WATRS

Water Redress Scheme

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DECISION

by Uju Obi LLB (Hons) MCIArb
An adjudicator appointed by WATRS
under the Water Redress Scheme
Decision date: 8 July 2015

Adjudication Reference: WAT /0023

Between and

- The claim is made by the customer, , against a water and sewerage company,
- The claim dated 14 June 2015 is for:
  - Compensation in the sum of £10,000.00.
  - An apology.
- The position of the company is explained in its 24 June 2015 defence which is disputed by the customer in his undated reply.
- The customer's claim concerns an odour in his property following works done by the company to a sewer pipe.
- The company's position is that it does not accept liability.

Decision

1. The claim succeeds in part.

2. I direct that the company pay the customer the sum of £2,000.00 in compensation. I also direct that an authorised representative of the company provide the customer with a written apology.

Main issues

3. I consider that the main issues in this adjudication are:

   a. Whether the company has failed to provide its services to the standard to be reasonably expected.

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[1] *Customer's address for correspondence:*
[2] *Company's address for correspondence:*

b. Whether the reasons given by the customer are sufficient to justify his claim.

Background information

4. In order to succeed in a claim against the company the customer must prove 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 a loss. If no such failure or loss is proved, the company will not be liable, however disappointed or upset the customer is.

5. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

6. The customer submits that: Following works by the company to renovate a sewage system on 27 November 2014, an increasingly strong chemical smell affected the lounge of his property. He contacted the company by telephone on or around 3 December 2014 to raise the issue and was informed that any sewage pipe under his property affected by any work done was his responsibility. However, a visit to his property was arranged. On 9 December 2014, a member of staff visited his property, confirmed that it could detect a styrene smell, advised him to keep a window open for a couple days and closed the complaint. However, the smell persisted. He raised the matter with the company again and another member of staff, visited the property. This member of staff said he could not smell anything and gave him some 'Oust' spray. Frustrated with the company's attitude he contacted Environmental Health (EH), who immediately identified the styrene smell and approached Mr who subsequently returned to the property with the EH officers and this time confirmed that he could smell the odour. There then followed a number of visits from the company's sub-contractor accompanied by EH officers. Finally the company informed him that it would remove the floor boards in the lounge and put in a membrane to eradicate the odour. This was to take place in mid-February 2015 but did not happen until March 2015. He was informed that the building firm contracted to do the work would take five days (from Monday to Friday); and that the work would include sanding and re-varnishing the floorboards. It took half a day to empty the lounge of furniture and another half-day to put the furniture back. The builders attended the property from Monday to Thursday but did not turn up on Friday. His partner was forced to finish the work. This took her three and a half days and although the company has reimbursed him for equipment hire

and materials, no account has been taken of his partner's time. Moving furniture around another room to give the builders room to work also caused damage there. The membrane worked and the smell has gone. The matter impacted on his life. He had to stop using his lounge from 30 November 2014 due to the smell. A family Christmas due to take place at his home had to be cancelled. A visit from his elderly parents over the Christmas and New Year period had to be cancelled as were the weekly visits from his daughter and first grandchild. On the company's advice, windows had to be kept open during the cold winter period in an attempt to clear the odour. This was done in the evenings and all day on the weekends for every weekend in December 2014, and during those times he could not leave the house for reasons of security. If he, his partner or her son who has lived with them since January were to die of throat cancer, it would be reasonable for some questions to be asked of the company's use of styrene under his home. He does not know how toxic the fumes were and any occasional random tests by the sub-contractor with a primitive hand-held device do not necessarily tell the whole story. The customer also submits that the company failed to respond to his correspondence in a timely manner, if at all.

7. The company submits that: On 29 November 2014, it installed a liner to the surface water sewer which runs under the customer's property. This work was carried out in accordance with the correct procedure. The customer reported the issue on 8 December 2014 and a visit was arranged to the property the following day. Another visit was made on 10 December 2014 by the sub-contractor and an EH officer. The sub-contractor and EH officer made another visit on 11 December 2014 and the presence of styrene was recorded. No specific concerns were raised nor was any action requested by the EH officer. It met with the EH officer at the property on 24 December 2014 and a styrene monitor recorded a level of 3ppm. It was noted that the odour was largely apparent at floor board level in the room concerned. Even though levels detected were extremely low and did not pose a health risk, it agreed to put actions into place to resolve the problem. It arranged for a contractor to attend on 29 December 2014 to raise some floor boards to further ventilate the room and allow further inspection. It was agreed with the customer that the boards would be left up for five days to encourage ventilation and dissipation. Styrene levels were recorded as between 2-5ppm. During a further visit to the property on 2 January 2015, styrene levels were recorded at 2ppm. Another meeting was arranged and took place on 6 January 2015. A CCTV survey of the pipe confirmed no obvious defects; styrene levels of 2ppm in the property; and 5ppm in an external manhole. It was thought that the liner had not fully cured on the outside face and would be 'reboiled' to rectify the problem. On 8 January 2015, work to 're-boil' the liner took place. On 12 January 2015, the customer advised that the odour had not improved – it agreed to visit the property the following day. It visited the customer on 13 January 2015 - the styrene odour was still present. EH also attended but voiced no concerns. On 19 January 2015, a meeting took place at the property with EH and a building surveyor was also present. All parties agreed that a joiner would be employed to remove more floor boards to allow further inspection. A joiner was contacted and

on the 29 January 2015 it was confirmed that the joiner would attend on 2 February 2015. The joiner attended on 2 February 2015. It was agreed that an odour protection membrane would be installed. On 10 February 2015 a detailed specification for the installation of the membrane was received and a quote for the work was requested. A further visit to review the practicalities of the work took place on 18 February 2015. A quote for the work was received on 25 February 2015. On 27 February 2015, this quote was approved and the work formally requested to proceed. It was agreed with the customer that the work would commence on 9 March 2015. Works commenced on 9 March 2015 and were completed on 12 March 2015. On 13 March 2015, the customer advised that he was expecting the existing floor to be sanded and varnished on that particular day. It offered to do this work but explained that a professional company would take up to a week to complete the work. The customer was unhappy with this timescale and advised that he would do the work himself. It agreed to make a payment to the customer to recognise the work he and his partner had carried out to the floor along with some other costs they had incurred. Over the period it also provided assistance and/or made a number of offers of assistance to the customer including temporary accommodation in a hotel on 24 December 2014 and on 16 January 2015; the costs of meals on 16 January 2015 were also reimbursed; a new hardwood floor; the temporary installation of a carpet to act as a barrier; front room storage removal to facilitate the building work; a number of storage containers to be delivered for possessions in the front room to be stored in; an additional membrane laid on top of the floor joist (at the customer's request) and £1,000.00 compensation. A number of these offers were rejected by the customer. Styrene was used in the resin to reline the sewers beneath the customer's property. This is one of the standard uses of styrene. It is apparent from Public Health England's information on styrene that the level of styrene to cause any impact on health would be in the excess of 100ppm. The levels of styrene detected were well below this ranging from 1-5ppm and it therefore does not believe that this will have an adverse impact on the customer's or his family's health.

Adjudicator's findings and reasons

8. I find that:

a. I must remind the parties that under Rule 5.4.3 of the WATRS Rules, comments may only be on points raised in the company's response and must not introduce any new matters or any new evidence. Any such new matters or new evidence must be disregarded by the adjudicator. I can therefore not take account of the new matters raised and new evidence submitted by the customer in the Reply to the company's Defence.

b. I must also remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of the evidence.

c. Submissions made without supporting evidence are unlikely to be accepted as proven.

d. Further, it is not part of the adjudicator's function to carry out an independent investigation of the facts, or for instance, to contact witnesses. The adjudicator is only able to consider the evidence submitted to WATRS.

Dates given

e. The customer has set out his version of the chain of events. The customer has only given a few dates in his submissions.

f. The company has also set out its own version of the chain of events. The company has given full dates in its submissions. Some of these dates differ from those given by the customer. For example in his application the customer states that he first contacted the company to raise the issue "around 3rd December", whilst the company submits that the customer first made contact on 8 December 2014.

g. I am mindful that with the exception of the date given by the company as the date on which the original sewer pipe work was carried out (the company gives this date as 29 November 2014, whilst the customer contends that the evidence shows that the date was in fact 27 November 2014), in his Reply to the Defence the customer does not refute the dates set out by the company in its submissions. I am therefore inclined, on a balance of probabilities, to attach more weight to the dates given by the company in its submissions.

The original sewer pipe work

h. The customer has not provided any evidence to show that the company did not carry out the original work to the sewer pipe correctly. Therefore in the absence of any substantive evidence showing otherwise I am unable to find a failing in this regard.

Potential impact on health

i. I acknowledge the customer's concerns about the potential long-term impact of the styrene on his and his family's health. However, I consider that any issues regarding personal injury or potential long-term effects on health relate to a complicated area of law excluded under s.3.4.3 of the WATRS Rules and in accordance with s.3.4.1 of the Rules such disputes are better resolved in another forum. I will not consider this aspect of the customer's claim any further.

Time taken to remove the odour from the customer's property

j. The company does not deny that the odour arose as a result of its works to the sewer pipe.

k. As discussed above, I find that the customer first contacted the company to alert it about the issue on 8 December 2014. The company's records show that the issue was not rectified until 12 March 2015; some ninety-five days later. Having carefully considered the evidence provided, and in the absence of any substantive evidence showing otherwise, I am inclined to find that the company made reasonable attempts to investigate and instigate methods to rectify the problem.

l. However, notwithstanding the above, I am mindful that the customer was greatly inconvenienced by the matter for over three months. The notes indicate the presence of the company's employees or contractors at the customer's property on at least fifteen different occasions over the 95-day period. I also accept the customer's submissions, on a balance of probabilities, that he was unable to use his living room during the period; that festive celebrations and other visits from his family had to be cancelled; that he had to keep windows open in an attempt to ventilate the property during some of the coldest months of the year and that as the property was as a consequence not secure he/his partner had to remain in the property during these times. It is also not in dispute that the customer's partner sanded and varnished the floors herself after the works were done to install the membrane. The customer states that he was told that the contractors would take five days to complete the work and that this would include sanding and re-varnishing the floorboards, as some were bound to be damaged as the membrane was being installed. I note that the company does not directly refute the customer's submissions in this regard. The company simply states that on 13 March 2015 it offered to do the work to the floor but explained that a professional company would take up to a week to complete the work. However, I find that it would have been fair and reasonable for the company to have returned the floors in a good condition at the end of the works. I am also mindful that by its own admission, the company only offered to do so on 13 March 2015 after works had been completed and a complaint had been raised by the customer. I also note the customer's submissions about damage caused to floorboards in another room on the ground floor as a consequence of having to move furniture around to accommodate and assist the contractors.

m. In light of the above, I find that it would be fair and reasonable for the company to pay the customer a measure of compensation for the stress and inconvenience caused.

Customer service

n. The customer also submits that the company failed to respond to his correspondence in a timely manner, if at all.

o. The company in its Defence acknowledges receipt of an email sent by the customer on 14 December 2014 setting out his complaint and requesting financial compensation. However, there is no evidence to show that this email was ever responded to. The evidence confirms the customer's submission that the first written communication from the company was sent on 31 March 2015; over three and a half months later. The evidence further shows that this letter was only written on the prompting of a member of the company's staff who had been in personal contact with the customer rather than as a result of the written complaint sent by the customer.

p. The customer responded to the company's letter by email on 22 April 2015. Having considered the company's subsequent responses I accept the customer's submission that the company did not directly address, if at all, the requests for information and/or clarification clearly set out in his email, including his request that his complaint be escalated and his request for information about "which Ombudsman regulates Water Companies."

q. Finally, the company's own notes also confirm the customer's submission that the Consumer Council for Water wrote to the company on 4 May 2015 on his behalf and asked the company to provide the customer with a response by 26 May 2015, the evidence shows that the company failed to provide a response in the timeframe given.

r. In view of the above, I find that the company failed to provide a reasonable standard of customer service during the period of the complaint.

Redress sought

s. In respect of the customer's request for compensation, as discussed above, I find that the customer was greatly inconvenienced by the matter for over three months. I also find that the company failed to respond to the customer's correspondence in a timely manner, if at all during the complaint period and failed to provide a reasonable standard of customer services. I therefore find that the customer is entitled to a measure of compensation as a result.

t. However, I find that the £10,000.00 claimed by the customer is disproportionate to the shortfall in the company's service.

u. I also take into account the offers made by the company and the payments already made to the customer. (The company submits that it has made payments totalling £703.70 to the customer. This sum includes payments for a hotel, meals, storage boxes, loss of Sky TV package use, decorating materials, and dry cleaning curtains.) The customer does not refute receipt of these payments.

v. Having carefully considered the matter, for over three months of the smell in the property bearing in mind the associated discomfort and loss of use of the living room; the stress and inconvenience caused to the customer and his family particularly over the festive period; the disruption and inconvenience caused by the presence of the company's employees or contractors on numerous occasions over the period; and the need to ventilate the property over the winter period with at least one member of the household having to be present in the property for reasons of security, I award £500.00 per month, totalling £1,500.00. For the stress and inconvenience of having to complete the remedial work to the living room, I award £250.00 and for the shortfall in the customer service during the period of the complaint, I also award a further sum of £250.00. I therefore direct that the company pay the customer the sum total of £2,000.00 in compensation.

w. In respect of the customer's claim for an apology, in view of my findings above I also find that that it would be fair and reasonable to direct that an authorised representative of the company provide the customer with a written apology.

Conclusion

9. My conclusion on the main issues is that:

a. The company has failed to provide its services to the standard to be reasonably expected.

b. The reasons given by the customer are sufficient to justify a part of his claim.

10. I therefore direct that the company pay the customer the sum of £2,000.00 in compensation. I also direct that an authorised representative of the company provide the customer with a written apology.

Uju Obi LLB (Hons) MCIArb
Adjudicator