

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1907 – Sewerage – Failed appointments

Date of Decision: 15 April 2020

Complaint

The company took an unreasonable amount of time to clear the customer's sewer. This limited the customer's ability to use his water facilities and caused stress to his family. Due to the number of call-outs that were required, a considerable amount of the customer's time was wasted. The customer would like the company: (1) to refund his sewerage charges in the sum of £150.00; and (2) to pay compensation for the stress caused.

Defence

(1) The blockage in the sewer was due to third party misuse - for which the company has no liability; (2) on each occasion that the customer contacted the company, to report a blockage or slow draining facilities, the company attended; (3) there was a delay (between November 2019 and January 2020) in clearing the blockage but this was due to not being able to access a neighbouring property (despite a number of attempts to get the neighbour to engage with the situation and to allow the company access).

No offer of settlement has been made.

Findings

(1) The company was reasonably responsive in dealing with the series of call-outs between November 2019 and January 2020; (2) the efforts to engage with the neighbour (with a view to seeking the access permission) were reasonable. There were no very more extensive steps that the company could or should have been taking in the circumstances; (3) where - as in this case - third party misuse appears to be a significant contributory factor in the cause of a sewer blockage, it would not be fair or reasonable to hold the company liable. There are only quite limited measures that any company can take to prevent third party misuse in this sort of scenario.

Outcome

The company does not need to take any further action.

The customer must reply by [] May 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 15 April 2020

Party Details

Customer: The Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The company took an unreasonable amount of time to clear his sewers. This limited the customer's ability to use his water facilities and caused his family stress.
- Some of the company's staff were "*exceptionally rude*". On one occasion, they refused to help because the customer had not dug up his bathroom floor. Other staff gave conflicting information regarding access to the main sewer.
- The company carried out an incorrect inspection on 3 January 2020 and said there was not a problem in the main sewer. This led the customer to arrange privately for an inspection, the result of which was that the company was found to be the cause of the problem.
- Due to the numerous times (at least six) that the customer had to call out the company, a considerable amount of the customer's time was wasted. The customer also explains that he was in the process of recovering from a serious illness and the stress of the whole experience hampered his recovery.
- In view of all of this, the customer would like the company:
 - to refund his sewerage charges for the duration of the problem (i.e. for the three-month period between November 2019 and January 2020) – amounting to £150.00; and
 - to pay compensation for the stress caused.

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The company's response is that:

- The claim is disputed.
- When the customer made contact to advise that he was experiencing blockages/ground floor toilet backing up, the company attended and cleared the blockages. On two occasions when the company attended, the sewer was free flowing and no blockages were found.
- The company has cleaned the sewer line of debris and is continuing to investigate to ensure the line is free flowing even though the customer's issues have been resolved.
- Under the terms and conditions of the company's [Customer Guarantee Scheme \(CGS\)](#), customers who experience internal sewer flooding will be credited with their annual wastewater charges and for external flooding, half of their annual wastewater charge.
- The customer is requesting a £150.00 refund of his water charges over a period of three months. As the company does not bill the customer directly, it has not been provided with the figures by XXWater (who bill the customer for wastewater on the company's behalf.)
- It is noted that the customer has provided a copy of his payment schedule with his evidence but this is not his bill.
- XXWater has advised that the customer's wastewater charges for the period between 1 November 2019 and 1 January 2020 were approximately £39.26.
- The company points out, however, that:
 - the customer did not experience any internal or external flooding; and
 - although the customer may on occasion have experienced slower drainage from his facilities, he did still have drainage services and as such, a wastewater service was provided by the company that must be paid for.
- The customer reported the first blockage on 13 November 2019. The line was cleaned after the company was able to gain access to the neighbouring property on 16 January 2020, a period of two months later. In the interim, however, whilst all efforts were being made to contact the neighbouring property for access, the company attended to each report of a blockage and cleared this for the customer.
- The manhole that the company needed to access is in the garden of a neighbouring property. The manhole at the customer's property is under his bathroom floor. Whilst the company understands that his property had been extended prior to the customer moving in, the fact remains that the manhole is now inaccessible as it has been built over. This was why it was necessary to access a neighbouring property to clean the line of debris.

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- In the period between 13 November 2019 and 16 January 2020, the customer contacted the company five times. The company attended on each occasion but blockages were only found on three visits, all of which were cleared:
 - on 13 November 2019, the customer's call was recorded at 9.12am, reporting a blocked manhole affecting his facilities. The company attended and cleared the blockage at 2.30pm the same day;
 - on 16 November 2019, the customer called at 10.04am reporting that his toilet was draining slowly. The company attended the next day at 5.46pm and cleared the blockage;
 - on 8 December 2019, the customer called at 12.25pm to report a blockage. The company attended the same day at 5pm but left without carrying out any work. The company returned the next day at 1.27pm and cleared the blockage;
 - on 27 December 2019, the customer reported that his drain was blocking again. The company attended on 30 December 2019 and cleared the blockage;
 - the company received two further reports of blockages from the customer on 31 December 2019 and 5 January 2020 but on both occasions when the company attended, the sewer was found to be free flowing.
- The company appreciates that experiencing blocked drains or toilets is unpleasant. However, on each occasion that the customer made contact, the company attended to clear the blockage. On two such occasions, the sewer was found to be free flowing.
- The company goes on to submit that:
 - sewers are essentially self-cleaning structures and if used properly, they should never need cleaning at all. Due to gravity and water travelling through the sewer, everything correctly deposited in it should drain away;
 - Section 94(1) Water Industry Act 1991 states that a water undertaker has a duty to maintain its sewers/drains so that the area is effectually drained. Therefore, when a blockage is reported, the company will deal with this straight away. However, the company has to prioritise proactive cleaning work to ensure that its finances are being used most effectively (for example, when customers are regularly suffering from internal sewer flooding);
 - 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;
 - the company is therefore complying with its obligations to the customer in this respect;

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- however, it is 'third party misuse' that causes the company to use significant resource and money for a structure that is basically self-cleaning. If used correctly, none of this resource would be required.
- In summary, the company's response is that:
 - the blockage in the sewer was due to third party misuse - for which the company has no liability;
 - on each occasion that the customer contacted the company (to report a blockage or slow draining facilities), the company attended;
 - it is accepted that the rubble/gravel in the sewer was first noted in November 2019 but that the clean did not take place until 16 January 2020. However, this delay was due to not being able to access a neighbouring property despite a number of attempts to get the neighbour to engage with the situation and to allow the company access.

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.

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How was this decision reached?

1. I have reviewed in particular:
 - a. all of the correspondence items and other evidential materials submitted alongside the customer's WATRS Application; and
 - b. the detailed 'chain of events' set out on pages 1 to 14 of the company's defence (including all of the various embedded photographs, call notes and system screenshots); and
 - c. the 'Evidence 1' and 'Evidence 2' items appended to the company's defence.
2. Looking at the events leading to this dispute, I quite appreciate why the experience endured by the customer has been difficult. I note that there are a number of factors involved ("Factors"), including, for example:
 - a. the regularity of the blockages and the number of call-outs that have been required;
 - b. the impact on the ability of the customer's family to use their water facilities normally;
 - c. the fact that the manhole in the claimant's property (i.e. in his bathroom) was 'built over' many years ago;
 - d. the amount of time that it has taken:
 - i. to identify and to resolve the underlying cause of the blockages; and
 - ii. to elicit the co-operation of the neighbour (because access needed to be gained to that neighbouring property in order to carry out the required work);
 - e. the issue of 'third party misuse' – and the part that this has played in the whole saga.
3. It seems to me that, in combination, these Factors have strained the relations between the parties. They have exacerbated the customer's situation too. However, the approach that I must take is to assess whether the company has been 'at fault' in any relevant respect and more specifically, to consider whether (in the provision of its services) it has fallen below the standard that would be expected in a case such as this.
4. I have had close regard to the interactions between the parties over the relevant period concerned. I have been assisted in this by the very detailed system notes and call records,

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which are set out in the company's 'chain of events' in its defence. By reference to the evidence, the company is able to point to six attendances at the customer's property, namely on 13 November 2019, 16 November 2019, 8/9 December 2019, 30 December 2019, 31 December 2019 and 5 January 2020.

5. The company, I find, was reasonably responsive in dealing with this series of call outs. In my opinion, I do not consider that there is a real basis for seeking to criticise this aspect of the company's provision of its services, therefore.
6. In terms of gaining access to the sewer (to investigate the problem and to resolve it), it was very unfortunate that the manhole at the customer's property was located underneath the bathroom floor. Obviously, there was no easy means of inspection. This was neither the customer's nor the company's 'fault', as I see it. Instead, I have looked closely at the 'work around' efforts made by the company. In this instance, the 'work around' involved trying to make contact with the neighbour, in order to gain much easier access there (because the manhole at the neighbouring property was located in their garden).
7. On examining the evidence produced with its defence, I am satisfied that the company's efforts to engage with the neighbour (with a view to seeking the access permission) were reasonable. I can see that several contact cards were left with the neighbour. I am not persuaded that there were any very much more extensive steps that the company could or should have been taking in the circumstances.
8. I do regard the 'third party misuse' issue to be a particularly important Factor. I take on board the point made by the company at the end of its defence, i.e. that:

"... third party misuse ... causes [the company] to use significant resource and money for a structure that is basically self-cleaning. If used correctly, none of this resource would be required ..."

9. On this, I have also had regard to the company's call notes of the contact with the customer on 28 January 2020:

"... there were concerns with the footage with the amount of brick and rubble found ... [the customer] advised there are properties nearby that [have had] extensive building work and this has been long term ... could this be the cause – I have explained that we would not be able to tell where this has come from as we wouldn't want to point the finger at any one individual however we would organize sending BIDBI [bin it don't block it] leaflets to the area

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just to advise people of what can be placed within the sewers ...”

10. As I see it, where (as in this case) third party misuse appears to be a significant contributory Factor to the cause of a sewer blockage, it would not be fair or reasonable to hold the company liable. It seems to me that there are only quite limited measures that any company can take to prevent third party misuse in this sort of scenario.
11. Pulling all of the above-mentioned strands together, I am satisfied in this case that the company provided its services to the standard that would be reasonably expected.

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 [] May 2020 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, FCIArb

Adjudicator

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