

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1378

Date of Decision: 1 May 2019

Complaint

The customer submits that he kept experiencing problems with sewerage blockages. He contacted the company and the company attended the property on 22 November 2018. The company informed him that the drain was clear and free flowing. He contacted his insurance company and his insurer's contractors informed him that the issue was the company's problem but that as it was an emergency, it would undertake the work. He then contacted the company as he was told that he could claim back his excess. He contacted the company on six occasions. However, the company has rejected his claim. The customer requests an apology, £200.00 compensation as a refund of his insurance excess, and £100.00 compensation for stress and inconvenience.

Defence

The company submits that drains serving a single property and within the property's curtilage remain the responsibility of the property owner. As the customer's property is at the head of the run, the sewer within his land serves only his property. On 22 November 2018 it visited the customer's property. Its section of sewer was found to be running freely. The defect was found to be on the private section of the sewer, the customer was therefore responsible for the repair. The customer was advised to contact a private contractor. The customer contacted his insurance company, who carried out the repair. The insurance company would have been aware that they should not carry out work on a public sewer and did not contact it at any time during the course of repairs to advise that the defect was on the public sewer. It has contacted the insurance company by phone on three separate occasions to clarify the situation, with the most recent occasion being 5 April 2019. On each occasion the insurance company has confirmed that the work was completed on the private section of sewer.

Findings

I accept the company's submission that drains serving a single property and within its curtilage remain the responsibility of the property owner. The evidence confirms the company's submissions that the customer's property is at the start of the run. The 22 November 2018 notes show that the customer was informed that the problem was a private matter and that the customer was advised to contact a private contractor. The customer contacted his insurance company, and contractors on his insurer's behalf attended the property on 27 November 2018. There is no suggestion in the contractor's report that the

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damage was on the public sewer or that the company would be liable for any part of the repair. I note the customer's submissions that the contractor undertook the work because it was an emergency. However, the evidence shows that on 22 November 2018, the company attended the property within two and a half hours of the customer calling to report the issue. There is no evidence to show that the company would not have attended the property as required on 27 November 2018. I am also particularly mindful that there is no evidence to show that the customer's insurer believes that it is not responsible for the cost of the repairs, or that the customer's insurer has contacted company to recover the costs incurred for the repairs.

Outcome

The company does not need to take any further action.

The customer must reply by 31 May 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1378

Date of Decision: 1 May 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- He is the landlord of the property. He kept experiencing problems with sewerage blockages. He contacted the company and the company attended the property on 22 November 2018. The company informed him that the drain was clear and free flowing, and that the blockage was 5 meters up the line. However, this was untrue as the blockage was 3.07 meters away.
- He contacted his insurance company. His insurer's contractors, [], informed him that it was the company's problem but that as it was an emergency, it would do the work.
- The drain collapse was on next door's property but involved having to cross the boundary onto his property. Work to patch a pipe was also carried out on his property. However, this work was not the problem. The collapse drained was caused by a post from a fence which is at least 10 years old. The issue has been ongoing for years so the fence post could have dropped due to the ground being soft from the leaking sewerage.
- He contacted the company on six occasions as he was told that he could claim back his excess. However, the company has rejected his claim.
- The customer requests an apology, £200.00 compensation as a refund of his insurance excess, and £100.00 compensation for stress and inconvenience.

The company's response is that:

- In October 2011, following a change in legislation, most private sewers transferred to the ownership of the sewerage undertaker. A sewer serves more than one property, so following the

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transfer the sewerage undertaker became responsible for the maintenance and repair of all shared private sewers to the point where they connect with a public sewer. Drains serving a single property and within its curtilage remained the responsibility of the property owner.

- As the customer's property is at the head of the run, the sewer within his land serves only his property. Therefore this is a private sewer.
- On 22 November 2018 it visited the customer's property following the report of a blocked drain. As part of the investigation into the blockage it carried out a CCTV survey. The CCTV survey was carried out from a manhole at a neighbouring property, which was clear and free flowing. However, further along the pipe the CCTV survey showed that the pipe had collapsed. The collapse was on the border between the customer's property and the neighbouring property. There was also a hole on a different section of the pipe. As the defect was on the private section of sewer, the customer was responsible for the repair. The customer was advised to contact a private contractor.
- It has not lied to the customer about the location of the defect. Its section of sewer was found to be running freely, and a card was left to confirm this.
- The customer contacted his insurance company, who carried out the repair. The insurance company would have been aware that they should not carry out work on a public sewer, and did not contact it at any time during the course of repairs to advise that the defect was on the public sewer, and therefore not their responsibility.
- It has contacted the insurance company by phone on three separate occasions to clarify the situation, with the most recent occasion being 5 April 2019. On each occasion the insurance company has confirmed that the work was completed on the private section of sewer. As can be seen in the copy of the report provided by the insurance company, the claim was accepted as accidental damage, and the insurance company determined that the boundary fence post was the most likely cause. The report also confirms that they would need permission from the neighbour as the excavation was likely to encroach on their land. There is no suggestion in the report that the damage was on the public sewer, or that it would be liable for any part of the repair or costs.

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.

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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?

Adjudication Process

1. I must remind the parties that adjudication is an evidence-based process.
2. 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.
3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.

Responsibility for sewer repair

4. I accept the company's submission that drains serving a single property and within its curtilage remain the responsibility of the property owner. The company has submitted an excerpt from the Department for Environment, Food and Rural Affairs (Defra) which supports its submission. The account notes submitted in evidence confirm the company's submissions that the customer's property is at the start of the run. I note the customer's submissions that the Defra regulation is unfair as if there are any issues next door or two doors down, any work would be done for free. However, the WATRS scheme is limited in scope and I have no power to review or challenge this regulation.

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5. The company has submitted in evidence contemporaneous notes of the 22 November 2018 visit. Given the period of time which has passed since the visit, and in the absence of any evidence showing otherwise, I am inclined, on a balance of probabilities, to attach weight to the company's contemporaneous notes.
6. The customer submits that on 22 November 2018, following its investigations the company informed him that his drain was clear and free flowing. The company refutes the customer's submissions and states that the customer was advised that the public sewer was free flowing and the issue was deemed to be private. The 22 November 2018 notes show that the customer was informed that the problem was a private matter and that the customer was advised to contact a private contractor. It is not in dispute that the customer then contacted his insurance company and contractors on his insurer's behalf subsequently attended the property on 27 November 2018; some five days later. Having carefully considered the matter, the evidence submitted to this adjudication does not indicate that the company gave the customer false information about his drain during the 22 November 2018 visit. I therefore accept the company's submissions on a balance of probabilities and find no failing on the company's part in this regard.
7. Both parties have submitted a copy of the 27 November 2018 report from the customer's insurer's contractor, [], in evidence. I accept the company's submissions that there is no suggestion in the report that the damage was on the public sewer or that it would be liable for any part of the repair. The report states, amongst other things, "claim accepted."
8. I note a subsequent email from [] to the customer dated 20 December 2018, in which [] then states that some of its work on 27 November 2018 extended beyond the customer's boundary and the company could consider this part of the work to be its responsibility. However, I also accept the company's submissions that private contractors should not carry out work on public sewers. The company's submissions are supported by the approach to the regulation and supply of water in the UK. If any work was required on a part of the sewer that fell under the company's responsibility, the private contractor should have contacted the company during the repairs to put the company on notice and give the company the opportunity to undertake repairs that fall under its responsibility. There is no evidence to show that the [] contacted the company. I note the customer's submissions that [] undertook the work because it was an emergency. The customer states that the workman from [] advised him that if he reported

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the matter to the company, he could be waiting days or weeks. However, I am mindful that the evidence shows that on 22 November 2018, the company attended the property less than two and a half hours after the customer called to report the issue. The evidence also indicates that the company's service level agreement is to attend a property within 4 hours. There is no evidence to show that the company would not have attended the property as required on 27 November 2018. *(Please note that for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims or complaints against [] cannot be considered.)*

9. I am also particularly mindful that there is no evidence to show that the customer's insurer believes that it is not responsible for the cost of the repairs, or that the customer's insurer has contacted company to recover the costs incurred for the repairs. The documents submitted in evidence show that the company has offered to refund the £200.00 excess paid, if the customer's insurer contacts it or its insurer. The documents show that the customer informed the Consumer Council for Water (CCW) that he was arranging this. However, there is no evidence to show that the customer's insurer have contacted the company or its insurer, or refutes responsibility.
10. For the avoidance of doubt, I note the customer's submissions that he contacted the company on six occasions as he was told that he could claim back his excess; however, the company rejected his claim. The documents support the customer's submissions that he has contacted the company on a number of occasions as he was told he could claim back the excess. However, there is no evidence to show that the claim was guaranteed. The evidence shows that the company requested various pieces of evidence from the customer in order to assess his claim. I find no failing on the company's part in this regard.
11. Accordingly, in view of all of the above, the evidence does not show that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person and that the company was responsible for the sewer repair.
12. The customer's claim is unable to succeed.

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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 31 May 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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