

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0567

Date of Decision: 31 August 2017

Complaint

The customer complains that the company incorrectly advised him to complete a build over application in relation to planned building work at his property. This resulted in him incurring unnecessary costs and caused planned building work to become delayed.

Defence

The company submits that it advised the customer that he would only need to gain its consent (via a build over agreement) if the sewer he was building close to, was public. The company asserts that as a goodwill gesture, it refunded the cost of the CCTV survey the customer carried out and that once the customer advised the sewer was private, it confirmed that no build over agreement was required. The company contends that it is not liable to pay the customer compensation for any delay caused to his building works.

Findings

The company correctly advised the customer that a build over agreement was only needed if the sewer close to the building works was public. However this advice was only provided during its second contact with the customer and not in its initial response to the customer. This is evidence of the company failing to provide its services to the customer to the standard to be reasonably expected by the average person. There is a lack of evidence that the company told the customer unequivocally that he had to have a build over agreement and carry out a CCTV survey. The company has paid the customer £150.00 to cover the cost incurred by the customer for the CCTV survey and the customer has not demonstrated he is due any further compensation from the company.

Outcome

The company does not need to take any further action.

The customer must reply by 28 September 2017 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0567

Date of Decision: 30 August 2017

Party Details

Customer: [REDACTED]

Company: [REDACTED]

Case Outline

The customer's complaint is that:

- The company advised that he had to complete a build over agreement application in relation to the proposed extension to his property. The sewer pipe map provided with the company's response indicated there were public sewers. The company also advised that building work could not commence until the application had been processed and an agreement reached regarding the relevant sewer pipes.
- As part of the build over application the company told him he needed a CCTV survey. He subsequently paid £150.00 for a CCTV survey which showed pipes were not public but private and as a consequence he was not required to obtain a build over agreement.
- When he queried this with the company it admitted it had made a mistake and that it should not have asked him to complete a build over agreement application as it has sufficient information to determine a build over application was not required. It refunded him the cost of the CCTV survey.
- However the company refused to compensate him for the major delays caused to the building works, the inconvenience caused and for wasting his time.
- The customer requests that the company apologise and provide compensation of £1400.00 (£1000.00 for a deposit paid to the builder which the customer submits he lost due to the delay caused by the company and £400.00 for inconvenience- £200.00 for 2 days it took him to source a CCTV survey). The customer also requests that the company review its procedures related to build over applications "so that other people are not conned out of money."

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The company's response is that:

- It first received notification in relation to the customer's planned building work on 26 April 2017 when the approved Building Regulations inspector checked if a build over agreement was required, as there were sewer pipes running through the customer's land. At this stage, no specific information had been supplied in regard to the work so it was not possible to confirm whether the public sewer, which is shown on the sewer records as running through the customer's property, would be affected.
- Any customer who wishes to build over or close to a public sewer has to have its consent before any building work can commence. This is to ensure that both the customer's property and its sewers are protected.
- It provided the customer with the relevant information and guidelines, and advised him to check the sewer he was proposing to build over, as if it was not a public sewer, then no agreement with it would be needed.
- If a customer is unsure about whether a sewer running through their property is a private or public sewer, it is their responsibility to establish this before proceeding with their building work. This may require a CCTV survey, which the customer is responsible for arranging directly with their chosen contractor. In some instances the customer can evidence that the pipe to be built over is not a public sewer, without the need for a CCTV survey.
- Once the customer had confirmed that the sewer was private it advised that he could proceed without the need for a build over agreement. It did not take any fee from the customer as no build over agreement was needed. The only payment made by the customer was to his own CCTV contractor, which it subsequently agreed to reimburse, as a gesture of goodwill.
- It does not consider that its build over process needs to be reviewed or amended in any way or that any payment is due to the customer. Whilst it has apologised to the customer for any confusion that was caused as a result of the correspondence he received in relation to the build over process, it is happy to send a further letter of apology to the customer if required.

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.

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If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. I remind the parties that adjudication is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
2. The customer claims that the company incorrectly advised him that he had to apply for a build over agreement in relation to proposed building works (an extension) to his property, due to the works running over a public sewer. The customer submits that as a result he incurred £150.00 for the CCTV survey and planned building works were delayed.
3. I acknowledge that the company is responsible for public sewers and therefore must protect them. I accept the company's submission that where its public sewers are located within the boundaries of private properties, which are under or in close proximity to proposed building work, a customer must gain its consent prior to building works as such may affect its sewers. Further, I accept that if the sewer is private i.e. it only serves the customer's property, a customer does not require permission from the company to build over the private sewer.
4. I acknowledge that following a CCTV survey arranged by the customer, it transpired that the sewer within his property boundary was private as it served his property only and therefore the company's consent (via a build over agreement) was not required in relation to the proposed building works.
5. The company denies that it told the customer: that his sewer was public; that he needed a build over agreement or; that he had to get a CCTV survey. It asserts that it advised the customer to

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first check if the sewer was public as its consent (via a build over agreement) and a CCTV survey were only required if it was a public sewer.

6. In light of the company's email to the customer dated 16 May 2017, it is clear that the company advised the customer that he should check whether the pipe in question only supplied his property, and that in this instance, no build over application would be needed. However, I acknowledge that in the company's initial response to the customer dated 10 May 2017, it makes no mention of the fact that a build over application is not required where the sewer affected by the building work is a private sewer. I note that the build over application, which was supplied with this response, also fails to mention this. Whilst I have not been provided with a copy of the initial enquiry made by Building Regulation inspector on behalf of the customer, the company confirms that the enquiry was to check if a build over agreement was required in relation to sewer pipes running through the customer's land. Whilst I accept the company's assertions that it did not know whether the sewer pipe in question was private or public and that the onus is on the customer establish this, I also accept that the sewer map it supplied with its response to the customer, does appear to suggest that its sewer was in or close to the customer's property.
7. Therefore, in light of my above observations, I consider that the company should have made clear to the customer at the outset that the pipe may be private in which case, no build over agreement is required. I consider that this is evidence that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
8. I acknowledge the customer's submission that having shown his builder the sewer map supplied by the company, the builder was reluctant to carry out any exploratory digging due to the risk of damaging the company's pipes. Therefore, I accept that the customer may have felt he had little choice in regards to getting a CCTV in order to establish if the sewer was public or not. However, there is a lack of evidence that the company told him unequivocally that he must complete a build over agreement application or carry out a CCTV survey. I am satisfied that the company had, by this stage, told the customer a build over agreement would not be required if the sewer was private and that he should check this prior to applying. Further, there is a lack of evidence that the company knew or ought to have known that the sewer in question was private particularly as the map indicates its sewer mains runs close to the customer's property. As such

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I do not accept the customer's claim that he was "conned" into spending money unnecessarily (on the CCTV survey).

9. The customer asserts that his building work was delayed due to the company demanding a build over agreement. In light of my above finding that it is up to the customer to establish if the sewer is private or public and to apply for a build over agreement where relevant, the company's advice to the customer to halt building work for this reason, was reasonable and does not in itself amount to any failure of service by the company. In light of the parties' correspondence, in particular the company's email and letter to the customer both dated 25 May 2017, I am satisfied the company confirmed that no build over agreement was required, within 2 days of the customer advising it that the sewer was private. Having reviewed all the evidence presented to me, overall, I am satisfied that the company responded to all of the customer's contacts within a reasonable timeframe, causing no unnecessary or unreasonable delay. Therefore, I find a lack of substantive evidence of the company failing to provide its services to the customer to the standard to be reasonably expected, in this regard.

10. As an aspect of the claim has succeeded, I will proceed to consider the customer's claim for redress. The customer has claimed £1400.00 in compensation (£1000.00 for a deposit paid to the builder which the customer submits he lost due to the delay caused by the company and £400.00 for inconvenience- £200.00 for 2 days it took him to source a CCTV survey). I acknowledge that the company has refunded the customer £150.00 for the amount he paid for the CCTV survey. I consider this is reasonable and proportionate to the company's proven service failing. In light of my above findings, I am not satisfied that the customer has substantiated his claim for further compensation. Therefore the claim for compensation cannot succeed.

11. The customer has requested that the company review its procedures related to build over applications "so that other people are not conned out of money." As this remedy is not specific to the customer's case, it falls outside the remit of WATRS. Therefore, I am unable to make any direction to this effect.

12. The customer has requested that the company provide an apology. As I am satisfied that the company has already provided written apologies for any confusion that was caused as a result

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of the correspondence he received in relation to the build over process, I find it is not liable to provide a further apology.

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 28 September 2017 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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