WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X281

Date of Decision: 15/03/2021

Party Details

Customer: The Customer
Company: X Company

Complaint

The customer says that she was given inaccurate information by the company regarding the presence of a public sewer on her property.

Response

The company says that the information provided to the customer was accurate based on its knowledge at the time and the customer was placed on notice that there may be additional public sewers not identified.

Compensation of £200.00 was offered prior to the customer bringing her claim to WATRS.

Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the comments it made to the customer about its responsibility for the sewer prior to 2011.

Outcome

The company needs to take the following further action: It must apologise to the customer for failing to acknowledge its pre-2011 responsibility for the sewer and pay the customer compensation of £300.00.

The customer must reply by 12/04/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

1. The customer's complaint is that: • She purchased the Property in 2011 with the intention of extending it in the future. • Searches were carried out at the time, but the company did not identify any sewer pipes in the vicinity of the planned extensions. • Relying on this information, she proceeded with the purchase. • When working on an extension of the Property in 2019, she discovered a sewerage system under the Property. • She incurred significant expenses because of this discovery. • The extension cannot now be built because of its proximity to the sewer. • The company states that the information it provided in 2011 was based on its most up-to-date data, but that this would not have included sewers on private property, as they were not adopted until October 2011. • She believes that there is sufficient evidence that the company knew about the sewer when providing the information in 2011 and that the sewer should have been included on the map provided to her. • She requests an apology and compensation of £10,000.00. The customer's comments on the company's response are that: • She emphasises the substantial inconvenience and distress she has experienced. • She believes the company's explanation is not plausible given the evidence. • The company has not satisfactorily explained how it created an accurate map of the sewer prior to 2019. • She challenges the company's statement that the sewer was not its responsibility in 2011, since it is a Section 24 sewer.

The company's response is that:

1. The company's response is that: • When purchasing the Property in 2011, the customer requested a Drainage and Water Enquiry. • This enquiry expressly notified the customer of the limitations to the information on which it was based, including that there may be sewers not shown if the company does not have information on them. • Historically the Local Authority was responsible for the sewer network and network plans were inherited by the company from them. • The company had sent a notification to the customer in July 2011 about the upcoming legislative change and the impact this would have on responsibility for sewers on private land. • The customer made contact in May 2019 as during construction work a sewer had been identified that was not included on the redacted. • The company informed the customer that the sewer was shown on its current maps, after an update to those maps in October 2012. • The company was unaware prior

to 2012 of the sewer now forming the basis of the customer's complaint. • The company attended the Property on 17 May 2019 to map the sewer network again. A copy of the resulting map was provided to the customer. • Prior to October 2011 any sewers on private property were the responsibility of the owner, not the company. • The company's legal responsibility is to update its maps as information becomes available. • The company believes that it provided its services to the customer to the standard to be reasonable expected by the average person.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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?

1. 1. In many disputes, the evidence as to precisely what happened will be to some degree unclear, and the law addresses this uncertainty through what has come to be known as the "balance of probabilities" test. Under this test, the decision-maker must look at the evidence provided by the parties, and decide what is most likely to have happened based on that evidence. Importantly, this decision is only based on the evidence provided by the parties, and so is made with full knowledge that the evidence provided may in some way be misleading, or that there may be additional evidence that would justify a different conclusion. However, as a decision must be made, it must be made based on the evidence actually provided, not on the decision-maker's unsupported speculations regarding what may or may not have happened.

2. In addition, the law requires that disputes be decided in accordance with "burdens", with the customer having the "burden" of producing evidence to support the claim. This means that if the evidence provided by the parties is evenly

balanced between the accounts of the two parties, or is otherwise insufficient to justify a conclusion that the customer's account is more likely than not correct, then the customer has failed to meet the burden and the claim cannot succeed. Again, this evaluation must be made based on the evidence actually provided by the parties, not based on unsupported speculation by the decision-maker regarding what may or may not have happened.

3. In the present case, this means that for the customer's claim to succeed it is not sufficient that she produce or refer to evidence that brings into question the company's defence. Rather, the available evidence must make it more likely than not that the company knew or should have known of the presence of the sewer in 2011 and that information on the sewer should therefore have been included in the redacted. However, while a significant amount of evidence has been produced in this
dispute, I do not find that there is any direct evidence of the company being aware of the sewer prior to 2012.

5. This does not, of course, preclude that such evidence might exist, and the customer's claim may in this respect be hampered by the limited nature of the WATRS process, which is designed to be faster and more streamlined than a court dispute. Because of this design, while the company can be required to produce additional evidence, it would be inconsistent with the nature of the WATRS scheme to order the kind of large-scale production of records that might be obtainable from a court. Instead, additional evidence should only be requested from a party where a specific item or category of items has been identified and the adjudicator believes that this evidence is required to reach a justifiable decision. In the present case, I find that the available evidence does not support a finding that there is more likely than not additional evidence in the company's possession that would show it had knowledge of the sewer at the time the document was produced.

6. In her comments on the Proposed Decision in this case the customer questioned whether she retains the right to pursue her claim in another forum that might allow her more substantial access to the company's records. The customer retains the right to reject this Decision and then pursue her claim in court or any other available forum should she wish to do so.

7. To be clear, it is obviously true that the sewer underlying the customer's complaint did exist at the time the enquiry document was produced, and that its presence on the customer's property was not reported by the company.

8. Moreover, while the company has argued that all sewers on private property were the responsibility of the owner prior to the October 2011 adoption, the

company acknowledges that the sewer in this case is a Section 24 sewer and Section 24 sewers were the responsibility of the company prior to the October 2011 adoption even if they lay on private land.

9. It is, therefore, the case that if the company was aware or should have been aware of the sewer at the time it produced the enquiry document, it was obligated to provide information on it.

10. However, the history of the construction of the sewer network involves more than one instance of public adoption of private sewers. Since private sewers were not always mapped, this meant that the adopting entity ended up with responsibility for sewers that it did not know existed or the location of which was unclear. This reality is expressly acknowledged in paragraph 7 of Section 199 of the Water Industry Act 1991, which exempts water companies from the otherwise applicable obligation to have records on public sewers, if the sewer was laid prior to 1 September 1989 and "the undertaker does not know of, or have reasonable grounds for suspecting, the existence of the drain, sewer or disposal main" or "itis not reasonably practicable for the undertaker to discover the course of the drain, sewer or disposal main and it has not done so." The Act, that is, did not obligate the company to have a record of all Section 24 sewers.

11. As I have explained above, I do not find that there is evidence that the company was aware or should have been aware of the existence of location of the sewer in 2011. As a result, even though the sewer was at that time the responsibility of the company, the company was not obligated to refer to it in the enquiry document.

12. In addition, the company fulfilled its responsibility to the customer with respect to the information provided in the enquiry document by expressly highlighting to her in thatdocument that "it has not always been the requirement for such public sewers,disposal mains or lateral drains to be recorded on the public sewer map. It is
therefore possible for unidentified sewers, disposal mains or lateral drains to 'to exist with the boundaries of the property". This statement placed the customer on notice that there may be additional public sewers, including within the boundaries of her property, that were not included in the enquiry document because the company did not have information regarding them.

13. For the reasons given above, therefore, I find that the company provided its services to the customer to the standard to be reasonably expected by the average person with respect to the information included in the enquiry document.

14. While the customer has also complained about the vagueness of some of the information provided to her by the company, I find based on the evidence produced

that the company provided the information that it had available, allowing for the limitations arising from the passage of time and the availability of documentation.

15. However, I nonetheless find that the company did fail to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its comments on its responsibility for the sewer prior to 2011. These comments varied from initial denials that the company had any responsibility for sewers on private property prior to 2011, expressly rejecting the contradictory advice from the customer's solicitor, to an acknowledgement in a 22 July 2020 letter that the question was one of the company's knowledge, rather than its legal responsibility.

16. I accept that the inaccurate information provided to the customer in this respect complicated an already difficult situation and increased the inconvenience and distress that she was already experiencing. I also find that it would be appropriate for compensation to be awarded to the customer for this additional inconvenience and distress, arising as it did from repeated incorrect statements from the company over an extended period of time. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress I find that fair and appropriate compensation in this respect would consist of £300.00. This amount acknowledges the protracted period over which this incorrect information was provided to the customer, but is also limited by the fact that this error ultimately did not change the status of the customer's claim, as the company nonetheless did not have an obligation to report the sewer to the customer.

17. Consequently, the company must pay the customer compensation of £300.00.

18. The customer has also requested an apology, and I find that an apology is appropriate for the inaccurate information provided to the customer regarding the company's responsibility for the sewer.

19. Consequently, the company must apologise to the customer for failing to acknowledge its pre-2011 responsibility for the sewer.

20. For the reasons given above, the company must apologise to the customer for failing to acknowledge its pre-2011 responsibility for the sewer, and pay the customer compensation of £300.00.

Outcome

1. The company needs to take the following further actions: It must apologise to the customer for failing to acknowledge its pre-2011 responsibility for the sewer, and

pay the customer compensation of £300.00.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in 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.

Tony Cole

Adjudicator