

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X031

Date of Final Decision: 19 July 2022

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer says the company failed to repair its sewer upon her complaints, resulting in her suffering from rats over many years and incurring costs resolving herself. She seeks that the company pay her £4030.00 in compensation for costs incurred, distress and inconvenience.

Response

The company says it inspected its sewers upon contact from the customer and found no issues. The customer then engaged a third party to carry out works before allowing it chance to inspect and take any action. It denies the claim.

Findings

The evidence shows the company provided its services to the standard to be reasonably expected.

Outcome

The company does not need to take any further action.

The customer must reply by 16 August 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- She has suffered rats accessing her home since 2009. She spent time and costs seeking to resolve this. She also asked the company to check its sewers to see if the rats were gaining access that way; however, the company repeatedly reported no issues with its sewers.
- In 2021 she asked a private contractor to investigate. They found a crude repair to the sewer near her home and believed rats gained access this way. There was simply a brick covering a hole in the sewer but with space around it for rats to enter. The contractor removed the brick and sealed the hole.
- She then complained to the company as it had failed to maintain its sewer or identify the issue upon her complaints. She sought reimbursement of her costs and compensation for distress, which it refused.
- Initially the company was satisfied with the third party repair; however, it later claimed this was inadequate and decided to line the sewer itself. At this time it identified further defects for repair.
- The company also finally accepted it had identified the crude repair in 2016; however, it maintained there was no hole or access for rats to gain entry. She considers the company should have remedied the repair sooner in any event.
- She wants information related to a neighbour's build over agreement in 2011, but the company has said it does not hold information dating back that far and cannot share information about works at third party properties.
- She claims compensation in the sum of £4030.00 to reimburse the costs she has incurred, and for distress and inconvenience.
- In comments on the company's response, she details inaccuracies in the company's response and maintains her claim.

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- In comments on a preliminary decision the customer:
 - disagrees with the adjudicator's assessment of the evidence;
 - says it is unreasonable to expect her to have known to complain to the company before allowing her contractor to repair the hole;
 - says without interventions of other parties the company would not have taken action to maintain the sewer; and
 - asks how to complain to Ofwat.

The company's response is that:

- It has no record of any build over agreement being in place in the area.
- Upon each contact from the customer it inspected its sewers and found no issues. It had seen the crude repair on its first inspection, but there was no hole or gap where rats could gain entry.
- In August 2021 the customer complained of rats again and said her private contractor had carried out works to its sewer. It reviewed the works and found them adequate, but that they would not suffice in the long term. It therefore decided to line the sewer.
- The private contractor completed works without first allowing it to inspect and assess any issues. They should not have carried out works to its assets without permission and it is not liable to cover their costs.
- It offered the customer £150.00 as a goodwill gesture without accepting liability.
- It denies the 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.

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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 company's general obligations to maintain its sewers under the Water Industry Act 1991 are overseen by Ofwat and I therefore cannot comment upon such. However, it is reasonable to expect the company to investigate any reports of defects to its sewers and to take appropriate action upon finding any issue. I can consider the dispute in this respect.
2. It is not in dispute that in 2016, following concerns raised by the customer, the company inspected its sewer. The company says it saw the crude repair, namely a brick blocking a hole, but that there was no space for rat ingress. It is not in dispute that the company reported back to the customer that there were no issues with its sewer.
3. In the absence of job records or photos taken at the time, it is not possible for me to say whether or not there was any gap around the crude repair at that time where rats could gain entry. I can see no reason why the company would report finding no issues if indeed there were any. And, as to whether the company should have resolved the crude repair, I consider that was a matter of judgment for the company, in the absence of any evidence it was causing any problems.
4. I must reach findings on a balance of probabilities. There is no evidence to show the gap existed in 2016 and there is some evidence that the company found no issues. Therefore I cannot say, on balance, there was a gap in 2016.
5. I accept the customer was suffering from rats entering her property and I acknowledge the distress time and costs she incurred in seeking to resolve this. However, it is not possible to say, even on balance, that rats were entering via the crude repair and not through some other means. The evidence therefore does not show the company failed to provide its services to the standard to be reasonably expected in how it responded to the customer's concerns.

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6. The customer has provided reports and photos from her third party contractor produced in 2021. These report on the crude repair, which was said to allow rats to gain entry and that the contractor then resolved. However, on review of the evidence, I cannot clearly see the crude repair in place and with space for entry before any works were undertaken by the contractor. Further and in any event, if there was any space for entry at that time, it is not possible to say how long this space was there and, in addition, I am conscious that the customer did not report to the company and allow it to take action itself if needed.
7. I cannot say, even on the balance of probabilities, that there was a gap around the crude repair at an earlier date that the company should have seen and resolved, as there is a lack of evidence that shows that to be the case.
8. I also cannot say that upon the gap being found by a third party, the company then failed to take action, as it was not told of the issue in order for it to carry out any works at the time.
9. Therefore the evidence does not show the company failed to provide its services to the standard to be reasonably expected in regards to any gaps in its sewer as identified in 2021.
10. I note the company reviewed the third party work and decided to line its sewer. I do not consider this evidences any failing. And, if in doing so the company identified further defects to resolve, this again does not evidence a failing. It is only reasonable to expect the company to act upon reported concerns or issues identified during an inspection. I find it is not reasonable to expect the company to proactively monitor every section of its sewers at all times, as this is not practicable. And, any complaint in such regard would be for Ofwat.
11. In summary, I have not found any failing by the company and so the customer's claim is unable to succeed. I appreciate the customer will be disappointed with this outcome. However, I trust it is clear that there is not enough evidence for me to find on balance that a gap was present that the company saw and yet did not act upon.
12. For the sake of completeness, I note the company does not have to provide data to the customer simply because she asks for it. If the customer believes she has a right to see such data she may wish to raise a complaint to the Information Commissioner's Office which is the appropriate body to consider such disputes.

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13. In response to comments on a preliminary decision, I acknowledge the customer disagrees with my weighing up of the evidence however my findings remain the same. I have not criticized the customer for not reporting her contractor's findings to the company but I do consider that the company had no opportunity to act upon those findings before her contractor did. As already explained, it is not reasonable to expect the company to proactively maintain its sewers except insofar as Ofwat has oversight of this. However, it is not within my remit to advise the customer on how to contact Ofwat.

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 16 August 2022 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.



J Mensa-Bonsu LLB (Hons) PgDL (BVC)
Adjudicator

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