

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1608

Date of Decision: 11 October 2019

#### Complaint

In April 2018, the customers complained to the company about a serious drainage problem at their property. The company investigated and concluded that there was a fault on the customers' private pipework and, as such, it was not responsible for the repair. A private contractor excavated the lounge floor and found that the main sewer, owned by the company, had collapsed. The company's engineers returned to the property to assess the situation and advised the customers to reinstate the excavation on the basis that the work would be carried out externally. The external works failed to remedy the problem and an internal excavation of the living area floor was commenced for the second time on 11 June 2018. During the excavation, the engineer accidentally cut an electric cable, resulting in a loss of power to the property. The customers have four children and the living room space is the only area of the property that can be used for eating, playing and family time. Without access to it, and with the danger posed by the excavation, the property was uninhabitable. The customers moved out and rented temporary accommodation at a cost of £340.00 per week. When the work was completed on 15 June 2018, the company erected a gate around the reinstated excavation and told the customers not to remove the gate until the flooring was replaced. The customers were only able to move back into the property when the company replaced the flooring on 9 July 2018, four weeks after the work had started. The customers want the company to reimburse the £1,360.00 costs they incurred for four weeks of temporary accommodation.

#### Defence

Following a report of drainage issues in November 2017, the company attended the property and concluded that the problem was on a privately-owned single curtilage drain and, as such, it was not liable to carry out remedial works. However, on 16 April 2018 it was informed by the customers' private contractor that the drainage issue may be on company owned pipework and an engineer attended on 18 April 2018 to investigate. The engineer concluded that the private pipework at the property drains into a company owned sewer within the property boundary and a section of the company owned pipework had collapsed. It advised the customers to reinstate an internal excavation carried out by the private contractor because the necessary repairs would be completed from outside the property. However, an external repair was not possible and internal works commenced on 11 June 2018. The

company denies cutting through the electric cable in the customers' home on the basis that photographs taken on 18 April 2018, before it commenced the internal excavation, show the electrical wiring was already damaged. The company also denies damaging the flooring; the flooring was lifted by the private contractor and therefore it was not liable to relay it. However, as a gesture of goodwill the company's contractors arranged for the flooring to be replaced. The customers contend that the company erroneously dismissed the initial complaint and instructed them to engage the services of a private contractor. However, the invoice the customer provided from the private contractor demonstrates that work was carried out on the private drainage. The customers have failed to substantiate their claim that they paid rent for temporary accommodation but, in any event, the customers' home was uninhabitable, albeit without laminate flooring, as of 15 June 2018 when the work was completed. The company accepts that the customers remained in temporary accommodation for a further three weeks, but state that if the customers were unable to move back in due to the lack of electricity supply, the company cannot be held responsible as it did damage the electric cable. The company does accept that the customer's home was uninhabitable for one week and has already made goodwill payments to the customer in the amount of £785.22 for the inconvenience suffered. In view of this, the company states that the customer has already been adequately compensated and denies any further liability.

The company has not made an offer of settlement.

## Findings

It is undisputed that the customers' property was uninhabitable during the internal excavation works between 11 June 2018 and 15 June 2018. The parties also agree that the property had no flooring in the lounge and no electricity until 9 July 2019. The photographic evidence provided by the company persuades me that, on the balance of probabilities, the company did not damage the electric cable that caused the power failure. The company claims that the property was uninhabitable from 15 June 2018, albeit without laminate flooring, and therefore it is not liable for any rental costs for temporary accommodation after this date. The customers' claim that the property remained uninhabitable until 9 July 2018 because the reinstated excavation site was gated off and, for safety reasons, the company instructed them not to remove the gates until the flooring had been re-laid. As the customers' private contractor removed the flooring in order to excavate the floor and then carried out repairs on the private pipework, even though a fault was then found on the company's sewer, I accept that the company was not liable to re-lay the flooring and did so as a gesture of goodwill. The customers remained in temporary accommodation until the floor was reinstated three weeks after the repair was completed and, whilst I appreciate that this would have caused considerable inconvenience to the customers, I cannot find the company failed to provide its service to the standard the average customer would reasonably expect by failing to perform the goodwill gesture of re-laying the flooring sooner. Similarly, as the company was not liable to re-lay the flooring, I cannot

find that the company has failed to provide its service to the standard reasonably expected by the average customer by refusing liability for rental costs incurred by the customer during this period. Furthermore, I accept that the customers have not provided substantive evidence in support of their claim for rental costs but, in any event, I find that the company's payment of £400.00 adequately compensates the customers for the inconvenience caused by the works and any costs incurred as a result of the property being uninhabitable between 11 June 2018 and 15 June 2018. Therefore, I make no further direction to the company in this regard.

**Outcome**

The company does not need to take any further action.

The customer must reply by 8 November 2019 to accept or reject this decision.

# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1608

Date of Decision: 11 October 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

### **The customers' complaint is that:**

- In April 2018 they contacted the company to complain about a serious drainage problem at their property. The company's engineers visited the property, completed diagnostic tests and concluded that the problem was on private pipework and, therefore, the company was not responsible for resolving the issue.
- They arranged for a private contractor to carry out the required remedial work. The living room floor was excavated and the private contractor found that a section of sewer, owned by the company, had collapsed. Therefore, the company was asked to re-attend.
- The company's engineers returned to the property and agreed that the main sewer had collapsed. They stated that the remedial works would be undertaken externally and advised the customers to reinstate the excavation for health and safety reasons.
- Two and a half months later, after the external works had failed to remedy the problem, the company advised them that it would excavate internally as direct access was needed.
- On 11 June 2018, the company's contractor commenced the works and, in the process, made a two metre by two metre hole in the living room area, lost all electricity to the property by accidentally cutting through an electric cable, ripped the flooring in the kitchen and damaged furniture.
- They have four children and the living room area in their two-bedroom flat is normally in constant use; it is used for eating, playing and family time. Without access to the lounge, and with the danger posed by the excavation, the property was uninhabitable, so they moved to another flat in the same building that was available for a short-term let.
- On 15 June 2018, the company completed the work and the excavation was reinstated with concrete. However, a gate was erected around the concrete and they were told not to remove it until the company replaced the flooring for health and safety reasons.

- On 2 July 2018, the company attended again as there were on-going issues with the drainage. A CCTV investigation revealed a problem with the drainage to the neighbouring property.
- On 9 July 2018, four weeks after the work commenced, the company attended and replaced the flooring, the property was cleaned and the electricity supply to the property was restored. They were then able to move back into the property.
- The company should not have dismissed their initial complaint and told them that the drainage problem was caused by a fault on their private pipework. This error led them to instruct a private contractor and incur considerable costs. Furthermore, when the company re-attended after the collapsed sewer was identified, it made a further error by instructing them to reinstate the excavation as the work would be carried out externally; the work was carried out internally and this meant that the living room had to be excavated for a second time.
- They also complain that, following the completion of the works, there was a delay of three weeks before the living room floor was replaced. During this time, they were unable to move back into the property with their children as they had been advised not to remove the gates around the repaired excavation for safety reasons.
- They want the company to reimburse the £1,360.00 rental costs they incurred for four weeks of temporary accommodation.

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

- Following a report of drainage issues in November 2017, it attended the property and concluded that the problem was on a privately-owned single curtilage drain. Therefore, it explained to the customer that it was not liable to carry out the remedial works.
- On 16 April 2018, it was informed by the customers' private contractor that the drainage issue may be on company-owned pipework and an engineer attended on 18 April 2018 to investigate. The engineer concluded that the private pipework at the property drains into a section of the company's sewer located within the property boundary, and a section of this pipework had collapsed.
- It carried out regular pump outs of the sewer network in the area to ensure a continued wastewater service was provided to the customer and the neighbouring properties. It advised the customers to reinstate the excavation in their lounge for health and safety reasons and because the necessary repairs would be completed from outside the property to minimise disruption.
- The aim of the works was to reline the sewer from a manhole located to the side of the property. However, due to the size of the collapsed section underneath the extension at the rear of the property, this failed.

- The customers state that it erroneously instructed them to reinstate the excavation made by the private contractor and this resulted in the lounge area of their property being excavated twice. However, even if it had deemed it necessary to complete the repairs by excavating inside the customers' home in the first instance, it would have still asked for the excavation made by the private contractor to be reinstated; its contractors will only work in excavations made by themselves to ensure the health and safety of its work crews and customers is maintained.
- Internal works commenced on 11 June 2018 and were completed on 15 June 2018.
- Its contractor denies cutting through the electricity cable in the customers' home and photographs taken by the company's contractors during a visit to the property on 18 April 2018, before the internal excavation commenced on 11 June 2018, show that the electric cable was already damaged and had been taped up by the private contractor.
- Its contractors did not damage any furniture or flooring; the flooring in the lounge was lifted by the private contractor prior to its work beginning. When it carries out any works of any nature, it always returns the work area back to its original condition. As it did not lift the flooring inside the customers' home, it was not obliged to relay it. However, as a gesture of goodwill, its contractor arranged for the flooring to be replaced on 5 July 2018.
- After the completion of the works, the customers and their neighbours continued to experience drainage issues. In response, a site meeting was undertaken on 2 July 2018 and further defects along the sewer were identified. Unfortunately, it took up to a year to fully resolve all of these issues due to a variety of reasons outside of its control. However, during this time it routinely pumped out the sewers to ensure a wastewater service was provided to all of the residents and to prevent sewer flooding.
- The customers contend that it erroneously dismissed their initial complaint and instructed them to engage the services of a private contractor. However, the contractor's invoice provided by the customer demonstrates that work was carried out on the private pipework before it connects to the company-owned drainage system. Furthermore, the invoice is addressed to the customers' landlords and it understands that this has been settled by the landlords' insurer who would have pursued the company for a reimbursement if it believed the company was liable.
- The customers state that they paid £1,360.00 for four weeks of temporary accommodation at £340.00 per week. However, they have failed to substantiate their claim with evidence that they were paying rent for two flats during this time. Furthermore, when its representative met with the customers on 2 July 2018, the customers' stated that their landlord had provided them with another flat to live in temporarily.
- The customers' home was inhabitable again, albeit without laminate flooring, as of 15 June 2018 when the excavation was reinstated. However, the customers remained in temporary accommodation for a further three weeks. When the claim was first made, the customers stated

that they were unable to move back into the property until 9 July 2018 because there was no electricity supply. If the customers' home was uninhabitable due to a loss of electricity supply, it cannot be held responsible as it did not damage the electric cable or interfere with the electricity supply.

- In view of the above, it denies liability to reimburse the customer for four weeks of rent but it accepts that the customers' home was uninhabitable for one week, while it completed the works between 11 June to 15 June 2018, and it has already paid £400.00 for the inconvenience caused by this. It has also paid £135.22 for the delay in re-laying the floor, including a £54.00 reimbursement of the cost of removing rubbish left after the completion of the works. A further payment of £240.00 was made for the length of time the drainage issue took to resolve and £10.00 was paid for a failed call back. Therefore, the customer has already received £785.22.
- Even if the company accepts that the customers paid for one week of accommodation, which it disputes in view of the lack of evidence of costs incurred, the maximum expense suffered by the customers as a result of the drainage repair is one week of rent at £340.00 and £54.00 for rubbish removal. If these sums are deducted from the £785.22 already paid to the customers, the customers have received £391.22 over and above their incurred expenses for the inconvenience they suffered during the week the works were completed. On this basis, it states that the customer has already been adequately compensated and further liability is denied.

### 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. Having reviewed the evidence presented by the parties, I find it is undisputed that the customers' property was uninhabitable during the internal excavation works between 11 June 2018 and 15 June 2018. The issue to be decided is whether the property remained uninhabitable until 9 July 2018, when the flooring was re-laid and the customers moved back to the property, and, if so, whether the company is liable for any costs incurred by the customers in renting an alternative property.
2. The parties agree that the property had no flooring in the lounge and no electricity until 9 July 2019. The company's view is that the property was inhabitable from 15 June 2018, albeit without laminate flooring. It seems to accept that the customers may not have felt able to move back into the property due to the lack of electricity, but states that, if this is the case, it cannot be liable as it did not cause the loss of power. I have reviewed the photographs taken on 18 April 2018, before the company excavated the lounge floor, and accept that these show pre-existing damage to the electricity cable. In view of this, I accept that, on the balance of probabilities, the damage to the electricity cable and the subsequent loss of power was not caused by the company.
3. In any event, the customers' claim that the property remained uninhabitable until 9 July 2018 because the reinstated excavation site was gated off and the company instructed them not to remove the gates until the flooring had been re-laid for safety reasons. The company make no comment about this in their defence statement.
4. Having reviewed the evidence provided by the customers, I accept that, on the balance of probabilities, the reinstated excavation was gated off and they were told not to remove the gating until the flooring was replaced for safety reasons. I also accept that, in these circumstances, the customers would have reasonably believed it was unsafe to move back into their home with their children.
5. The company states that, as the private contractor removed the flooring in order to excavate the floor and carry out repairs on the private pipework, it had no obligation to re-lay the flooring. It accepts that it did re-lay the flooring for the customers, but states that it did this as a gesture of goodwill, not because it had an obligation to do so.

6. The invoice from the customers' private contractor states "We lined the pipes but the packer exploded because the defect was to [sic] big to hold air pressure. We therefore had to excavate and replace three metres of pipework on two branches. There is one more lining patch to be done at a cost of £800 + vat, but this can only be done once Thames Water has repaired their drainage pipes." This suggests that the contractor did complete work on the private pipework and, while it was doing this work, it identified that there was also a problem on the company's sewer.
7. Having reviewed the evidence, on the balance of probabilities I accept that the private contractor removed the flooring to complete work on the private pipework and did complete work on the private pipework. Therefore, even though the contractor found a fault with the company's sewer whilst completing these repairs, the flooring was removed to carry out private repairs.
8. The customer states that the company were wrong to advise them that there was a fault on their privately-owned pipework and they should instruct a contractor to carry out remedial works. However, whilst I accept that there was also a fault on the company's sewer, the evidence demonstrates that the company were correct in stating that there was a fault on the private pipework as repairs were carried out.
9. The private contractor reinstated the excavation but did not re-lay the flooring. As above, the company states that it re-laid the flooring after the completion of the internal works as a gesture of goodwill. On the basis that the company's liability is limited to returning the property to the condition it was in before the works were commenced, and when the company commenced its excavation the lounge flooring had already been removed, I accept that this is the case. The flooring was not removed by the company and was not removed to repair the company's pipework and, therefore, the company was not liable to reinstate it.
10. There was a three week delay between the completion of the works and the reinstatement of the flooring. During this time the customers remained in temporary accommodation and, whilst I appreciate this must have been most inconvenient for the customers, I cannot find the company failed to provide its service to the standard the average customer would reasonably expect by failing to perform the goodwill gesture of re-laying the flooring sooner. Similarly, whilst I appreciate the customers will be disappointed by this decision, as the company was not liable to re-lay the flooring, I cannot find that the company has failed to provide its service to the standard reasonably expected by the average customer by refusing liability for rental costs incurred by the customer during this period.

11. The company accepts that the customers could not have lived in the property between 11 June 2018 and 15 June 2018, but states that it has already compensated the customers in the amount of £400.00 for this inconvenience. The company has also provided evidence to show that it has made further payments of £250.00 for the time taken to resolve the drainage issues and £135.22 for rubbish removal and the delay in relaying the floor, even though it was not liable to re-lay the floor. The company further states that the customer has not provided any evidence to show that they were charged by their landlord for the temporary accommodation provided.
  
12. I accept that the customers have not provided substantive evidence in support of their claim but, in any event, I find that the company's payment of £400.00 adequately compensates the customer for the inconvenience caused by the works and any costs incurred as a result of the property being uninhabitable between 11 June 2018 and 15 June 2018. Therefore, I make no further direction to the company in this regard.
  
13. Finally, the customers state that the company erroneously instructed them to reinstate the excavation made by the private contractor and this resulted in the lounge area of their property being excavated twice. Whilst I accept that the repeated excavation of the lounge would have caused further inconvenience to the customers, I accept that, even if the company had deemed it necessary to excavate internally in the first instance, it would most likely have asked for the excavation made by the private contractor to be reinstated for health and safety reasons. Therefore, I find no failing on the company's behalf in this regard.

**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 8 November 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.

*KS Wilks*

Katharine Wilks

**Adjudicator**