

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1150

Date of Decision: 14 January 2019

#### Complaint

In mid-2018, the customer was in the process of selling her property to a buyer. As part of the buyer's due diligence on the property, they requested that the company conduct a utility search (for water and sewerage services). The company explained that, as it had not yet adopted the sewer system for the property, it could not provide accurate information. However, its response documents showed that (based on the information it had available) a sewer line ran underneath the customer's property. The customer states that this caused problems with the sale of her property and it took effort on her part to resolve the matter. The property sale ultimately went through but the customer states that it was close to falling through and this ruined her enjoyment of a family holiday to Dubai. The customer states that she is unhappy with the company's actions in relation to this matter and is seeking compensation. She states that the company has provided her with £100.00 as a gesture of goodwill but she is not satisfied with this sum. The customer also believes that the company has breached data protection laws and discussed her details with a third-party. The customer is therefore seeking compensation for stress and inconvenience in the sum of £2500.00 from the company.

#### Defence

The company does not accept that it has acted negligently in its obligations. The company confirms that the sewer system in question is privately owned (and has not yet been adopted by the company) and the only records available to it at the time of the buyer's search request indicated that a sewer line ran underneath the property. The company further confirms that when it provides this type of information, it highlights that the information may not be correct (due to the fact that it has not adopted the assets). Its disclaimer makes it very clear that the information it can provide is limited and not necessarily accurate. Following contact from the customer, the company was then provided with the detailed plans from the developer (obtained by the customer) and it was then able to update its records. The company accepts that communications with the customer did not go as smoothly as it would have liked and it apologises for this. However, it was able to assist the customer by updating its records promptly and it also provided the customer with £100.00 as a gesture of

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goodwill for any inconvenience experienced. The company does not accept that it has breached any data protection laws. The company states that, in light of all the above, it does not accept liability for the customer's claim for redress.

### Findings

Under the circumstances, I am not satisfied that that the company's actions in connection to a utility search request from a third party (the buyer) amount to a failure to provide its services to the customer to the standard to be reasonably expected by an average person. Furthermore, I find that the remedial action already taken by the company in response to its accepted oversights was fair and reasonable. Accordingly, I am not satisfied that any further compensation for stress and inconvenience is warranted.

### Outcome

The company does not need to take any further action.

The customer must reply by 11 February 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1150

Date of Decision: 14 January 2019

## Party Details

Customers: [ ].

Company: [ ].

## Case Outline

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

- In mid-2018, she was in the process of selling her property to a buyer.
- As part of the buyer's due diligence on the property, they requested that the company conduct a utility search (for water and sewerage services).
- The company explained that, as it had not yet adopted the sewer system for the property, it could not provide accurate information. However, its response documents showed that (based on the information it had available) a sewer line ran underneath the customer's property.
- The customer states that this caused problems with the sale of her property (as this information could have negatively affected the buyer's decision to purchase the property) and it took effort on her part to resolve the matter. Specifically, the customer states that she had to contact the developers and obtain plans of their private sewer network to provide to the company (thus enabling it to update its records).
- The sewer plans (which showed the sewer was not under the customer's house) were then provided to the buyer and the property sale ultimately went through. However, the customer states that the sale was close to falling through and this ruined the enjoyment of her family holiday to Dubai.
- The customer states that she is unhappy with the company's actions in relation to this matter and is seeking compensation. She states that the company has provided her with £100.00 as a gesture of goodwill but she is not satisfied with this sum.

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- The customer also believes that the company has breached data protection laws and discussed her details with a third-party.
- Consequently, the customer is seeking compensation for stress and inconvenience in the sum of £2500.00 from the company.

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

- It has not acted negligently in its obligations.
- The company confirms that the sewer system in question is privately owned (and has not been adopted by the company yet) and the only records available to it at the time of the buyer's search request indicated that a sewer line ran underneath the property.
- The company further confirms that when it provides this type of information, it highlights that the information may not be correct (due to the fact that it has not adopted the assets). Its disclaimer makes it very clear that the information it can provide is limited and not necessarily accurate.
- Following its response to the buyer's search request, the customer contacted the company and conveyed her concerns.
- The company again confirmed that the sewer line was privately owned and therefore it did not have accurate information to provide. Subsequently, the company was then provided with the detailed plans from the developer (obtained by the customer) and it was then able to update its records.
- The company accepts that communications with the customer (spanning 13 to 20 July 2018) did not go as smoothly as it would have liked and it apologises for this (in particular, the company highlights its failure to return a telephone call to the customer and its provision of some inconsistent information). However, in the end, it was able to clarify any issues and assist the customer by updating its records promptly and waiving any search charges. Furthermore, the company confirms that it also provided the customer with £100.00 as a gesture of goodwill for any inconvenience experienced.
- The company does not accept that it has breached any data protection laws.
- The company states that, in light of all the above, it does not accept liability for the customer's claim for redress.

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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.

The WATRS Scheme Rules provide detailed information on the process of adjudication, including the timing of the various stages. It is important for the smooth running of the scheme and fairness to all that time limits are respected and submissions made in good time to allow them to be properly considered as a part of the process. Furthermore, I must also draw attention to the fact that in accordance with the scheme rules, new complaints and evidence cannot be raised at the comments stage. Accordingly, I must disregard any new complaints and/or evidence introduced at the comments stage and will proceed accordingly.

## How was this decision reached?

1. The customer's only claim is for the company to provide her with compensation in the amount of £2500.00 for the stress and inconvenience she experienced as a result of the company's actions in response to a utilities search request from the buyer of her property. Specifically, the customer indicates that the company was unable to give accurate information to the buyer regarding the location of the private sewer lines located near her property and she had to intervene in order to ensure that the sale of her property did not fall through. Furthermore, the customer also believes that the company has breached data protection laws by discussing her details with a third party. In accordance with the reasons already detailed in its defence, the company does not accept that it has failed to provide its services to the standard to be reasonably expected.

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2. I draw attention to the fact that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I note that the customer has sought to raise a complaint about a breach of data protection laws. I remind the parties that, in accordance with the WATRS rules, complaints that raise complicated issues of law are beyond the scope of this scheme. Under the circumstances, I find that the customer's complaint relating to an alleged data protection law breach raises complicated issues of law and therefore cannot be examined under this scheme. Additionally, in accordance with WATRS rule 3.4.1, I also find that this particular element of complaint should be referred to a more appropriate forum for resolution.
4. I also note that the customer has submitted new evidence with her comments on defence. I draw attention to the fact that, in accordance with the rules of this scheme, any new evidence/submissions introduced at the comments stage must be disregarded by the adjudicator. I will proceed accordingly.
5. It is not in dispute that the sewer lines for the property in question are privately owned and have not yet been adopted by the company. Accordingly, I am inclined to accept that the company may not have been able to provide accurate information on the sewer line in question as it is not one of its assets. I find that this point was made expressly clear by the company when it responded to the buyer's utility search request. Specifically, I note that the copy of the plans provided by the company as part of its response to the buyer (submitted in evidence) expressly states that the information is for guidance only (and is based on the information that it has available to it at the time) and that it provides no warranty of its accuracy. Consequently, I do not find that the company's action of providing utilities information to a third party (the buyer) to the best of its ability (based on the information it had available) whilst making it expressly clear that it did not guarantee the accuracy of the information provided, amounts to a failure to provide its services to the customer to the standard to be reasonably expected by the average person.
6. Whilst I understand and appreciate that the customer has experienced stress and inconvenience in connection with the sale of her property and that she had to intervene in order to ensure that the sale did not fall through, for the reasons already detailed above, I am unable to conclude

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that this (in and of itself) amounts to a failure on the part of the company to provide its services to the customer to the standard to be reasonably expected by the average person.

7. I note the company accepts that its communications with the customer in connection with this matter did not go as smoothly as it would have liked. Having reviewed the parties' respective submissions in relation to this issue (and bearing in mind the company's own acceptance of liability), I find that the company's communications with the customer fell below the standard to be reasonably expected by the average person. However, I note that in recognition of this issue, the company apologised to the customer and provided her with compensation in the sum of £100.00 as a gesture of goodwill. Taking into account the nature and extent of the company's failures in connection with this matter, I am satisfied that the company's remedial actions were fair and reasonable and I do not find that any further redress is warranted under the circumstances.
8. Consequently, in light of all the above, I am not satisfied that there are any unresolved failures on the part of the company at this time. Therefore, in the absence of any unresolved failures on the part of the company, I am unable to uphold the customer's claim for redress.
9. This concludes the WATRS stage of the customer's complaint. I remind the parties that the customer is not obliged to accept this decision.

#### **Outcome**

The company does not need to take any further action.

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## **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 11 February 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 then 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.



**E. Higashi** LLB (Hons), PGDip (LPC), MCI Arb.

**Adjudicator**

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