

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1568

Date of Decision: 16 September 2019

Complaint

As a result of flooding to the garden of Plot 22, the customer's company Green Ltd incurred additional costs of £55,690.54 for: installing two land drains and a catch pit to cessate the water ingress (without success) and; due to a delayed handover of the property to its clients. The customer submits that she assisted the company with its investigations, however, it was discovered that the layout of the drainage system did not correlate with the company's maps. The customer requests that the company pay compensation of £25,000.00 (the maximum claim amount under WATRS for commercial properties) towards costs incurred due to its failure to resolve the issue with its sewers in a timely manner.

Defence

The company asserts that investigations were not straightforward and compounded by the fact that it inherited thousands of kilometres of sewers overnight following new law that came in to effect on 1 October 2011. Further, the sewers surrounding the property were unmapped or the maps it inherited were wrong, however, not having unknown assets mapped is not negligent. Although the company accepts that there were delays, it contends that a contributory cause of the flooding was a piled foundation installed by the customer's builder. Further, the required investigations and emergency engineering work were carried out within a reasonable timeframe considering the work required (costing £337,000.00). The company does not accept it is liable for the costs claimed. It did not make any settlement offer.

Findings

The company resolved the reported flood in the garden of the property by carrying out emergency engineering work, however, it took approximately nine months for works to complete. Some delays, including those caused by unmapped sewers, were unavoidable. However, the company failed to act with sufficient urgency during the first two months of the flooding report. Although the company did not conclusively prove its contention that a contributory cause of the flooding was a piled foundation installed by the customer's builder, as the flood was not caused by an issue known to the company that it previously failed to take steps to mitigate against, and as it has demonstrated that it effectively repaired the sewer, the company is not liable for the costs incurred by the customer. However, as the company did not take sufficient action to

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investigate/identify source of flooding during the first two months, I find it is liable to pay the customer £2,000.00 in compensation for inconvenience caused.

Outcome

The company shall pay the customer £2,000.00 in compensation.

The customer must reply by [] October 2019 to accept or reject this decision.

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The complaint concerns water ingress/flooding in the garden of [].
- The company's delay to resolve the issue in a timely manner, resulted in the customer's company, Green Ltd incurring additional costs of £55,690.54.
- She arranged for two land drains to be installed and a catch pit to cessate the water ingress, but without success. She assisted the company with its investigations and it was discovered that the layout of the drainage system did not correlate with the company's maps.
- The existing drainage system within the vicinity (of the plot) had been damaged and was the cause of the excessive flooding on the site.
- As a result of the company's delay in addressing the issue in a timely manner, this also impacted on the handover time between Green Ltd and its client; a total of 268 days from 17 October 2017 to 12 July 2018.
- The customer seeks reimbursement of additional costs incurred by Green Ltd, limited to £25,000.00 (the maximum claim amount under WATRS for commercial properties).

The company's response is that:

- The customer first contacted it on 13 September 2017 and advised of the flooding issues affecting the site. Investigations and various works took place over the following months to understand the location of the sewers and what work was required. Investigations were not straightforward and compounded by the fact that it inherited thousands of kilometres of sewers

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overnight following the Private Drains and Sewers legislation that came in to effect on 1 October 2011. There were delays as the sewers were unmapped/maps it inherited were wrong. The company asserts not having unknown assets mapped, is not negligent. Records have a clear disclaimer that they are not to be relied upon in the event of building or excavation work

- After numerous visits and CCTV surveys, in February 2018 an obstruction was found in the pipe. Its investigations suggest that the obstruction was caused by a piled foundation installed by a builder working on the site.
- In order to resolve the situation, its emergency engineering team had to divert the sewer, which took place between March and June 2018 costing £337,000.00.
- On completion of the diversion from under the property, a CCTV survey of the sewer proved it to be sound. In addition, dye was added to an upstream manhole to test for water ingress into the rear garden, no dye was reported.
- It believes there were other contributing factors to the flooding of this site: when its pipe sonde reached the property wall in the old pipe it stopped at an obstruction and it believes this to be a piled foundation. This would usually be classed as accidental construction damage and should go through the developer's insurance company as with any other service strike. There is a duty of care for the developer to identify assets on site (the Building Regulations are clear that drainage should be protected from piled foundations and if proposed within 1m of drains trial holes should be dug) and their piling contractor should have known this;
- Locals have reported a ground water issue in the area for decades with water regularly bubbling up in the bank to the rear of the property.
- The developer chose to remove the bottom of a bank to accommodate the property, it asks what drainage have they provided to deal with potential groundwater in the bank as it contends water obviously made its way to the lowest point, i.e. the garden.
- It received a letter from Green Ltd on 18 October 2018 advising of their intention to recover costs they had incurred. It sent an email on 31 October 2018 to acknowledge receipt and advise that this had been passed to the relevant teams to investigate.
- Green Ltd sent it a further email on 28 November 2018 as they were waiting for a full response to their previous contact.
- It sent a reply by email on 29 November 2018 confirming the reasons why it did not accept liability for any of the costs incurred.
- On 18 December 2018, it received an email from Green Ltd asking that the case was reviewed again. A reply was sent on 3 January 2019 advising its decision remained unchanged.

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- It received a further email from Green Ltd on 19 February 2019 advising that they disagreed and providing further information on what happened and updated costs. A reply was sent on 28 February 2019.
- On 13 May 2019, it received an email from The Consumer Council for Water (CCW) on behalf of Green Ltd. A reply was sent on 22 May 2019 answering all the points raised.
- It acknowledges there were delays but submits that the required investigations and emergency engineering work were carried out within a reasonable time frame considering the work required.
- It does not believe they are liable for the costs claimed.

Reply

- The customer contests the company's claim that the damage to the pipe was due to the log retainer; this is not correct, the pipe was "circa 6 meter deep, the retainer wall was 750 mm deep" and the piles Green Ltd installed "were 5.03 m deep". The customer requests provision of CCTV which she asserts is crucial to the customer's case.

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?

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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. Furthermore, WATRS cannot undertake investigations and neither does it have power to require a party to provide certain evidence (as a court or tribunal would). As such I am unable to require the company to provide CCTV evidence, as sought by the customer in her Reply. I will proceed to consider the claim based on the evidence submitted by the parties.
2. The dispute relates to water ingress/flooding in the garden of [] (the Site). The customer's compensation claim is for the costs incurred by Green Ltd due to the company's failure to complete works to resolve the flooding at the Site, in a prompt manner.
3. I find that, in accordance with section 94(1) of the Water Industry Act ('The Act'), the company is obliged to repair and maintain its sewers so that the area is effectually drained. However, I am mindful that the courts have on many occasions determined that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for water and sewerage companies to adopt, although, where there is a known issue, companies should repair their assets. Further, generally, unless a company has acted negligently, it would not be responsible for any damage from flooding if the cause is outside its control i.e. third party actions. At this juncture, I remind the parties that any claims of negligence fall outside the scope of WATRS (if indeed this is being alleged), however, I am able to consider if the company provided its services to the standard that would reasonably be expected of it, in relation to the flood that occurred at the Site in September 2017.
4. The customer first reported the flood to the company on 13 September 2017 and the company sent a team to investigate the same day. It is not in dispute that the company's investigations continued during multiple subsequent visits over the course of the next five months in order to understand the location of the sewers (and how they run) and what work was required. The company has explained it experienced difficulties as the sewers on Site were unmapped (and did not show on its records) following the Private Drains and Sewers legislation. The company contend that it attempted to carry out several CCTV surveys from various different manholes and cleansed the sewers using different methods, however, these were unsuccessful and it was only during a visit in February 2018 that it found an

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obstruction in the pipe, which was causing the flooding. It says that as it was unable to repair the defect to the sewer, its emergency engineering team had to carry out work to divert it and install a new manhole and that was completed on 28 June 2018.

5. Having reviewed the evidence submitted to me, I accept that the company carried out various investigations and works between September 2017 and February 2018 before its emergency engineering team began work in March 2018 to divert the sewer and install a new manhole. Works included: high pressure jetting on 4 and 25 October 2017; sewer cleansing on 19 December 2017; high pressure water jetting on 1 February 2019 and high pressure water jetting with sonde on 2 and 6 February 2018 and then in order to reach the sewer defect, on 5 March 2018, it set up over pumping to relieve a five metre excavation so the pipe could be located. However, I acknowledge the company's assertion that as the unshored side of the excavation gave way and it was no longer safe to work (prompting it to hand over the job to its emergency engineering team). Between 20 March and 28 June 2018, the company's emergency engineering team diverted the sewer and installed a new manhole that resolved the issue.
6. I am satisfied therefore that by taking action to resolve the flood (which it says cost £337,000.00), the company met its obligation to repair and maintain its sewer network. However, I acknowledge it took approximately nine months for it to complete the necessary works. The company admits there were delays although contends that the required investigations and emergency engineering work were carried out within a reasonable time frame considering the work required.
7. The company has explained that a significant amount of delay was due to problems identifying the sewer line. I acknowledge that due to the Private Drains and Sewers legislation in 2011, responsibility for thousands of kilometres of previously private drainage were transferred to Water and Sewerage Companies. The company asserts that it became responsible for an additional 37,000km of sewers overnight, the vast majority of which was unmapped and of entirely unknown condition. Further, it asserts that no financial provision was made to fund the proactive mapping of these assets, most of which are difficult to access being mostly located on private property and around buildings. I accept that in the customer's case, delays to the company's investigations were caused by the sewers in and around the Site being unmapped (or because maps inherited by the company's maps did not

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correlate with the sewer). On balance, I accept that such delays were, in the circumstances, unavoidable and I do not accept they constitute evidence of the company failing to provide its services to a reasonably expected standard. However, I find that the information in the company's 'Chain of Events' and 'Work Order' Notes, indicate the company attended the Site approximately twice in September 2017, twice in October 2017 and did not attend in November 2017 before the frequency of its visits increased during December 2017, January 2018 and February 2018, prior to it undertaking the emergency work between March and June 2018. Whilst I accept that there was likely work happening being the scenes, the company has not shown it was sufficient. Therefore, based on the evidence, I do not accept that the company has demonstrated that it treated the flood report with sufficient seriousness or urgency, during the first two and a half months. Therefore, I am satisfied this is evidence of the company failing to provide its services to a reasonable expected standard.

8. The company contends that a contributory factor to the flooding of the Site was an obstruction in the pipe and that its investigations suggest was a piled foundation (installed by a builder working on the Site). It claims that during a visit to the Site on 6 February 2018: "a customer at property advised that a builder had put wooden stakes at the rear in September 2017 and since then water has been seeping through the wall". I find that the company reiterated this position in its response to the customer dated 29 November 2018: "There is a duty of care for the developer to identify assets on site (the Building Regulations are clear that drainage should be protected from piled foundations and if proposed within 1m of drains trial holes should be dug) and their piling contractor should have known this". I also acknowledge that the company has cited this in its job notes dated 27 March 2018 and 4 April 2018 and in its subsequent responses to the customer and CCW. The customer contests the company's above contention, stating the (sewer) pipe was: "circa 6 meter deep, the retainer wall was 750 mm deep and the piles installed were 5.03 m deep". The customer has submitted evidence to support her submission including documents titled: "Keller – Daily Report Vibro" and,"Unilogue Pro installation guide", as well as maps of the Site including measurements of the sewers and piling used. Whilst I accept such evidence supports the customer's above submission, I consider the evidence still suggests only a small difference in depth between the two (sewer pipe and piles). However, as there is a lack of substantive evidence to show that an obstruction caused by the customer was a contributory factor to the flood and as I am unable to investigate or test the veracity of oral statements, I cannot accept the company's submission in this regard.

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9. I acknowledge that the company has also said it believes that there were other contributing factors causing the flooding of the Site including a ground water issue in the area for decades with water regularly bubbling up in the bank to the rear of the property (allegedly reported by locals) and due to the developer removing the bottom of a bank to accommodate the property, which the company suggests allowed potential groundwater to make its way to the lowest point, i.e. the garden. Again, I find that the company has not supplied any substantive evidence to demonstrate this although I find it does reiterate its position in its responses to the customer and CCW. However, as above, I am unable to investigate or test the veracity of oral statements, therefore I find that there is a lack of conclusive proof to show there were other contributing factors causing the flooding of the Site.

10. In summary, whilst I accept there were delays by the company in addressing the flooding from its sewerage/drainage network, there is no suggestion that the flood was caused by an issue previously known to the company that it previously failed to take steps to mitigate against. Although there is a lack of conclusive proof to show that there were other contributing factors that caused the flooding of the site (other than defects to the sewer), as I am satisfied that the company has shown it has fulfilled its obligation to repair its assets (at substantial cost and in line with the accepted reactionary approach), I find it is not liable for the costs incurred by the customer as a result of the flood or the timeframe taken by the company to address the flood. Whilst it is reasonable to expect the company to carry out necessary repairs promptly; I am satisfied that the company has demonstrated there were unavoidable delays due the sewers on site being unmapped and difficulties encountered for example, due to the depths of the sewer. However, due to my above finding that the company unreasonably failed to act with sufficient urgency for at least the first two months after the flood report, I find it reasonable to direct that the company pay the customer a measure of compensation for inconvenience caused. However, this amount will not correlate to the amount claimed which is based on costs incurred over the 9-month timeframe it took the company to address the flooding. In the circumstances, I assess a reasonable sum to be £2,000.00.

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Outcome

The company shall pay the customer £2,000.00 in compensation.

What happens next?

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



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb

Adjudicator

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