

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1266

Date of Decision: 25th June 2019

#### Complaint

The customer states that the company effected repairs that are inadequate and below the required standard. The customer states that this has caused him losses both of a financial and personal nature. He states in particular that the company has not followed the Drain Repair Book or the UK Building Regulations in the work carried out. He claims that the company have been incompetent and untruthful and that this has caused him stress and disrupted his homelife.

The customer seeks a re-repair of the foul and storm water drains according to recognised building standards. The customer seeks compensation of £14,728.

#### Defence

The company states that it has acted in an appropriate way to the issues arising at the customer's property. It states that the cause of the ingress of sewerage was not the roots in the Surface Water ("SW") line, but a surcharge that occurred whilst another cleaning operation was being carried out. It states it is not bound by the authorities cited by the customer. It states it has fulfilled its obligations to the customer. A Customer Guarantee Scheme ("CGS") payment of £150 was paid into the customer's account in error, as the flooding was not the fault of the company.

The company has not made any offer of compensation.

#### Findings

The customer has not shown that the company has failed to provide its services to a standard to be reasonably expected by the average customer. The company acted in accordance with the legislation.

#### Outcome

The company does not need to take any further action.

The customer must reply by 23<sup>rd</sup> July 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 25th June 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

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

- The customer lives at [ ]. ("the Property").
- He states that the Property has been subject to flooding due to the poor works carried out by the company.
- The customer states that the company has failed to follow the guidance laid out in the Drain Book and the UK Building Regulations.
- He claims that the repair work carried out to drains in the sewer near the Property has led to a problems and an ingress of sewerage at the Property.
- He states that instead of relining the foul water drain, as the company has done, it should have excavated and re-laid the problematic part of the sewer.
- The customer claims that the company's actions have caused him to be displaced from his home, loss of income and stress.
- He states that the company has told him untruths and provided a poor customer service.
- The customer seeks for the company to re-repair the foul and storm water drains according to recognised building standards. He also seeks £14,728 in compensation.

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

- The company states that it has acted according to best practice and has responded to each complaint of the customer in a proper fashion.

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- It states that it is not bound by the Drain Book, which is for privately owned assets, and that the UK Building Regulations do not apply.
- The company states that it has carried out all appropriate tests and that it finds that the water entering the customer's Property is ground water and not foul water.
- It states that it is not an asset of the company that is causing the seepage into the customer's Property.
- The company defends all the claims made against it by the customer.
- It relies on the Water Industry Act 1991("the Act")
- It states that a CGS payment of £150 was made to the customer before it was realised that the flooding was a ground water issue.
- It states that it has taken its advice from experienced sources, including Field Operation Specialists ("FOS"), and has maintained its assets in an acceptable way.
- It states that there is no contractual duty between it and the customer.

**In reply the customer states:**

- He reiterates his claim that the company has not understood the problem and that it has not acted adequately in relation to the issue of the drains.

**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.

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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. This process is evidence based and my decision will be made taking into account the information provided to me by the parties.
2. I must make clear that initially I shall be looking at the question of whether or not the company failed in its provision of services. Only if I find that there is some fault on the part of the company would it then be appropriate for me to go on to look at whether or not this caused any financial loss on the part of the customer. That is, the first hurdle must be overcome before the issue of an appropriate remedy is addressed at all.
3. The customer's main complaint concerns the repairs that the company has carried out on drains affecting his home, referred to here as the Property. The company states that the repairs are properly carried out in a manner in keeping with its legal obligations.
4. I note that in this application and defence there exists a large quantity of material and evidence. I have assiduously read all the papers and, in this decision, I am addressing the salient points. That is, I shall be looking at the matters that go to whether or not there is any failing on the part of the company and, further, whether that resulted in a loss for the customer.
5. The customer has referred to a publication called The Drain Book. Part of his case is that the company has not adhered to this book when carrying out the repairs on the sewer. The customer has included a copy of this in his evidence.
6. The company states that The Drain Book is for private assets and does not apply to or bind a service provider such as itself.
7. In considering this issue I have had regard to the obligations of the company that are laid out in statute. The Water Industry Act 1991 ("the Act") and other guidance does not refer to the Drain Book as an authority. I take into account that the assets being maintained by the company are

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on a much different scale than those being dealt with in a private capacity. The company has illustrated in its defence that its decision making and operations are on a large scale and not comparable with private entities. In any case, I find that there is no supporting authority that binds the company to follow The Drain Book.

8. The customer further relies on the UK Building Regulations. In the same vein as the above paragraphs, it is not evident that these Regulations were ever meant to be used by water and sewerage companies. Certainly, there is no authority, that I have been made aware of, to say that the company is bound to follow these regulations.
9. The customer states that the water ingress is water coming from the company's asset. The company states that it is in fact ground water and that the cause of it is not the asset of the company. I note that the company ran dye tests on the Property to ascertain the source of the water. The company is satisfied the these showed that the flooding was not coming from a fault with its asset, but from a surcharge due to the cleaning of a neighbouring drain. The company has further stated that ground water is the cause of other instances of flooding at the Property. The customer did report seeing dye in his property after one of the tests was carried out. On careful consideration of all the notes relating to the flooding at the customer's Property, I am not persuaded that the customer has shown that the cause of this stemmed from the company's drains or from its alleged poor maintenance of those drains. It is not entirely clear what the cause is of the flooding but based on the evidence presented I cannot find that this is the fault of the company.
10. The customer states that he has received poor customer service from the company. The company states that it has provided a good service and complied with its obligations as set down in legislation. I take into account the details of the company's actions listed in the defence to this action. The company states that on each occasion when it was contacted by the customer it reacted without delay. It states that it always had the situation at the customers Property "in hand". I do not find that the customer seriously challenges this. I note here that a difference of opinion between the customer and the company as to the best way to address the flooding issue does not amount to poor customer service on its own. The customer has alleged that there were untruths told by the company. I find that there were differences in the manner in which the company perceived the issues arising from the customer's complaints, but I do not find that there is evidence of any deliberate manipulation of the facts on the part of the company.

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11. There is much technical detail in this application and defence. I appreciate the time it has taken to prepare the case and the clear effort that has been expended in producing this material for my information. I must note that the technical aspect of this case is not in itself the main issue. I take into account that the company states that it has been advised by its experienced team, including the FOS. The customer disagrees with the outcome of the company's investigations and decision making process, but he has not challenged the claim by the company that it has availed of experienced team members.
12. The company has stated that it dealt diligently with the customer's complaint, attending the Property, corresponding with the customer and providing written explanations for its decisions. I note that the customer has also produced the information provided by the company in answer to a Subject Access Report ("SAR"). I do not find, on the evidence, that the company has failed to provide a cohesive and accessible service to the customer that would be to the standard to be expected by the average person.
13. The customer makes the allegation that the company has breached its contractual obligations to the customer. I accept that the company is correct when it states that there is no contractual relationship between the parties and that its terms of operation are set down in legislation and overseen by a regulator.
14. The company has indicated that it has taken steps to educate that customers in the area of the Property regarding the use of its facilities and that a leafleting campaign was carried out. I consider that this is indicative of the company's concern regarding the upkeep of its assets.
15. I take account of the fact that the customer is very concerned with the technical aspect of his complaint. I realize that I have not addressed the detailed issues regarding the manner in which the company has carried out its repair. However, I must make clear that this process is in place to determine whether or not the company has fulfilled its obligations in law. I have not been presented with anything to counter the company's defence regarding its interpretation of its legislative obligations.
16. I am satisfied, on the evidence, that the company has acceptable technical advisors dealing with the matter of how to go about dealing with the drains.

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17. On balance, I do not find that the customer has shown that the company has failed to provide its services to a standard to be reasonably expected by the average person. I anticipate that the customer will be disappointed in this outcome. I must emphasise that this is not a criticism of the customer's point of view, but rather an examination of the legislative obligations of the company based on the evidence presented. Although it is clear that the customer has suffered from the effects of flooding, I do not find that this is due to the fault of the company.

#### 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 23<sup>rd</sup> July 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.



J J Higgins, Barrister, ACI Arb.

Adjudicator

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