

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0992

Date of Decision: 15 March 2019

#### Complaint

The customer contends that the surface water sewer pipe ("SWS") running across the front of his property is defective - and that this has likely caused an element of subsidence due to an ingress of water. There was a long delay before the company confirmed that it was the party responsible for the Pipe. The customer would like the company to (1) pressure test the line of the Pipe after any replacement work; (2) replace any drainage pipes with neighbouring properties that border his; and (3) pay compensation of £2500.00 for inconvenience and distress suffered.

#### Defence

The company maintains that the SWS is operating to the standard expected and as such, it is fit for purpose. Any works to replace the SWS are unnecessary but the company has nonetheless offered to do the works as a gesture of goodwill. It is not prepared to carry out the pressure testing asked for by the customer, however, and nor is it willing to replace the pipes of the neighbouring properties.

No offer of settlement has been made.

#### Findings

Having regard to a CCTV inspection report relied on by the company, the SWS is not defective and is in fact in good working order. Replacement works are, therefore, unnecessary. The company cannot justifiably be required to carry out the pressure testing asked for or to replace the pipes of the neighbours that border the customer's property. The company's delay in confirming ownership of the SWS, however, was a failing in service. It meant that the customer's efforts to resolve the problems with the SWS were misdirected and needlessly protracted. To reflect this, the company should pay compensation of £300.00.

#### Outcome

The company needs to take the following further action:

I direct the company to pay the customer £300.00 in compensation.

The customer must reply by 12 April 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0992

Date of Decision: 15 March 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- There has been a longstanding problem with the surface water sewer / drainage pipe ("SWS") at the front of the customer's property and with associated water ingress.
- When the customer first complained to the company, the pipework was the responsibility of the customer. It was adopted, however, in October 2011 by the company (following the introduction of revised legislation and the transfer of private sewers and laterals to the incumbent companies).
- The company undertook dye tests in 2014, which showed apparently that the SWS was not the company's responsibility.
- The customer was directed to raise his issues, therefore, with the local authority ("LA").
- In May 2018, the LA installed two manhole chambers. This allowed the company to carry out a full inspection of the SWS. It was discovered - at that point - that the SWS was in fact the company's asset.
- Defects were detected to the SWS and the company has agreed either to replace the pipework ("Replacement Works") or to install a liner. The customer will not allow permission for the Replacement Works without a pressure test being carried out for his house insurance purposes.
- The company has refused to carry out the pressure test as it considers that this could damage the pipework.
- The customer would like the company:

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- as per the industry regulations, to pressure test the SWS after the company carries out its Replacement Works; and
- to ensure that the Replacement Works extend to repair or replace any drainage pipes on neighbouring properties that border the customer's property ("the Border Pipes"). The Border Pipes have also been identified as defective. If the Border Pipes are not dealt with, the ground in the vicinity will not return to a stable state in order for the Replacement Works to commence.
- On the question of the company giving an apology, the customer says he feels that, since 2012, when the company first became involved in the matter:

*"... it has had little regard to the problem other than to carry out failed surveys, that is to say they stated this was not their asset when in times the [LA] carried out a survey, with a third party which demonstrated in 2018 that [the company] did in fact own the asset. How could you apologise for this complete error, by any and all who have had dealings with this case. To apologise would be to rid the properties of the nuisance, without delay, correctly to any and all affected pipes in the terrace of five which have all been shown to be defective ... any properties suffering defects due to this should be compensated to cover these cost of repairs, or to make provision with the insurance companies to contribute to this substantially given the time frame from denying liability to accepting liability it, some six years ..."*
- The customer also claims £2,500.00, plus interest, for the distress and inconvenience that he has had to endure.

**The company's response is that:**

- It has been in ongoing discussions with the customer for some years about this matter. It has maintained that the SWS in question is operating to the standard it would expect and as such, it is fit for purpose.
- In 2011, it carried out a dye test to identify where the surface water drainage line was running. The results of that test were inconclusive.
- It has visited the customer at his property numerous times to discuss his ongoing concerns.
- In June 2018, manhole chambers installed by the LA, enabled access to conduct a CCTV inspection to review the condition of the SWS. The CCTV report concluded that the SWS is in good working order.
- To resolve matters and to assist the customer as best it can, the company has offered to replace a section of the SWS, i.e. to carry out the Replacement Works ("the Offer"). The Offer is purely

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- a gesture of goodwill to put the customer's mind at ease. The Replacement Works are not necessary and the cost to the company is likely to exceed £3,500.00.
- The company emphasises that it will not conduct a pressure test of the pipe after it completes the Replacement Works. This is for two reasons:
    - first, this is an open-ended drainage system and the results would be inconclusive; and
    - second, it could degrade older pipes in the network and cause additional cost and disruption for other customers.
  - The company also states that it will not be in a position to replace any other parts of the drainage pipework or system (i.e. other than the SWS) than referred to in the Offer. Any work to the Border Pipes, for example, is unnecessary and:
    - would likely cost in excess of £10,000.00; and
    - would cause unnecessary disruption for the company's other customers in the area (when there are no related issues for those other customers).
  - The company does acknowledge mistakes made on its part, specifically that:
    - it initially believed that the SWS in question was the responsibility of the LA. It was only possible to identify that the pipe was the company's responsibility after the LA installed manhole chambers (and after taking further guidance). Regardless of ownership, however, the outcome as explained above remains the same; and
    - it recognises that its terminology can be confusing. For example, it uses the word 'defective' to describe the age of its assets, not just the condition. The company offers its apologies for the confusion caused by this.
  - Whilst the company understands the concerns raised by the customer in relation to the SWS, it believes that the Offer represents a fair and reasonable basis for addressing those concerns.

### 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 'sequence of events', which is set out by the customer within the body of his WATRS application form and which covers the period between 24 March 2011 and 14 June 2018; and
  - b. the emails, letters, reports and other materials submitted by the customer alongside his WATRS application form; and
  - c. the CCTV report, at 'appendix 1' of the company's defence and the 'appendix 1a' guidelines that go with the CCTV report. (I note the company's clarification that these 'appendix 1a' guidelines are "... *intended to explain the grading levels of the CCTV report. The photographs within it, are for example only and are not the customer's pipework related to this application ...*"); and
  - d. the company's letter to the customer dated 18 January 2019, at 'appendix 2' of its defence, detailing the Offer made by the company to undertake the Replacement Works "*as a gesture of goodwill*".
2. I have also had the benefit of reading the customer's comments in his email of 4 March 2019 ("Comments"), filed in reply to the company's defence.
3. On my reading, there appear to be three key issues at the heart of this dispute:
  - a. the company's delay in confirming its ownership of, and responsibility for, the SWS ("the Delay"); and
  - b. whether, in fact, the SWS was/is defective at any relevant point in time. I use the term 'defective', here, in the sense that the SWS required relatively urgent repair or replacement ("Defective"); and

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- c. whether pressure testing should be carried out, as the customer requests.

### The Delay

4. I turn to the question of the Delay first of all. The company acknowledges that it made a mistake in this respect and I note that it has apologised to the customer for the fact that the Delay occurred. I am satisfied (and find), therefore, that the Delay represented a failure by the company to provide its services to the customer to the standard that one would reasonably expect.
5. Whilst it admits and apologises for its failing in this regard, the company goes on to say this about the ultimate consequences of the Delay:

*“ ... It’s important to mention that regardless of ownership, the outcome as we have explained, remains the same ...”*
6. I take the company to be arguing, essentially, that the Delay made no significant difference to the customer’s situation. In other words, if the ownership question had been resolved at an earlier point in time, it does not necessarily follow that the Replacement Works would have been actioned sooner. This is because, according to the company’s submissions:
  - a. the SWS was not in a Defective condition anyway; and
  - b. that being so, even in the absence of the Delay, the company would (still) not have been obliged to undertake the Replacement Works.
7. I accept the logic of the company’s argument in this respect. If my finding is that the SWS was/is not Defective (and that is an issue to which I am turning next, below) then I cannot see that the customer can recover compensation due to the Replacement Works being delayed.
8. However, it seems to me - and I find - that the Delay probably still caused some separate measure of inconvenience and distress to the customer in this case, i.e. inconvenience and distress distinct from the impact of the SWS not being repaired or replaced. As I see it, the Delay on the ownership question meant that the customer’s efforts to get to the bottom of the problems with the SWS were misdirected and needlessly protracted. I am satisfied, therefore, that the company should compensate the customer for that particular consequence of the Delay (irrespective of any finding that I reach on the issue of whether the SWS was Defective.)

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## Whether the SWS is/was Defective

9. The company' asserts that the SWS is/was not Defective and that, therefore, the Replacement Works are unnecessary. To support its position on this, the company relies on the CCTV inspection report, dated 1 June 2018 ("the CCTV Report"), a copy of which is included with its defence as 'appendix 1'.
10. From his Comments, I see that the customer seizes on numerous observations that are flagged up in the CCTV Report:

*"... The way forward is to as advised to [] Water is to allow the inspection during the careful excavation of the pipes in the first instance (our engineers at the site also) then when that is completed to remove the old pipes. Replace with the new pipes, pressures test to be in compliance with regulations and to ensure any defective pipes within close proximity to our dwelling are also repaired as any defective pipes can also be a cause for leaks and if in close proximity to our dwelling they can give rise to further problems re softening of soil to the foundation area. The extent of the excavations minimum must include the entire front elevation to pour property boundary to boundary **and I believe as noted that there are defects noted** [my emphasis], see*

- *8.69 Joint displaced, medium 1 This is virtually on the border to No 40, followed by the remaking medium displaced joints up to the gully at approx. 2.7 meters from the boundary;*
- *9.42 Joint displaced, medium 1*
- *10.00 Joint displaced, medium 1*
- *11.46 Junction, at 10 o'clock, diameter 100mm ..."*

11. I have examined the CCTV Report carefully and I have also had regard to the guidelines relied on by the company and attached to the defence as 'appendix 1a' ("Guidelines"). It seems to me that all of the observations referred to by the customer in his Comments are recorded as 'Grade 1' or 'Grade 0' defects. As I interpret the Guidelines, however, for the SWS to be classed as Defective (in the sense that the Replacement Works could be said to be necessary or required at this stage), one would be looking for Grade 4 or Grade 5 observations to be recorded in the CCTV Report.

12. Looking at the Guidelines, Grade 4 defects refer to repairs that need to be completed within one

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to two years and Grade 5 refers to repair work that is 'urgently' needed.

13. There are, however, no Grade 4 or Grade 5 observations included in the CCTV Report.
14. On the basis of the evidence in the CCTV Report, therefore, I find that the SWS is/was not Defective. It follows that I accept the company's points in its defence when it submits that:
- a. the Replacement Works are unnecessary; and
  - b. the SWS is, in fact, "*in good working order*";
  - c. the company is only proposing to undertake the Replacement Works as a gesture intended to put the customer's mind at ease.

#### Whether pressure testing should be undertaken

15. I note the reasons that the company gives for resisting the customer's calls for the SWS to be pressure tested after the Replacement Works have been carried out. As I see it, the risk that older pipes in the network might be degraded is a valid basis for concern. On balance, I am not persuaded that it would be reasonable to require the company to engage in pressure testing in this case.

#### Whether the company should extend the Replacement Works to the Border Pipes

16. As to whether the company should be required to extend its Replacement Works to deal with the Border Pipes, I take account of the company's response that the costs associated with this could exceed £10,000.00. Having already accepted the company's position that the Replacement Works are unnecessary (and are proposed purely as a gesture of goodwill), I do not consider that it would be justifiable or reasonable to direct that the company must also repair and/or replace the Border Pipes if and when it is undertaking the SWS Replacement Works.

#### Compensation

17. In light of my findings in paragraph 14 above, i.e. that the SWS is/was not Defective, I regard the Offer put that the company has put forward as a reasonable one in all the circumstances. I do not make any direction, however, that the company must carry out the Replacement Works. It seems to me that it is a matter for the customer as to whether or not he wishes to accept the Offer.
18. Referring to my findings in paragraph 8 above, i.e. that the Delay meant that the customer's

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efforts to tackle the SWS situation were misdirected and needlessly protracted, I do consider that an award of compensation should be made. I have taken the following factors into account:

- a. the extent of the Delay;
- b. the impact of the misinformation (about who had responsibility for the SWS) on the customer;
- c. the fact that the customer had to persist in seeking assistance from the company for as long as he did (and that he felt the company, in response, “... *had little regard to the problem ..*”)

19. Taking these factors into account, I conclude that an award of £300.00 would be reflective of the inconvenience and distress suffered and that is the amount of compensation that I shall direct the company to pay in this case.

#### **Outcome**

The company needs to take the following further action:

I direct the company to pay the customer £300.00 in compensation.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 April 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.

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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. WATRS will therefore close the case and the company will not have to do what I have directed.

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

**Adjudicator**

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