

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1113

Date of Decision: 27 February 2019

#### Complaint

The customer submits that it has incurred costs in the sum of £9,601.45 for works that were necessary to prevent repeated foul sewage flooding at the premises; the result of a collapsed pipe that was determined to be the company's asset. The manhole was filling up quickly and the company failed to attend on time, missing several appointments. It was therefore left with no other option but to employ an independent service to address the issue. The customer requests £2,388.00 for a CCTV survey and drains clearance; £180.00 for a tanker to clear drains; £3,876.45 for emptying the manhole; £2,556.00 for consultant fees; and £2,500.00 for distress and inconvenience. A sum total of £11,500.45.

#### Defence

The company submits that, bar one invoice, it disputes this claim. It has offered to pay the customer's invoice for a private contractor's attendance on 1 September 2017 as it did not attend as promised by 30 August 2017, this invoice totals £582.00. It has in error, also offered to pay the same £582.00 invoice for works carried out by a private contractor on 1 September 2017 for a second time. It does not intend to revoke this offer. Otherwise, it has attended as requested. A number of invoices relate to drainage issues that were not reported to it and works that were carried by a private contractor in relation to these. As these issues were not reported to it, it cannot consider reimbursing these costs. It has offered the customer £300.00 as a gesture of goodwill as it acknowledged that its service could have been better at times. It has offered a total of £1,464.00 to the customer (£300.00 + £582.00 + £582.00).

#### Findings

For the avoidance of doubt, any offers to settle are a business decision for the company alone to determine and fall outside the scope of WATRS. Offers may be made to avoid the financial cost and time of going to adjudication. Adjudicators must consider any compensation independently of any offers made. The company's obligation is to resolve any reported issues within a reasonable time. A company cannot be held responsible for any faults it is not aware of, and has not been given the opportunity to resolve. I can appreciate the difficulty of the situation for the customer and I acknowledge that the customer will be disappointed that I am not in a position to direct the redress requested. However, bar one invoice, the customer's request for reimbursement does not succeed. The company should pay the customer a measure of compensation for the distress and inconvenience caused by the

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time taken to investigate the defect after the issue had been reported to it.

**Outcome**

The company needs to take the following further action:

I direct that the company pay the customer the sum of £1,332.00 in compensation.

The customer must reply by 27 March 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1113

Date of Decision: 27 February 2019

## Party Details

Customer: [ ]

Customer's Representative: [ ]

Company: [ ].

## Case Outline

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

- It incurred costs in the sum of £9,601.45 for works that were necessary to prevent repeated foul sewage flooding at the premises; the result of a collapsed pipe that was determined to be the company's asset.
- The manhole was filling up quickly and the company failed to attend on time, missing several appointments. It was therefore left with no other option but to employ an independent service to address the issue.
- Following the Consumer Council for Water's (CCW) referral, the company offered to reimburse the sum of £582.00 increasing this to a total sum of £1,464.00. However, it rejects this.
- The customer requests £2,388.00 for a CCTV survey and drains clearance; £180.00 for a tanker to clear drains; £3,876.45 for emptying the manhole; £2,556.00 for consultant fees; and £2,500.00 for distress and inconvenience. A sum total of £11,500.45.

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

- The sewer concerned collects wastewater and surface water flows from the school and the issue, which was confirmed as a collapsed sewer, meant that these flows were building up in a manhole (MH) onsite. The customer claims it had no alternative but to pay for private contractors to assist it prevent flooding to the property. However, bar one invoice, it disputes this claim.

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- It has offered to pay the customer's invoice for a private contractor's attendance on 1 September 2017 as it did not attend as promised by 30 August 2017, this invoice totals £582.00.
- (It has, in error, also offered to pay the same £582.00 invoice for works carried out by a private contractor on 1 September 2017 for a second time. It does not intend to revoke this offer.)
- Otherwise, it has attended as requested.
- A number of invoices relate to drainage issues that were not reported to it and works that were carried by a private contractor in relation to these. As these issues were not reported to it, it cannot consider reimbursing these costs.
- It was first contacted and made aware of an issue at the site on 20 July 2017. The method of this contact was by email, which it considers to be a non-urgent communication. It has regulatory requirements set out in the government's Guaranteed Standards Scheme (GSS), and it also runs its own enhanced version with additional standards known as the Customer Guarantee Scheme (CGS). With regards to written enquires about water or wastewater services, it has ten working days to provide a response. If it does not meet the ten working day timescale a payment of £30.00 is made to its customers. Although it aims to reply to its customers' written communication as quickly as possible, due to the number of written communications it receives daily, sometimes responses can take up to ten working days.
- None of the pages on its website advise customers to email it to report sewer flooding or blockages. Each page has the number for its 24 hour call centre and details of its Twitter and Facebook pages. Its telephone lines and social media channels are manned 24 hours a day, whereas its written communication offices for receipt of emails and letters are not. The first call it received from the customer was on 25 July 2017.
- Its contractor completed the repair to the sewer line on 4 November 2017.
- It has offered the customer £300.00 as a gesture of goodwill as it acknowledged that its service could have been better at times as it did not attend with the correct equipment at times and did not attend as promised. Other than this, it believes it provided an excellent service when called upon.
- It has offered a total of £1,464.00 to the customer (£300.00 + £582.00 + £582.00).

### 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.

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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 must 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.

### **Offers to settle**

3. For the avoidance of doubt, any offers to settle are a business decision for the company alone to determine and falls outside the scope of WATRS. Offers may be made to avoid the financial cost and time of going to adjudication. Adjudicators are not bound by offers made and must consider any compensation independently of any offers.

### **Sewer blockage**

4. The company's obligation is to resolve any reported issues within a reasonable time. This is because a company cannot be held responsible for any faults it is not aware of, and has not been given the opportunity to resolve.
5. The company has submitted evidence that confirms that under its CGS, it has ten working days to respond to written queries. Evidence submitted by the company also confirms the company's submission that none of the pages on its website advise customers to email it to report sewer

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flooding or blockages. Therefore, having carefully considered the matter, I accept the company's submissions that although the customer's first contacted it by email on 20 July 2017, for the purposes of this adjudication; its responsibility begins from the customer's telephone call on 25 July 2017. I accept company's submissions that email is a non-urgent communication. The evidence indicates that the company was not aware of the customer's email until 28 July 2017. I also note that upon receipt, given the nature of the issue, the company contacted the customer by telephone. I therefore find no failings on the company's part in this regard.

6. However, following this call, the company's account notes shows that it was not until around 26 September 2017, two months later, that the company's concluded its investigations to determine responsibility for the issue and the works required to repair the sewer. The company itself acknowledges that during this period, it failed to attend the site with the correct equipment on a number of occasions and did not attend the site by 30 August 2017 as promised on 25 August 2017. I find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard. I am also inclined to accept, on a balance of probabilities, the customer's submissions that the company failed to attend on 25 July 2017, 26 July 2017 and 4 August 2017. The premises are a school. Bearing in mind the customer's submissions that there is no front door for the company to have knocked on but a large entrance hall manned by a team of receptionists; that there was no one of the name of Mr [ ] working for the School or its contracts; and that photos show the company's van was parked at some distance to the site and the MH on 4 August 2017. Taken together, I am inclined to accept, on a balance of probabilities, the customer's submissions that the company did not attend the correct address on these dates. I therefore also find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard.
7. The evidence shows that works to repair the sewer commenced on 2 October 2017, less than a week after the company concluded its investigations. These works were completed on 4 November 2017, a month later. In the absence of any evidence showing otherwise, given the nature of the work required as described by the company, I am inclined to accept the company's submissions that it completed the repair within a reasonable period of time. I therefore find no failing on the company's part in this regard.

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## Redress

8. In respect of the customer's Tomato Plant invoice dated 11 July 2017 for £2,338.00; [ ] Ltd (Dyno-Rod) invoice dated 17 July 2017 for £180.00; [ ] (EC1) invoice dated 28 July 2017 for £486.00; [ ] (EC2) invoice dated 3 August 2017 totalling £156.00; and [ ] (EC3) invoice dated 4 August 2017 totalling £582.00, these works were carried out before the company was notified of the issue. As discussed above, the company cannot be held responsible for any issues it is not aware of. Consequently, the customer's requests for reimbursement of these sums do not succeed.
9. In respect of [ ] (EC4) invoice dated 15 September 2017 for £582.00, the company acknowledges that it failed to attend the site as promised by 30 August 2017 and had it attended the site there would have been no need to employ a private contractor. I find that the company is liable to reimburse the customer for this cost. This is also accepted by the company. I therefore direct that the company pay the customer £582.00.
10. In respect of [ ] (EC5) invoice dated 29 September 2017 for £1,800.00, this is for works carried out on 18 September 2017. No evidence has been submitted to this adjudication to show that the customer informed the company that there was an issue with the MH on 18 September 2017 and that the company was given the opportunity to resolve the issue, although the parties had been in contact that day. In light of the evidence provided, I accept the company's submissions that it was actively investigating the matter at this stage. As discussed above, the company cannot be held responsible for any issues it is not aware of. Consequently, the customer's claim in this regard does not succeed.
11. The [ ] GC1 contains a fee for £270.45 which is described as "Add OHP" and has been added to the subtotal of the [ ] invoices. No evidence has been submitted to show what this "Add OHP" means or relates to. In the absence of which, the customer has not shown that the company is liable to pay this sum.
12. In respect of the customer's claim for the [ ] fee of £2,556.00, I note the email dated 5 January 2018 submitted by the customer as evidence for this claim. The email from [ ] states that this is for "*As a result of the [ ] Water pipe issue, we have completed additional work above and beyond the drainage design scope (including additional site visits and liaising with [*

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[ Water)”. However, the customer has not submitted an invoice from its consultants to confirm the sum stated was subsequently charged, I am mindful that the WATRS Application was submitted on 15 January 2019; over a year later. Nor, importantly, is there any evidence to showing a breakdown or how this figure was arrived at by the customer’s consultants. I am also mindful that water companies’ own, and are legally responsible for, pipework up to the boundary of a property. Whilst property owners/occupiers are legally responsible for pipework within the boundary of a property. I therefore accept the company’s submissions that any works [ ] carried out to the “drainage design scope” would be works to the privately owned drainage systems within the boundary of the property, and only it has the power to make “drainage design scope” changes to its assets. I remind the parties that adjudication is an evidence-based process. In the absence of an invoice confirming the loss claimed and clear evidence showing that the sum claimed is fair and reasonable and proportionate to the failings shown in this adjudication, the customer has not shown that the company is liable to pay this fee.

13. I can appreciate the difficulty of the situation for the customer and I acknowledge that the customer will be disappointed that I am not in a position to direct the redress requested. However, bar the [ ] (EC4) invoice dated 15 September 2017 for £582.00, the customer’s request for reimbursement does not succeed.

14. In respect of the customer’s claim for compensation for distress and inconvenience, in light of my findings that the company failed to provide its services to the customer to the standard to be reasonably expected with regard to the delays investigating the defect, I am satisfied that the customer is entitled to a measure of compensation. However, I find that the sum claimed by the customer is disproportionate to the breaches shown. Having carefully considered the evidence provided, I find the sum of £750.00 to be a fair and reasonable level of compensation. I therefore direct that the company pay the customer the sum of £750.00 in compensation.

#### **Outcome**

The company needs to take the following further action(s):

I direct that the company pay the customer the sum of £1,332.00 in compensation.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27 March 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.

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**U Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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