

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1082

Date of Decision: 6 December 2018

Complaint

The customer's claim is that the company and its required contractor's lack of skill and care whilst dealing with a build over agreement has unreasonably delayed his project build, which has led to an increase in costs including additional building and rental costs. The customer is seeking £10,087.00 and interest, comprising £3,500.00 for additional builder's costs, £5,000.00 additional rental property charges, £220.00 unoccupied water charges and £1,367.00 costs of the company's required contractor.

Defence

The company states that it did not fail to operate its business appropriately or without reasonable skill and care. The customer was made aware that a build over agreement would be necessary and any contractor working on the company assets would need to be suitably qualified and insured. However, the customer chose to commence works without a build over agreement in place and a suitable contractor was not appointed until July 2018. Accordingly, any additional building or rental costs incurred either in providing information for the build over application or the resulting works are for the customer's account. Therefore, no sums are due. The company has not made any further offers of settlement.

Findings

I am satisfied from the evidence that the company did not fail to provide its services to the customer to the standard to be reasonably expected, with regard to build over agreement. Furthermore, I am satisfied there have been no failings with regard to customer service as I find the company has provided a good level of service at all times throughout its dialogue with the customer.

Outcome

The company needs to take no following further action.

- The customer must reply by 8 January 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 6 December 2018

Party Details

Customer: []

Company: []

Case Outline

The customer's complaint is that:

- The company's and its required contractor's lack of skill and care whilst dealing with a build over agreement has unreasonably delayed his project build, which has led to an increase in costs including additional building and rental costs.
- The company has been inconsistent with its requirements of its method statement.
- The company has provided a poor level of service throughout its dialogue.
- The customer is seeking compensation of £10,087.00 and interest, comprising £3,500.00 for additional builder's costs, £5,000.00 additional rental property charges, £220.00 unoccupied water charges and £1,367.00 costs of the company's required contractor.

The company's response is that:

- The company did not fail to operate its business appropriately or without reasonable skill and care.
- Whilst the company assisted the customer in locating the contractor, this was a goodwill gesture as it is under no obligation to do so. The contract was between the contractor and the customer; therefore, the contractor is a third party and any issue with the contractor falls outside this adjudication.
- The company, in order to assist the customer in this instance only, allowed the customer's builder to undertake works within its sewer under the supervision of an adequately qualified and insured contractor. Furthermore, it waived the £5m insurance cover to also assist the customer. However, neither of these inconsistencies with its method statement in March 2018 led to any delay as a build over agreement had not been agreed between the parties until 7 August 2018.

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- The customer was made expressly aware in January 2018 that a build over agreement would be necessary. However, the customer chose to commence works without a build over agreement in place and the build over application was not received until 21 March 2018. Accordingly, any additional building costs either in providing information for the build over application or the resulting works are for the customer's account.
- As the customer was aware in January 2018 that a build over agreement was necessary and a delay would ensue whilst its application was agreed, the company is not liable for any rental charges or unoccupied water charges as once the build over application was received in March 2018 the company did all it could, as quickly as it could.
- On each occasion the customer made a complaint, this was taken seriously and fully investigated and it should not pay any compensation as when dealing with the customer's complaint the company did all it could, as quickly as it could. Furthermore, there was no intention to cause the customer stress or inconvenience.

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. The dispute centres on whether the company failed to operate its business appropriately or without reasonable skill and care when dealing with the customer's build over application. The

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company is required to meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008. The combined effect of these is to place an obligation on a water and sewerage company that when there is a report of a leak, the company needs to investigate fully if the company's assets are to blame and, if repairs are needed, make such repairs to prevent further leaks.

2. Furthermore, the company also has certain obligations in respect of its customer services as set out in OFWAT Guaranteed Standards Scheme (GSS).
3. The customer, who was in the progress of purchasing a property at [], initially contacted the company on 3 November 2017 requesting advice regarding drainage issues and construction of an extension to the house above the main sewer. On 11 November 2017 the company responded and advised that it could attend the property to investigate the drainage issues further, but the customer would need to contact its Developer Services team with regard to the extension to the house above the main sewer. Various correspondence took place between the parties and on 27 December 2017 the customer advised the company that they had purchased the property at []; however, they would be renting until the extension had been approved and built. Between 27 December 2017 and 21 March 2018 correspondence took place between the parties regarding the drainage and sewer issues. In addition to the customer's own CCTV inspection various other CCTV inspections were carry out by the company between the 27 December 2017 and 9 January 2018. The evidence shows that within this period the roots and trees that had been causing the drainage and sewer issues were cleared.
4. On 9 January 2018 the company advised customer that the extension he intended to build would require a build over agreement as it would go over a transferred sewer. The evidence shows that on 21 March 2018 the customer sent his build over application, confirmation that his builder will provide a Method Statement and a request that the sewer be diverted. The company responded on the 27 March 2018 requesting further documents to be supplied by the customer's architects. Also, the same day, the customer advised the company that his builder was prevented from carrying out the works due to sufficient insurance and qualifications. On 28 March 2018 the company replied to the customer with an explanation of why the customer's builder was prevented from carrying out the works and the reason for the additional documents requested. The evidence shows that the company waived its policy that only a properly qualified contractor undertakes the works and its requirement that said contractor has a minimum of £5m for insurance. Various correspondence between 28 March 2018 and 27 July 2018 took place between the parties discussing the various aspects of the build over agreement and sewer

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diversion. The evidence shows there were complex issues involved which needed to be resolved and various CCTV surveys required before the build over agreement could be approved. The evidence also shows that during this period the customer had built his garage over the sewer before the build over agreement had been authorised. It was agreed on 27 July 2018 that the customer's builder could undertake the works under the supervision of a qualified contractor, which in this instance was [] Engineering. The build over agreement was approved on 7 August 2018.

5. I note the various complaints the customer has raised concerning the third-party contractor, [] Engineering. However, [] Engineering is a third party and has no contractual relationship with the company. In accordance with Rule 3.5 of the WATRS scheme rules this adjudication cannot be used to adjudicate upon disputes regarding third party complaints and therefore, the customer's complaint concerning the contractor's lack of skill and care fails.

6. With regard to the customer's comment that the company employed a lack of skill and care to appoint an approved contractor in a timely manner. The company had notified the customer in March 2018 as to the requirements needed for a third party to work on the company's assets. The evidence shows that the guidance notes that accompany the sewer diversion application form sent to the customer in March 2018 make it clear that it is for the customer to appoint the contractor to undertake the works. The company provides a list of contractors that meet the requirements and the company states it is for the customer to appoint whichever contractor they wish. The evidence shows the list was provided at the early stages of the customer's build over application and before it was approved. Accordingly, I find the company did not fail in its skill or care by not providing the list sooner within its dialog with the customer. On reviewing the evidence, I accept that the company [] Engineering is on its list of approved contractors; however, on the balance of evidence I find the list is not a recommendation, only a list of approved contractors with the required qualifications and insurance cover to work on the company's assets. The evidence shows the customer was unable to retain an approved contractor and on the 3 July 2018 the company agreed to contact various contractors on the customer's behalf, which it did. On 24 July 2018 [] Engineering attended the customer's property to survey the site in preparation for providing the customer with a quote. Ultimately it was the customer who needed to appoint the contractor in a timely manner and the evidence shows that customer did not appoint [] Engineering until 27 July 2018. Therefore, I find that the company did not delay the appointment process and it cannot be at fault where there is delay due to the customer being unable to retain an approved contractor. The evidence also shows that the customer has also been offered by the company a goodwill gesture worth

£1,000.00 to be the waiver of the company's usual fees in issuing a build over agreement and all the associated works it entails. After careful review of all the evidence I am satisfied that the company's service and actions were reasonable in this respect and I find they did not cause any loss or delay with the customer's build project. Accordingly, I find the evidence does not support the customer's position and so this aspect of the customer's claim fails.

7. With regard to the customer's comments that company provided inconsistent requirements regarding its method statement, I note that the company tried to assist the customer in having this work undertaken, even if it meant allowing an unqualified and under insured contractor undertaking the work under the supervision of a qualified contractor. Furthermore, the evidence shows that when the method statement was required in March 2018 the customer's builders would not have been able to start the project as a build over agreement had not been agreed between the parties and could not be until the revised plans was received from the architects which were not received until 26 July 2018. Therefore, I am satisfied that the company's service and actions were reasonable in this respect and did not cause any loss or delay. Accordingly, I find the evidence does not support the customer's position and so this aspect of the customer's claim fails.
8. The customer states that the company exerted a lack of care and skill in managing CCTV surveys undertaken. On reviewing the evidence, I am persuaded that the customer's own CCTV survey could not be relied on due to the fact it was undertaken prior to the roots being cleared in January 2018 and the trees were subsequently removed. In my view, the surveys undertaken by the company between the 27 December 2017 and 9 January 2018 and before the customer had applied for a build over agreement were justified as these were required to remove the roots blocking the sewer and unrelated to the build over agreement. The evidence shows that the various issues raised and needing addressed by the customer's build over application was extensive particularly as by the time of the fifth survey the customer had built his garage over the sewer before the build over had been authorised. Therefore, I find that the additional surveys undertaken after the company's Wastewater Strategy and Support Manager attended a site meeting on 18 April 2018 also seem justified, with the exception of the fourth survey, which had to be redone due to human error. Although not all mistakes can be anticipated, the company needs to take steps to limit the consequences of their employees' human error, which in this instance was the requirement for an additional survey a week later. I am satisfied that the additional survey was sufficient to limit the consequence of the employee's earlier error regarding the chainage/meterage clock. Therefore, I find the company did not fail to provide its

services to the customer to the standard to be reasonably expected with regard to CCTV surveys.

9. I note that the customer has requested redress of £3,500.00 for additional builder's costs, £5,000.00 additional rental property charges and £220.00 unoccupied water charges. As above, I am not satisfied that it has been proven the company failed to provide its services to the standard to be reasonably expected and as I have already found that the company did not unreasonably delay his project build, I therefore cannot find the company liable for these costs. The company's service and actions were reasonable and did not cause any loss or delay. Accordingly, I find the evidence does not support the customer's position and so this aspect of the customer's claim fails.
10. The company has certain obligations in respect of its customer services. After careful review of both the customer's letters and the company's responses, I am satisfied that, by the end of the company's dialogue with the customer, the company had adequately explained the reason behind why the customer's builder would normally be required to have certain qualifications and a higher insurance. I also note that the company felt it helped the customer by relaxing previously stringent insurance liability requirements and chasing potential contractors on his behalf.
11. From the timeline set out within the various correspondence, I find the company responded adequately to all the customer's concerns. Furthermore, after careful analysis of all the correspondence submitted in evidence, I am not satisfied that it has been proven the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in respect of customer service.
12. In light of the above, I find the customer has not proven the company failed to provide its services to the customer to the standard to be reasonably expected by the average person with regard to the build over agreement and sewer diversion, nor has the customer proved the company failed to provide services to the standard to be reasonably expected when investigating these issues. Furthermore, I am satisfied there have been no failings in respect of customer service as the company has provided a good level of service at all times throughout its dialogue with the customer.

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 8 January 2019 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 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.



**Mark Ledger FCI Arb
Adjudicator**