

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1596

Date of Decision: 17 December 2019

Complaint

The customer's complaint is that due to bad engineering and other issues including added sewer connections, the sewer system near his home is no longer fit for purpose as it regularly causes him to experience blockages and drainage issues. Further, his neighbour's unauthorised connection to the sewer pipe that runs across his property boundary causes backflow and discharge into his garden. The customer requests that the company replace the sewer and remove the pipe running across his property boundary.

Defence

The company asserts it has thoroughly investigated all the issues that the customer has been complaining about since 2002. It denies there are any defects or structural issues with its sewer and asserts it is fully functioning. It installed a Non Return Valve at the customer's property, as a gesture, which it annually maintains. It asserts it has no plans to replace the sewer on the route suggested and it denies liability for removing the sewer pipe across the customer's boundary as the relevant permissions would have been obtained at the time the neighbouring property was built. The company made no offer of settlement.

Findings

The customer has experienced blockages and drainage issues for a number of years and the company has taken measures to minimise the risk of further issues including installing a Non Return Valve (NRV) and setting up an annual maintenance plan of the NRV, a six-monthly maintenance plan to camera the sewers and it has also cleared tree roots. Whilst the remedies requested by the customer fall outside of the scope of WATRS, I accept from the evidence, that the company has not done enough to minimise the risks or investigate the issue causing the discharge into the customer's garden. Therefore I direct the company line the main sewer and investigate further the cause of this issue with a view to finding a solution.

Outcome

The company shall, as well as the measures already agreed (as set out at paragraph 8), line the main sewer and investigate further the cause of the backflow/discharge into the customer's garden with a view to finding a solution.

The customer must reply by 17 January 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1596

Date of Decision: 17 December 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- He has been complaining to the company regarding the sewer arrangements and lack of capacity at this property for many years.
- There is constant loading and potential abuse of the sewer network that results in frequent blockages that subsequently "seriously" flood his property.
- A NRV was fitted to help alleviate the issue, which occasionally has silt build up and can create issues.
- In addition, a neighbouring property is connected to the sewer and the pipe passes through his property. This causes his garden to be flooded with rainwater and/or foul sewer water. He did not give his permission for the pipe to pass through his property. This pipework has prevented him from extending his own property. He requests that this pipework is removed and the hole filled in.
- Another cause of blockages is surface water ingress into the foul water sewer and new housing developments have also been raised as an issue to an already over-stretched sewer.
- The company's staff members are unpleasant and unprofessional.
- The customer details the observations made by one of the company's technical operative (Mr A. Jones) who visited his property (without notice) on 15 August 2019. His observations made include:

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- 1) That the main sewer (installed in 1907) is only 4 inches. The customer asserts that he believes this size pipe is inadequate to cope with all the new connections from new developments.
- 2) That there was root ingress on Oak Lane/Beech Terrace and stated the roots needed cutting and the pipe lining. The customer asserts the company's B Smith made similar observations when he visited on 27 March 2019 and spoke of the company lining the main sewer however, the company then changed its mind.
- 3) That there was no fall from his manhole because the main sewer is higher. The customer asserts this has meant that in the past he has had discharge of foul sewage from the main sewer causing substantial problems and damage.
- 4) His NRV was broken. The customer asserts the operative "put it right" but this shows that a regular maintenance programme is needed as the manhole near his front door was overflowing with foul sewage on 30 July 2019.
- 5) The 4-inch pipe leads into a 6 inch pipe. The customer asserts the 4 inch pipe suffers from back-flow because of over-intensification and surface water draining into it, just before it meets the 6 inch cast-iron pipe with its two 90 degree bends; an obvious problem which makes back flow even more likely.
- 6) The camera survey showed no problems. The customer asserts that the camera survey is intended to be used to detect obstructions. It is not intended to be used to justify bad design; just because there is no obstruction visible at any one time, this does not mean there is no engineering problem.
- 7) The combined system in Beech Terrace restricts flow and causes back flow. The customer asserts that again, bad engineering and misuse of a system installed in 1907. It is fact that there is back flow and it is a fact that the present arrangement is the main contributor to it. This can only be resolved by appropriate engineering measures. This "cannot be up to customers to sort out".
- 8) He should flush toilet twice to increase flow as he has a "slow moving" drain. The customer asserts this is due to the fact that the main sewer pipe is too high.
- 9) Obstruction found 4 metres inside pipe. This seems to be as a result of constantly impeded flow, especially during bad weather. Not his fault that all too often he cannot discharge properly because of back flow and interference through surface water. He has been informed that there is a substantial amount of silting in the main sewer, it is therefore logical that silt and other debris might become lodged near the NRV and impede its efficient function. This supports his argument that regular maintenance is needed.

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- 10) The neighbouring property's (Applegarth) pipe goes underneath the fence, underneath his back garden, runs along the edge of the property and exits left past his neighbour's shed. The customer asserts this makes this a public sewer that the company is responsible for. The owner of Applegarth has, without permission, made a hole in that pipe for the surface water from his shed. When he has discharge problems, not only does the back flow come out of that unauthorised hole, but also the sewage and surface water from Applegarth cannot go anywhere and finishes up in his back garden (making it unusable). The company is responsible to resolve this.
- The customer requests that the company provide minutes of a meeting that took place at his home in 2014.
- The customer requests that the company replace the sewer from the pumping station at [], including the [] development directly to the main out-going sewer from [].
- The customer also requests that the connection from the neighbouring property is removed by the company and the hole filled in.

The company's response is that:

- The background to this case is that the customer has been complaining to it (sixty-five times) since August 2002 about issues relating to the sewer network.
- The customer believes the sewer network is overloaded and does not have capacity to deal with heavy rainfall, however, it does not have any evidence to suggest that this sewer lacks capacity.
- The customer's emails/letters have been through its complaints process and have been fully reviewed. The concerns that the customer has raised have been answered and it is unable to add anything further to its previous responses.
- It confirms that the customer has contacted it 13 times in relation to operational issues between August 2002 and November 2019. Having investigated the matter on a number of occasions, it has not found any evidence to suggest that there is not enough capacity in this sewer.
- It has attended the customer's property each time the customer has reported an issue and it has not found evidence of flooding at the property. It has carried out an investigation to ensure the sewer is working as it should be and checked for overloading and infiltration. It found some roots in the sewer and these were cleared in May 2019. The sewer is not overloaded and there are no structural issues with its sewers in this area. Its sewer is in full working order. If it finds that the cause of a blockage to be unsuitable items, such as nappies or wipes, it will send letters out to let customers know what is and is not suitable to put down toilets or drains.

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- It installed an NRV on 11 August 2003 at the customer's request, even though it did not believe it would add any operational benefit to the property. It advised at the time that if it installed the NRV, it would be for the customer to maintain. Each time the customer has reported an issue, it has found the NRV to be operating as it should be. As a gesture of goodwill, during a meeting in March 2019 between it and the customer, it agreed to set up an annual maintenance plan to maintain the NRV to prevent any silt building up.
- It confirms that the sewer connection from the neighbour's property does cross the customer's property boundary. It often sees this layout. At the time the sewer was laid, the local council, or the household that this serves, was responsible for it. It only became responsible for that sewer following the 2011 transfer. The sewer was laid at the time the property was built by the developer. It asserts that they would/should have sought the correct permissions from the local council and the connection would/should have been inspected by them at that time. It has completed an onsite investigation which shows there are no issues with this connection and the household that this serves has not reported any flooding issues with the sewer. Should an operational issue arise that causes the customer's garden to be flooded with rain water/sewage, the customer should contact it so that it can investigate.
- In relation to the customer's claim that the pipework for the neighbour's connection has prevented him from extending his own property, if the customer wants to extend the Property but there is a sewer within three metres of the proposed works, he will need its consent prior to the works being carried out. This is to protect the sewer and the building from possible damage, and to ensure that access to the sewer is not adversely affected. It has not been consulted on such an application, therefore has no evidence to suggest that the sewer has prevented the customer extending the Property, as alleged. It will not be removing the sewer, which is lawfully laid. Furthermore, the household that this serves has not reported any flooding issues with the sewer.
- It confirms that there is a surface water connection into the foul system. It has been connected into the drains for many years and no problems have been reported. It is not unusual for a sewer system to operate in this way. Having checked its records, the sewer is mapped as a foul sewer but surface water does connect into it.
- In relation to the new developments, it has advised the customer that is not a statutory consultee for planning matters. Accordingly, it is not consulted/does not view every planning application across in []. Where a new development is proposed and consultation takes place, it will view the available mapping and sewer record information and use its experience to assess the situation and comment appropriately to the planning authority.

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- In relation to the customer's claim that its staff are: unpleasant and unprofessional, it regrets that the customer feels this way. The customer has been contacting it about the same issues since 2002, and despite the customer's concerns being answered on a number of occasions, its staff remain helpful and professional. It has responded to and investigated any issues that the customer has reported. It had to issue the customer with its "Customer Conduct Policy" in response to the customer's language and approach to its staff.
- It submits the minutes of a meeting held at the customer's home in 2014, as sought.
- In relation to the customer's request for a new sewer to be laid from the pumping station at the bottom of [] direct to the main outgoing sewer from [], based on all investigations to date, it is unaware of any problems that would require the laying of a new sewer in the location suggested. Accordingly, it does not have any current plans to lay a new sewer pipe on the route suggested.

Reply

- The customer has provided a detailed reply in which he disputes aspect of the company's Defence and reiterates and expands upon the main aspect of his claim.

How is a WATRS decision reached?

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

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

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How was this decision reached?

1. The dispute relates to issues the customer says he has encountered associated with the sewer including blockages, issues with drainage and discharge into his garden. The customer has put forward a number of possible causes of the problems primarily that aspects with the design of the sewer including narrow (4 inch) pipes, the mains being on higher land than his manhole (meaning there is no fall), 90 degree bends in the sewer pipe causing backflow and also a surface water connection into the foul system (the sewer is a combined sewer) which during periods of heavy rainfall, increases the load. The customer contends that these design flaws and an increased capacity from new connections (from new developments) is the root cause of the problems he is encountering. The customer requests that the company replace the sewer (from the pumping station at [], including the [] development directly to the main out-going sewer from []). Furthermore, the customer requests that the company remove the connection running from the neighbouring property across his land as he contends this is contributing to the issues.
2. At this time, I remind the parties that WATRS is designed to be a quick and inexpensive method of resolving disputes between companies and their customers. I am only able to consider, on a balance of the evidence provided, if the company has provided its services to the customer to the standard to be reasonably expected by the average person. Further, I confirm that my decision is limited to considering the claims raised in the Application and the Defence only; whilst I have considered the customer's Reply in full, in accordance with Scheme Rule 5.4.3, I have not taken into account any new matters raised.
3. I find that under the Water Industry Act 1991 ('the Act'), the company is obliged to repair and maintain its sewer system, however, I am also mindful that the courts have on many occasions determined that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for water and sewerage companies to adopt rather than a proactive or pre-emptive approach. Furthermore, whilst it must adequately repair defects to its sewers, I am mindful that there is no duty on the company to completely eradicate the risk of blockages or flooding by taking whatever measures may be deemed necessary.
4. The parties agree that the customer has contacted the company on approximately sixty-five occasions since 2002; the company confirms thirteen of these occasions concern

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operational issues. However, the company contends that on all of these occasions no defects or damage to its assets have been found. The company has provided, at Appendix 1, a summary of its visits made concerning the operational issues mentioned above. It is clear that the first four incidents were either sewer flooding or blockages but, due to the lapse of time, no further notes have been provided. Some details are given for the next nine incidents but are brief but indicate blockages were found on 26 December 2016, 12 April 2018, 16 November 2018 and that the company “jetted” to clear these blockages and carried out jetting on a number of other occasions. Therefore, I consider this evidence supports the customer’s account given of his pipes regularly blocking as well as drainage issues experienced over the past seventeen years. I acknowledge that as well as the company responding to the incidents reported by jetting the customer’s pipes to clear the blockages and restore the flow, it fitted a NRV in 11 August 2003, as requested by the customer, in order to prevent raw sewage outflow. I can also see that during a meeting between the parties on 27 March 2019, it also agreed to set up an annual maintenance plan to maintain the NRV to prevent any silt building up. The company also confirms that it attended on 3 May 2019 to clear tree roots that had been found in the sewer. I note this visit is not included in Appendix 1, but it is clear from the CCWater documentation that the company took this action following the CCTV survey carried out by its representative B Smith, in March 2019 which showed root ingress was present in the sewer.

5. The company contends however that when it has checked for overloading and infiltration as part of its investigations (including CCTV surveys), it has not found evidence of an overloaded sewer system and also there are no structural issues with its sewers in this area. Whilst it has reiterated this position in its responses to the customer including the letter provided at Appendix 3, I am mindful that it has not submitted any substantive evidence to support its stated position (for example the results of CCTV surveys or contemporaneous job notes). Moreover, it has offered little explanation for the cause of the habitual blockages the customer has experienced. In its Defence the company has mentioned that, if it finds that the cause of a blockage to be unsuitable items, such as nappies or wipes, it will send letters out to let customers know what is and is not suitable to put down toilets or drains. Whilst I accept that blockages caused by items or obstructions found in the sewer system as a result of third parties placing them there, is a common and plausible reason for blockages (and something outside of the company’s control), in the customer’s case, the company has not directly said this is the cause of the issues being encountered nor is there evidence to suggest this.

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6. Based on the evidence, in particular the regular blockages and the customer's detailed submissions and explanations, I am inclined to accept his suggestion that there are a number of contributory factors and causes of the problems including: narrow (4 inch) pipes (leading to a 6 inch pipe further along the sewer line towards the railway embankment), the mains being on higher land than his manhole (meaning there is no fall); 90 degree bends in the sewer pipe causing backflow; a surface water connection into the foul system (the sewer is a combined sewer) and; the increased capacity from new connections (from new developments). Based on the customer's accounts given of the company's representatives who attended on 27 March 2019 and in August 2019 to investigate the issue, it seems these particular individuals were in broad agreement with the customer on the above points, although in its response at Appendix 3, the company states that its previous investigations found that the 90-degree bed down to the railway embankment does not cause "a detrimental restriction to the flow the whole sewer". Therefore, whilst I accept that there is no evidence of a damaged or defective sewer as per the company's assertion, due to a combination of weaknesses in the design of the sewer, not helped by the foul water connection as well as increased capacity due to a growing number of connections, I accept they are the likely causes of the blockage and drainage problems being encountered by the customer.
7. However, I am mindful that the remedy requested for the company to replace the sewer along the route suggested, would entail large scale improvement work, the cost of which would likely exceed the maximum limit of an award under this Scheme (£10,000.00) and so, for this reason, this remedy falls outside the scope of WATRS. Moreover, as above, whilst the company is required to repair and maintain its assets, legally it is not required to completely eradicate the risk of blockages or flooding by taking whatever measures may be deemed necessary although it must mitigate the risk. I am also mindful that the company is not solely responsible for added connections to the sewer network (as a result of new developments) as such decisions also involve third party agencies including the local planning authority, therefore, the cause of any increased capacity is, outside of the company's control. However, as above, where there are blockages and issues caused by inadequacies in the sewer system, it is obliged take measures to minimise these happening.
8. In the customer's case, as mentioned above, it is clear that the company has: installed a NRV at the customer's property; set up an annual maintenance plan to maintain the NRV;

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set up a six-monthly maintenance plan to camera the sewers and; agreed to investigate any operational issues experienced (although I consider the company is obliged to investigate any operational issues reported, regardless). However, based on the evidence, I am not satisfied the company has taken sufficient steps to reduce the risk of further blockages and drainage issues being caused. This is evidence of the company failing to provide its services to a reasonable expected standard. As I accept tree root ingress has been an issue in the past, I find it reasonable to direct that the company line the main sewer to prevent root ingress in order to reduce the risk of blockages. Whilst it is clear that following on from the parties' meeting of 27 March 2019, the company rejected the customer's request for this action (despite, according to customer's minutes of meeting included in the CCWater documentation, the company's B Jones indicating this work would be something the company could carry out during the meeting), I am satisfied this work is justified in the circumstances.

9. The customer submits that his neighbour has, without permission, made a hole in the sewer pipe (connecting Applegarth to the sewer) for the surface water from his shed to flow into the sewer. He complains that as this pipe crosses his property, when there are discharge problems, not only does the back flow come out of that unauthorised hole, but it ends up in his garden, causing a health hazard. The company confirms the pipe from Applegarth crosses the boundary of the customer's property but explains this is a common layout and it only became responsible for it in 2011 when ownership transferred. The company submits that the sewer was laid at the time the property was built by the developer who would have sought the correct permissions from the local council and the connection would have been inspected by them at that time. Further, it asserts that it has completed an onsite investigation which shows there are no issues with this connection and the household that this serves has not reported any flooding issues with the sewer. I accept that the company is responsible for this sewer connection (since the 2011 transfer) that runs across the customer's boundary. However, on balance I accept the company's assertion that the relevant permissions for this connection would have been granted at the time the neighbouring property was built and there is no evidence to establish it has been unlawfully laid. I also find that the issue of the connection the customer says has been added by his neighbour since 2011 (for surface water to run into the sewer pipe), falls outside the scope of WATRS as it concerns the sewer arrangement of a third party (his neighbour) and therefore this matter is between the third party and the company. For the above reasons, I find there is no basis to uphold to the customer's request for the company to remove the pipe.

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Furthermore, whilst I acknowledge the customer's assertion that the pipe is preventing him from extending his property, as there is no evidence of the pipe having been paid unlawfully, this issue would not make the company liable to remove the pipe. I acknowledge that the company has confirmed that the customer would need to request consent (from it) if the proposed works are within three metres of a sewer.

10. I accept however that the company would be responsible for any discharge from the sewer arrangement that flows into the customer's garden. The customer asserts this (last) happened on 30 July 2019 when "half of our back garden was in standing water which was coming out of that hole". I acknowledge that a "jetvan" visited the customer's property on 31 July 2019 and company's note for this date, as supplied at Appendix 1 states: *"Attended site and spoke with the customer who explained that yesterday he had RTU issues as well as the sinks not draining. I checked the inspection chamber in the garden and camera surveyed down to the NRV and found no issues. NRV is working as it should be. The sewer was clear and flowing as it should"*. In its Defence the company reiterates that the sewer and NRV were found to be clear and working as they should. However, the company has not confirmed whether or not it found the customer's garden to be flooded or if it has ruled out the sewer arrangement described being the cause. Having reviewed all of the evidence, on balance I am not satisfied that the company has shown it has thoroughly investigated the cause of discharges causing "swampiness" in the customer's garden. On balance I find this constitutes evidence of the company failing to provide its services to a reasonably expected standard. Therefore, in light of the public sewer pipe running through the customer's property boundary, I find it reasonable to direct that the company continue to investigate this issue with a view to identifying the cause/finding a solution.

11. The customer asserts that the company's staff are unpleasant and unprofessional. It is clear from the parties' respective submissions that due to the ongoing issues being experienced by the customer, he has needed to continue communicating with the company (or via CCWater on his behalf) which I acknowledge has led to relations between the parties becoming strained. However, I have not been provided with sufficient evidence or details of specific incidents which would enable me to conclude that the standard the customer service provided by the company's staff has been so poor or unprofessional that it constitutes evidence of the company failing to provide its services to a reasonably expected standard. Therefore, this aspect of the claim cannot succeed.

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12. Whilst I am unable to enable the customer's requests for the company to replace the sewer along route requested or remove the sewer connection that crosses his boundary for the reasons stated above, in accordance with Rule 4.3.3, I direct that the company line the main sewer and investigate further the cause of the backflow/discharge into the customer's garden with a view to finding a solution.

Outcome

The company shall, as well as the measures already agreed (as set out at paragraph 8), line the main sewer and investigate further the cause of the backflow/discharge into the customer's garden with a view to finding a solution.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 17 January 2020 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.



A. Jennings-Mitchell (Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb)

Adjudicator

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