

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0932

Date of Decision: 24 December 2018

Complaint

During July 2017, the company's staff had to access his property due to a blockage nearby. They came on to his property without permission. They called him a liar and engaged in bullying behaviour. They removed his interceptor, which the customer contends was done completely unnecessarily and against his wishes. The company has only given a half-hearted apology for what has happened. The company's offer of £100.00 and a food hamper is regarded as insulting. In the circumstances, the customer contends that "a *more suitable compensation*" should be awarded.

Defence

The company initially attended at the property, as an emergency call out, due to the customer's neighbours being flooded with wastewater. The removal of the interceptor was necessary to prevent the customer's neighbours' properties flooding in the future. The company investigated the allegations about the conduct of its staff but found no evidence to support these claims. It admits that there were failings in its services, however, in (1) starting work at the property without first knocking the door to let the customer know; and (2) failing to give the customer a call-back ("the Acknowledged Failings"). The company considers that its offer to pay £100.00 as a gesture of goodwill, plus a hamper, is a sufficient reflection for the Acknowledged Failings.

No offer of settlement has been made.

Findings

There is insufficient evidence to support a finding that the company's representatives or contractors engaged in behaviour which, objectively, could be categorised as 'bullying', 'intimidatory' or 'insulting'. It was necessary and reasonable for the company to remove the customer's interceptor for the reasons that it has explained (i.e. in order to prevent the customer's neighbours' properties from flooding in the future). It is appropriate for the company to pay compensation in respect of the Acknowledged Failings.

Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum of £125.00 in compensation.

The customer must reply by 24 January 2019 to accept or reject this decision.

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coat asked to look into his sewer. The customer asked what was going on. He was told that the neighbours were having problems with flooded cellars and blocked sewers. The customer told the man that he was wasting his time as the customer had previously checked his manholes when he saw the company outside. Nonetheless, the customer was happy for the man to check them. The customer was then appalled to see about a foot of water with condoms and tampons floating around.

- One of the company's contractors came later in the day and used a rod to clear the tampons and condoms from the lip of the pipe in his FWS. This cleared the backlog of dirty water into the main sewer underneath the road. At this point, all the customer's pipes and manholes were clear again. The manhole in number 4 was still blocked and full of sewage.
- On 22 July 2017, the company rang the customer's doorbell at 9.00am and asked that he plug all holes and cover the toilet. The company was going to use a powerful jet to blow through the sewage still stuck in the sewer at number 4.
- In the evening of the same day, at 9.30pm, the customer saw a silhouette of a bright coloured jacket through his window. He opened the front door and there was a strange man standing over the customer's manhole. The customer asked what he was doing. He said that he was putting a flexible camera up the customer's pipe to see if there was a blockage, as number 4 was still blocked. The customer asked him why he was on the customer's property without permission. The man replied that he did not need the customer's permission.
- The man then wanted access to the customer's cellar to check for flooding and refused to believe that the customer did not have a cellar. He pointed to the coal shuttle excess and called the customer a liar. He then told the customer that they were going to dig up his path, remove his wall and remove the lip in the drain and that the customer could do nothing about it. The customer took the man's name and told him not to come back onto his property, as he would be reporting the incident to his superiors and calling the police if he continued to trespass.
- The customer's grandchildren and wife heard the commotion and came to make sure that he was alright. His wife and grandchildren were crying because they heard what the man had said. His wife rang the company's customer services department and lodged a complaint that evening. Customer services rang back and apologised for the way in which the customer had been treated.
- On 25 July 2017, at 5.15pm, Mr Brown came to speak to the customer about the problems that they were having next door. He talked about the water table and its effect on properties in the area. This was the reason for the flooding of the two properties beside the customer's property. He said that the neighbouring properties were having their interceptor removed to help with the

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passage of water to the main sewer. None of this made any sense to the customer. Mr Brown asked whether the customer would like his interceptor removed. The customer declined the offer, as there were no problems with his manholes or pipes.

- Mr Brown proceeded to tell the customer that, because the customer's manhole was full of sewage to within an inch of the top, the sewage had seeped into the neighbouring cellars and caused their flooding. The customer stopped Mr Brown there and corrected him regarding the amount of sewage in the manhole. He said that he had pictures but refused to show them.
- The customer has set out a detailed chronology of events thereafter – between 26 July and 25 August 2017.
- On 11 August 2017, the company came and removed the interceptor from the customer's drain. They put a new cover on the manhole.
- What Mr Brown failed to mention was that there were huge underground leaks in several of the neighbouring streets. These were in fact causing the problems with the neighbouring cellars in the area. The customer argues that what was going on, in fact, was this ("the Customer's Proposition"):
 - the company wants to create more space for excess water by removing people's interceptors;
 - thus, when there are heavy floods of water, it will be able to flow backwards into people's manholes, hence creating more space within the system and alleviating pressure in the main sewers;
 - all of this can push sewage back up the pipes and cause them to surcharge;
 - in these circumstances, the company is not liable for any problems caused by flooding;
 - the company is not solving the problem. They are instead creating an even bigger problem. Homeowners will be responsible for the fallout of what will happen and the company is under no obligation to help if there is no interceptor on the property.
- The customer poses the following questions for the company to answer ("the Customer's Three Questions"):
 - where exactly was the blockage in the sewer line in relation to number 4 and when was it cleared?
 - what specifically was the history of the neighbouring property that led the company to decide to remove the customer's interceptor?
 - how can the company predict what will happen in the future and what is there to suggest that the customer will not be prone to future flooding?
- The customer acknowledges that the company has apologised but he considers that their

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apology was given “*half-heartedly*”. He describes the company’s offer of £100.00 and a food hamper as “*insulting*”. In the circumstances, he expects and requests that “*a more suitable compensation*” be awarded. He submits that the offer “... *is not acceptable for the level of insults, hassle, distress, and failure to answer questions in relation to [the] removal of my interceptor ...*”.

The company’s response is that:

- It initially attended at the property, as an emergency call out, due to the customer’s neighbours being flooded with wastewater.
- It is acknowledged that there were failures in service on its part, specifically:
 - starting work at the property without first knocking the door to let the customer know. (However, as was advised to the customer in its email of 8 September 2017, the company asserts that it always has the right to access its assets, in the case of an emergency, without notification. It refers to section 171 of the Water Industry Act 1991 in this regard); and
 - a failed callback.
- In recognition of these failures, its contractor, [] Group, offered the customer £50.00 plus a hamper as a gesture of goodwill. In addition, the company apologised to the customer and offered him a further £50.00 goodwill payment. This was to reflect the fact that the customer had to call and email about the matter.
- It is appreciated that the customer is unhappy with the removal of the interceptor. However, as has previously been advised, this was necessary to prevent the customer’s neighbours’ properties flooding in the future. Since the removal of the interceptor, the company has had no reports of operational issues (other than when the customer made contact in August 2018 to report a blocked drain, which, upon attendance, it was found to be a blocked toilet and therefore, a private issue).
- As to the customer’s statement that (since the interceptor was removed) he has had constant foul smells coming up through the pipes in his house, the company responds that:
 - this has never been reported to it previously; and
 - this did not form part of the customer’s complaint originally.
- As to the customer’s allegations about the conduct of its staff and his comment that it has “... *not named the bully boys who verbally assaulted me on my own premises ...*”, the company replies that it previously investigated this but found no evidence to support these claims. The only record of aggressive behaviour is that of the customer, towards the company’s technician,

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on 21 July 2017.

- As to each of the Customer's Three Questions, the company responds as follows:
 - where exactly was the blockage in the sewer line in relation to number 4 and when was it cleared? The company points to its 'Evidence 2' item, which shows the locations of the blockages. It cleared the blockage on 21 July 2017. It jetted the line again on 23 July 2017 because, when it arrived on site, the manhole at the rear of number 4 was full;
 - what specifically was the history of the neighbouring property that led the company to decide to remove the customer's interceptor? As previously explained to the customer, the interceptors were removed to help alleviate the risk of future flooding at the properties;
 - how can the company predict what will happen in the future and what is there to suggest that the customer will not be prone to future flooding? Needless to say, the company is not able to predict the future. However, it has removed the interceptors from number 6 and number 4 Green Street to help alleviate any future flooding for the customer's neighbours and for his property. This does not mean, of course, that it can 100% guarantee that the properties will never suffer sewer flooding but, by removing the interceptors, the company is actively trying to prevent this.
- In summary, the company's position is that:
 - it has fully explained to the customer the actions that it has taken and the reasons why those actions were deemed necessary; and
 - the offer of a payment of £100.00 as a gesture of goodwill, plus a hamper, is a sufficient reflection for the failings in service experienced.

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

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customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

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 have reviewed:
 - a. the 'chain of events', which is set out by the company on pages 1 to 5 of its defence; and
 - b. the chronology detailed by the customer, in the body of his letter dated 18 November 2018, which covers events between 21 July and 25 August 2017; and
 - c. all of the documents:
 - i. as submitted by the customer alongside his WATRS application form (including particularly, the handwritten diary entries for 10 and 11 August 2017); and
 - ii. as annexed to the company's defence; and
 - d. the customer's comments filed, on 7 November 2018, in response to the company's defence.
2. I note that the parties are in dispute as to the true and accurate chronology of events in this case.
3. The customer's claim seems to be concentrated on two aspects in particular:
 - a. the "*bullying techniques*" allegedly used by the company's representatives in their interactions with the customer ("the Staff Conduct Aspect"); and
 - b. the company's removal of the interceptor, which the customer contends was done completely unnecessarily and without his consent ("the Interceptor Removal Aspect").
4. As to the Staff Conduct Aspect, I note that the customer describes the effect on him in terms that are extremely concerning:

"... I can never forgive them for what they have done. I was very ill at the time and at [a]

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low ebb in my life. They cost me my sanity, my self-worth, sleepless nights, and belittled me in front of my family ... The sorry affair left me close to suicide over the fiasco. It reminded me of the barbaric way Hitler treated the Jews and this is how I felt ..."

5. As to the actions of the company more generally, the customer goes on to state that:

"... They have used smoke and mirrors to deviate away from the actual truth. They have not named the bullyboys, who verbally assaulted me on my own premises. I find it hard to believe currently that people in positions of power still walk over the disabled and refuse to listen to the facts and get away with it. This is unacceptable and needs to be rectified ..."

6. For the company's position in response to the Staff Conduct Aspect, the main document that I have examined is the 'Evidence 1' item, which is attached to the defence. Essentially, 'Evidence 1' is a note on the company's investigation into the customer's allegations:

- a. that there was *"daily intimidating behaviour"* on the part of the company's representatives; and
- b. that the customer was 'called a liar'; and
- c. that the customer's property was accessed without permission; and
- d. that there was *"poor communication from those on site"*.

7. The overall impression from reading the 'Evidence 1' document is that the company's investigation of these matters proved inconclusive. However, the general approach seems to me to have been balanced and relatively open-minded. For this reason, I am inclined to regard the investigation as having been carried out genuinely and I give weight to it accordingly. I note the following sections in 'Evidence 1', for example:

- a. *"... Reviewing the jobs we have on the system and the remarks under these activities, I cannot confirm if this really happened. I respect and trust what the customer has reported; unfortunately I cannot confirm this at this current time ..."*; and
- b. *"... Again, I am not in a position to confirm exactly what was told to the customer on site by the Field Teams. I believe, the Field Teams generally do not advise fully the customers regarding the next steps as a variety of people have to communicate and discuss first on what exactly is needed prior to providing the customers with an update."*

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Before that happens, any information provided to the customer can lead to potentially incorrect info given to the customers which can cause further issues later on ...”

- c. *“... I believe [] did not have the most satisfying journey based on the incidents reported and the failures occurred from [] and [] teams, but as soon as the teams were made aware of this, we tried and did the best possible to eliminate any disruption caused to the customer ...”*
- d. *“... I believe nothing happened intentionally and based on the fact that the general situation was raised as an emergency, the teams had limited time and space to action unmistakably ...”*

8. Taking all of the available evidence into account, there does not seem to be sufficient support for a finding that – in this case – the company’s representatives or contractors engaged in behaviour which, objectively, could be categorised as ‘bullying’, ‘intimidatory’ or ‘insulting’. In reaching this conclusion, however, I still readily acknowledge how distressing these events were for the customer – in the way that he describes from his perspective personally.
9. Turning next to the Interceptor Removal Aspect, the customer argues, in a forthright way, that the company removed his interceptor when *“there was absolutely no need to do so”*. On this point, I have given careful consideration to the Customer’s Proposition – by which he argues why the company might be motivated to target the removal of customer’s interceptors generally.
10. The Customer’s Proposition strikes me as rather speculative. I cannot see that there is any independent evidence to substantiate the customer’s suggestions of *“what really went on”* here. On the balance of probability, therefore, my conclusion is that it was necessary and reasonable for the company to remove the customer’s interceptor for the reasons that it has explained (i.e. in order to prevent the customer’s neighbours’ properties from flooding in the future).
11. There were failings, I find, in the services provided by the company – but only in the respects that the company has already itself acknowledged (“the Acknowledged Failings”). Given the profound impact that he describes its interactions as having had on him, I quite appreciate why the customer is dismissive of the goodwill gestures offered by the company. It seems to me, however, that these offers were a reasonable enough reflection of the Acknowledged Failings.
12. In light of the above – save for the Acknowledged Failings - I am satisfied that the company has provided its services to the customer in this case to the standard that one would reasonably expect.

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13. In respect of the Acknowledged Failings, however, I shall make a direction that the company should pay the customer £125.00 by way of compensation.

Outcome

The company needs to take the following further action:

I direct the company to pay the customer the sum of £125.00 in compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 24 January 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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