water. The report shows that, between IC1 and IC5, there was standing water 0.00 metres from IC1, the pipe material changed at 0.30 metres with a deviation to the left at the same point, and that there was no standing water until 2.95

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metres further upstream, close to a displaced joint at 2.84 metres. The photographs taken of each manhole show water in IC1.

26. Between IC1 and IC2, there was water 0.30 metres from the manhole and 2.48 metres from the manhole. The material of the pipe changed 6.10 metres from IC1. The next standing water is recorded at the manhole of IC2, at 6.37 metres.
27. I am satisfied that there is standing water in the new section of pipework, shown in the manhole at IC1 and along the new pipe section. The photographs show that the water level in IC1 is greater than the water level at IC2. I therefore accept that, whilst the report does show that the original pipework upstream has a series of displaced joints and standing water, the new pipework section is also affected by standing water, held between the upstream join and a point around 0.30 metres downstream from IC1.
28. I therefore accept, on the balance of probabilities, that there are additional issues on the new pipework indicating, again on the balance of probabilities, that the function of the pipe has been degraded from the customer's works.
29. The company states that its survey indicates that it is possible to re-lay the pipework such that the fall is increased. It is clear that this will not be a dramatic change in fall, however I accept that there has been some degradation in the function of the pipe due to the customer's changes, albeit that this represents a minimal change to the overall risk of blockages or flooding.
30. The company has requested the customer complete various changes to the pipework, after which it will accept full responsibility for the pipe and, should there be any issues with the sewer in the future, it will cover the full cost of any rectification. I am satisfied from the evidence that the changes to the pipework have caused additional issues and that the company is entitled to require the customer to complete works to restore the condition of the pipework to its pre-existing state.
31. Notwithstanding this, I acknowledge the customer's concerns that the pipe itself is not fit for purpose, due to the issues upstream, and her submissions that the company should replace the damaged sections of the pipework to improve the gradient and displaced joints issues. Alternatively, the customer submits that the sewer could be re-laid through land belonging to Red House, ensuring that the customer is not impacted by any issues with the sewer. I acknowledge

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that, should the pipe develop issues in the future, the customer may be disturbed by the company visiting to clear the sewer or by completing any works to the pipe.

32. I also accept, as above, that the survey of the full pipe has demonstrated some significant issues to the original clay pipework. This pipe has been the responsibility of the company since it was transferred in October 2011 and, being upstream from the customer's works, has not been affected by the customer's alterations to the sewer pipe.
33. The customer has stated that her preferred resolution would be for the company to relocate the sewer entirely, due to issues with ground levels limiting the amount of fall that could be obtained.
34. I am not persuaded that it is necessary for the sewer to be replaced entirely as no issues with its function, such as blockages or flooding, have been reported to the company. I am also mindful that the customer is responsible for bringing the deviated portion of the sewer up to an agreed standard; the customer would have been responsible for meeting Building Control requirements in any event and I am satisfied that these changes are required before the company can be obliged to take sole responsibility for the altered sewer. There is no requirement that the company proactively resolve any issues with the original sewer pipe, where they have not caused any reported issues, or that it must do so in such a manner that it also resolves issues caused by the customer diverting a lower portion of the sewer.
35. Notwithstanding this, it is clear that there are serious issues with the original pipe that may cause an issue in future. The company also appears to have misinterpreted the report as it has stated that the displaced joints were "within the newly laid diverted pipework" when the report states that the displaced joints were more than 2.5 metres upstream from the start point of the diversion. I therefore find it reasonable to direct the company to review the suitability of the original clay pipework, including the severity and impact of the displaced joints on the operation of the sewer, and identify if this pipework is fit for purpose. The company shall, as part of this review, identify if it is necessary to conduct any works on the original pipework and, if so, if this can be completed in such a manner as to improve the function of the diverted section of pipework.
36. The customer should be aware, however, that she remains responsible for ensuring that the changes made to the company's sewer at her instruction are made good. I am satisfied that the company has acted reasonably in relation to its requirements in this regard, making allowances for the customer's extension and building requirements such as the lowered land levels. The

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customer may incur additional costs to put in place remedies that she and her contractor disagree with; however, the present situation is that the customer has made alterations to the company's pipework without permission or agreement and the company is entitled to have its property returned to its original state. In the event the company's requested works are unsuccessful at improving the sewer, the company has agreed that the customer will not be liable for any further costs of rectification. I find that this represents a high standard of customer service from the company as it is clear that it is attempting to balance its right and need to have the sewer pipe reinstated, with the fact that the extension has been built, that the customer was wrongly advised initially by Building Control, and that a like-for-like reinstatement is not possible.

### **Outcome**

The company needs to take the following further action(s):

Review the suitability of the original sewer pipe and identify if the pipework is fit for purpose. Should it identify that works are required to the original pipework, the company shall review whether this work can be completed in such a manner as to also improve the function of the diverted section of pipework.

### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 July 2019 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.
- 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, consisting of a stylized, cursive 'A' followed by a long horizontal stroke that ends in a small upward tick.

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

**Adjudicator**

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