

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1625

Date of Decision: 16 October 2019

#### Complaint

There were two sewer collapses in the vicinity of the customer's property, one in January 2016 and another in December 2017. Over the last three years, the company has been carrying out works to repair the sewers. The customer advised that they are still in the dark as to what is happening with regards to the sewers. The prolonged delays in contacts and work by the company has led to a huge deterioration in the customer's property, living conditions and general health. The customer asks for (1) £3000.00 by way of personal compensation; (2) £1750.00 as a contribution to her property repair costs; (3) her bill to be wiped; (4) a structural survey and CCTV survey to be carried out and funded by the company.

#### Defence

The work to locate and repair the collapse has been challenging due to the depth, size and position of the sewer. Complexities and unexpected difficulties arose on the project. The ensuing delay was unacceptable but inevitable. It is acknowledged that the matter was long and complicated but the company ensured that the customer and her husband were kept informed at all times and took steps, such as tankering, to minimise the risk of flooding. The value of credits and other payments already made to the customer in this matter totals £1,882.46.

No offer of settlement has been made.

#### Findings

The customer's 'awful' experience over the last 3 years has resulted from a combination of factors. Most of these factors were not within the company's ability to control or mitigate. Given all the circumstances of the case, the company made sufficiently regular attempts to stay in contact with the customer and to provide updates. The company was not engaged in any practice of 'deceit' or 'manipulation' or 'lying' or the making of 'false claims', as the customer alleges.

#### Outcome

The company does not need to take any further action.

The customer must reply by 13 November 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1625

Date of Decision: 16 October 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- Along with her husband, she lives at [ ] ("the Property").
- There were two sewer collapses in the vicinity of the Property, one in January 2016 and another in December 2017. Over the last three years, the company has been carrying out works to repair the sewers ("the Repair Works").
- The customer's complaint concerns the poor customer service provided and the way that she and her husband ("they") have been treated by the company during the period of the Repair Works.
- The customer and her husband have continually tried to accommodate the company and its contractors to the detriment of their own physical and mental health. Despite efforts from their MP, the issue is still not resolved and with winter coming up, this is now a major concern.
- The situation is ongoing and the customer is still in the dark as to what is happening with regards to the sewers ("the Situation"). The prolonged delays in contact and work by the company has led to a huge deterioration in:
  - the Property;
  - the customer's and her husband's living conditions; and
  - their health.
- The value of the Property has decreased since April 2018 such that the amount of the loss in that respect is now over £35,000.

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- The customer feels that they have been very patient and fair but this has led to “... *no more than gross incompetency, gross negligence, deceit, and lies* ...” on the part of the company. The customer also alleges that there has been “*deception and lies*” from the company in their communications along with the withholding of information.
- The customer explains that the Situation has affected all aspects of their lives both at home and at work. They have had to take endless days/weeks off of work without notice due to the “*sporadic and inconsistent communication*” from the company.
- The customer’s husband was hospitalised with pneumonia and sepsis and the customer herself has recently been admitted to hospital after having a grand mal seizure (and she has had her driving licence stopped.)
- The customer goes on to explain that she is a long-term anxiety and depression sufferer. Over the period of the three years, she has taken 115 days taken off work as sick due to the impact that the Situation has had on her health. Sadly, she has also lost two babies within 18 months. The customer argues that it has been the company’s “*miscommunication, lack of information and transparency*” that has led to the Situation.
- The customer and her husband have had no boiler since October 2018 as this is fixed to the back wall of their extension, which has damp/water running down.
- For all the distress and inconvenience caused by the company over the last three years, the customer wishes to claim:
  - £3000.00 by way of personal compensation;
  - £1750.00, which is half of what the customer says that it is going to cost to carry out repairs to the Property. (The customer contends that the condition of the Property has deteriorated whilst the customer and her husband have had to wait for the company to finish the Repair Works).
- The customer also requests that her bill is wiped (as was previously agreed by [                      ] of the company in his meeting notes of his attendance at the Property on 22 March 2019.)
- Finally, the customer requests that the company:
  - instructs an independent surveyor to undertake a structural survey of the Property; and
  - arranges for a CCTV survey to be carried out of the drains.

**The company’s response is that:**

- In paragraphs 4 to 77 of its defence, it has set out a very comprehensive summary of events, from its perspective, which covers the period between 24 January 2016 and 3 July 2019 (“Events Summary”).

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- The company's responses to the claim are essentially as follows:
  - "... [it] acknowledges [that] the work to locate and repair the collapse has been challenging due to the depth, size and position of the sewer. Complexities and unexpected difficulties arose due to [the company] having to accurately mark the location of the repair using CCTV equipment, clear the overgrown vegetation before the marking up could be carried out, and to agree and pay for the required access with relevant land owners, which included determining the most appropriate route for heavy plant machinery to use, which minimised disturbance or damage to the area. [The company] needed to carefully plan the depth of the excavation to ensure all practical and health and safety requirements were considered in addition to undertaking a significant amount of research into alternative methods of repair...";
  - "... [it] accepts that the delay has been unacceptable but will aver that it was unavoidable. [The company] kept [the customer and her husband] informed of progress at all stages, often communicating on more than one occasion in a day. Tankers have been deployed constantly to ensure that the area remains effectively drained in accordance with [the company's] Statutory Duty ...";
  - "... [as to the] anxiety, stress [and] illness which it is alleged has been caused by the dispute with [the company] ... this allegation is denied. It is accepted that the matter was long and complicated but [the company] ensured that the [customer] and her husband were kept informed at all times and took steps, such as tankering, to minimise the risk of flooding ..."
- In addition, the company points to various charges that have been cancelled and/or payments that it says have been made already to the customer ("Credits and Payments Already Made"), specifically:
  - a £50.00 goodwill payment in May 2016 and a 'Guaranteed Standards Scheme' payment of £105.53;
  - credits of £120.00 were applied to the customer's account after a successful application for one of the company's financial assistance schemes. The scheme required regular payments towards unpaid charges. Eligibility for the scheme ceased when payments were not maintained. In the customer's case, the assistance tariff was withdrawn from her account but the credits (that had previously been applied) remained;
  - between May 2014 and April 2019, the customer made nineteen bank direct debit indemnity scheme refund applications. These applications resulted in the reversal of payments previously debited by the company and returned the total sum of £839.13 to

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- the customer's bank account;
- in March 2019, in recognition of the time it had taken for the Repair Works to be completed, the company wrote off £767.80 of charges outstanding on the customer's account;
- The total value of these Credits and Payments Already Made, therefore, the company says, is £1,882.46.
- As to the customer's request that the company should fund a CCTV survey and a structural survey of the Property, the company replies that it "... offered to carry out a structural survey of the Property in July 2019, however, access to the Property for this purpose was denied. Notwithstanding this, it is unclear why a survey is required given the evidence of the [customer's] insurers that the Property is not subsiding ..."

### 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 materials that I have reviewed include in particular:
  - a. the customer's covering letter of 21 August 2019, which accompanies her WATRS application form;

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- b. all the 'additional evidence' submitted alongside the customer's WATRS application form; and
  - c. the customer's timeline ("Customer's Timeline") and supporting documents numbered 1 to 106; and
  - d. the company's Events Summary as detailed in paragraphs 4 to 77 of its defence; and
  - e. the exhibits RST-1, RST-2 and RST-3 appended to the company's defence.
2. I have also had the benefit of reading:
- a. the customer's comments ("Comments"), which were filed on 7 and 8 October 2019 by way of reply to the company's defence;
  - b. the company's document dated 8 October 2019, in response to the Comments.
3. The last three years have obviously been enormously difficult for the customer and her husband. I was sorry to read about all the adversity that they have had to endure. Overall, the impacts that the customer describes seem to be nothing short of devastating.
4. I note that the customer is careful to emphasise that her claim is a contained one. From the outset, she says that she:
- "... would like to make it clear that this complaint is not regarding the potential subsidence claim against RST Water, it is regarding the customer service and the way we have been treated by RST Water over the last 3 years. We have continually tried to accommodate RST Water and their contractors to the detriment of our own physical and mental health ..."*
5. The customer goes on to explain that the main elements of the 'poor treatment' stem (for example) from the company's alleged:
- a. *"sporadic and inconsistent communication"*; and
  - b. *"gross incompetency, gross negligence, deceit, and lies"*; and
  - c. *"miscommunication, lack of information and transparency"*.
6. The customer expands on this in her Comments:
- "... [The] issue with the sewers has been ongoing since before October 2018, a decision*

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*to start work was not in place until 4th February 2019. We have not been updated, kept in the loop or informed via RST Water. We have had information withheld, incorrect information give or just being ignored. I have evidence of every time that I have tried to contact RST Water. RST Water have made false claims about being at our property and had they contacted my husband as stated in their statements then we would not have had to constantly chase RST. It may be of benefit to request a Subject Access Request to have the transcripts for all of the calls made. Tankers were deployed on a daily basis, turning up at unacceptable times often when we were having dinner or early mornings. We had tankers arriving on Christmas Day and on various other occasions – this is all documented in our evidence ...”*

7. The focus, therefore, is on the company’s provision of information and its communications with the customer (“the Information/Communications Issue”)
8. For its part, the company disputes that its communications with the customer (and/or supply of information) can be criticised. Its stout reply in this case is that it “... *kept [the customer and her husband] informed of progress at all stages, often communicating on more than one occasion in a day ...”*
9. My primary task in this adjudication is to assess whether the company:
  - a. has been ‘at fault’ in the respects alleged by the customer; and
  - b. (to the extent that the company may indeed have been ‘at fault’) whether this translates into a failure to provide its services to the standard expected.
10. I have examined the Customer’s Timeline and the Events Summary set out in the defence. Commendably, both documents are comprehensive and it is apparent that each has been prepared with great care.
11. Although I appreciate that the customer intends her claim to be confined to the Information/Communications Issue, I consider that this aspect must still be looked at in context.
12. From reading all the evidence, it seems to me that there were numerous factors and incidents, which - *in combination* - contributed to making the customer’s (and her husband’s) experience as ‘awful’ as it has been over the last three years. As I see it, given the particular circumstances, most of these critical factors were difficult for the company to control or predict or

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mitigate. The critical factors that I allude to (as being difficult for the company to control or predict, etc.) include, for example:

- a. in engineering terms, the sheer complexity and scale of the Repair Works. (I note that £250,000 has been spent on the project);
- b. the implications of the sewer being at a very deep level;
- c. the time that it would take to scope out (and to cost out) - and then execute - the appropriate repairing technique, option or resolution;
- d. the extent of the consequent project delay;
- e. all the contemporaneous pressures associated with:
  - i. trying to push through the sale of the Property in 2018;
  - ii. suffering the diminution in the Property's market value;
  - iii. contemplating litigation in relation to these matters (and needing to instruct a solicitor in that regard);
  - iv. making a claim on the insurance policy (and then having to press the insurance claim and to deal with the loss adjusters appointed by the insurers);
  - v. trying to co-ordinate investigations and efficient contacts between the loss adjusters and the company (when evidently, the loss adjusters and the company had differing priorities and roles);
  - vi. awaiting the insurers' crucial decision on the cause of the damage to the Property (i.e. on whether there was subsidence).

13. In my assessment, it is not realistic to isolate the Information/Communications Issue from all the other factors that were bearing down on the customer and her husband. It seems to me that the presence of those other factors drastically affected (anyway) the quality of the information that the company was able to give out.

14. I note that, persistently, the customer was pressing the company for updates about the Repair Works and progress, etc. For extended periods of time, the company was not able to give an answer that would be perceived as positive. It does not follow that this meant that the company was therefore 'at fault'. Rather, it seems to me the reality of the situation was simply that:

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- a. the company was not in a position to confirm that progress had been made;
  - b. this was because the project was proving much more complex and challenging and time-consuming than had originally been envisaged.
15. On the question of 'broken promises', I note that the customer draws my attention to the [ ] meeting notes of 22 March 2019. I have read those meeting notes and have also read the company's email sent to the customer on 24 September 2019 (timed at 14:35). From my review of the evidence, I am satisfied that - allowing for the particular circumstances of this case - the company's efforts on the Information/Communications Issue were adequate. The Events Summary, for example, discloses (in my assessment) sufficiently regular attempts to stay in contact with the customer and to provide updates. I have to say that I am not persuaded that - at any stage - the company was engaged in any practice of 'deceit' or 'manipulation' or 'lying' or the making of 'false claims', as the customer alleges.
16. I have given consideration to whether another water and sewerage undertaker - faced with the all the same challenges as the company faced in this scenario - would have performed better (whether with regard the Information/Communications Issue or generally). On the balance of probability, I am not convinced that they would have performed any better.
17. In light of the above, it has not been shown that the company has failed to provide its services to the standard one would reasonably expect in this case.

#### **Outcome**

The company does not need to take any further action.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13 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.



**Nik Carle** ( LLB (Hons), Solicitor, DipArb, FCI Arb)

**Adjudicator**

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