

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0977

Date of Decision: 31 October 2018

Complaint

The customer's dispute concerns sewerage connections for his property. The customer states that he contacted the company after he purchased the business and was initially incorrectly told that the company has no sewers in the vicinity to connect to. The company admitted this error and has granted a 6 month refund on charges. He carried out extensive works in relation to the sewer connections from his property. However, he believes that was the company's duty to complete these works. The customer requests a refund of the survey costs in the sum of £500.00 and a refund of the costs of works in the sum of £4,728.00.

Defence

The company submits that it was not its responsibility to pay for the cost of the works as the work completed was carried out on a private section of the network. On 1 October 2011, the law surrounding responsibility for sewers changed. It became responsible for tens of thousands of kilometres of sewer pipes and drains in Yorkshire. In order for a private sewer/drain to be eligible for transfer, it had to have connected to an existing public sewer on or before 1 July 2011. There were found to be two sewerage connections from the property. It initially incorrectly believed that the whole property was not connected to its sewer networks. However, one entered its public sewer, which was not, at that stage, mapped on its systems. It agreed to refund the customer £503.00. This is the cost of the survey fee, £145.00 as well as £358.00 for the adoption connection fee for the errors. The second connection led to an unmapped stone culvert. The culvert was not and is not one of its assets. Once the connection to the culvert was found, the customer was informed that he had to apply to connect to its foul/combined sewer. Under sections 106, 107 and 108 of the Water Industry Act, works undertaken to connect a private sewer/drain to the public sewer are done at the developer's/customer's expense.

Findings

There is no evidence to show that the company was aware or should have been aware of the property's sewerage connections until the issue with the sewer was raised by the customer. The company acknowledges it initially provided incorrect information in relation to the first pipework. The company failed to provide its services to the customer to the standard to be reasonably expected by the average person in this regard. However, the company

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provided appropriate redress for this failing. The second pipework was not connected to an existing public sewer. No evidence has been submitted to show that the stone culvert is one of the company's assets. The second pipework and the culvert are private assets and therefore not the company's responsibility. The customer received a Section 59 Drainage of Building notice from the local authority requiring him to connect the second pipework to the public sewer. I accept the company's submissions that under sections 106 and 107 of the Water Industry Act, works undertaken to connect a private sewer/drain to the public sewer are done at a customer's expense. There is no evidence to show that the company is liable to pay the cost of connecting private drains to the public sewer or to refund the customer the cost of these works as requested by the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 28 November 2018 to accept or reject this decision.

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Date of Decision: 31 October 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The dispute concerns sewerage connections for his property.
- He contacted the company after he purchased the business and was initially incorrectly told that the company has no sewers in the vicinity to connect to. The company admitted this error and has granted a 6 month refund on charges.
- He carried out extensive works in relation to the sewer connections from his property. However, he believes that was the company's duty to complete these works.
- The customer requests a refund of the survey costs in the sum of £500.00 and a refund of the costs of works in the sum of £4,728.00.

The company's response is that:

- It is not its responsibility to pay for the cost of the work as the as the work completed was carried out on a private section of the network.
- On 1 October 2011, the law surrounding responsibility of sewers changed. It became responsible for tens of thousands of kilometres of sewer pipes and drains in Yorkshire. This became known as the "Big Transfer". In order for a private sewer/drain to be eligible for transfer, it had to have connected to an existing public sewer on or before 1 July 2011.
- Following the Big Transfer it commenced a process to update its system to show the additional sewer/drain pipework and manholes that fell into its control/responsibility. The scope of this work

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is massive, and the process continues to date, with many formerly private sewers only becoming apparent when issues on them are reported by customers.

- On 1 August 2017, the customer made contact complaining about odours emanating from the main sewer laid in the ground at West Lane. It was this contact that highlighted the existence of the sewer in Green Street; prior to 2011 it was a private sewer. Its mapping systems were updated with this new information.
- Its inspectors visited the property on 4 August 2017 and found there to be two sewerage connections from the property. One which entered its public sewer in Green Street, which was not, at that stage, mapped on its systems. The second connection led to an unmapped stone culvert. The culvert was not and is not one of its assets. On that basis its inspector explained to the customer that the connection was a private issue, that it would be the customer's responsibility to deal with and he would need to contact his local council.
- For the sake of clarity, it did not take over responsibility for the pipework leading to the culvert in 2011 as part of the Big Transfer, as that connection did not meet the necessary criteria for transfer i.e. it did not connect to an existing public sewer.
- It was not involved in any of the work done when the property was developed in 1989. Prior to the customer making contact to check the sewer, it was not aware of the sewer pipe set up at and around the property.
- It initially believed that the whole property was not connected to its sewer networks.
- Once the connection to the culvert was found, the customer was advised that he must apply to connect to its foul/combined sewer.
- Under Section 106 of the Water Industry Act 1991 ("the Act"), an owner/occupier of any premises is entitled to have their drains communicate with the public sewer. It granted the customer this right and as such, his new private connection now connects to the public sewer in Green Street.
- Under sections 106, 107 & 108 of the Act, it can, essentially carry out the work at the developer's/customer's expense if it so wished or as an alternative the customer can carry out the work with its permission and approval. It gave the customer permission to connect into the sewer in Green Street.
- It agreed to refund the customer £503.00. This is the cost of the survey fee, £145.00 as well as £358.00 for the adoption connection fee.
- It has received no benefit from the works carried out by the customer. The culvert into which the customer's sewerage connection discharged into was not one of its assets. Any pollution incident occurring from that connection would have been a private issue.

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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 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 remind the parties that adjudication is an evidence-based process.
2. 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.
3. In addition, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims or complaints against third parties cannot be considered.
4. I accept the company's submissions that following the Big Transfer, due to the size and nature of the sewage network, a reactive system of mapping is a reasonable approach for companies to adopt. The company's actions are supported by the approach taken in the regulation of the UK water industry – it is accepted that due to the complexity and age of the network the process

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of mapping will be a lengthy one, and that companies may not become aware of formerly private sewers until an issue with the sewer arises.

5. There is no evidence to show that the company was aware or should have been aware of the property's sewer connections until the issue with the sewer was raised by the customer.
6. I also accept the company's submission that it only took over responsibility for pipework already connected to an existing public sewer at the time of the Big Transfer.
7. Following the customer's contact and the company's subsequent visit in August 2017, it was found that there were two sewerage connections from the Property.
8. The first was connected to the company's public sewer in Green Street. The company acknowledges it initially incorrectly claimed that it had no sewers in Green Street, despite its technicians being aware of its location. I therefore find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in this regard. However, the company subsequently apologised for this misinformation and explained that at the time it advised the customer, its maps had not yet been updated following its visits and that maps are not updated straight away as any amendments from the technicians must be checked. The evidence also shows that the company agreed to waive survey fees due to this error. The evidence also indicates that the company also subsequently refunded the adoption connection fee. I am satisfied this was appropriate and proportionate action by the company.
9. The second pipework was not connected to an existing public sewer. No evidence has been submitted to this adjudication to show that the stone culvert is one of the company's assets. I therefore accept the company's submission that the second pipework leading to the culvert and the culvert itself were private assets and not its responsibility.
10. There is no evidence to show that the company was involved with the development of the property in 1989, and that it was responsible for the connection of the second sewerage pipework. The evidence indicates that development fell under the supervision of the local authority in 1989. As above, any claims or complaints against third parties cannot be considered under this adjudication.

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11. The customer received a Section 59 Drainage of Building notice from the Department of Health and Wellbeing of the local authority requiring him to connect the second pipework to the public sewer.
12. I accept the company's submissions that under sections 106 and 107 of the Water Industry Act 1991, a customer can carry out works to connect private drains to the public sewer with the company's permission and approval. If alternatively, the water company carries out these works, the company will do so at a customer's expense. There is no evidence to show that the company is liable to pay the cost of connecting private drains to the public sewer or refund the customer the cost of these works, as requested by the customer.
13. Finally, although as discussed above, the company was not providing a sewerage service in relation to this second pipework, the parties' submissions show that the company was billing the customer for this service. However, the evidence also shows that the company has refunded six months' worth of sewerage charges with effect from 14 June 2017; the date on which the customer took over occupation of the property for incorrectly billing the customer for sewerage, and that the company did not bill the customer for sewerage charges until 5 March 2018; when a new account was set up. I am therefore satisfied that this was appropriate.
14. Consequently the customer's claim 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 28 November 2018 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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**U Obi LLB (Hons) MCI Arb
Adjudicator**

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