

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1250

Date of Decision: 14 March 2019

Complaint

In May 2017, during the process of buying a new house, the customer commissioned a CON29DW Drainage and Water search from the company ("the Report"). The Report confirmed that the customer's property was connected to a public sewer. However, that confirmation was later shown to be incorrect. The local Council has become involved and is using powers under the Building Act to install the required pipes in order to connect the property to the public sewer network. The costs of this work are to be recharged to the customer. As the Report was wrong, the customer considers that the company should bear these costs.

Defence

An error in the company's billing records (used to prepare the relevant answer in the Report) was created as a result of work originally carried out by the developer. This was not picked up as part of the building control process. The company does not believe that it is responsible for installing the required private pipe work to connect the customer's property to the public sewer network or for covering the local Council's charges in this regard.

No offer of settlement has been made.

Findings

It is understandable how the error on the company's billing records came about. However, the terms and conditions under which the Report was provided do not exclude the company's liability in this instance. In giving the inaccurate answer in the Report, the company (1) failed to provide its services to the standard one would reasonably expect and (2) is liable, therefore, for the consequences of the Report being wrong.

Outcome

The company needs to take the following further action:

I direct the company to pay the customer's share of []Council's re-charged installation costs to connect the customer's property to the public sewer network.

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

ADJUDICATOR'S DECISION

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Date of Decision: 14 March 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In May 2017, the customer and her husband were in the course of purchasing a new property at [] ("the Customer's Property"). The Customer's Property was part of a new development known as Green Court and there were four other properties neighbouring the house that the customer was buying (together - "the Five Properties").
- During the conveyancing process, the customer's solicitor commissioned a CON29DW Drainage and Water search on the Customer's Property. The CON29DW report was provided by the company on 11 May 2017 ("the CON29DW Report").
- The CON29DW Report confirmed that the Customer's Property was connected to a public sewer. However, this information was incorrect. In fact, none of the Five Properties were connected to the public sewerage system.
- The Environmental Health Team at [] ("the Council") became involved and is using powers under the Building Act to install the required pipes in order to connect the Five Properties to the public sewer network.
- The developer has gone into liquidation. The costs of the Council's work ("the Installation Costs"), therefore, are to be re-charged to the individual owners of the Five Properties.
- The customer does not believe that she and her husband should have to pay the Installation Costs. The information contained in the CON29DW Report was wrong. The customer and her

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husband would not have proceeded with their purchase if the CON29DW Report had been accurate and the true picture clear.

- In the circumstances, the customer would like the company to pay her and her husband's share of the Installation Costs.

The company's response is that:

- On 5 February 2018, the company was contacted by an Environmental Health officer reporting a pollution incident. A team attended the same day, and revisited the following day, when it was confirmed that the flooding was coming from a private pumping station ("PPS").
- The customer then contacted the company on 23 September 2018 to report that there was raw sewage running down the road and advising of the situation with the drainage from the Customer's Property.
- The company sent an email to the customer on 5 October 2018 advising that this was a private issue and that the company was unable to help.
- From information provided by the Council, it is now understood (and has transpired) that:
 - the Five Properties were built in 2015; and
 - when building the Five Properties, the developer did not follow the scheme of drainage illustrated on the approved planning application. Instead, the Five Properties were connected to an old PPS located in the car park of a now disused public house. The PPS is no longer operational and the tank is not being emptied. As a result, there have been a number of flooding incidents.
- Where a new connection to a public sewer is required, an application must be submitted. Any work required should be completed by a competent contractor employed by the developer or property owner. Once the application has been approved (and on completion of the work), the company would carry out an inspection to ensure that the work meets the required standards.
- On 23 June 2015, the company approved an application for an indirect connection to the public sewerage network via an onsite manhole. The developer then contacted the company on 4 September 2015 advising that the type of connection would change. The developer was advised that a new application should be submitted.
- The company received a further application on 11 October 2016. As the application did not contain a site plan to show where the connection was going to be, the company wrote back on 18 October 2016 to request this. A further application was then received on 19 April 2017. However, again, as no site plan was included, the company wrote back on 7 June 2017 to request one.

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- No further information was received and the application was never approved. The company explains that it is not uncommon for a received application not to be progressed. There could be any number of reasons why the application would no longer be required. The company would not tend as a matter of course to look into this any further, therefore.
- In the case of a new build property, the developer will provide information confirming the connected services at the property. The company then uses this information to set up a billing account for the property. On this occasion, the information provided by the developer confirmed the property was connected for both water and sewerage services. The company was advised that the Five Properties were not connected for surface water drainage as this drained to a soakaway.
- As there are multiple checks beforehand via the inspection process, the company would generally trust the information provided by the developer. Based on the sheer volume of accounts that the company has to create, it would be extremely time consuming to have to check each application.
- The company therefore created the billing account for the Customer's Property for both measured water and used water (sewerage) charges. Bills were issued accordingly from January 2016 on this basis. The company received no contact questioning the sewerage charges and had no reason to suppose that these might be incorrect.
- The answer to question 2.1 of the CON29DW Report confirmed that records indicated that foul water from the Customer's Property drained to a public sewer. The guidance notes for this question advised that the connection status for the property is based on information held on the billing records. At this time, based on information provided by the developer, the company was billing for both water and sewerage services at the Customer's Property. It was only after this time that this was shown to be incorrect.
- As soon as the company became aware of the position, the billing accounts were amended so the Five Properties are now billed for water services only. Any money overpaid has been credited back to the water services account for the Customer's Property.
- The customer and her husband were advised that if they installed the required pipe work up to the public sewer network then the company would waive the connection charges.
- The company does not believe that it is responsible for installing the required private pipe work to connect the property to the public sewer network or for covering the Installation Costs. The situation has been caused by work carried out by the developer, which was not picked up as part of the building control process.

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- Any information provided was correct at the time that it was given - based on the information that had been provided to the company by the developer. This was corrected once the company was made aware and any monies overpaid were refunded.

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. I have reviewed
 - a. all of the documents submitted by the customer alongside her WATRS application form, including particularly:
 - i. the letter from [] Solicitors dated 17 May 2017; and
 - ii. the full copy of the CON29DW Report with all appendices; and
 - iii. the document prepared by the customer's husband headed '*sequence of events from a consumer's point of view*'; and
 - b. the bundle of materials (23 pages) put in by the company to support its defence.

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2. It is common ground between the parties that the answer given to question 2.1 in the CON29DW Report (“Question 2.1”) was incorrect:

“Question 2.1: *Does foul water from [the Customer’s Property] drain to a public sewer? ...*

Answer: Yes ”

3. I see from the ‘Order Summary’ page of the CON29DW Report that the use of the tick mark denotes that *“this response represents the typical situation for a residential property”*.
4. In its defence, I note that the company refers to the Guidance Notes underneath Question 2.1, which say:

“... The connection status of the property is based on information held on the billing records by the responsible water company ...”

5. The company’s billing records, therefore, were the source for preparing the answer to Question 2.1.
6. As at 17 May 2017, i.e. the date when the CON29DW Report was provided, the company’s records showed that it was billing for both water and sewerage services at the Customer’s Property. The entry on the company’s billing records was, however, wrong. It was based, the company submits, on misleading information that had been provided originally by the developer.
7. The company’s explanation of what happened in this case is very clear. It is readily understandable how the error on the billing records came about. It seems to me that it is difficult to criticise the company for not picking up on the problem earlier than it did. I do take the company’s point that *“ ... to check each application when creating an account would be extremely time consuming. [The company has] to trust their processes are correct ...”*
8. However, notwithstanding that its explanation may be clear, the core issue is whether the company can avoid legal liability for the consequences of the answer to Question 2.1 being wrong.
9. On that issue, I have had close regard to the relevant Terms and Conditions, which appear at page 22 of the CON29DW Report, Appendix 4 (“the Terms and Conditions”). There are ‘Limitation of Liability’ provisions in paragraph 3 of the Terms and Conditions. As I see it, the key section for present purposes is in paragraph 3.2:

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“... 3.2 Subject to paragraph 3.1, the Company accepts no responsibility for and excludes its liability (whether for breach of contract, negligence or any other tort, under statute or statutory duty, restitution or otherwise at all) for:

3.2.1 any inaccuracy or error in the Report based on incomplete or inaccurate information **supplied by the Customer and/or the Client** [my emphasis];

3.2.2 any use of the Report by the Customer for any purpose other than the Purpose;

3.2.3 any inaccuracy or error in information provided **by any Third Party Undertaker** [my emphasis];

3.2.4 any change in the location and connection of existing drainage and/or water services at the Property after the date stated in the Report ...”

10. On my analysis, the exclusion of liability in paragraph 3.2 of the Terms and Conditions does not apply to the particular facts of this case. According to the company’s submissions, the inaccuracy or error in the CON29DW Report (and in the billing records) was based in this instance on information provided by the developer - not by the customer or her solicitor or by any ‘Third Party Undertaker’.

11. I find, therefore:

- a. that, in giving an inaccurate answer to Question 2.1, the company failed to provide its services to the standard one would reasonably expect; and
- b. that the company is liable to the customer for the consequences of the CON29DW Report being wrong.

12. In light of my findings above, I am satisfied that the appropriate remedy is for the company to pay the customer’s share of the Installation Costs (once quantified by the Council) subject, of course, to:

- a. the customer satisfactorily evidencing the share that the Council is recharging to her in respect of the Installation Costs; and
- b. the company’s payment liability being no more than £10,000.00, that amount being the maximum award permitted under the WATRS Scheme Rules.

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Outcome

The company needs to take the following further action:

I direct the company to pay the customer's share of Telford and Wrekin Council's re-charged installation costs to connect the customer's property to the public sewer network.

What happens next?

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



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

Adjudicator

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