

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1340

Date of Decision: 14 May 2019

#### Complaint

The customer asserts that the company delayed with addressing blockages and defects with its sewer, causing delays to improvement works at his property. Furthermore, it stopped works progressing with his extension despite the company granting a 'Build Over' agreement in relation to these works. The company has refused to remove a 'belly' it identified in the sewer line; this is causing an odour at his property. The customer claims £23,000.00 for the de-valuation of his property, for a private contractor's invoice for work to drain the sewer and for stress and inconvenience.

#### Defence

The company denies it failed to address issues with its sewer in a timely manner. Delays were caused by it revoking the Build Over agreement due to concerns about the method of piling. It has a duty to protect its assets; however, once it received the required information it re-provided the Agreement. Any delay to the customer's home improvements were due to the works near its sewer not being conducted as per the initial specifications. It accepts that there were shortfalls in the service it provided to the customer, including unclear and confusing information. However, it feels the compensation amount of £400.00 already provided is sufficient recompense. The company made no settlement offer.

#### Findings

The aspect of the customer's claim relating to the de-valuation of his property falls outside the scope of WATRS and therefore, only the customer's remaining claims totalling £3,000.00 have been considered. The blockages and issues with the sewer would have caused an unavoidable delay to the customer's home improvement works when they were discovered after works had commenced. Further, some delay would have been caused by the company needing more information about the method of piling to ensure it would not damage its assets. However, the main cause of the delay was due to the company's failure to address blockages and issues with its sewer within a reasonable timeframe. I accept that the customer reasonably incurred costs for a private contractor to drain a section of the sewer to allow his improvement works to continue, due to the company's failure to carry out this work. Accordingly, the company shall pay the customer £500.00 for the cost of

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private work undertaken and an additional compensation sum of £250.00 for stress and inconvenience caused to the customer.

**Outcome**

The company shall pay the customer £750.00 in compensation.

**The customer must reply 12 June 2019 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1340

Date of Decision: 14 May 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- Whilst building works were being carried out to his property ([ ]), a sewage blockage was found and he reported this to the company on 3 July 2018 requesting that it unblock this as soon as possible.
- On 7 July 2018, one of the company's engineers found a 'belly' in the sewer (where sewage collects); however, despite sending numerous engineers over three months, it has failed to address this.
- At the time he was having an extension to the property and despite having a 'Build Over' agreement with the company, it stopped this progressing.
- The customer requests that the company remove the 'belly' in the sewer line and pay him the following amounts:
  - £2,500.00 for distress and inconvenience;
  - £20,000.00 for the devaluation of the property and;
  - £500.00 to cover the private drain invoice.

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

- The customer is seeking £23,000.00 for distress and inconvenience, de-valuation to his property and requires payment of an invoice to a private drainage company. It highlights that the claim amount exceeds the maximum allowable amount of £10,000.00 in the WATRS

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Scheme rules and in addition, no evidence has been provided with the WATRS Application to substantiate any sums being claimed for.

- Concerning the claim for £20,000.00 due to the alleged devaluation of the property due to an odour, it asserts the matter of an odour has not been raised before and has not exhausted its or Consumer Council for Water (CCW's) complaint processes. Further, WATRS is not the correct forum to raise a de-valuation of property claim. This is a complex matter requiring evidential proof from specialist surveyors and is outside the remit of the WATRS rules.
- Steps it has taken to resolve the customer's case are:
  - Considered a Build Over Application from the customer.
  - Provided Consent based on the first set of plans/specifications.
  - Revoked the Build Over Agreement when it became clear the method of piling was not as per specifications.
  - Requested a piling statement from the customer before it could consent to reinstatement of the Build Over Agreement and to protect its sewer from damage.
  - Investigated and cleared any blockages on its sewer line, removing tree roots, small amounts of silt and rubble and mass scale.
  - Cleaned its sewer.
  - Carried out CCTV surveys to establish whether there was any issue with its sewer and found it to be fully serviceable with no defects. No work was required and it confirmed this accordingly.
  - Confirmed that the slight belly in the line was not impacting on the serviceability of the sewer; however, it lined this private part of the sewer to give the customer assurances. It subsequently advised it would not undertake any further works as this is on the customer's private line.
  - Met with the customer and spoke with his contractors about its requirements.
  - Allowed the private contractor's lining in its sewer, which had been carried out without its permission, to remain. Having noted creases in the work done it confirmed this did not appear to be affecting serviceability of its sewer. It should also be noted that despite the private contractor's statement that the lining was to stop the collapse of its sewer, there has never been any evidence that the sewer was in imminent danger of collapsing.
  - Confirmed it would not carry out any further works on the customer private sewer pipework because it is not its responsibility to do so.
  - Allowed the unconsented Y branch in the sewer manhole to remain.
  - Provided goodwill payments to say sorry for any unclear or confusing information.
  - Provided Customer Guarantee Scheme payments of £30.00 on any occasion when it did not respond to correspondence within 10 working days. Where it failed to provide these payments on time, a further £10.00 has been added.
  - Signposted the customer to the CCW when he remained unhappy with its position and decisions made, and engaged with them.
- Therefore, the company denies that it failed to address any sewer blockages in its line in a timely manner. The evidence clearly shows the actions it has taken to resolve any issues.
- The reason it revoked the Build Over Agreement was due to concerns that its sewer would be damaged from the building work being undertaken (particularly if mechanical diggers were

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being utilised). It has a duty to protect its assets. The Agreement was reinstated once it was assured that the necessary compliance would be met.

- It accepts there was a slight belly in the private part of the sewer; however, it has explained that this is not on its part of the sewer line. Nevertheless, it has lined this for the customer. It will not be carrying out any works on the customer's private pipework and no further works are required in any event on any part of the sewer network because CCTV shows it is fully operational and working well.
- It has provided payments to say sorry for any customer service issues and under its Customer Guarantee Scheme.
- It has received a Claim Form from the customer; however, this remains unsubstantiated despite asking for evidence and proof of losses, which it is entitled to ask for.
- It asserts that any delay to the customer's home improvements were due to the works near its sewer not being conducted as per the initial specifications sent to it. The customer does not state exactly what works could not proceed during this time.
- For the avoidance of doubt, it has not at any time experienced any odour whilst at the customer's property and neither has it been asked to investigate this. However, due to the stack pipe (soil pipe) leading directly in to the manhole, this may cause smells. This is entirely the customer's responsibility because this is within his private internal pipework and before the manhole.
- In response to redress sought, it asserts that its sewer runs across the rear the customer's and his neighbour's back gardens and it is responsible for this part of the network only from the new manhole chamber shown in the photographs. Any sewer line located prior to the new manhole, belongs to the customer and is his responsibility to maintain and repair if necessary. In this instance, when the customer let it know he was building over or close to its sewer, it was essential it ensured its sewer was protected as it is shared with other customers and must remain in good order at all times. Therefore it has a duty to ensure any building work would not damage the sewer, or cause any potential problems in the future. Had the customer's contractors caused any damage, it would have been within its rights to claim from them for any costs to carry out repairs to put things right.
- The sewer in question was transferred to its responsibility in October 2011 following determination from DEFRA of the transfer of private sewers to water undertakers. Therefore, whilst it did not lay this sewer, it is now responsible for it.
- Whilst preparing this Defence, the information suggests this particular sewer naturally holds water/waste due to its slight gradient. In some sewers, the gradient is greater, and gravity takes

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the waste away quicker than that of this sewer, but this does not mean there is any issue with the sewer and it has confirmed it is working well, so no works are required. Even if there is a slight belly in the line, or displacement of the sewer pipe, sewers are not meant to be watertight and it is entirely satisfied it is functioning as it should be, and no works are required, irrespective of the customer's thoughts on this. It should also be borne in mind, it would not carry out works if none are needed because its resources must be used correctly and in order of priority. So whilst it understands the customer remains dissatisfied because he wants it to renew the sewer pipe entirely, to do so would mean digging up gardens, excavating, labour, materials and any other costs that would certainly exceed £10,000.00 limit (under the WATRS Scheme rules), when no expense is actually necessary. Therefore, it will not remove the belly in the private stretch of the sewer line (although it has re-lined this section at its cost).

- It denies that the customer is entitled to £2,500.00 for stress and inconvenience. As soon as it was advised of blockages, it did all it could to resolve this in a timely manner. It returned to the property on several occasions, at the request of the customer and also when he would not accept its position and in an effort to keep on reassuring him that no works were necessary.
- It does not accept to pay the £500.00 invoice to a private drain company because 1) the customer's contractor illegally lined its sewer (they did not have its permission) and 2) the customer did not ask it for permission for the work to be carried out privately.

### **Reply**

- The blockage in the manhole has been reported to the company prior to September 2017 as this issue was mentioned in the Home Buyer Report.
- The customer disputes that the 'belly' found by the company is on the private sewer; statements to this effect in the Defence are incorrect.
- When the company attended for the last time on 16 September 2018, engineers lined the left side but refused to line the right side of this manhole. The photographs show that the sewer pipe is half full of water and also had a large 2.55m crack in it. The manhole is in his garden and so the company has responsibility to repair it yet it has refused as it has stated it is a private sewer pipe.
- The company did not respond to his 3 September 2018 notice given requesting it to repair the sewer pipe so he paid a private company to do the tasks the company was responsible for but refused to do on several occasions.

### **How is a WATRS decision reached?**

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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. The dispute relates to the delay caused to the progression of the customer's home improvement works and alleged defects with the sewer that the customer feels the company is responsible for, yet has refused to carry out. The customer claims compensation to cover the costs he has incurred as a result of the company's delays and failures and £2,500.00 in compensation for the stress and inconvenience caused to him and his family.
2. I acknowledge that the total amount of compensation claimed is £23,000.00. I find this amount exceeds the maximum permitted claim amount under WATRS; I acknowledge that the customer has been made aware of this by WATRS and that he requested for his case to continue to adjudication.
3. The company contends that the amount claimed of £20,000.00 for the de-valuation of the property falls outside of the scope of WATRS. I find that the basis of this claim is that his property is de-valued by an odour that the customer believes comes from the sewer. The company denies this and has suggested any odour may be due to the stack pipe at the customer's property running from the upstairs toilet straight to into the manhole (as oppose to into the sewer line). However, it also contends that the customer has not raised this

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complaint with it via its complaint procedure. Having reviewed the evidence, I find I am unable to consider the customer's claim in relation to the loss of value to his property for the following reasons: there is a lack of evidence that this particular complaint has been made through either the company's or CCW's complaint procedures. Furthermore, due to the sum claimed and nature of the allegation, I agree that there are alternative, more appropriate forums to consider this type of complaint. As such, for these reasons I shall not address this aspect of the claim. However, I shall proceed to consider the remaining claims and issues.

4. The customer has submitted an invoice dated 22 September 2018 from 'Asap Drainage' for £500.00, in support of his claim. The company has attached evidence in support of its stated position titled 'Evidence 1 to 6' that I find includes job notes, photographs and correspondence with the customer and CCW. I also acknowledge receipt of the CCW document bundle. I acknowledge that the customer has submitted comments and evidence with his Reply. I draw the parties' attention to WATRS Rule 5.4.3, which states that comments on the company's Defence must not introduce new matters or new evidence and that the adjudicator will disregard any such material if submitted. Therefore, unless I consider this new evidence or a matter raised directly rebuts a point in the Defence, I will disregard all new matters and evidence, as per the Scheme Rules.
  
5. The customer reported a blockage in his sewer to the company on 3 July 2018 (after work to his property had commenced) and I find that the company sent four engineers to the customer's property to investigate between 7 July and 23 July 2018. During this timeframe it removed tree roots from a section of the sewer further down the road that it thought may be a contributing factor (following prior contact from the residents of this property). I find that due to the company's visiting Network Engineers reporting that the flow was running slowly, the company wished to carry out a CCTV survey on the sewer to see if further work was necessary. On 7 August 2018, the company attended, jetting the sewer line and reported that it found no major defects, only small cracks. However, it is clear that the CCTV footage taken on this visit was subsequently lost by the company and so the customer was told that it needed to undertake a further CCTV survey to establish if more work was required. The company subsequently confirmed the survey had been re-booked for 28 August 2018. On 4 September 2018, the company advised the customer that it had viewed the CCTV footage and it was confirmed there were no defects but that the sewer was still holding debris. When the company's engineers returned on 14 September 2018 they found a 'lip' in the chamber

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at the rear of the property but having removed rubble and fitted two metres of patch lining, the company's job notes state the line was left clear. Furthermore, on 17 September 2018, it checked the quality of the work and the evidence records it had been completed to a good standard.

6. On a balance of the evidence, I accept that the company took longer than it reasonably should have to address the reported problems. This was partly due to missed appointments and the loss of the first CCTV footage. It is clear that the customer had to chase the company on multiple occasions throughout the above timeframe. I am satisfied that this is evidence of the company failing to provide its services to a reasonably expected standard.

7. Furthermore, it is clear from the customer's email dated 3 September 2018 titled 'Final Notice' that he was awaiting for the company to drain the sewage pipe as this was stopping the progression of his home improvement works, namely his contractor was unable to install a Y-junction in the "in-garden manhole" until the sewer pipe had been drained. In the customer's email dated 3 September 2018 titled 'Notice', I find he advised the company that he intended to employ a private company to drain the sewage pipe and charge this to the company, if it had not completed the works within two weeks. I cannot find any evidence of a response from the company. I can see from the invoice enclosed that the customer subsequently incurred £500.00 for this work to be done privately on 22 September 2018. The description of the work states:

*"To structurally drain line foul drain approx 6.1 meters by our air inversion method to prevent foul drain from leaking and causing a collapse sewer with 10 year guarantee base on [ ] water".* The company does not accept it should pay the customer for the cost of the invoice as it says it did not give permission for a private company to carry out work on its private assets. However, there is no suggestion the work to its sewers was not required. In light of this, and my above finding that the company unreasonably delayed with addressing the issues including draining a section of the sewage pipe, which the customer had first raised in early July 2018, I find it reasonable for the company to reimburse this cost to the customer as I am satisfied he acted reasonably by employing a private contractor to drain the sewer.

8. The customer submits that the company has refused to address the 'belly' on its sewer pipe in his garden. I am not satisfied that the company has substantiated its contention that the section of the sewer that has a 'belly' or a "slight displaced joint" is private. The customer is

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adamant that, as it is a lateral sewer pipe in this back garden, it would be the company's responsibility. I am mindful that in its Defence, as well as stating that that the 'belly' is on the private section, the company has stated that the sewer in question was transferred to its responsibility in October 2011 following determination from DEFRA of the transfer of private sewers to water undertakers and therefore that whilst it did not lay this sewer, it is now responsible for it. The company goes on to say that whilst there is a slight belly, this particular sewer naturally holds water/waste due to its slight gradient. Moreover, it is entirely satisfied from its investigations that it is functioning as it should be and therefore, the replacement of this section of the pipe is not justified and, in any event, the costs involved in would exceed the maximum amount of the Scheme. It further states that it will not carry out works where none are needed as it must use its resources correctly and in order of priority. It seems to me that by providing alternative reasons for not carrying out the work requested (replacing the section with the 'belly'), this undermines the company's former claim that it is not responsible for that particular section of the pipework. I have also reviewed all of the job notes that detail the work it has carried out. I find that there is no suggestion within these that the section of pipe with the 'belly' is on the customer's private section.

9. Therefore, in the absence of substantive evidence from the company, for example a sewer map showing that the location of the 'belly' on the sewer line is on the customer's private pipe, I do not find that the company has proven it is not responsible for maintaining and repairing this section. However, it should be noted that I have reached this finding based on a balance of the evidence submitted to me at this time and it is not a definitive finding. I am satisfied however that the company has shown that following work to remove silt, rubble and scale on 14 September 2018 and then the fitting of two metres of patch liner repair on 17 September 2018, this section of the sewer line has been left in a fully functional condition. I have not been provided with any substantive evidence to show otherwise. Moreover, the company has highlighted that the cost to provide the remedy sought by the customer to replace this particular stretch of sewer line, would likely exceed the maximum award under WATRS. Therefore, for the above reasons, I do not uphold this element of the claim.
  
10. I acknowledge that in his Application, the customer claimed that the company stopped works progressing with his extension despite him having a 'Build Over' agreement with it in relation to these works. In response the company has provided details of events surrounding the 'Build Over' Agreement explaining that, whilst it initially granted this, due to concerns about

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the method of piling (mechanical as oppose of manual) impacting its sewer system, in May 2018, it 'revoked' the agreement pending further information from the customer. Whilst, I find no evidence to show that its decision this was due to any prior omission on the part of the customer, as I accept that the company has a duty to protect its assets, and due to its legitimate concerns at that time, I accept it had a right to request further information including a revised plan and therefore its actions in this regard do not demonstrate any service failing by the company. Whilst I consider this likely delayed the progression of the customer's extension, the customer has not detailed the specific delays caused by this. I acknowledge the customer has said he did not receive any documentation or clear advice from the company that it had revoked the agreement. Whilst I consider it was clear from the company's emails dated 25 and 30 May 2018 that it required further information surrounding the method of piling, I accept that the company was unclear about it revoking the agreement, within these communications. This is evidence of it failing to provide its services to a reasonably expected standard. I acknowledge from the evidence that the company re-approved the Build Over Agreement on 21 September 2018.

11. In summary, I consider that building works to the customer's extension would have been delayed unavoidably when blockages and issues were found with the sewer that needed to be addressed before the customer could continue with his extension. Further, on balance, I accept that some additional delay was caused by the company requiring further information from the customer regarding the method of piling. However, I also find that additional delay was caused by the company failing to address issues with its sewer within a reasonable timeframe. Further, as it had not drained one section of its sewer pipe by 22 September 2018, I accept that the customer acted reasonably by employing a private contractor to carry out this work to enable him to continue with the extension works. However, I do not accept that the company is liable to remove the 'belly' or replace a section of the sewer line as it has shown it is serviceable.

12. The customer requests £2500.00 in compensation for the stress and inconvenience caused by the issues and delays. The company has shown it has already paid the customer £360.00 in compensation for missed appointments and for unclear and confusing communications and £40.00 in Customer Guarantee Scheme payments. Based on the evidence, I am not satisfied that the compensation provided by the company sufficiently reflects the stress and inconvenience caused to the customer as a result of its shortfalls. However, I do not find that

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the customer has justified the sum claimed in full. In the circumstances, I find it fair to direct that the company pay the customer an additional compensation amount of £250.00. I am satisfied this amount together with sum of £500.00 to reimburse the customer for the cost he paid for a private contractor to drain the sewer line, is fair and proportionate.

#### **Outcome**

The company shall pay the customer £750.00 in compensation.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 June 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.

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**A. Jennings-Mitchell**, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb

**Adjudicator**

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