A drain on your resources

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Establishing the difference between a watercourse or a public sewer is key to knowing who is responsible for it

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Watercourses come in all shapes and sizes, but they all place responsibilities on owners. Whole books have been written about these responsibilities, and the Environment Agency (EA) has also published a useful introduction to the topic. Public sewers, on the other hand, are owned by the country?s water and sewerage companies. As owners, they have a range of statutory responsibilities for the upkeep and maintenance of the network, as well as powers to carry out these responsibilities.

However, the problem is that it is not always possible to distinguish immediately between watercourses and public sewers, particularly where the channel in question has been culverted and flows through a concrete or brick-built structure. One might expect that maps would indicate who has responsibility for which assets. Yet this is not uniformly the case. The EA does maintain a record of main rivers and water and sewerage companies maintain a public sewer map, but many watercourses appear on neither.

Furthermore, the sewer map that water and sewerage companies are required by law to maintain is not a definitive indication of ownership, and it is not uncommon for errors to occur. Not all public sewers are mapped and not everything mapped as a public sewer will turn out to be a sewer as a matter of law ? what is mapped as a public sewer can sometimes be a watercourse. Where that happens, it will be owned by the relevant landowner, who is sometimes referred to as the riparian owner.

The wrong categorisation of assets can be devastating for homeowners. They will most likely have carried out a water and drainage search as part of the conveyancing process, and one of the questions in the search seeks to establish whether there are public sewers on the property. It can be that, years after purchase, what was thought to be a sewer running under or near the property turns out to be a watercourse, and the unsuspecting homeowner is then faced with the responsibilities of the riparian owner. This can be particularly unwelcome if repairs are needed.

Some years ago, trade body Water UK realised that there was no common understanding of how water and sewerage companies should respond when they discover that an asset identified on the sewer map as a sewer may actually be a watercourse. Leaving the asset mapped as a sewer is not an option, because water and sewerage companies have no legal powers to maintain watercourses; neither do they have the right to spend customers? money on this.

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A new protocol sets out how to approach potential misclassifications to help avoid disputes going to court. It sets out the background to this issue and explains what type of evidence will be needed in individual cases. It also notes that water companies are willing to investigate whether it is feasible for any reclassification to coincide with a change in property ownership, thus avoiding the existing property owners suddenly finding themselves responsible for a watercourse. This can be difficult to achieve where, for example, a number of properties are involved or if it would lead to significant delay.

Proving ownership of an asset can be lengthy and onerous, and another problem is that property owners may find it hard to assemble the necessary evidence to challenge a potential reclassification. Water companies have agreed that, where possible, they will help the property owner to establish the facts.

Water and sewerage companies agreed to follow the protocol as of February this year, and will be monitoring its effectiveness.

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Further information

- Related competencies include: Legal/regulatory compliance
- This feature is taken from the RICS Property journal (May/June 2019)
- Related categories: Minerals and waste management