

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1491

Date of Decision: 10 October 2019

#### Complaint

The customer submits that the company is responsible for an (sewerage) odour and rat problem at her property and this has been confirmed by her home insurance company that investigated the issue. The company has failed to resolve the issue and she requests that it complete the necessary works to resolve the odour/rodent issue.

#### Defence

The company contends that it has investigated the odour and rat problems reported by the customer but has not found any defects with its sewers that can account for the issue. It asserts that the likely cause is two disused lateral drains that were not capped off when the property was extended by its previous owners. It asserts that as these are private drainage pipes, it is not responsible to cap or patch line them, however, it has advised the customer that it is willing to carry out the work but that it is chargeable (£3,000.00) although states that it cannot guarantee it will eliminate the odour. The company made no settlement offer.

#### Findings

The company has investigated the odour and rat problem at the customer's property, as and when this has been reported by the customer and has not found any defect with its sewer to account for the problem. I find its conclusion that the cause of the problem is likely to be disused laterals, is in accordance with the findings of the customer's building insurance company's report. Although this reports also states it is the company's responsibility to address the issue, as I accept the company's explanation that this is private pipe work that should have been capped at the time the previous property owners built an extension, I am satisfied that it has demonstrated it is not liable to cap the disused lines or take any further action (other than that which it has already offered).

#### Outcome

The company is not liable to cap the disused lines or take any further action (other than that which it has already offered).

**The customer must reply by 07 November 2019 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1491

Date of Decision: 10 October 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- She has experienced an odour (sewerage smell) at her home for many years and has also had to suffer rats coming into her utility room.
- Her home insurance company confirmed in a report (dated 17 October 2018) the cause to be a redundant drainage line attached to the company's assets and that a solution to the problem would be for the company to insert a sleeve on the line.
- Her insurance company has stated that responsibility for the solution rests with the company as the local Sewerage Undertaker.
- The redundant lines are connected to the company's asset (not disputed) and this is where the odour is coming from.
- The customer request that the company complete the necessary works to resolve the odour/rodent issue.

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

- The issues have arisen due to the fact that when the property was extended by the previous owners/developers, they did not cap off the disused private drainage pipes. On this basis, it has no liability and as such it disputes the claim for it carry out necessary work in order to rectify the problems.
- It has attended on a number of occasions, cleaned the line and laid bait for the rat issue.

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- As a gesture of goodwill, in recognition of the number of non-attendances in 2015/16 it sent the customer a cheque for £300.00, for which she signed a form of discharge.
- In its email of 18 February 2019, it confirmed that it had found all the shared sewer lines to be in good condition with no defects, and as such had eliminated its assets as being the cause of the odour.
- It has fully explained its position to the customer and has advised that it can carry out the relining (to the drainage pipes), but this will be chargeable, as the issue is private. In addition to this, it is not guaranteed that relining would eliminate the issues.
- In its email of 8 April 2019, as a gesture of goodwill in recognition of the fact its communication could have been better; it sent the customer a cheque for £150.00. This cheque was cashed on 18 April 2019.
- It contends that water companies are not responsible for rat infestations. The relevant Legislation concerning the control of rats can be found at: <http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/55/part/1>.
- The two laterals that were not capped are private as they serve the customer's property only. They are connected to its Foul Water Sewer (FWS), and as explained in its email of 8 April 2019, it is possible that rats are using its FWS to reach the property but are burrowing and living in the disused laterals that should have been capped off when the extension was built.
- It was also explained in this email, that the manhole chamber (MC) that was installed on its FWS when the property was extended, was installed without its permission as the previous owner/developer should have applied for a build over agreement or contacted it for consent. The MC they have installed does not have the correct gradient and as a result it holds waste water, which could be contributing towards the odour.
- It has not received the insurance report that the customer alleges states it is responsible, however it acknowledges that the customer provided this to the Consumer Council of Water (CCW). However, in the CCW's email of 2 May 2019, they advised the customer that having reviewed the report they were in agreement with it that the issue was private.
- In summary, when the property was extended the owner/developer should have consulted it and applied for a build over agreement. Because they did not, they have installed a new MC on its FWS without prior consent. They should also have capped off the disused laterals, which are now the source of the issues the customer is experiencing. While it can empathise with the customer, this issue has been caused by a third party and is a private matter for which it has no liability or responsibility.

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- A significant amount of time and resources have been taken in trying to resolve this for the customer but this is a private issue for which it has no liability or responsibility.
- In recognition of its customer service shortfalls, it has paid a total goodwill of £450.00.

## Reply

- In her Reply, the customer asserts that the company's Specialist Engineer (Mr Brown) agreed it was the company's problem and that the line should be sleeved, however the company went against the word and assurance and recommendation of their own Specialist who had assured her that this would be done. She has never received an explanation as to why the company does not accept Mr Brown's recommendation.
- She clarifies that she made the insurance report available to Mr Brown.
- She disputes the company's suggestion that the relining of the line is a private issue; this cannot be the case as the smell of sewage is coming from the company's main line. Further there is no supporting evidence to show that the lateral lines are not correctly capped. The company is using this excuse to absolve itself from any responsibility.
- She reiterates her request for the company to carry out its duty and sleeve the line as per the recommendation by its Specialist Engineer, Mr Brown, so she can at last enjoy her home.

## 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.

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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. I remind the parties that adjudication is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
2. The dispute relates to a (sewerage) odour present at the customer's home that the customer contends the company is responsible for; her Insurance company has confirmed this and she also submits that the company's own engineer previously agreed it was the company's responsibility to address.
3. The company asserts that it believes the source of the smell is two disused lateral pipes and that this falls under the homeowner's responsibility to maintain. The company submits that they should have been capped when the previous homeowner extended the property and installed new laterals and a new MC. On this basis, it is not liable to cap/patch line the redundant pipes although it has advised the customer that it is able to carry out the work for £3,000.00.
4. Having reviewed the case papers, including the company's 'Chain of Events', set out in its Defence, I consider that the dispute arose following the customer contacting the company on 17 October 2018 reporting rodent activity at her property. I find this led to the company attending to clean the sewer line (removing fat, oil and grease) on 27 October 2018 and I find the notes of the same date state that the stack pipes needed to be blocked to stop the smell. As no follow on work was identified (apart from baiting the line to eradicate the rats), the customer complained to the company on 8 November 2018 advising that her insurance company's report had identified that the stack pipes needed to be blocked and that it was the company's responsibility. I acknowledge receipt of the customer's building insurance report referred to (included in the CCW documents); I find this document states that the disused lateral drains (as oppose to the stack pipe) serving the old soil and vent pipe may not have been correctly capped and may be the cause of the problem. I find that the report also states that it believes it is the local water authorities' responsibility to address this.

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5. It is clear that the company attended the customer's property again on 9 November 2018 to investigate the issue further yet it concluded that as the customer owned the disused lateral pipes, the issue was private. I accept that in response to the customer's complaint, the company then arranged for its network engineer to attend on 15 December 2018 who carried out CCTV and based on the notes in the Chain of Events, I can see that this individual also stated that the two unused laterals may be the source of the smell and recommended for these to be sealed/patch lined and raised a request for the company to undertake this work. It is clear however that the company did not authorise the work and that it advised the customer of this by phone on 21 December 2018 stating that as no operational issues had been found with its asserts, the request for this work had not been granted. The company however agreed for a further network engineer to attend to check again where the smell is coming from. The notes in the company's Chain of Events state its technician who attended on 9 February 2019 again found the problem may be caused by two laterals which had not been capped off (as well due to the auxiliary manhole having a slight back fall so may hold water). I can see that in its letter to the customer dated 18 February 2019, the company advised that as the source of the smell had been found to be due to the redundant pipe work and that as this falls under the homeowner's responsibility to maintain, the work to cap the lines to prevent the smell entering the property, would be the customer's responsibility.
6. In light of the company's Chain of Events, I acknowledge that the customer had reported the odour and rats in her home to the company prior to October 2018, during 2015/2016 when I accept the company had sought to identify the cause by taking action including carrying out a CCTV survey, completing cleaning to the sewer and baiting the sewer line. However, I note that the company reported at this time that no defects in the sewer had been found that would have caused rats to enter the customer's home.
7. Therefore, on balance I am satisfied that the company has shown that it has investigated the odour and rat problem when reported by the customer, both prior to and since October 2018 when the customer's home insurance company suggested the disused laterals may be the source of the smell. The company admits that there have been customer service shortfalls on its part, during both of the above timeframes due to occasions when it failed to attend when it had arranged to and because its communications with the customer "could have been better". I find that the evidence confirms that the service provided by the company

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whilst dealing with the customer's communications and complaints has, at times, fallen below the standard that can be reasonably expected by the average person. However, I acknowledge that the company has paid the customer a total of £450.00 as a goodwill gesture in recognition of these shortfalls. On balance, I am satisfied this is reasonable recompense in the circumstance.

8. I acknowledge that in her submissions, the customer suggests she is doubtful that the odour/rat problem stems from the disused laterals that are connected to the company's FWS (and she says the company has not proven this). However, I am mindful that both the building insurance report and the company have made clear that based on their investigations, the disused uncapped lines are the most likely cause of the odour and rat issues and recommend that they are capped on this basis although the company has stated that it cannot guarantee that capping/lining the discarded laterals will eliminate the odour problem as it does not know the standard of the new private lateral pipe work (installed when the property was extended).
9. As to whether the company is responsible to cap the disused lateral lines, I find the company is responsible for maintaining and repairing its assets in accordance with its obligations under the Water Industry Act 1991. Further, I accept that under the Private Sewerage Transfer Regulations, responsibility for shared foul water sewers and manholes transferred to sewerage companies in July 2011 and I find this includes where they are within a property boundary. Whilst I find that a sewerage undertaker is also generally responsible for lateral drains connected to its (shared) foul water sewers (as in this case), the company asserts that in the customer's case, the disused pipes are private as they are within the property boundary and only served the customer's property (when in use). Further, it contends that an application for a build over agreement should have been made (at the time the extension was built) in order to gain its consent for the new manhole chamber to be connected to its FWS (but no application was received) when it would have told the developer to cap the old drains.
10. In light of the company's above submissions and in particular as I accept that the capping in question is for lateral lines that are no longer in use directly due to the property having been extended by the previous owners/developers (when new laterals and a manhole were installed), on balance I am satisfied that the company's stated position that it is private and

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the property owner's responsibility, is correct and therefore I find that its refusal to carry out this work does not constitute a breach of its obligations. Moreover, I am satisfied that the company has shown that it has investigated the odour and rat problem at the customer's property when reported by the customer in accordance with its obligations but found no defects with its sewer that could account for the issues.

11. In summary, I am satisfied that the company has adequately investigated the reports of an odour and rat problem and has paid sufficient compensation to the customer in respect of admitted customer service shortfalls. I find its conclusion that the cause of the problem is likely to be disused laterals to be in accordance with the findings of the customer's building insurance company's report. Although this reports also states it is the company's responsibility to address the issue, as I accept the company's explanation provided for why this is a private issue, I am satisfied that it has demonstrated it is not liable to cap the disused lines or take any further action (other than that which it has already offered).

#### **Outcome**

The company is not liable to cap the disused lines or take any further action (other than that which it has already offered).

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 7 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.

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

**Adjudicator**

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