

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X396

Date of Decision: 17/06/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer had a problem with sewage backing up into her property.

After raising the matter with the company, the problem was eventually identified and the sewer diverted. The work carried out by the company caused significant disruption to the customer's property. Excavations caused damage to the customer's driveway, lawns, pond and planting areas. Some reinstatement has been carried out by the customer, the cost of which has been reimbursed to her by the company. The reinstatement has not been carried out to a standard equivalent to that which existed prior to the commencement of the work.

Excavation of the property started around August 2020 but the reinstatement has still not been completed. The customer has not been able to use her garden since August 2020. The customer seeks compensation in the total amount of £5,420.00. This is in relation to inconvenience and distress, loss of earnings and replacement of plants and a hedge.

#### Response

The company acknowledges that the work to rectify the problem with the sewer took longer than it should. The company accepts that it should reinstate the customer's property to a standard equivalent to that prior to commencement of the work. It says it has reimbursed the customer for reinstatement work that she arranged to have carried out. It also says that it has engaged a contractor to carry out remaining reinstatement work. In respect of loss of earnings, the company does not consider it was necessary for the customer to be present during the work. It will not therefore reimburse the customer for loss of earnings. The company considers that the customer's garden will be returned to a satisfactory state following completion of the remaining work.

## Findings

The company has offered the customer £500.00 for the inconvenience caused and £250.00 to replace plants. This has not been accepted by the customer.

The evidence shows that the customer has suffered inconvenience and distress. She has not had the use of her garden since around August 2020. Damage caused during the work had caused the customer serious concerns. Errors by the company in conducting surveys led to abortive work. This increased both the time taken and the extent of the work. Reinstatement of the customer's property has taken longer than would have been reasonable.

The company has not provided its services to a standard that would be reasonably expected. As a result, the customer has suffered loss, distress and inconvenience.

## Outcome

The company needs to take the following further action:

- a. Pay the customer the sum of £500.00 towards the cost of replacing plants.
- b. Complete the reinstatement works to the customer's fence, pond and lawn areas.
- c. Pay the customer the sum of £750.00 in respect of inconvenience and distress.
- d. Inspect the works and confirm to the customer that the work complies with relevant standards.

The customer must reply by 15/07/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X396

**Date of Decision:** 17/06/2021

## Case Outline

### **The customer's complaint is that:**

• The customer had experienced problems with sewage backing up from a manhole since she purchase the property in 2015. Initially, she believed this was a problem with her own drainage system. • After the customer's efforts were unsuccessful in resolving the matter, she contacted the company in June or July 2018. • The company installed a liner in August 2019 but that did not rectify the problem. The company then re-laid a section of the sewer. However, there were inadequate falls in the pipe and the company subsequently diverted the sewer. The work undertaken by the company caused significant disruption to the customer's drive and garden. • Following several months of discussions, the company agreed to fully reinstate the customer's drive and garden once the work was complete. The company agreed that the customer could engage a landscape gardener and it would cover the cost. This was done at a cost of £8,204.20. The customer says that her garden has still not been fully reinstated. • In addition to the cost of reinstatement, the company has offered £500.00 compensation for inconvenience. The customer has not accepted this as she considers it is not proportionate to the level of inconvenience and distress suffered. • The company has offered the customer £250.00 to replace plants. The customer has not accepted this as she considers it to be inadequate. • The customer claims a total of £5,420.00 made up as follows: £2,500.00 as compensation for inconvenience and distress; £920.00 for loss of earnings; and £2,000.00 to replant hedge and plants to front side and rear garden.

### **The company's response is that:**

• The company says it was contacted by the customer in June 2019 following an external sewage escape at her property. It says it attended on 28 June 2019 and cleared a build-up of silt. • The company was contacted again on 24 July 2019 following a further sewage escape. The company says that it found a gravel build-up and a dip in the sewer that was causing debris to be held. The company says it lined the section of sewer affected and completed this on 12 August 2019. • The company says it received further contact from the customer on 30 October 2019 reporting an odour at the property. The company says that further investigations established that the sewer did not have sufficient fall to allow sewage to flow. The company re-laid approximately 10 metres of sewer pipe. This was completed on 13 August 2020. It says that the delay was due to requiring funding approval. • Following completion of

the work, the company said that the sewer still did not have adequate falls and therefore diverted the sewer. This work was completed on 11 September 2020. The company says that all operational issues at the property have been resolved. • The company says that it attended the site on several occasions to reinstate the customer's property. It says it was unable to reinstate the areas as planned due to additional requests from the customer. The company agreed to the customer seeking quotes for the work. It says that it has paid the customer a total of £8,054.00 in respect of reinstatement. • The company says it has also appointed a contractor to carry out further works in respect of the customer's lawn and pond. The cost of this work is quoted as £3,368.00. • The company says that it has also refunded £450.00 to the customer. • The company acknowledges the time taken to resolve the matter and considers its offer of £500.00 as a gesture of goodwill to be reasonable. It has also offered the customer a further gesture of goodwill of £250.00 towards the cost of replacing plants. • The company is not prepared to cover any loss of earnings by the customer as it considers it was not necessary for the customer to be present during the works. • The company says that a hedge that was removed was not on the customer's property and was located on land owned by the local authority. It says it will not reinstate this hedge unless the local authority requests it.

### **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. The customer has had an ongoing issue with sewage since she moved into her property in 2015. Initially, as she believed this to be a problem with her system, she did not contact the company. However, she says that in June or July 2018, she contacted the company about the problem. The customer believes the company

closed the case as she had not followed up with them.

2. The customer reports a number of issues arising during the works including problems with the driveway sinking due to lack of compaction, damage to a patio base and a collapsed floor in a shed.

3. The current issues for the customer are the time taken to resolve the matter and the situation in regard to the reinstatement of her property. The customer claims a total of £5,420.00 made up as follows which I will deal with in the order shown:

a. Replanting hedge and plants to front side and rear garden: £2,000.00

b. Loss of earnings for second diversion: £920.00

c. Compensation for distress and inconvenience: £2,500.00

4. The company says that it was contacted in June 2019 by the customer. It says that there was an external flooding issue. The customer says that there were no flooding issues but that sewage had backed up into her property. The company says that it identified a problem with a build-up of debris in the sewer and took steps to clear the pipe. After further contact from the customer, the company eventually established that the sewer did not have sufficient fall to allow the line to flow freely. Prior to determining this, the company relined a section of the sewer and then re-laid a section of the sewer. Neither of those actions resolved the problem. The company then diverted the sewer. The company has provided an outline of the work carried out. The company says that the work relating to the diversion of the sewer was completed on 11 September 2020.

5. The company acknowledges that the matter had taken more than a year to resolve. In its email sent 1 September 2020, the company confirmed that an error had been made in surveying the sewer. This resulted in the sewer being re-laid incorrectly and without falls. The same email confirmed the company planned to divert the sewer and was seeking funding approval to do so. It is reasonable to conclude that this failure extended the time taken to resolve the matter as it resulted in the abortive re-laying of the sewer.

#### Reinstatement of Hedge and Plants

6. The company confirmed in its email sent 1 September 2020 that it would work with the customer in regard to a full reinstatement of the area. It is reasonable to conclude that the company accepted that the customer's property should be reinstated to the condition it was in prior to any work commencing.

7. The company says that it attended the customer's property on several occasions to reinstate the areas following the various works to the sewer. It says that it was unable to carry out the reinstatement as planned due to additional requests from

the customer. The customer denies making additional requests. She states all that she requested was to have her lawns, pond and plants reinstated. The company says that it paid the customer to engage a company of her choosing to carry out reinstatement.

8. From the information provided, it appears that the customer had engaged a company to carry out elements of reinstatement. This was not the full extent of the works required. However, the company reimbursed the cost of the work to the customer.

9. Matters outstanding are reinstatement of the customer's fence, pond, lawn and plants. The customer also expects the company to reinstate a hedge that was partially removed.

10. The company has provided a copy of a quotation from a contractor to reinstate the fence, pond and lawn. The amount of the quotation is £3,368.64. The description for the lawn areas refers to removal of existing turf and preparation of the area to allow new turf to be laid. It is not clear whether this includes the cost of laying new turf. The company says that it has approved the quote from the contractor to carry out the works listed. However, it says works were delayed due to weather conditions. The company's response to the complaint indicated that the start of work was imminent.

11. The customer expects the company to reinstate a section of a hedge that was removed to allow works to proceed. The company says that the hedge in question was not on the customer's property and was located on land owned by the local authority. The customer says that the land is privately owned. Whether the land belongs to the local authority of another private owner, it is not owned by the customer. Whilst I appreciate the customer had benefitted from the hedge, as it was not her property, she is not eligible to have it reinstated. It would be for the owner of the land on which the hedge is situated to take the matter up with the company. It is noted that the company has indicated it would look at replacing the hedge if requested to do so by the landowner. In respect of the reinstatement of the hedge, I make no direction to the company.

12. In relation to replacement of plants, it is noted that the company has offered the customer £250.00 to replace plants that were damaged during the works. The customer says that the cost of replacing plants is more than £250.00. However, she has not provided information concerning the cost of replacing plants.

13. It is reasonable that the customer should have her property restored to a condition similar to that prior to the work commencing. This includes hard and soft landscaping. I could see nothing within the quotes provided that indicates any

replacement of plants has been included. It is therefore reasonable that the company should provide an allowance towards the cost of replanting.

14. The customer has not provided details of planting required. However, a diagram provided by the customer showing the route of the work, together with photographs submitted, indicate a significant area has been affected. It is also apparent from the photographs that the garden was well established. I accept the customer's view that an allowance of £250.00 is likely to be inadequate. Taking account of the area affected and the maturity of the plants, I conclude that a payment of £500.00 would be more representative of replanting costs. I therefore direct the company to pay the customer the sum of £500.00 towards the cost of replacing plants.

15. In relation to other reinstatement matters, I note that the company has reimbursed the customer the monies paid to her contractor. The company also says it refunded the sum of £405.00 to the customer. The customer has denied this. It is not clear from the information provided what this sum related to. I have therefore not considered this matter further.

16. I note that the company has advised that it has engaged a contractor to complete the remaining works as identified earlier, namely reinstatement of the fence, pond and lawn areas. The quote provided to the company for this work as referred to earlier is £3,368.64. The customer has made no further claims.

17. I therefore direct the company to complete the reinstatement of the fence, pond and lawn areas in line with the quote provided.

#### Loss of Earnings

18. The customer claims the sum of £920.00 in respect of loss of earnings whilst the work was being undertaken during the diversion of the sewer. The customer is not claiming for the earlier period when the sewer was re-laid.

19. The company says that the customer was not required to be present for any of the works as there were no access restrictions. The company also says that as it had not requested that the customer should be present and that it was her choice to be in attendance. The company is therefore not prepared to cover the customer's loss or earnings. The company also notes that the customer had not provided any proof of loss of earnings.

20. I note that the customer had no confidence in the company's workmanship as a result of the work carried out in relation to the re-laying of the sewer. I acknowledge that she felt she needed to be present during the diversion works. However, since there were no access restrictions, I accept the company's position that the

customer was not required to be in attendance. It was the customer's choice to remain at home while the work was carried out.

21. I find the customer's claim for loss of earnings fails and I make no direction to the company on this matter.

#### Inconvenience and Distress

22. The customer says she first reported the issue to the company in June or July 2018. She believes that as she had not followed the matter up, the company closed the case. The company reports its first contact from the customer in June 2019. Whilst the customer disputes this, it is reasonable to conclude as the customer had not followed the matter up since 2018 that the problem was not a significant concern to her up to that point.

23. It is, however, evident that the customer has suffered inconvenience and distress resulting from the time it had taken to resolve matters. It is apparent that the length of time her garden was disrupted, from around August 2020 up to the present time, has added to that inconvenience and distress. This has been compounded by the company's error in incorrectly surveying the sewer levels which resulted in additional work over a greater area. I find that an award for inconvenience and distress is appropriate in these circumstances.

24. The company has offered the customer £500.00 in respect of inconvenience. I have taken account of the time the customer has had her property disrupted and the loss of use of her garden. I have considered the anxiety the customer has experienced resulting from the condition her property had been left in during the work. I have also considered the customer's lack of confidence arising from errors made by the company.

25. I conclude that a payment for inconvenience and distress should fall within Tier 3 of the WATRS Guide to Compensation for Inconvenience and Distress. I direct the company to pay the customer the sum of £750.00 in respect of inconvenience and distress.

#### Guaranteed Standards Scheme

26. I have 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. The GSS also requires the company to

make payments to customers as a result of any flooding incidents, subject to certain exclusions.

27. I have found no evidence that the company has failed to provide a response to the customer's complaint within the required timescales. The customer has said there were no flooding incidents. I therefore find no areas where the company has failed to meet the standards required under the GSS.

28. I note that the customer is concerned with certain aspects of the work, including the proximity of a new sewer pipe in relation to the ground level. I direct the company to ensure all work relating to the sewer re-laying and diversion is fully inspected. The company shall confirm in writing to the customer that the work complies with relevant standards.

### Summary

29. I have directed the company to:

- a. Pay the customer the sum of £500.00 towards the cost of replacing plants.
- b. Complete the reinstatement works of the fence, pond and lawn areas.
- c. Pay the customer the sum of £750.00 in respect of inconvenience and distress.
- d. Inspect the works and confirm to the customer that the work complies with relevant standards.

### Outcome

1. The company needs to take the following further actions:
  - a. Pay the customer the sum of £500.00 towards the cost of replacing plants.
  - b. Complete the reinstatement works to the customer's fence, pond and lawn areas.
  - c. Pay the customer the sum of £750.00 in respect of inconvenience and distress.
  - d. Inspect the works and confirm to the customer that the work complies with relevant standards.

### 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.

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**Ian Raine**  
**Adjudicator**