

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1643

Date of Decision: 27 January 2020

Complaint

The customer claimed that a leak from a broken sewer had caused subsidence to her property. The broken sewer was discovered in April 2017 but not repaired until January 2018. The customer considers that damage resulting from subsidence to the customer's property reduced the value of the property.

The customer seeks an apology from the company and claims £10,000.00 compensation for damage to her property.

Defence

The company notes that the customer's insurance company dealt with an insurance claim relating to the subsidence but the insurance settlement did not cover the full cost of the claim as it was determined there was pre-existing damage at the property. The company carried out repairs to the sewer but does not agree that the damaged sewer caused subsidence to the customer's property.

The company acknowledges there had been some customer service failings when dealing with the customer's complaint. The company has offered the customer the sum of £100.00 as a gesture of goodwill in respect of those failings. This has not been accepted by the customer. The company further acknowledges that there was a delay in responding to a complaint from the customer and has credited the customer's account in the sum of £25.00 as required under the Guaranteed Standards Scheme.

Findings

The customer has received a settlement from her insurer in respect of a recent episode of subsidence. The settlement covered the estimated cost of repairs due to subsidence but did not cover further damage claimed. The customer has been compensated by her insurer for damage caused by subsidence. The insurer has not sought to recover any part of its outlay from the company. The customer has not provided sufficient evidence to demonstrate that the damage claimed resulted from the broken sewer.

The company delayed completing repairs to the damaged sewer due to an error in scheduling the work. The company has not performed to the standards to be reasonably expected. The company has acknowledged this failing and has offered the customer the sum of £100.00 as a gesture of goodwill. The customer has not accepted this. The company failed to respond to a complaint within the required timescales under the guaranteed standards scheme. The company has acknowledged its failure and credited the customer's account in the sum of £25.00 as required under the Guaranteed Standards Scheme.

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Outcome

The company shall pay the customer the sum of £100.00 in respect of its service failing to carry out repairs to the sewer in a reasonable period. Such amount may, at the company's discretion, may be credited to the customer's account.

The customer must reply by 24 February 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1643

Date of Decision: 27 January 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- In February 2017, the customer contacted the company to report a problem with a manhole in her rear garden.
- In April 2017, the customer contacted the company stating that cracks had appeared in a shared sewer pipe. The customer also states that cracks were appearing in her property. The customer believed that the sewer pipe was leaking and the leak was causing subsidence to her property. This caused damage to the property and reduced its value.
- The customer states that a contractor attended her property and discovered a rod had been left in the sewer pipe. The company did not rectify the problem until January 2018.
- The customer states that a case concerning her insurance claim was submitted to the Financial Ombudsman in 2018 and the Financial Ombudsman had found in favour of the customer and ordered the company to pay the full amount of her claim.
- The customer seeks an apology from the company.
- The customer seeks compensation for damage caused in the sum of £10,000.00. The customer also seeks interest on the total amount claimed.

The company's response is that:

- On 13 February 2017, the company received a telephone call from the customer reporting that the manhole in her rear garden was blocked and overflowing. The company attended the same

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day and found the manhole to be blocked but not overflowing. The company cleared the blockage by jetting and the sewer was left running freely.

- On 26 April 2017, the customer contacted the company to report that a building surveyor had found cracks in the sewer which was causing subsidence at the property. The company attended the property on 27 April 2017 and carried out a CCTV survey. The company found a drainage rod stuck in the pipe that had damaged the pipe where it connected to the main sewer.
- On 22 December 2017, the customer contacted the company as no work had been undertaken in relation to any repairs. The company visited the customer's property on 23 December 2017, confirmed the problem and planned the repairs. The company states that repairs were completed by 12 January 2018.
- On 3 April 2018, the company attended the customer's property at the request of the customer's insurance company. The company considers the damaged sewer was not the cause of the subsidence at the customer's property.
- The company states that it contacted the customer on 25 June 2018 and explained that the subsidence was not caused by damage to the sewer and that the company was unable to help the customer.
- The company acknowledges that there was a delay in carrying out the repairs to the sewer. This was due to an error in scheduling the work. The company recognises the customer did not receive the standard of service reasonably expected as she had to chase up the repair. The company states it has apologised to the customer for the delay and offered the sum of £100.00 as a gesture of goodwill. The company notes this offer has not been accepted.
- The company notes that it failed to respond to a complaint raised through the Consumer Council for Water (CCW) within ten working days and acknowledges the customer's entitlement to a payment of £25.00 under the Guaranteed Standards Scheme (GSS).

How is a WATRS decision reached?

In arriving at a decision, I have considered the following key issues:

- a. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
- b. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

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In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard which would be reasonably expected and 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 I have not considered it in reaching my decision.

How was this decision reached?

1. The principal aspects of this dispute are whether or not a leak in the company's sewer system caused subsidence at the customer's property and, if so, whether that subsidence caused any loss or disadvantage to the customer.
2. Much evidence has been provided and from that evidence it appears that the customer's property has suffered subsidence. Whilst I have referred to the evidence available in reaching my decision, a significant amount of that evidence relates to a dispute between the customer and her insurer. That dispute is in respect of repairs required to the property that the insurer does not accept are covered as they are considered to date from a time before the customer purchased the property. It is noted that the customer's insurers have agreed a claim in respect of subsidence and made a payment in settlement. It is also noted that the customer referred the dispute with her insurer to the Financial Ombudsman Services and a final decision has been issued by the Financial Ombudsman.
3. A WATRS adjudication is only concerned with a dispute between a customer and the company providing water and sewerage services to that customer. I can offer no opinion or finding in respect of the customer's dispute with her insurer or regarding any dispute the customer may have with the Financial Ombudsman Service. My decision only relates to matters between the customer and the company and to no other organisation.
4. The company has acknowledged that damage to its sewer in the vicinity of the customer's property was discovered in April 2017. The company also acknowledged that the damage was

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not repaired until January 2018. From the records provided by the company, it is apparent that excavation to carry out the work was carried out in May 2017 but that the excavation was in the wrong location. No further work was scheduled until the customer contacted the company in December 2017. The company accepts this was an error on its part.

5. The company has stated that the damage to the sewer was caused by a rod that was stuck in the pipe. It is likely the damage occurred some time before it was discovered although it has not been established when the damage may have occurred. The customer has suggested damage occurred at the time the company attended to clear a blockage in February 2017. However, there is no evidence to support this.
6. During the early part of 2018, the customer made a claim on her property insurance policy in respect of a subsidence incident. The customer's insurers appointed a loss adjuster to assess the claim. The loss adjuster states in its letter dated 1 May 2018 that a subsidence consultant visited the customer's property on 11 January 2018. Following that visit, the insurers accepted the customer's claim under subsidence. The letter from the loss adjuster notes that, in its opinion, subsidence was caused by a leak from a water company owned sewer.
7. An earlier letter from the loss adjuster dated 23 April 2018 refers to subsidence movement due to an escape of water from a public sewer. The letter notes that subsidence only affected the rear left corner of the property adjacent to the public sewer. The letter also advised the customer that her insurer was willing to offer the sum of £8,007.41 in full and final settlement of her claim. That amount was determined from the amount quoted by a contractor to carry out repairs of £9,007.41, less the customer's policy excess of £1,000.00.
8. The company's notes dated 22 December 2017 refer to an inspection by the customer's insurer's and to water collecting under the customer's property causing the property to collapse. The customer had also reported a smell which is recorded in the company's notes dated 21 December 2017.
9. References are made in various communications that state the company had accepted liability for the damage caused by the broken sewer. The company has accepted that it is responsible for maintaining the public sewers but has denied any liability for damage resulting from the broken sewer. I have seen no evidence supporting the statements made that the company had accepted liability for damage to the customer's property.

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10. The customer's insurer wrote to her on 8 May 2018. In that letter, the insurer noted that it understood from the customer that the company had accepted liability for all damage to the property. The letter confirms the settlement amount and that the settlement was on a "without prejudice" basis and would not affect the customer's right to approach the Financial Ombudsman Service. The insurer has also stated that it would endeavour to recover its outlay from the company and that if successful would refund the policy excess. Whilst I have seen no communications between the insurer and the company, the company's notes dated 3 May 2018 record that a letter was received from the insurer advising all damage was pre-purchase. The company's notes dated 27 April 2018 refer to contact from the insurer advising the insurer does not consider the company to be liable.
11. The company notes that it received no correspondence from the customer's insurer requesting reimbursement of its outlay. The company has referred to a discussion in August 2018 with the subsidence consultant appointed by the customer's insurer. The company states that in that discussion the subsidence consultant confirmed to the company that he saw no reason to approach the company in regard to any damage at the property. The company refers to an email dated 4 July 2018 supporting that reference. The email appears to be from the loss adjuster's subsidence consultant to a contractor. I could find nothing in that email supporting the company's position that the subsidence consultant had confirmed he saw no reason to approach the company. The email does state however, in section 3, "The cause of movement appears to be due to a leakage from a water authority owned sewer."
12. The customer has stated in her WATRS application that the Financial Ombudsman had found in favour of the customer and had ordered the company to pay the full amount as the fault and liability was with the company. The final decision issued by the Financial Ombudsman relates only to the dispute between the customer and her insurer. The final decision mentions that the insurer identified repairs needed as a result of a collapsed sewer. There is no direction in the Financial Ombudsman's decision relating to the company. It is also noted that the Financial Ombudsman's final decision did not uphold the customer's complaint against her insurer.
13. The customer's insurer has accepted the customer's claim in respect of damage as a result of subsidence. The insurer has not accepted the customer's claim in respect of damage it considers existed prior to the customer's purchase. The report from the loss adjuster suggests that the cause of subsidence was a leak from the company's sewer. However, the insurance

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company does not appear to have sought to recover any monies from the company. I have seen no explanation for this but it may be reasonable to conclude that the insurer did not consider there was sufficient evidence of liability to be able to recover monies from the company.

14. Whether or not the subsidence was the result of a leak from the company's sewer system, the customer has received a settlement from her insurer in respect of that subsidence. The amount of that settlement was based on a quotation from a contractor to carry out subsidence related repairs. The customer has therefore received compensation for damage due to subsidence. If the subsidence had resulted from a leak in a sewer pipe, that would be a matter between the insurer and the company.
15. The customer claims the additional amount of £10,000.00 as compensation for damage caused to her property. Since the customer has already received a settlement from her insurer in respect of subsidence, it is reasonable to conclude that this claim is for additional compensation in respect of damage not covered by the insurance settlement. In order to succeed in the claim, the customer would need to show that damage to her property, beyond that which has been dealt with by her insurer, was the result of a failure on the part of the company.
16. The report from the insurance loss adjuster concludes that damage to the property, other than subsidence agreed by the insurer, is historic. A copy of an email to the customer dated 10 April 2017 outlines the results of a structural inspection of the customer's property. This appears to be independent from the report by the loss adjuster. The email refers to "copious evidence of historical settlement ... but not to a degree where the structural integrity of the building has been compromised". The email also refers to the property requiring significant maintenance and an upgrade of drainage. Statements in that email are consistent with observations made by the insurer's loss adjuster that the property had suffered historical movement and was in need of significant maintenance.
17. In the light of the report from the loss adjuster and the comments on structural aspects made in the email to the customer dated 10 April 2017, together with the absence of any expert report to the contrary, I find no evidence that a failure on the part of the company has resulted in damage to the property beyond that for which the customer's insurer has made a settlement payment.

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18. The customer has already received a settlement from her insurer in respect of subsidence damage. I find the customer has not provided evidence that the damaged sewer was responsible for other damage to her property. The customer's claim therefore fails.
19. I have also examined the standards of service provided by the company. It is apparent that delays were experienced in repairing the damaged sewer. Damage was discovered in April 2017 but not repaired until January 2018. The delay in carrying out repairs was due to the company failing to initiate the necessary follow on works. It was only when the customer contacted the company to follow up herself that the company took steps to complete the repairs. I find the company has failed to meet the standards to be reasonably expected.
20. The company has acknowledged that its standard of service fell below reasonable expectations and has offered the customer the sum of £100.00 as a gesture of goodwill. I find the company has recognised its failure and that the compensation offered to be adequate in the circumstances. It is noted that the customer has not accepted this. I direct the company to pay the customer the sum of £100.00 as compensation for its service failure resulting in a delay to completing repairs.
21. I have also considered the company's performance in relation to the Guaranteed Standards Scheme (GSS). The GSS sets out the minimum standards of service customers are entitled to expect from water or sewerage undertakers. Under the GSS, a company is required to respond to written complaints from customers within ten working days. Where a company fails to provide a substantive reply to a customer's written complaint within the required period, the company must make an automatic payment to the customer.
22. I have found one instance in August 2018 where the company failed to respond to a customer complaint within the required time frame. The company had acknowledged this and made a payment to the customer of £25.00. The company stated this would be credited to the customer's account. I find the company has made the required payment under the GSS and make no direction for further payment.

Outcome

The company shall pay the customer the sum of £100.00 in respect of its service failing to carry out repairs to the sewer in a reasonable period. Such amount may, at the company's discretion, be credited to the customer's account.

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What happens next?

- This adjudication is final and cannot be appealed or amended.
 - The Customer must reply by 24 February 2020 to accept or reject this decision.
 - When the Customer notifies WATRS of acceptance or rejection of the decision, the Company will be notified of this. The case will then be closed.
 - If the Customer does not inform WATRS of his acceptance or rejection of the decision by the date required, this will be taken as a rejection of the decision.
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Signed

A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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