

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1233

Date of Decision: 7 May 2019

#### Complaint

The company dug up the customer's driveway in error when it attended to repair a collapsed sewer in the public footpath. The customer was without his driveway on three occasions; the work could have been completed in one visit if the company had investigated fully. The company dismissed the customer's concerns and complaint and did not give notice before attending at the customer's property.

#### Defence

The company attended to repair the sewer in the public footpath, however the excavation paint mark had washed off. The company dug up the customer's driveway and repaired a broken pipe. The sewer in the footpath was repaired after the customer contacted it. A second collapse was then found and repaired.

The company has offered £800.00 for the multiple service failures in this case.

#### Findings

The company's survey was clear as to the location of the collapsed sewer being in the public footpath and 8.8 metres from the manhole. There was no basis for the company to have dug up the customer's driveway other than through there being no effective safeguards in the job order. There was no evidence from CCTV surveys that the customer's sewer pipe was damaged; on the balance of probabilities, the company therefore damaged the customer's private pipework. The company failed to meet reasonable requests for the customer to be notified before visits, did not provide managerial call backs, and left equipment on the customer's property without permission. There were numerous failures by the company, some of which were avoidable, and the customer's distress was apparent and aggravated by various factors.

#### Outcome

The company needs to take the following further action:

Provide the customer with a written apology.

Pay the customer the sum of £1,050.00 in compensation.

The customer must reply by 5 June 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1233

Date of Decision: 7 May 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer was experiencing issues with the flow of sewage from the main drain to the public sewer in February 2018. The customer had the drain jetted and a camera survey confirmed the blockage was removed and free from defects. When the issue returned, the company attended and found a collapsed drain on the public footpath outside the customer's property. The company attended on 9 May 2018, but dug a hole incorrectly in the customer's driveway, replacing part of the customer's pipework and causing two ridges to the pipe meaning a camera could not be fed through.
- The company dismissed the customer when he tried to explain that the hole had dug in the wrong place and the fault could not have been repaired. The customer made it clear that he did not want anyone else entering his property without express permission and him being present. The customer returned home on 11 May 2018 to find that the company had filled the hole without obtaining permission or explaining what action had been taken to rectify the fault caused to the customer's sewer pipe. The company eventually repaired the fault in the public highway in July 2018.
- The customer had been unable to park cars on his driveway on three separate occasions; had the company carried out a complete investigation, the customer believes that all three repairs could have been conducted at the same time, minimising the disruption. The customer has felt that his complaints and concerns were dismissed and that, had someone with authority taken control of the case, it could have been resolved in a more professional manner and in a shorter

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timescale. The company's full response to the customer's complaint contains errors, including stating that the company repaired the customer's private drain; however, no fault had been found on any camera investigation. The customer had intended to replace his driveway in Spring/Summer 2018. As a result of the ongoing delays and the customer's concerns that there may still be issues with the sewers, the customer delayed replacing the driveway. As a result, the customer was unable to use his original contractor and had to pay an extra £750.00 for the work.

- The customer requests an apology and a total of £3,400.00 in compensation for the stress and inconvenience caused, the company's repeated trespass, criminal damage to the customer's property, and the additional cost to relay the driveway due to the delays.

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

- The company states that it was made aware of a blockage to the customer's sewer on 23 February 2018. The next blockage was reported on 26 April 2018. The company identified a partial collapse of its sewer on 27 April 2018 and arranged to return to repair this on 9 May 2018. The company excavated on the customer's driveway rather than the area where the collapse had been identified under the public footpath. The customer called the company on 9 May 2018 to advise that the dig had been carried out in the wrong place. The customer asked the company to attend on the same day and it did attend in the early hours of 9-10 May 2018, but was asked to return during the day due to potential noise. The company confirmed on 10 May 2018 that it had replaced part of the customer's private pipe and had left a displaced joint.
- The company completed a repair to the partial collapse under the footpath on 17 May 2018 and did a temporary reinstatement of the footpath. The company returned and completed a full reinstatement on 23 May 2018. A camera survey completed on 23 May 2018 found another partial collapse further along the sewer. The company completed lining work on 13 July 2018, followed by work to reinstate the ground on 21 and 24 July 2018. The company attended on 26 July 2018 and a camera survey confirmed that the lining work had resolved the remaining issue.
- The company acknowledges that it excavated in the wrong place on 9 May 2018, however it found a broken pipe under the driveway that it fixed. The company disputes that the customer's claim was dismissed when he called to advise that the dig had been carried out in the wrong place. The customer advised that the original mark had washed away. The customer's wife requested, on 9 May 2018, that the company call her 15 minutes before coming to the property in future. The company accepts that these requests were not met, but it affirms that this was a request and not an instruction. The company agrees that there would have been fewer visits required if the first dig had been carried out in the correct place, however the company would not have located the

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second defect prior to the original defect being repaired. The company acknowledges that the customer did request to speak to a manager on 9 and 11 May 2018, but that these requests were not followed up.

- The company offers a total of £800.00 in compensation.

### 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. In reviewing the evidence, I find that there is no reference to the customer's private sewer pipe being damaged or collapsed. The customer's insurer and the company were satisfied that the customer's sewer was flowing freely, up to a collapsed drain in the footpath. I note that the company's survey also found that the collapsed sewer was 8.8 metres from the customer's manhole cover.
2. The company's surveyor sprayed an 'X' over the excavation point on the public pathway on 27 April 2018. The company attended to excavate and repair the collapsed sewer pipe on 9 May 2018. By this time the spray mark had washed off due to rain. I note that the mark was rendered invisible less than two weeks after it was applied. I find it to be a failure of the company to act in the manner expected of a reasonable water and sewerage undertaker by using a spray paint to mark an excavation point that cannot remain visible for two weeks.

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3. The company's contractor attended on 9 May 2018 and dug a hole in the customer's driveway, over a sprayed mark that was not an 'X', located around 0.5 metres from the customer's manhole. I am mindful that the job note for the jet van visit on 27 April 2018 confirmed that the partial collapse was 8.8 metres downstream and was a "collapse on public f/p". I consider that, even where the mark showing the excavation point may have been obscured or lost, this information should have been passed to the contractor. I consider that it would have been apparent to the contractor that they should not be digging 0.5 metres from the manhole cover as, even if they were unsure of the exact location of the excavation point, they should have been aware that it was almost 9 metres away from the manhole cover. I also find that the photographs and the notes from the 9 May 2018 visit demonstrate that the company's contractor excavated on what is clearly a private driveway that in no way appears to be a public footpath, and that the contractor was aware that it was digging to the driveway.
4. I therefore find that the contractor can only have reasonably excavated the customer's private driveway where they had not been provided with any details other than the customer's address and that they should dig where marked. I find this to be a significant failure of the company to meet the standard expected of a reasonable water and sewerage undertaker as it appears that it has no effective safeguards in place to ensure excavations are only carried out in the places both marked appropriately, i.e. with an 'X', and in locations that are as described by the survey.
5. The job note for the 9 May 2018 visit states that the contractor "dug dwn on white yw mark on drive, located broken pipe repair backfilled awaiting reinstatement". As above, I find that the dig could have been avoided by the contractor being advised of the approximate location of the collapsed sewer, being 8.8 metres away and in the public footpath. I also find that I have no evidence to indicate that there was any issue with the customer's sewer pipe that would affect the flow of sewage into the company's network; the evidence indicates that the pipe was free flowing and without issue up to the collapsed sewer pipe in the public footpath. I am therefore not persuaded that the company's contractor had any basis to replace this section of pipe, or that any repair was actually conducted at this time.
6. I note that, by replacing a section of pipe, the sewer pipe was left with two ridges from a displaced joint. I find that the company left the customer's pipework in a worse condition than it had been in previous to its visit. I find that this constitutes a significant failure of the company to act in the manner expected of a reasonable water and sewerage undertaker.

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7. I am satisfied that, during the call with the customer's wife on 9 May 2018, it was arranged that any crew that attended the property would call ahead of time so that she could be present, confirm the works to be carried out, and generally ensure that only the necessary and agreed works were completed. The company did not call the customer before attending; the company states that this was a request and not an instruction from the customer's wife. I am not persuaded that this is a realistic distinction to draw. I am satisfied that the customer's wife requested that the crew contact her before visiting and that the company's representative agreed that they would call when leaving their previous job. By agreeing to do this, I am satisfied that the company set an expectation with the customer. I therefore find that the company failed to meet the standard expected when it did not call the customer or his wife to advise that the crew was en route.
8. The crew backfilled the hole on the customer's driveway and tarmacked this. I accept that this caused the customer some significant frustration as the company's actions had caused damage to his private pipework in the form of the displaced joint, and they were not provided with any notice that the work was being completed and were therefore unable to attend and confirm that the work to their private property was completed properly. I am also mindful that the customer had requested to speak to a supervisor about the issues and the reasons the work had been completed on the driveway and not in the footpath; the company's failure to notify the customer of the work meant the customer was not able to query this with the contractor.
9. The company returned to the customer's property on 17 May 2018. I note from the call recording that the company had been due to attend on Wednesday 16 May 2018. The customer received a text message advising that the crew would not be there in the morning but would arrive later in the day. The crew arrived at the customer's property during late afternoon on 16 May 2018 and left equipment on the customer's property for use the following day. The crew reattended during the morning of 17 May 2018 and completed a repair to the collapsed sewer in the footpath, refilling the hole with a temporary tarmac repair. There is no job note for this visit in the company's Appendix 4; the only note is dated 23 May 2018, the date on which the company states the tarmac was reinstated. I am, however, satisfied from the call recording that this note represents the visits on 16, 17 and 23 May 2018.
10. I am satisfied from the call recording that the crew had been arranged to attend on 16 May 2018; no reason has been provided for why the crew did not attend on this date. The crew left equipment on the customer's property without notice or consent and, whilst I accept that the customer did

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not contact the company to request its removal, I find that the company failed to provide the services to the standard expected by leaving equipment on the customer's private property, relating to works to be completed in the public footpath, without contacting the customer in respect of this.

11. The call recording is also clear that the company arranged for the crew to contact the customer before attending, this being included on the job order and the planner had also confirmed that the crew would call the customer. I find that the company therefore fell below the standard reasonably expected when it attended without making the required contact with the customer.
12. The company completed the reinstatement of the footpath on 23 May 2018. A further issue was found via a camera survey on 31 May 2018 and a partial collapse was found further down the sewer, 10.5 meters and 11.5 metres from the customer's manhole cover. I accept that the company was reasonably unaware of this second blockage as it could not have been seen on earlier CCTV surveys due to the first blockage. This second blockage was repaired on or around 26 July 2018.
13. The customer was disrupted from using his driveway on three occasions. I find that this should have been only two occasions, one for each blockage to be cleared, and that all of the disruption in respect of the 9-10 May 2018 works could have been avoided by the crew having the full details of the required job, from which it would have been apparent that the 'X' marking the excavation spot had been lost and would need to be renewed.
14. Following the company's work to replace a section of the customer's private sewer pipe, found above to have been unnecessary from the evidence provided, the company lined the customer's sewer in order to make good the displaced joint. This work was conducted on 13 July 2018 and confirmed as successful on 26 July 2018.
15. In respect of the customer's complaints about customer service, I am satisfied that the level of service in respect of the site visits was poor. Having listened to the call of 9 May 2018 with the customer, I find that the representative did take the customer's complaint seriously and, having clarified that the complaint was not merely that the crew had excavated a larger-than-anticipated area, the representative arranged for a crew to visit and confirm the work that had been carried out and whether this matched the job specification. I find that the representative properly managed the customer's expectations, advising that it would be the following day for a CCTV visit but that

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she would put the customer's property for a priority visit that may be in the small hours of the morning. The customer's frustration and upset is clear during this call, however I am not persuaded that there was any failure in how the company handled this call.

16. The customer's wife called the company shortly after this call and the representative confirmed that the initial representative had arranged for a new survey to be carried out as soon as possible, but that this may not be that evening or night due to a high workload. The customer's wife did specifically request to be advised when the company was visiting as the 'X' had washed away and she could show the crew where it had been; as above, I find that the company's customer service was poor as it did not make any such call to the customer.
17. I am satisfied from the call recording for 18 May 2018 that the company's telephone representatives did make every effort to ensure that the customer was kept informed of any works carried out. I find that the failure to contact the customer rests with the crews completing the jobs, rather than any failure of the company to put the proper notes in the job requests. Notwithstanding this, the crews are agents of the company and I find that the company remains responsible for their failure to call the customer.
18. I also note that the customer did request to speak to a manager or supervisor during his calls; no supervisor was available due to the time of the calls. However, the account notes for 9 May 2018 states expressly "no call back needed"; I find this to be incorrect as the customer had expressly requested a call back from a manager, in addition to being contacted by any crew visiting his property. I am satisfied that the company failed to complete any managerial call back as requested on the 9 and 11 May 2018 calls.
19. I am not persuaded that there was any other significant failure of the company to provide updates to the customer, based on the evidence provided to me.
20. In respect of the company's submissions that it has a right, under the Water Industry Act, s171, to enter the customer's property for sewerage purposes, I am not persuaded that this is relevant to the events in this case. I find that, at all times, the issue with the sewers was found to be in the public footpath and to the company's sewer pipe. There was therefore no reason for the company to enter the customer's property at any time, other than to access the manhole for surveys, and I find no basis for the company to have conducted any works to the customer's private sewer, other than as a result of a significant error and poor communication with its crews.

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21. Turning to the remedies requested by the customer, he has requested an apology and a total of £3,400.00 in compensation. The compensation relates to an additional cost to relay the customer's driveway, incurred as a result of the delays caused by the company; the stress, time taken off work, and period without access to the customer's driveway; repeated trespass onto the customer's property with no authorisation being sought at any time; and, criminal damage to the customer's property due to the hole dug in the customer's driveway.
22. I am satisfied that an apology is reasonable. I therefore direct that an authorised representative of the company provide the customer with a written apology for the failure of the company's crew to identify that the marking at which they dug could not be correct due to the recorded distance of the work from the manhole cover; that the customer's driveway was dug up without notice despite this being clearly a driveway and not the public footpath; that the crew returned to backfill and repair the hole to the customer's driveway without notice or contacting the customer; that the company failed to arrive on 16 May 2018 until around 16:00 and that the work was completed on 17 May 2018 without the customer being contacted, despite this being clearly stipulated on the job sheet; that the company left equipment on the customer's property overnight on 16 May 2018 without contacting the customer or requesting permission to do so; that the company caused damage to the customer's private sewer pipe on 9 May 2018 that was not repaired until around 26 July 2018; and, that the company failed to complete any supervisor or managerial call back to the customer as requested on 9 and 11 May 2018.
23. In respect of the claims for compensation, I am unable, under the Water Redress Scheme Rules, to consider any criminal matter. I therefore find that the request for compensation on the basis that the company caused criminal damage to his property cannot be considered under the Scheme.
24. In respect of the increased driveway costs, the customer has provided an email dated 2 June 2018 that advised that the price for block paving the customer's driveway would be £15,850.00 including VAT, or £12,500.00 including VAT for a part-tarmac, part-brick paving. A customer order has also been provided, dated 9 November 2018, for a total of £16,600.00. The customer submits that this price difference of £750.00 was incurred as a result of the issues with the sewers and that he was advised not to have the driveway re-laid until the issues were resolved.

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25. I am satisfied that the customer's sewer and the connection into the company's systems were fully serviceable on 26 July 2018. I find that, in order to recover this cost from the company, the customer must demonstrate that it was only incurred as a result of actions taken by the company. The 2 June 2018 quote does not include any deadline by which it must be accepted. I have also not been provided with any evidence confirming that the customer did attempt to accept this offer but that the driveway company was unable to conduct the works due to the amount of time that had passed since the offer had been made. The customer placed the order for the replacement driveway on 9 November 2018, three and a half months after the sewer issues had been resolved. I am not persuaded that the customer has established that this additional price was incurred solely as a result of action taken or not taken by the company. I am therefore not persuaded that this sum can be recovered from the company.
26. The remainder of the compensation claimed, totalling £2050.00, relates to the stress caused to the customer and that the company repeatedly trespassed on his property. I find that this also constitutes a claim for distress and inconvenience as the company has made good all damage caused by digging the customer's driveway.
27. I refer the parties to the WATRS Guide to Compensation for Inconvenience and Distress. This forms the guidance about the compensation levels appropriate to the seriousness of a complaint.
28. In this case, I am satisfied that the customer was caused a significant amount of distress by the initial, and fully avoidable, error in the company digging up his driveway and not the location of the collapsed sewer. I find that this stress was aggravated by the damage caused to the customer's sewer pipe, increasing the likelihood of blockages until all issues were resolved. The issues were further aggravated by the company's failure to contact the customer about works, despite this reasonable request being documented fully. The company also used the customer's property to store equipment overnight without contacting the customer and after failing to complete works on the agreed date; this will have further aggravated the customer's stress.
29. I find that the customer made the company fully aware of the levels of stress that he was experiencing, including that it may exacerbate a heart condition. I find that the repeated nature of the company's failures to contact the customer before attending will have also increased the stress experienced. The customer was also without the full use of his driveway on three separate occasions; as above, this should have been only two occasions and only due to work being completed on the footpath next to the driveway entrance and not in the driveway itself.

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30. Notwithstanding this, I am satisfied that the company's call centre staff did take appropriate action to arrange for a site visit as soon as possible after the 9 May 2018 visit, and that they did put all relevant notes on the job sheets. However, whilst this is a mitigating factor, I find that it is only very minor in nature as the job crews failed to follow instructions about contacting the customer, effectively undermining the call centre staff's attempts to rectify the issues.
31. I also acknowledge that the calls with the customer did become somewhat aggressive with the customer demanding visits during the evening of the call and asking to speak to a supervisor despite the company's representative having explained that no one was available. However, I find that the customer did recognise this and requested the company speak to his wife wherever possible.
32. I consider that the customer's complaint constitutes a Tier 3 complaint, warranting compensation of between £500.00 and £1500.00. The company has offered the customer a total of £800.00 in compensation, being £600.00 for the stress and inconvenience caused to the customer, and £200.00 for the trespass and lack of notification to the customer.
33. I consider the company's error in digging the customer's driveway warrants compensation of £400.00, this having been completely avoidable by the contractor simply confirming that the dig location was 8.8 metres from the manhole and therefore could not relate to the white marks on the customer's driveway. I consider that a further £200.00 is reasonable in respect of the company's failures when it returned to backfill and tarmac the customer's driveway, this being on private property and after the customer had expressly requested to be contacted prior to any visit.
34. I find the ongoing stress in relation to the damaged private sewer pipe, through the displaced joint, lasting from 9 May 2018 until 26 July 2018, warrants a further £100.00 in compensation. The company did rectify this issue and it does not appear to have caused any material increase in blockages over and above the issues caused with the company's pipework under the footpath.
35. I find that the company's repeated failures to call the customer to advise that they would be attending the site warrant a further £150.00, and I find that a further £100.00 is warranted in relation to the failure to complete works on the date advised of 16 May 2018 and that the company placed equipment on the customer's property overnight.

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36. Finally, I consider that £50.00 is reasonable in respect of each of two failures to have a supervisor or manager contact the customer about his complaint.

37. I therefore find that a total of £1050.00 is due to the customer for the distress and inconvenience experienced.

#### **Outcome**

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

Provide the customer with a written apology and £1,050.00 in compensation.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 5 June 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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**Alison Dablin**, LLM, MSc, MCI Arb

**Adjudicator**

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