WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0939

Date of Decision: 12 November 2018

Complaint

The customer complains that when she was laying a new driveway, she discovered water that the company assured her was a leak from a sewer. It would not permit her to complete work until the company had investigated whether this was a public sewer. In consequence, she had to stop work to her driveway pending the conclusion of investigations. The company had promised to pay her builder's costs for seven days lost work. She claims half the cost of replacing the driveway; reimbursement of the full cost of [ ]'s additional invoices; payment for further work to be undertaken; and compensation for inconvenience at a total cost of £9,690.00.

Defence

The problem turned out to be surface water not a leaking sewer and the manhole was a private drain. The customer had contributed to the delay by requesting a review after it had informed her of this. The company says it is not liable for the customer's losses. It had offered to compensate the customer in the sum of £3,090.00 for five days lost labour and seven tonnes of wasted concrete but that was a goodwill payment only.

Findings

Although the company was entitled to investigate whether the manhole was connected to a public sewer, it gave incorrect advice to the customer on which she relied to her detriment. The company then indicated that it would pay "builders costs" but on receipt of the invoices was prepared to pay only for five and not seven days lost labour. This fell below the standard that would reasonably be expected. The company should pay for the additional two days at a cost of a further £900.00. The customer also succeeded in her claim for £100.00 compensation for inconvenience.

Outcome

The company needs to take the following further action, namely to pay compensation of £4,090.00.

• The customer must reply by 10 December 2018 to accept or reject this decision.• If the customer accepts this decision, the company will have to do what I have directed.• If the customer rejects this decision, or does not respond, the company will not have to do what I have directed.

ADJUDICATOR'S DECISION

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Date of Decision: 12 November 2018

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- The customer complains that during the laying of a new printed concrete driveway, three separate [ ] water technicians confirmed that the leak in her garden was most likely to be due to their sewerage assets.
- When the technicians attended later in order to confirm their provisional view, it was found that the issue was due to surface water and was not from the company's assets.
- The consequence was that the customer's driveway work had to be placed on hold for the investigation period of 10 days, which resulted in increased costs of wasted concrete and extra labour.
- During the stage I and stage II complaint responses the company acknowledged that the customer incurred costs as a direct result of its delays and, based on invoices from the customer, the company decided to cover the costs of five days worth of wages and wasted concrete. It described this as a gesture of goodwill because it said that the contractor, ABC Design, had informed the company that they still had been able to do other tasks while they could not carry out their substantive work.
- The customer has therefore been offered reimbursement on the basis that her contractor could not work for five days and 12 tonnes of concrete was wasted. This was £3090.00. The customer, however, claims that the actual time lost was seven days rather than five and contends that ABC Design say that they did not tell the company that they had done other work, which would have contradicted the invoices.

- The customer also says that in consequence of the disruption of the work, she now has a substandard driveway as it has been completed in three separate sections.
- I interpret the customer's requests set out in the application form as follows:
    - the company to cover the cost of a new driveway or at least pay half the cost by way of compensation;
    - reimbursement of the full cost of ABC Design's additional invoices;
    - Payment for further work to be undertaken; and
    - Compensation for inconvenience.

  The total claim is for £9,690.00.

The company's response is that:

- The company's position is that it is not liable for this claim.
- The company:
    - Says that the drain in question was a private drain for which it is not liable;
    - Denies that it was responsible for delay to the customer's construction activities and points out that concrete had been laid after their first attendance, which contributed to damage;
    - Says that the customer has been offered compensation of £3,090.00 that exceeds the loss suffered and it denies liability for the substandard drive.

  The company denies that the customer had been working around the company. The company was in fact working around the customer, who continued to undertake building works despite having a waterlogged garden.
- The company says that the service provided was not below the standards that would reasonably be expected of the company. The company denies the claim although it states that has offered to reimburse the customer for five days of loss of contract time and seven tonnes of concrete at £120.00 per tonne.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. There is some disagreement between the parties as to the facts giving rise to this dispute. I therefore first reach findings of fact before turning to my findings in respect of the customer's claim for compensation.

2. The company has given access to the customer, following a DSAR, to its data regarding the contacts between the customer. The customer has submitted this in support of her application, in addition to other supporting evidence including a large number of recordings of telephone conversations. The company has submitted documentary evidence in support of its defence. Having regard to the documentation submitted by both parties, I find as follows:
    - The company was contacted by the customer on 14 April 2018 advising that there was excess water in her garden. The customer suspected a clean water leak. The company informed the customer that supply pipes are usually private pipes but that it would undertake an inspection. An appointment was booked to visit the premises on 23 April 2018. At this point there was no suggestion that any construction activities would need to be halted and I find that this was a different issue from that which arose subsequently: I accept the customer's explanation that the appointment of 23 April 2018 related to a different leak involving only clean water and that the appointment was cancelled because the customer arranged for her own plumber to undertake this work.
    - On 15 April 2018, the customer advised that she had dug down in her garden and found a leak and therefore wanted the company to come sooner than 23 April 2018.
    - On 16 April 2018, the customer contacted the company to say that she believed that the sewer had collapsed and she and her partner believed this to be the source of the water in the garden. The company called back that day and visited the customer on 17 April 2018.

- On 17 April 2018, water was found where builders had been mending a fence to the rear of the property. A manhole on the property was located. A camera survey of the drain was tried and a jet was used, but this was unable to clear an apparent obstruction that was very close to the manhole. A note of the customer's complaint states that the company's contractor had told her that the manhole contained sewage. The company's internal records say that the company considered that the drain was probably private and not the company's responsibility but it nonetheless continued to try to investigate the run of the drain and to determine whether there was a sewage leak. The customer says that there were some problems with the equipment used by the company's contractors and the company says that the customer insisted that a larger vehicle attend to check the situation again. This occurred later that day and a further inspection took place. The company's records show that it was unable to get past an obstruction and it suspected that this could be root growth within the sewer.
- The customer requested that a supervisor should revisit that day to decide conclusively what the problem might be. An appointment was made but then cancelled. The customer asked if she could use a private plumber but the company advised that it would need to inspect the leak to see if it qualified for supply pipe repair. An issue exists between the parties as to whether one of the company's contractors had been threatened, but I find that this has no bearing on the dispute that I have to resolve.
- In the meantime, the customer had to decide about the commitment for her driveway. She had paid ABC Design £12,000.00 to construct her driveway in printed concrete. The men were on site to carry out this work and so was 12 tonnes of concrete. The customer says that a decision was taken to lay some of the concrete but it was necessary then to lay off the men and seven tonnes of concrete was wasted.
- The company attended on 18 April 2018 and inspected the drain and carried out a camera survey. Again it was unable to get past an obstruction. The customer says that she was told that the company was responsible for the drain and that a further visit would be necessary on 25 April 2018. The company requested the opportunity to inspect further down the driveway but was not given access to this area, which had then been concreted over. Dye was poured into the private gullies at the rear of the property and it was found that these flowed into the private manhole at the side of the property. A survey was then carried out at the rear of an adjacent property and the private gullies tested. No dye showed in the ground, so suggesting that the water in the ground was not coming from any public assets. The company then states that it concluded its

investigations and affirmed to the customer that this was a private problem. A text message was sent on 19 April 2018 confirming this.

- The customer, however, did not agree that this was the correct position. The company agreed to review this a third time and explained that the service level agreement for an independent review was within seven calendar days. The company then visited the property on 23 April 2018 to inspect the clean water supplies in the area to see if they were a cause or contributor. Following an investigation, it confirmed that there were no clean water leaks.
- An independent review was then carried out on 25 April 2018 including a camera survey from the manhole to the rear of the property. The end of the pipework was found to be under an outhouse on the property. This was not apparently defective or leaking and was a private pipe. An ammonia sample and dye test was carried out. The sample came back with no ammonia and no dye entered from the manhole hole in the garden. A survey from the manhole in the neighbouring property also showed no problems. The company noted that the ground at the property and in a nearby garden was very wet and concluded that the entire issue was caused by groundwater. The customer was notified.
- On 25 April 2018 the customer spoke to a case manager at the company. The note taken by the case manager states:

  I advised will pay for 7 days for builders losses - if can provide a invoice will process this. Customer was okay with this but wants to make a official complaint by writing to the director, I spoke to [ ] who supported me whilst being on phone to raise a manager called back as this is beyond a case manager. I did offer £200 as a goodwill from my side as a case manager, customer refused this as feels this is not enough for losses.

  A subsequent internal note states:

  spoke to [ ] in case management. Confirmed with her that she and [ ] were present when the above call occurred and that he agreed that he'd pay for the inconvenience of the 7 days not the full costs. Will seek guidance as to next steps.
- As the customer objected, the company visited the property again on 9 May 2018 and carried out a fourth test on the drains. It concluded that the drain was a private land drain.
- A log on 10 May 2018 said that the reason for the delay in the works, according to the customer, was that a first van had deemed the issue to be the company asset and then

follow-on work for a vactor was arranged. These technicians also deemed it to be a company issue. However, upon the Network Solution Technicians visit, this was deemed to be a private issue. The company asked why a pipe locator had not been used on the first and second visit. When a locator was used, the issues were found.

- A response is given that a locator was not used because the blockage in the pipe was only approximately a foot beyond the manhole. The company also records that the staff member was threatened by the customer and the builder. On the following day, the company was unable to work from the manhole in question as the concrete had just been laid. It was said that the customer was claiming some days' delay due to concrete costs but it was the company that had been delayed as concrete had been delivered and then laid, preventing the company to have access to the manhole.
- On 16 May 2018, the company agreed that it would increase its offer to £3090.00 to reflect five days of lost work and seven tonnes of concrete.

3. I am mindful that I am required to consider whether the company had provided its services to the standard reasonably to be expected of it, not whether the company was in breach of contract or of its statutory duty. Nonetheless, the WATRS Scheme Rules require that I reach a decision in accordance with the relevant law and I bear in mind that the company carries out a statutory function to maintain public sewers. I also am mindful that this responsibility exists even in situations arising where, before the opening of the private water market in 1990, the location of many sewers for which the company might be responsible was not recorded and therefore are unknown to the company. I find that this situation is likely to have the consequence that, when new drainage is found that might carry effluent, the company must decide whether it is or is not responsible for the asset in question. This is what occurred here. I also consider the fact that it was for the customer and her contractors to discover the problems that were likely to be associated with laying a driveway in her own property.

4. Against this background, I find that when notified on 15 and 16 April 2018 that the problem in the customer's garden might concern a sewer, it was reasonable for the company to insist on investigation. I find that this investigation did, indeed, take some time and disrupted the construction of the customer's driveway.

5. I further find, however, that it is the timing and manner of this investigation that has led to the problem. In particular, the customer complains that three technicians who investigated between

15 and 18 April 2018 could smell sewer odour at the affected area and at no point up to 18 April 2018 was the customer informed that she could use her own contractors to remedy the problem. When the customer rang and spoke to the company's call centre on 17 April 2018, the customer was told that she was not allowed to repair the pipe and would be breaking the law if she did so. It therefore follows that the advice that the company gave to the customer in those initial days was incorrect in the following ways:

a. The company acted, until the contrary was established, on the basis that the pipes in question were those of the company;
b. The company considered, on the basis of information provided by three investigating contractors, that there was a leak of sewage that was causing the damp area to the customer's garden;
c. The company prevented the customer from taking action herself to resolve the problem with the manhole.

Thereafter, at the end of 18 April 2018, the customer was informed of the precise opposite of these three propositions. I find that it is not surprising, therefore, that the customer was on 18 April 2018 both uncertain as to which account was accurate and indignant that damage had been caused to her economic interests because the company had, though its agents, initially given incorrect advice. I find that an average customer would reasonably have expected a sewerage company to give an explanation as to its change of position and to provide further investigation which, in the event took seven days for the company to complete. Even though the customer requested this clarification, I find that such request was only made because of the conflicting advice given to her and I conclude that her request for a definitive resolution of two opposing sets of advice was directly referable to the incorrect advice given by the company on 15 to 17 April 2018.

6. As the customer has incurred a financial loss in reliance on incorrect representations initially made by the company which caused the customer to change her plans to her detriment, I find that an average customer would have considered it fair and reasonable for the company to bear some responsibility for the losses thus caused. On 25 May 2018, I find that, whether or not the company intended to compensate the customer for seven days of inconvenience, in fact the company promised to compensate the customer for, according to the note, "builder's losses" over seven days, which I find would ordinarily have been understood to refer to both labour and materials. If the company had intended to refer only to "inconvenience", it would not have been necessary for the customer to supply the company with copies of the builder's invoices. I find that, having promised the customer to compensate her, an average customer would reasonably

expect that the company would abide by this agreement. I find that the company has not done this, but has only compensated the customer for five days' losses because it considers that the contractors carried out other work. The position as to this is somewhat unclear and I note that the company has inquired with representatives of ABC Design as to these losses, but I find that the company has put forward no persuasive evidence that ABC Design was carrying out other chargeable work in this time. On the other hand, the customer has put forward the invoices showing what she has been required to pay ABC Design. I find that the company's subsequent approach amounted to a refusal to honour the indication given on 25 May 2018 and this fell below the standard of service that an average customer would reasonably expect.

7. The customer has submitted invoices from ABC Design which set out what she has been charged in respect of the disruption to the work. In particular, these comprise:
    - seven tonnes of concrete wasted - £840.00
    - seven days of wasted labour - £3,150.00.

    It follows therefore that the company would reasonably have been expected to pay the customer a sum of £3,990.00. In the light of my finding that the company had fallen below the standard that had reasonably been expected of it in not making that payment, I find that it is fair and reasonable that the customer should be awarded compensation in that sum by way of redress.

8. I turn now to the customer's claim that her driveway is now substandard and that the company should contribute half the costs of restoring it to its intended quality. She also argues that the company has caused damage to the concrete around the manhole. I am not able to reach a conclusion that the company should provide this redress. I take into account that the potential issue regarding the manhole had become known on 15 April 2017 and the customer had reported this to the company. Notwithstanding this information, the customer decided that she would authorise commencement of the work. She, and not the company, therefore, decided that the work should be laid in separate stages while the company investigated its liabilities, which it was required to do. Moreover, although the customer says that this is now substandard because it is printed concrete that ought to have been laid in a single exercise, she has not submitted any photographs or other evidence that supports her contention that her drive looks "patchy" or unsightly. No photographs have been submitted that support the claim of damage by the company's contractors to the concrete around the manhole cover. I find that this damage has not been proved. The company has not agreed to meet this cost and I find that the company

has not, in refusing to compensate for this loss, failed to meet the standards that an average customer would reasonably expect. Although the customer has made a claim for future invoices, I find that there is no evidence that would support such a claim and I make no such direction.

9. As for the customer's claim for £100.00 for the inconvenience caused to her, I bear in mind that this is limited to the inconvenience caused by inconsistent advice. The customer has restricted her claim to £100.00 and I find that this is a sum which is fair and reasonable.

10. It follows, therefore that the redress awarded is the sum of £4,090.00.

Outcome

The company needs to take the following further action, namely, to pay compensation to the customer of £4,090.00

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 December 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

Claire Andrews, Barrister, FCI Arb

Adjudicator