

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0577

Date of Decision: 18 September 2017

Complaint

The customer has endured a serious infestation of rats at her home. The company investigated the problem in late 2013 and subsequently carried out works underneath the customer's kitchen. The infestation ceased after the works were completed but the problem recurred in March 2017. The company installed an interceptor in May 2017. The customer contends that the rats must have entered the property from the sewer. She claims financial compensation for all the disruption and damage caused to her home and for all the associated stress. She requests that the company provide her with an apology. Finally, she requires the company to sign a written agreement in relation to the proper and continued maintenance of the interceptor.

Defence

There is no conclusive evidence that the rats entered the property from the sewer. The company's investigations in 2013 and 2017 (including two separate CCTV surveys) revealed no sign of rodent activity in the sewers. In any event, the works carried out in 2013/14 were an adequate and effective response to the problem. The company does not consider that it should be obliged to enter into an individual maintenance agreement with regard to the interceptor.

Findings

On a balance of probability, it has not been established that the rats entered the property from the sewer. By investigating and undertaking works in 2013/14 and 2017, the company did all that reasonably could be expected to address the problem. The works were an adequate and effective response and no failings can be identified in the provision of the company's services.

Outcome

The company does not need to take any further action.

- This adjudication is final and cannot be appealed or amended.
- The customer must reply by 16 October 2017 to accept or reject this decision.

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to have solved the problem and “*the rats have gone away*”. The District Council have confirmed that:

- there are no other points of access (for the rats) in the road; and
- “...as long as [*the Interceptor*] is maintained the rat problem should cease ...”
- There is an audio recording (“the Audio Recording”) of comments made, by which the company’s contractors can be heard conceding:
 - that “ ... *they* [i.e. the rats] *have gnawed through the chamber* ...”; and
 - that the problem has resulted from inadequate maintenance of the sewers.
- She is anxious to ensure that this public health issue does not break out again in her home.
- By way of redress for all of this, the customer would like the company:
 - to admit that the problem is coming from the sewers; and
 - to sign a written agreement to maintain the Interceptor properly “*in perpetuity*” and in order to:
 - to stop further rodent activity; and
 - to allow her to sell her house for the appropriate market value; and
 - to provide financial compensation or recompense for:
 - the condition of her kitchen, which had to be removed twice. £4,000 is claimed in respect of the costs of replacing worktops and units; and
 - the condition of her kitchen floor, which “...*has been carved up so many times it is now unsustainable* ...” £2,500 is claimed in this respect; and
 - the condition of her understairs cupboard, which has a chewed rat hole in it. She would like the cupboard to be stripped back and re-plastered because “... *it stinks from years of sewage and rat droppings* ...” £2,000 is claimed in this respect; and
 - the contents of her understairs cupboard. Given the extent of the infestation, these contents – including photographs – had to be destroyed. £1,000 is claimed in this respect; and
 - the severe stress, the isolation and stigma caused to the family in having to live with such a major public health problem in her home for so long (including the fact that Christmas 2013 had to be spent with no proper kitchen); and
 - to give her an apology, in view of the company’s persistent denials of liability in this case (despite the Audio Recording and other evidence showing that the problem stemmed from the company’s inadequate maintenance of the sewers).

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The company's response is that:

- During its first investigations with a 'look-see' camera at the end of November 2013, no rodent activity could be located within the sewers surveyed. However:
 - at that stage, its operatives had been unable to check the condition of the buried manhole chamber ("the Chamber") and could not establish its exact location; and
 - the crew formed the view that the manhole may have been located within the boundary of No.1, making it a private asset; but
 - later, in December 2013, Environmental Health pursued the investigation further by removing parts of the kitchen of the Property. This revealed that the Chamber was not in fact located at No.1 but rather, at No.3. It was discovered, therefore, that this was a shared drainage point for which the company was responsible (and was not a private asset as originally believed).
- Once it was clear that the company bore responsibility for maintaining the Chamber, further investigations were carried out at the Property. A CCTV survey was undertaken on 30 December 2013. No evidence of rodent activity was detected but the survey did reveal the need for some repairs to the Chamber. In particular, it could be seen that there was a hole in the wall of the Chamber. This hole ("the Remnants Hole") was the remnants of an old private drainage pipe that was once in situ but was now redundant. It is possible that the rats had gained entry to the Property through the Remnants Hole but this cannot be confirmed.
- Contractors attended at the Property on 3 January 2014 and completed the 2013/14 Works, which included:
 - sealing up the Remnants Hole; and
 - laying a new channel in the Chamber; and
 - building two brick piers and installing of two concrete lintels on top of the Chamber. The installation of the lintels was designed to add additional protection between the sewer network and the interior of the Property.
- Following the completion of the 2013/14 Works, nothing further was heard from the customer until April 2017. At that point (i.e. in April 2017), the customer made contact to complain of further issues with rodent infestation. In response, the company carried out investigations in May 2017 ("the 2017 Investigations"). The 2017 Investigations included:
 - digging down within the kitchen of the Property to provide access to the Chamber and in order to reassess the 2013/14 Works; and
 - the undertaking of a (further) CCTV survey.

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- The 2017 Investigations revealed no indication of rodent activity in the sewers or in the Chamber (and there was no sign, either, of disturbance to the previously installed lintels). The area was reinstated and extra concrete was applied “*for added protection*”. The concrete lintels were placed back in position. The final piece of work undertaken in 2017 was to install the Interceptor within a manhole situated in the alleyway by No.1 [REDACTED]
- Whilst acknowledging and regretting the distress caused to the customer and her family as a result of the infestation, it has not been conclusively established (and the company does not accept) that:
 - the rats entered the Property from the sewer; or
 - even if the rats did enter in that way, that they were (only) able to do so because the sewer had been inadequately maintained prior to that point.
- It is also **disputed** that:
 - the Audio Recording proves there was some (or any) admission on behalf of the company:
 - that the rats had indeed entered the Property from the Chamber or the sewer; or
 - that the 2013/14 Works had been of poor quality or ineffective such that they had not protected against rodent ingress; and
 - the fact that the infestation has ceased since the installation of the Interceptor in May 2017 proves that the rats were coming (originally) from the sewer.
- The customer’s call for the Interceptor to be proactively maintained (as an individual asset) is resisted because:
 - it would not necessarily be an effective use of resource to do this; and
 - there have been no reports yet of blockages to the Interceptor and no reason to be concerned that it will block (and therefore, commitment now to a periodical inspection cannot be justified); and
 - in any event, the Interceptor is not dependent on any moving parts for its operation that require maintaining.
- However, as a matter of general responsiveness and on a reactive basis, the company will deal with any issues attributed to any interceptor, i.e. as and when an issue is reported to it.
- In all the circumstances of this case, the company does not consider it would be appropriate for it to be directed to provide the customer:
 - with the admission that she seeks (i.e. that the problem is coming from the sewers); or
 - with the signed written agreement to maintain the Interceptor properly in perpetuity; or
 - with any of the financial compensation or recompense claimed; or

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- with an apology.

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.

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 should 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 her case on the balance of probability.
2. In reaching this decision, I have had the benefit of reading:
 - a. the customer's comments on the company's defence ("the Comments"); and
 - b. the company's response to the Comments ("Response to the Comments"), which – under Scheme Rule 5.4.4 – I have decided to take into account because they are useful in narrowing the core issues between the parties.
3. I note that, by way of email sent on 14 September 2017 at 16:24, the customer has asked that a *further* round of comments ("the Further Comments") be considered. However, in view of the Scheme Rules and the lateness of their delivery, I have decided that it would not be appropriate to take the Further Comments into account. Accordingly, I have not had any regard to them.

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4. The failings alleged against the company are not detailed very explicitly. Nonetheless, the implications are clear enough.
5. The gist of the customer's case, as I understand it, is that:
 - a. the company was responsible for the maintenance of the sewer;
 - b. a serious rat infestation was suffered at the Property;
 - c. the rats could only have entered the Property from - and because of a defect in - the sewer;
 - d. the fact that the company needed to (and did) carry out the 2013/14 Works was confirmation in itself:
 - i. that there was a defect; and
 - ii. that the rats were indeed emanating from the sewer; and
 - e. if there was a defect in the sewer then self-evidently, the company failed in its maintenance obligations; and
 - f. if the company had discharged its obligations properly, the infestation (and associated damage, upheaval and stress, etc.) would have been avoided; and
 - g. on this basis, the company should be directed to provide the financial compensation claimed; and
 - h. the fact that the infestation problem returned in March 2017 (at the same location) must mean that the 2013/14 Works had either been:
 - i. ineffective; or
 - ii. botched; but
 - i. in any event, by March 2017, the situation was again one whereby rats were entering the Property from - and because of a defect in - the sewer; and
 - j. the measure that has ultimately solved the problem has been the fitting of the Interceptor; and
 - k. therefore, in order to discharge its obligations to the customer on an ongoing basis (and to ensure that the infestation never returns), the company should be required to undertake in writing to "*maintain the Interceptor properly in perpetuity*".
6. In my headed sections below, I attempt to work through the main propositions put forward by the customer.

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Damage resulting from rodent ingress: the limits of the company's liability in principle

7. I note the submission made by the company at paragraph 16 of its defence. It contends that liability on its part should only arise in circumstances where:
 - a. a particular defect in the sewerage system has been reported to it; and
 - b. the potential for rodent infestation (because of the defect) is clear; but
 - c. having been alerted to that potential, it has failed to take any (or any adequate) remedial action in response.

8. It seems to me that the company's position on this is a reasonable one, in principle. I accept the company's submission about rodents in sewerage systems being "*a fairly common occurrence*". With that point accepted, I do not consider that sewerage companies can practically be expected to identify defects pro-actively, in order to prevent infestation before it occurs. That would be a wholly unrealistic standard to set. For this reason and in the present case, I am not persuaded that the company could have incurred any liability to the customer (even in principle) prior to being called in end of 2013. Plainly, before that point in time, it had no awareness of any possible defect within the Chamber.

The customer's assertion that the rats were emanating from the sewer (because of a defect in the sewer)

9. I have looked at this question very closely. In order for the customer to succeed on this aspect of her claim, the conclusion that I need to be able to reach (it seems to me) is that ***it is more likely than not*** that the rats were emanating from the Chamber or from the sewer.

10. The overall picture appears to be as follows. On the one hand:
 - a. there must be some serious possibility that the rats were gaining entry to the Property through the Remnants Hole. I see that, in its defence, the company readily accepts such a possibility; and
 - b. it is also notable that the Remnants Hole was sealed up and the customer confirms that the problem stopped straight away after that, coinciding with completion of the 2013/14 Works; and
 - c. the conclusion reached by Environmental Health is supportive of the customer's contention that the rats were emanating from the sewer.

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11. On the other:
 - a. the Remnants Hole, the company explains, had not been caused by rodent activity; and
 - b. neither the CCTV survey undertaken on 30 December 2013 nor the one undertaken on 2 May 2017 found any sign of rodent activity in the sewers.

12. As I see it, the results of these two separate CCTV surveys (in December 2013 and in May 2017) are difficult to explain away or dismiss.

13. Additionally, the customer points to the fact that the company:
 - a. needed to – and did – carry out the 2013/14 Works; and
 - b. that the rodent activity ceased after the 2013/14 Works were completed.

14. The customer's implication (if I read it correctly) is that these facts vindicate her in her case that the rats must have emanated from the sewer. She also implies that there is vindication because there has been no recurrence of the infestation since the Interceptor was fitted in May 2017. I cannot find in the customer's favour on these points, however. If I were to do so, I would be ignoring the results of the two CCTV surveys (which found no evidence of rodent activity in the sewers).

15. I do not consider that the customer's case is helped by her reliance on the Audio Recording. From the Comments (at paragraph 14), I note the customer's explanation about the Audio Recording having been made "*by accident*" and she adds that "*... this is my property and I am entitled to record within it ...*"

16. It must be correct, of course, that the customer is entitled to make recordings within her own home, for personal use. However, as I see it, it is another matter altogether to seek to present the Audio Recording in evidence in an adjudication process such as this one. There is an issue of fairness to the company's contractors. The Audio Recording was made without their knowledge or consent. For these reasons, I attach little evidential weight to the Audio Recording. In any event, I have read the company's submissions in paragraph 14 of its defence and on page 2 of its Response to the Comments and I accept the concerns raised in those sections about context.

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17. Whilst the evidence is in conflict and very finely balanced, ultimately – for all the reasons mentioned above - I cannot conclude **it was more likely than not** that the rats were emanating from the Chamber or from the sewer. This aspect of the customer’s case is unable to succeed, therefore.

The adequacy and effectiveness of the 2013/14 Works as a response to the problem

18. As already indicated at my paragraph 17 above, I have given little evidential weight to the implications of the Audio Recording. On the question of the adequacy of the 2013/14 Works generally, I have noted the response that the company gave in its letter to the customer of 4 July 2017. The company points out that the 2017 Investigations revealed no disturbance to the lintels and no indications of rodent activity. I accept the company’s submissions on this. It seems to me that (as the company contends) the result of the 2017 Investigations was suggestive of the 2013/14 Works being adequate.

19. Even if it could be shown the probability was that (for example) the rats were gaining entry to the Property through the Remnants Hole, it seems to me that – by completing the 2013/14 Works as quickly and adequately as it did – the company provided the response expected of it in those circumstances. On this level, I am satisfied that the effectiveness of the 2013/14 Works can be gauged by the fact that the rodent infestation stopped for a period of more than three years after their completion.

20. For these reasons, I have not been able to identify any failing on the part of the company in connection with the adequacy or completion of the 2013/14 Works.

The Interceptor

21. As I read it, the implication of the customer’s case is that if the Interceptor had been installed originally (as part of the 2013/14 Works) then the infestation would probably not have recurred in March 2017. I have already (partially) dealt with this point at my paragraph 15 above. Regarding the Interceptor, I note the submissions made by the company at paragraphs 13(g), 18 and 19 of its defence. Taking those submissions into account (and I accept them), I am satisfied that there was no failing on the part of the company linked to the Interceptor – whether in relation to the stage at which it happened to be installed or at all. In the circumstances, I am not persuaded that there are any grounds to require the company to enter into the formal written maintenance agreement that the customer requests. This aspect of the customer’s claim is unable to succeed, therefore.

Summary of conclusions

22. In summary, my findings in this case are that:

- a. whether in principle or at all, it has not been shown that the company incurred any liability to the customer prior to its being first contacted about the problem at the end of November 2013; and
- b. the company's carrying out of the 2013/14 Works was an adequate and effective response to the problem; and
- c. on the balance of probability, it has not been established that the rats were entering the Property from the Chamber or from the sewer;
- d. no failings – in the provision of the company's services – have been shown.

23. In view of these findings, I do not consider that there are grounds in this case (or that it would be appropriate) to direct the company:

- a. to concede or admit formally that the infestation is emanating from the sewers; or
- b. to provide any of the financial compensation or recompense claimed;
- c. to sign a written agreement committing it to 'in perpetuity' maintenance of the Interceptor; or
- d. to apologise to the customer.

24. It follows that the customer's complaint is unable to succeed.

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 October 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.

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- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.
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Nik Carle LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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