

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1563

Date of Decision: 16 October 2019

Complaint

After moving into his property in 2014, the customer discovered that his neighbours had regularly complained about the smell of raw sewage, the occurrence of leaks and the presence of rats. The company admitted that there was a problem but said it was unable to find the cause. After some time, the floor underneath the customer's staircase started to collapse and he and his wife were forced to move out of their home. The customer made further complaints, but the company only agreed to carry out the necessary repairs when the customer threatened to report the matter to the relevant authorities. The company found that a main sewer had collapsed and had caused damage to the pipe underneath the customer's stairs ("the Pipe"). The company repaired the main sewer but refused to repair the Pipe on the basis that it was not a company asset and it only served the customer's property. The customer provided evidence to show that the Pipe serves several properties and it should have been adopted by the company under the Transfer of Private Sewers Regulations 2011. However, the company's lawyer then stated that the Pipe is not connected to the main sewer and only connecting pipes were adopted under the 2011 regulations. The customer believes that this is incorrect as the surface water from his property and several neighbouring properties drains down an iron pipe attached to his wall, into the Pipe and directly into the mains system. If there is now a gap between the Pipe and the main sewer, it must have occurred when the main sewer collapsed. The company has now offered to repair and adopt the Pipe, but only on condition that the customer signs a document to say he accepts the Pipe is currently privately owned and he will not claim compensation. The customer will not sign the document because the Pipe is not privately owned and belongs to the company. The customer wants the company to accept ownership of the Pipe and liability for its repair. Furthermore, the customer wants the company to carry out the required repairs because it is legally obliged to do so, not as a gesture of goodwill. The customer also wants the company to apologise for the distress he and his wife have suffered and the unacceptable length of time it has taken to resolve this issue. The customer claims £2,500.00 in compensation for stress and inconvenience, and £1,000.00 for the various expenses incurred as a result; travel to and from temporary housing, travel to and from their holiday home, and the daily costs of not being able to reside at home, including food and fuel costs.

Defence

The company did not acquire ownership of the Pipe under the Transfer of Private Sewers Regulations 2011 (“the Legislation”) as the Pipe is not connected to the sewer. When the company investigated the cause of the sinkhole underneath the customer’s staircase, it found that there was no physical connection between the Pipe and the main sewer. The investigations also revealed that a section of the main sewer had collapsed. It diverted the sewer in April 2019 but the responsibility for the privately-owned Pipe remains with the customer. As a gesture of goodwill, it has offered to undertake the repair and lay a section of sewer to connect the Pipe to the main sewer. The new section would become part of the company-owned sewer and would be maintained by the company in the future. This offer has been made to the customer on the understanding that, as a statutory undertaker, the company has no liability for the existing private arrangements. As such, the company accepts no liability for any damage that may have been caused as a result of problems with the existing pipework. Sadly, the customer has declined this offer to date but it will remain open to the customer until 31st December 2019. The company apologises for the delay in resolving this complex private issue and urges the customer to accept the offer.

The company has not made an offer of settlement.

Findings

The ownership of the Pipe is central to this dispute; if the Pipe is owned by the company, the company must maintain it under section 94 of the Water Industry Act 1991 but, if the Pipe is privately owned, the company is not liable for its maintenance, repair or any losses consequent to the damage caused by its collapse. If the company is deemed to own the Pipe, the customer’s complaint amounts to an allegation that the company has breached its duty to maintain effectual drains under section 94 of the Water Industry Act 1991. In accordance with WATRS Rules, the dispute over ownership of the Pipe, and the customer’s complaint that the company has breached its statutory duty to maintain effectual drains, fall outside the scope of this Scheme for several reasons; the complaint concerns complex issues of law, the complaint would be better addressed to a more appropriate forum, and the complaint concerns matters over which Ofwat has powers to determine an outcome. Therefore, the customer’s request for a declaration of ownership and measures to remedy the collapsed Pipe, and the claim for compensation for stress and consequential losses, cannot be adjudicated upon through this Scheme. With regard to the customer’s request for an apology, the main issues raised concern the way the company has dealt with the alleged breach of its statutory duty to provide effectual sewers and its acceptance of ownership of the Pipe under the Transfer of Private Sewers Regulations 2011. I find that, as the Scheme Rules do not allow me to consider the company’s liability under section 94 of the Water Industry Act 1991, or to determine the ownership of the Pipe, I am also unable to consider whether the customer service the company provided when dealing with these matters fell below the reasonably expected standard.

Outcome

The company does not need to take any further action.

The customer must reply by 13 November 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 16 October 2019

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- The customer moved into [] ("the Property") in 2014. It is an old Victorian building with a sewer pipe ("the Pipe") underneath the stairs that is shared with the surrounding properties for draining surface water into the main sewer.
- After moving in, he discovered that his neighbours had been complaining to the company for many years about the smell of raw sewage, water leaks in the buildings and cellars, and the presence of rats. After a long series of complaints, the company sent jetting teams and various other experts, but the issues continued. The company admitted that there was a problem but said it was unable to find the cause.
- Eventually, the floor under his stairs started to collapse. He telephoned the company many times and numerous people came to inspect the area of damage. The company said that the staircase was in danger of collapsing and, thereafter, his 70-year-old wife was too afraid to use the staircase so they were forced to move out of their home. They have been staying with relatives, friends and in a holiday home ever since.
- He made further complaints to the company, but nothing was done until he threatened to report the matter to the relevant authorities; the company then sent lawyers and surveyors to the Property and finally agreed to carry out the necessary internal and external repairs. The Managing Director and the company's lawyers sent letters of confirmation, but when he mentioned compensation the company's attitude changed.
- During the works, the company found that a main sewer had collapsed and this had caused the Pipe to collapse. The main sewer was repaired but the company informed him that it would not repair the Pipe because it is not a company asset and only serves the Property.

- He explained to the company that the Pipe is in fact a company asset as it serves several properties and would have been adopted by the company under the Transfer of Private Sewers Regulations 2011. The company arranged a site meeting and again told him that the Pipe was not part of the 2011 adoption scheme because it only serves the Property; only pipes used by more than one property were adopted under the 2011 regulations. He invited the company's representatives onto his roof so that they could see that the Pipe is used for rainwater drainage off approximately ten different buildings, including shops. However, they said they would have to consult their lawyers before a decision could be made.
- He checked with the Citizens Advice Bureau, the [] Government's website, DEFRA, Ofwat, [] Water and a solicitor who all agree that any sewer pipe, no matter what condition it is in, that is used by more than one property and communicates with the mains system, should have automatically been adopted in 2011. He also commissioned a surveyor's report and this confirms that water from various neighbouring properties flows into the Pipe.
- The company's lawyer then said that it was irrelevant how many buildings use the Pipe because it is not connected to the company-owned sewer and only connected pipes were adopted under the Transfer of Private Sewers Regulations 2011. This is incorrect. The sewer infrastructure for the Property and the neighbouring properties has not been altered since it was constructed over 100 years ago and all the surface water from the Property and several neighbouring properties flows down an iron pipe attached to his wall, into the Pipe, and directly into the main sewer. If there is now a gap between the Pipe and the main sewer, it must have occurred when the main sewer collapsed and the earth around it moved. Furthermore, the company has always applied a surface water charge to his account and, therefore, the Pipe must have been and should be connected to the sewer.
- For two years the company has refused to take responsibility for the Pipe and has done nothing to resolve the problems; even the flooring that the company pulled up and the hole it excavated have not been reinstated.
- However, the company has now offered to repair the Pipe and adopt it thereafter as a gesture of goodwill, on the condition that he signs a document stating that the company does not currently own the Pipe and he will not claim compensation from the company. The company has said that if he refuses to sign this document, they will not complete the required work. This is wrong, unfair and unjust. It also shows extremely poor customer service; his staircase is dangerous, the company knows that he is unable to live in his property until it is repaired, the pipe is a company asset and it needs urgent repair. Therefore, he will not sign the document.
- Furthermore, he will not sign the document out of principle; the Pipe belongs to the company and he wants the company to carry out the repairs because they are legally obliged to do so, not as a gesture of goodwill.

- He wants the company to accept ownership of the Pipe and liability for its repair. Furthermore, he wants the company to carry out the required repairs as it is legally obliged to do so, not as a gesture of goodwill.
- He also wants the company to apologise for the distress this situation has caused and for the unacceptable length of time it has taken to resolve.
- He claims compensation in the amount of £2,500.00 for the stress and inconvenience caused by the company's failure to take responsibility for the Pipe and its repair, and for having to move out of his home. He also claims £1,000.00 for the various expenses incurred as a result of being unable to live at home; travel to and from temporary housing, travel to and from their holiday home, and daily costs for food and fuel.
- Having considered the defence documents presented by the company, he states that at no point has he disputed the ownership of the downpipe.

The company's response is that:

- The customer's claim relates to the disputed ownership of a downpipe and a surface water drainage pipe ("the Pipe") which he claims has caused the ground to collapse beneath an external staircase within the boundary of the Property.
- The downpipe collects surface water from the Property and channels it into the Pipe which is underground. The downpipe and the Pipe are not company-owned assets and, therefore, it is not responsible for the maintenance or repair of the Pipe.
- The customer's claim that it acquired ownership of the Pipe under the Transfer of Private Sewers Regulations 2011 ("the Legislation") is incorrect as the Pipe is privately owned and is not connected to the sewer.
- The legislation requires the transfer of private sewers, private lateral drains (which is the part of a drain outside the boundary of a customer's property), and any associated pumping stations. Customers remain responsible for the drainage serving their own property which lies inside their boundary, and water companies are responsible for drainage serving two or more premises, or where it serves a single property, but the drain lies outside of the boundary of that property. Companies are only responsible where the private drain or sewer connects directly to the public sewer.
- Under the legislation, sewers were transferred without the benefit of any design drawings or location plans. Due to this, the statutory undertakers are only able to deal with issues when they arise.
- The customer reported a sinkhole underneath his external staircase and when it investigated it found that the downpipe was discharging surface water into the Pipe, which runs for two and a half metres underground, and has no physical connection to the sewer. Because there is no

physical connection, surface water drops into a private gully approximately twelve inches below the Pipe, and also into the ground surrounding the gully. This inevitably results in water ingress to the surrounding area.

- The investigations also revealed that a section of main sewer had collapsed and it believes that surface water collected from the downpipe into the Pipe has been entering the void underneath the Property for some time and has contributed to the collapse of the sewer. It undertook work to divert the sewer in April 2019 but, as there is no connection between the sewer and the Pipe, the Pipe is a private arrangement and was not transferred under the Legislation. Therefore, the responsibility of it remains with the customer.
- The void beneath the Property needs to be filled with cement, but it is unable to carry out this work while the Pipe continues to discharge surface water into the void as this would undermine the newly laid concrete. In order to reinstate the void, it has advised the customer to make alterations to his surface water arrangements, to ensure no surface water drains into the ground under the Property.
- It has assisted the customer in trying to resolve this matter. It has visited the area on many occasions to monitor the situation and help the customer and his neighbours; it has found and cleared blockages, undertaken visual inspections, assisted with cleaning ups, undertaking CCTV checks and providing general advice.
- As a gesture of goodwill, and to bring this ongoing matter to a final resolution, it has offered to lay a section of sewer to connect the Pipe to the main sewer. The new section would become part of the sewer and would be maintained by the company in the future. However, the downpipe would remain private. This offer has been made to the customer on the clear understanding that, as a statutory undertaker, it has no liability for the existing pipework. As such, it accepts no liability for any damage that may have been caused as a result of the existing private pipework arrangements. Sadly, the customer has declined this offer to date but it will remain open to the customer until 31st December 2019.
- It apologises for the delay caused by the company in trying to resolve this complex private issue and urges the customer to accept the offer.

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.

How was this decision reached?

1. Having considered the facts of the case, I find that in order to resolve this dispute I would need to determine the ownership of the Pipe under the Transfer of Private Sewers Regulations 2011 and, if I found that the company owned the Pipe, an alleged breach of the company's statutory duty to maintain its sewers to ensure that the customer's property was effectually drained.
2. Section 94 of the Water Industry Act 1991 outlines the company's duty to maintain its sewers and states:

“(1) It shall be the duty of every sewerage undertaker—

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—

(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and

(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

3. Having carefully reviewed the evidence and in view of the fact that the customer’s complaint raises issues relating to the company’s obligations under section 94 of the Water Industry Act 1991 and the Transfer of Private Sewers Regulations 2011, I consulted the WATRS Scheme Rules to establish whether the complaint was within scope of this Scheme.

4. Rule 3.4 of the Scheme Rules states:

“WATRS may reject all or part of an application to the Scheme where it considers that:-

3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute; or

3.4.2 the application should have been made against an alternative water and/or sewerage company; or

3.4.3 in exceptional circumstances, the dispute raises a complicated issue of law.”

5. Rule 3.5 of the Scheme Rules states:

“The Scheme cannot be used to adjudicate disputes which fall into one or more of the following categories:

- disputes concerning the Competition Acts 1998 and 2002 as amended;
- regulatory enforcement cases;
- bulk supply determinations;
- disputes between undertakers, between licensees and between undertakers and licensees;
- water supply licensing disputes;
- whistle blowing;
- any matters over which Ofwat has powers to determine an outcome;
- disputes relating to eligibility to transfer to a statutory licensee;
- water quality legal standards;
- enforcement cases under the Environmental Protection Act 1990 and the Environmental Act 1995 as amended;
- disputes that are subject to existing court action or on which a court has ruled unless the court’s decision has been set aside;

- disputes that are the subject of an existing or previous valid application under the scheme;
- the handling of CCWater and Ofwat complaints;
- complaints which are being or have been investigated by a statutory or regulatory agency or agencies including the Drinking Water Inspectorate and/or the Environmental Agency in respect of the breach of a statutory or regulatory requirement unless a WATRS Notification or Option Letter has been issued in respect of the complaint;
- resale and third party complaints;
- disputes relating to the fairness of contract terms and/or commercial practices;
- disputes concerning allegations of fraudulent or criminal activity; and
- any dispute or disputes that are considered by WATRS to be frivolous and/or vexatious.”

6. I find that the complaint raised by the customer concerning the ownership of the Pipe, and the company’s alleged breach of section 94 of the Water Industry Act 1991, falls beyond the scope of this scheme for several reasons, which I shall now outline.

7. Having considered the facts of the case, I find that the complaint raised by the customer concerns complex legal issues, specifically the company’s compliance to the Transfer of Private Sewers Regulations 2011 and section 94 of the Water Industry Act 1991 above. In view of this, I find that Rule 3.4.3 of the Scheme Rules prevents me from adjudicating on these issues.

8. Furthermore, in accordance with section 18 of the Water Industry Act 1991, Ofwat has the jurisdiction to take enforcement action against water companies that breach their section 94 statutory duty to maintain sewers. Therefore, I find that the complaint would be better addressed to Ofwat, which I consider to be “a more appropriate forum”, as per Rule 3.4.1.

9. In addition to this, Rule 3.5 specifically renders any matters over which Ofwat has powers to determine an outcome outside the scope of this scheme. As above, section 94 (3)(b) of the Water Industry Act 1991 delegates enforcement powers to Ofwat and, therefore, as an adjudicator operating under the rules of this Scheme, I have no jurisdiction to consider an alleged breach of section 94.

10. For the reasons I have outlined, and in accordance with the Scheme Rules, I find that the customer’s claim that the company has breached the Transfer of Private Sewers Regulations 2011 and section 94 of the Water Industry Act 1991, and his request for the company to carry out repair works on the Pipe, fall outside the scope of this Scheme and, therefore, I shall not

adjudicate on these matters. I appreciate the frustration the customer will likely feel at this, but I do not have the jurisdiction to consider or direct upon these matters.

11. The customer also asks for an apology from the company on the basis that it has taken an unacceptable amount of time to remedy this issue and this has caused him and his wife considerable stress. Having considered the evidence, whilst I fully accept that this situation must be extremely stressful, I find this complaint intrinsically linked to the company's alleged breach of section 94 of the Water Industry Act 1991 and the Transfer of Private Sewers Regulations 2011. Therefore, whilst I fully appreciate the disappointment the customer will feel, I also find this element of the customer's complaint out of scope.

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 13 November 2019 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.

KS Wilks

Katharine Wilks

Adjudicator