

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1487

Date of Decision: 25 November 2019

Complaint

The customer claims that the company incorrectly told her that the drains at the property she intended to purchase were satisfactory however she has experienced blockages since moving into the property. The company has failed to effectively address the issue and refused to complete rectification works. The customer requests it resolves the issue or otherwise clear the blockage indefinitely, pay her compensation of £2,500.00, cover her monthly fee to HomeServe, waive her sewerage charge and provide an apology.

Defence

The company asserts it only surveyed the public section of the sewer it is responsible for when the customer asked it to carry out a CCTV survey in 2017 to check for roots. It has carried out works to the customer's private sewer pipes as a gesture of goodwill (costing £5,750.00) but it is unwilling to carry out any further works to her private sewer as the customer is responsible for repairing this section of the sewer. It accepts there were delays and poor service but due to the works it has already carried out free of charge, it disputes liability for all of the remedies requested by the customer. The company made no offer of settlement.

Findings

It is unclear from the evidence as to the scope of the CCTV survey the company agreed to carry out in 2017 when the customer was purchasing her property. Therefore, the failure to identify, at this time, the issues on the customer's private pipes later discovered, do not justify further works by the company or the other remedies requested by the customer particularly as the company has already completed various work including the re-laying of the customer's private pipes, free of charge. There was however multiple instances of the company failing to provide its services to a reasonably expected standard when dealing with her case. Therefore the company is liable to provide a written apology and pay the customer £1,250.00 in compensation for the stress and inconvenience caused.

Outcome

The company shall pay the customer £1,250.00 in compensation and provide a written apology.

The customer must reply by 23 December 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1487

Date of Decision: 25 November 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She first contacted the company over two years ago to conduct a survey of her drains before purchasing her current property.
- Following a report from the company that stated that the private drains were satisfactory, she bought her property and moved in.
- Shortly afterwards she started experiencing problems with blocked drains and the loss of facilities within her property.
- The company and its contractors ([]) then proceeded to try to rectify the issue by relaying the private drains. She has endured several excavations at her home. She has had her electric cable to her home cut twice by the contractors and there was a lack of communication between the company and the contractors and also with their communications to her herself.
- The first relay did not resolve the issues and following the Consumer Council for Water's (CCW) involvement, the company agreed to relay the private sewer to improve the gradient so that the waste material could flow from the property into the main sewer however she continues to experience issues.
- The company has stated it will not carry out any further work on the private pipework. In order to solve the issue with the fall, the company would have to change the position of the main sewer and this is not something it will consider.
- During the two years of problems, the company has been sending out teams to clear the blockages free of charge. However, it has advised that it will not continue with clearing the blockages.

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- Had the company's report identified that her drain had little fall, which could have led to potential issues, she would not have bought her property.
- The company contends that it does not usually carry out CCTV surveys or reports on private drains and it is now saying that it did not survey her pipework but rather surveyed its pipework to her boundary. This contradicts what she was told by the company initially.
- She has been advised to use less toilet paper or to bag this and dispose this with her normal household waste. She has explained that she has health issues and that she has problems with mobility.
- The company has advised that she will have to fund clearance of any blockages via her own private plumber or clear the blockages herself, however, she considers that as the survey was incorrect the least the company could do is to continue to clear the blockages for her. Previously the company had agreed to provide monthly inspections and would clear any blockages encountered at no charge to the customer.
- It took the company from May to 11 September (2019) for to complete the reinstatement works, at which time it took a camera survey of the drains, but have not provided any details of the results. However, an email sent to CCW advises that she should save buckets of wastewater to pour down toilet or drains. As she has to walk on two crutches this is impossible, and not something she should be expected to do as a normal day to day activity.
- She has to pay HomeServe a monthly payment so she has someone who will clear her drains. They have advised that having to use them regularly will result in the charge being increased. The initial charge was an introductory £12.00 per year, upon renewal this increased to £8.00 per month (£96.00 per year) and is currently costing £10.00 per month (£120.00 per year).
- The customer requests that the company rectify the problems with her drains so that she is able to use the facilities within her home without worrying that the drains will block. If the company is still unable to rectify the drain issues, then she would like ongoing inspection and blockage clearance free of any charges indefinitely.
- The customer seeks £2,500.00 in compensation from the company for stress and inconvenience caused.
- The customer requests that the company provide her with an apology for carrying out a survey that was incorrect, which has devalued her home and caused her over two years of contractors and workmen at her home, as well as two years of upset, stress and inconvenience.
- The customer requests that the company not charge her for wastewater services as she is unable to use this.

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The company's response is that:

- On 6 March 2017, the customer contacted it about a property she was buying. She had been advised there may be an issue with roots in the drain. It advised the customer that they would be able to check the sewers that it is responsible for. It also gave the customer some details of drainage contractors who could help her if the issue was on the private drain.
- It attended the site on 9 March 2017 and checked the sewer for roots as requested. No roots were found and there were no visible defects. The customer was updated with the results by phone.
- On 29 January 2018, it received contact from RST Water Services (RSTS) as HomeServe, the customer's drainage insurers, on her behalf. The customer was experiencing problems with blockages and HomeServe had requested details of the inspection that had been completed the previous year.
- It subsequently agreed to carry out a further inspection of the sewer around the customer's property; this took place on 14 February 2018. During the inspection it was found that there were no problems with its sewer, but the private section of sewer to the customer property's had a 'belly' in it, which was causing an issue with the flow through the pipe. It was found that there was a problem with the private drain at the property which was bellied and had a poor gradient.
- Although the pipe is not its responsibility, following its visit of 2 March 2018, as a gesture of goodwill it agreed to re-lay the private pipework. A team attended on 4 June 2018 to start work to relay eighteen metres of private pipe and install a new manhole at a point where the pipe had a 90 degree bend, to improve the flow at this point. Unfortunately, at the beginning of the work an electric cable was damaged, which held up the repair for a few days. The work was completed on 12 June 2018.
- Following a CCTV survey of the sewer on 20 June 2018, it was agreed a further section of the sewer would be replaced. It attended the customer's property between 30 July 2018 and 17 August 2018 to replace the private section of sewer. Regular visits were also made to carry out inspections to make sure there were no blockages while the work was ongoing.
- As the customer was unhappy that her private pipework was still not working properly, in August 2018, it agreed to carry out a CCTV survey to check the private sewer was free from defects. It also continued regular visits to make sure the sewer was not blocked.
- It returned on 3 September 2018 to fully cleanse and CCTV the sewer as arranged. The survey showed that there was no issue with the private section of sewer, but there were some drainage rods stuck in its section of sewer further along the road.

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- The work to remove the rods from the sewer was completed on 31 October 2018. Following this a manager attended the customer's property on 7 November 2018 to discuss all the work that had been carried out (as requested by CCW) and also cleansed and surveyed the sewer whilst on site and all was found to be satisfactory. The customer raised some concerns about the reinstatement that had been carried out, which it agreed to rectify.
- Following a further attendance of the site on 18 December 2018, it agreed to relay a further section of the private pipework to assist the customer. This work was carried out between 4 March and 7 March 2019.
- As the customer was unhappy about the reinstatement works, it attended again on 13 March 2019 and agreed to relay four slabs, replace some concrete around the chamber that had been damaged by frost, and put down a small area of tarmac to level up the trench. It made attempts to arrange with the customer for the outstanding reinstatement work to be carried out but this was unsuccessful.
- On 16 May 2019, CCW contacted it to advise that the customer had reported a blockage to them. It attended site on 18 May 2019 and although there was no blockage it jetted the private sewer.
- It carried out the previously agreed reinstatement works on 11 September 2019 and also reinstated the whole patio area. While on site it also carried out another CCTV survey of the private drain, which confirmed that there are no defects and there is a positive fall away from the property towards the main.
- Therefore, despite no responsibility for rectifying issue on the customer's private sewer, as a gesture of goodwill, it replaced the private sewer at the customer's property as it had a shallow gradient. It also improved a 90 degree bend in the pipe to improve the flow through the manhole. It carried out the work to the private sewer at a cost of approximately £5,750.00. Prior to the contact with the customer, it had received no reports of any sewer issues at this address from the previous occupants.
- In relation to the customer's request for it to rectify the problems with her drains, a CCTV survey of the private sewer, confirms that there are no defects which could cause a blockage. This is a single serving sewer to a property that only has one toilet. It has been noted during inspections that the volume of paper being flushed outweighs the volume of water. Therefore, paper is becoming stuck in the sewer.
- The private sewer has a poor gradient which cannot be fully resolved due to the pipe depths of the downstream sewers. Increasing the volume of water through the pipe will aid self-cleansing of the private pipework. It has advised the customer how this issue can be resolved; the only way to achieve a better gradient than the pipe already has, would be to relay approximately fifty metres

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of pipe at a depth of two metres. This would cost in the region of £60,000. However as this is a private sewer, it is not responsible for resolving this issue. It has replaced the pipe as a gesture of goodwill, but will not be carrying out any further work.

- In its opinion, the gradient of the private sewer is sufficient for the sewer to operate properly. If it owned this sewer, it would not consider it necessary to carry out any further work.
- It does not agree to provide the customer with an apology for carrying out a survey that was incorrect as the survey was carried out as sought.
- As there are no faults with the public sewers in the customer's area and as the customer's property is connected to the public sewerage system, she is responsible for paying sewerage charges.
- It appreciates that there were some delays in completing the work. It could have completed the work sooner, but it had to work with the customer to find dates that were acceptable for her.
- Given that it has replaced the customer's private sewer twice at its own cost, it does not believe that any further compensation is due.
- It acknowledges that the customer is regularly calling out HomeServe to unblock her private sewer however it is not responsible for any increase in insurance premiums that may arise as a result of this.

Reply

- The customer asserts that the evidence in the Defence related to the initial survey, does not establish that it agreed to only survey the main/shared sewer. The comments: "we can come out and check our side of things and then take it from there if it is private drainage" implies the private drain would be inspected. The customer asserts that its evidence is: "at best, ambiguous" . The company's letter (dated 31 January 2018) is not specific about which drains were inspected and therefore it is unclear if private drains were excluded from the inspection.
- The notes also refer to restricted access to the property, and the need to contact the estate agents. The customer asks if only the main/shared drain was to be inspected, why would the company need access to the property.
- The customer highlights that the company later found stones and drain clearing rods in the sewer and whilst it is unclear where in the main sewer these were found, this seems inconsistent with the survey that reported: 'no defects to the sewer'.
- The customer acknowledges there were delays as a result of her having to cancel some appointments due to her health issues, however these delays were less than those caused by the company being unable to form organised plans for the works.

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- Due to the company providing a misleading survey and then its inability to resolve the issues at the first attempt, she has had to endure over two years of stress and upset due to continually blocking drains. The whole situation has had a negative impact upon both her physical and mental health.
- The company has previously advised that it would consider compensation in acknowledgment of the stress and inconvenience caused to her but has not provided this or apologised to her.

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. The dispute stems from the results of a survey of the sewer drains that the customer had asked the company to carry out on 6 March 2017 in relation to a property she was in the process of purchasing. The customer's claim is that as the company's report stated that the drains were satisfactory, she proceeded with the purchase. However, she contends that this advice was incorrect as she has had to endure continually blocking drains since moving into the property, in May 2017.
2. I acknowledge receipt of: the company's Defence pack which includes its contact with the customer and case notes from 6 March 2017 up to 29 May 2019; the case documentation in

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the CCW pack and; evidence of the monthly amount the customer is now paying to HomeServe to address blockages.

3. Having reviewed all of the evidence, it is clear from the company's case note dated 6 March 2019 that the customer contacted the company at this time asking for a survey of the drains (as a private survey had indicated a possible issue with tree roots), which the company carried out on 9 March 2019. I can see that the company contacted the customer on the same day by phone to advise her of the results of its findings. There is no evidence of a formal written report either setting out the terms of the survey or the results of that survey. Neither has the CCTV survey itself been submitted. The only evidence, apart from the parties' stated recollections, is the company's below 6 March 2019 note of the conversation with the customer:

*"called in as they have had a survey done and they have advised may be an issue with the drain with the roots.
I have advised that we can come out and check our side of things mains and shared and then take it from there if it is private drainage etc.
I have also given customer name of couple of drainage contractors off google as she is not from the area. .Access is restricted to can we contact the estate agents for access please".*

and the company's below 9 March 2019 note regarding the results of the survey:

" ID 6[]9 * Confirmed inspection of Defect CCTV survey from UCMH in R/O 100A D/S to POI over property boundary and through UCMH O/S 100A at 15m to identify root ingress, SA at 24.85m, CUW in multiple areas but no roots identified with no defects visible. Customer updated by phone. Checked gisst and confirmed Unmapped Transfer"*

4. It is undisputed between the parties that the company advised her that there was no evidence of tree roots and no visible defects in the sewer yet after the customer moved into the property, she experienced continual blockages to the drains. It is clear that the company has, since the customer first raised the issue (via RSTS as HomeServe) on 29 January 2018, undertaken various works to the sewer in order to resolve the issue. I accept that the majority of these works were to the customer's private section of the sewer as the company had found 'a belly' in the pipes that it considered may be affecting the flow and so it relayed the private sewer twice. The company also found drain clearing rods stuck in the (public) sewer line that ran in front of the customer's driveway that it removed in case this was causing the issues at the customer's property.

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5. The company has stated that it carried out all the remedial works to the customer's private drains "as a gesture" as it asserts it is only responsible for the public sewers up to the boundary of the customer's property. I accept that the company is not responsible for repairing or maintaining drains inside the customer's boundaries, as these are the customer's private drains. The customer does not dispute this but holds the company responsible for the drainage issues as she believed the advice it gave to her on 9 March 2017 was in relation to all of the sewer and not just its public section (running up to her boundaries). The customer says she is still encountering blockages and the company has now told her it will not carry out any further works or clear blockage on her private drains and further, it has stopped weekly inspections to check if there are any issues. Therefore, she wants the company to rectify the issue, or if it cannot continue with clearing the blockages and also pay her compensation for all of the upset and inconvenience caused by the problems.

6. The company's 6 March 2017 note specifically states: "I have advised that we can come out and check our side of things mains and shared..." which I consider indicates that it was stipulated to the customer that the company would only check the public section of the sewer and the reference to having provided the customer names of drainage contractors seems to support this. However, I consider the comments that it needed access (from the estate agent) may indicate it intended to look at the private section of the drains also. Further, I consider that the wording: "over property boundary" included in the 9 March 2019 notes of CCTV survey, also suggests it inspected the private section. As such, I find the evidence available is contradictory and does not clearly establish exactly what was agreed or what was advised to the customer in relation to the scope of the CCTV survey, i.e. if it would include all public and private drains or just those the company's side.

7. Either way, the customer believed the company's survey covered all relevant drainage to the property and, as above when she contacted the company after experiencing blockages, it agreed to undertake remedial works on her private drains, free of charge. I am mindful that the scale of the works was extended each time it became clear that the works completed had not fully resolved the issue. The company has explained in its Defence that whilst the private sewer has a poor gradient which cannot be fully resolved due to the pipe depths of the downstream sewers, it believes the gradient of the private sewer is sufficient for the sewer to operate properly and contends that its last CCTV survey carried out on 11 September 2019 confirmed this. It adds that if it owned this sewer, it would not consider it necessary to carry

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out any further work. The company also states the only way to achieve a better gradient than the pipe already has, would be to relay approximately fifty metres of pipe at a depth of two metres, costing in the region of £60,000. The customer has explained the issues that she continues to experience with flushing and blockages and she is unhappy about being advised to add water whilst flushing, specifically to “save buckets of waste water to pour down toilet or drains” (or use less toilet paper).

8. Whilst there is no clear evidence to show whether the CCTV survey the company agreed to carry out included all public and private drainage, it is clear that the customer’s request was specifically for the company to check for tree roots. Therefore, whilst the 9 March 2017 note states “no defects” were found, I consider that the presence of tree roots would have been the focus although clearly it would be incumbent on the company to report any obvious visible damage. However, as to the ‘belly’ or poor gradient in the private pipework found after a further CCTV, in the absence of the clear terms as to the scope of the initial survey, I am not satisfied that the failure to report this (if indeed the private section was surveyed) constitutes a service failure on the part of the company. In light of my above findings and because the private drains are the customer’s responsibility, I find insufficient basis to find that the company is liable to carry out further works to rectify the issue. Moreover, if the cost of such works was £60,000 as suggested by the company, this remedy would fall outside of the scheme on this basis. However, I am persuaded that the company should have been clearer about the scope of its CCTV survey only covering the pipes up to the customer’s boundary, although equally, I consider the onus was on the customer to ensure the survey being carried out was on the terms agreed and I am mindful that she has not provided any evidence to demonstrate this. On balance, I am satisfied that by completing the works on the customer’s private drains to date, the company has, in effect, discharged any responsibility for the confusion caused by this failure to clarify to the customer the scope of the CCTV survey it agreed to carry out on 6 March 2017.

9. However, I acknowledge from the evidence instances of delays and poor workmanship whilst the company (or its contractors) carried out agreed works to the customer’s private drainage at her property. I consider that having committed to undertake works, the company was responsible for providing its services to a reasonably expected standard. It is clear that the company (or its contractors) inadvertently cut the customer’s electricity cable on two occasions (6 June 2018 and 1 August 2018). The customer’s communications with the company documents the significant inconvenience caused by this. Based on the customer’s

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communications with the company at the time (and also CCW's communications made on the customer's behalf since 25 September 2018), I accept that there was misinformation/ poor communication between the company and its contractors including on: 4 June 2018 when crew turned up not knowing what they were supposed to be doing (then went home) and also in relation to the information it was giving to the customer: later on in the same week her complaint to the company dated 7 June 2019 indicates crews did not attend at the times or on the days that had been advised to the customer and also that different crews did not always know what work other crews had done. It is evident this pattern continued (as set out in the customer's next complaint dated 19 August 2019) causing the customer to have to regularly contact the company to chase for updates and to complain. She also mentions instance of contractors being inconsiderate, for example repeatedly knocking on the door if she did not answer quickly after the first knock; the customer has limited mobility (and uses crutches) and I am satisfied that the company was aware of this and should have relayed this information to its contractors and did not.

10. I am mindful that the matter has been ongoing for more than eighteen months (since January 2018) with the last of the re-laying completed in March 2019 (and reinstatement works in 11 September 2019). The company admits there had been delays on its part, I find the evidence confirms this, including when removing the rods from the sewer line; this required digging up roads and as cars were parked on the relevant areas, dates for the work in October 2018 had to be rescheduled; I accept this could have been avoided by better organisation with coning off the area. The company has highlighted however that some delays were due to the customer cancelling or postponing appointments. I accept this although I find this was only in relation to reinstatement works since April 2019. The customer has explained the reasons for this being health appointments, which I accept although clearly the company would not be liable for this particular delay.
11. In its response to the customer dated 12 December 2018, the company accepted that it had provided a poor service to the customer and further it agreed that it would pay the customer compensation for the poor service once all of the works had been completed. In its Defence the company denies that it is liable to pay the customer compensation due to the amount of work it has already undertaken. I find no evidence of the company paying the customer any compensation as promised and whilst, due to the amount of work the company has completed in an attempt to improve the situation, I consider an award in the amount sought of

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£2,500.00 would be disproportionate, I find that the company shall pay the customer a measure to reflect the stress and inconvenience caused, firstly by failing to be clearer about the scope of the original CCTV survey and secondly, as a result of the numerous errors and delays during the period of the works and complaint period after committing to undertake the works. In the circumstances, I find that the company shall pay the customer £1,250.00 for the significant stress and inconvenience I accept was caused by its failures to provide its services to a reasonably expected standard; this amount falls into Tier 3 of the WATRS Guide for Compensation for Inconvenience and Distress. I am satisfied this amount is reasonable and proportionate to the company's proven service shortfalls.

12. I do not consider that the company is to pay compensation to cover the cost of premiums the customer currently pays to HomeServe, as I do not find this remedy flows from my above findings.
13. As above, because the company is not responsible for any further rectification works, I am unable to uphold the customer's request for the same or for clearing blockages on the customer's private drains indefinitely. I also accept the company's assertion that as there are no faults with the public sewers in the customer's area and as the customer's property is connected to the public sewerage system, it is not liable to waive the customer's sewerage charges. Therefore, I am unable to direct that it provide this particular remedy.
14. The customer also requests an apology. Based on the service shortfalls by the company discussed above, I consider this request to be reasonable and I direct that the company provide a written apology to the customer.

Outcome

The company shall pay the customer £1,250.00 in compensation and provide a written apology.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 23 December 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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