

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX20

Date of Decision: 20/07/2021

Party Details

Customer: "The Customer"

Company: "The Company"

Complaint

The customer says that the company has refused to undertake work on a damaged sewer.

Response

The company says that there is no evidence of damage to the sewer, and the customer did not cooperate with its complaints process.

No offer of settlement has been made.

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 its handling of her complaint.

Outcome

The company needs to take the following further action: It must re-open the customer's complaint, allowing her to make any further submissions she wishes to make. If the company concludes that appointment of a loss adjuster remains the appropriate course of action, it may then do so, and may appoint the loss adjuster originally chosen, if that is its preference. It must then make clear to the customer that she must choose between cooperating with the company's processes, and hence its loss adjuster, or withdrawing her complaint. It must also pay the customer compensation of £200.00.

The customer must reply by 17/08/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- She wants the company to repair a cracked sewer pipe that runs across the rear of the Property.
- The company has declined to do so and will no longer communicate with her.

The customer's comments on the company's response are that:

- The company has misleadingly presented the evidence.
- The company is not giving appropriate recognition to the views of the independent surveyor.
- She requests that the company at least be required to pay for an Atterberg limit test.

The company is disregarding the evidence she has provided of problems with the sewer.

- The customer had a reasonable ground for refusing to cooperate with the loss adjuster, and indicated a willingness to cooperate with a different loss adjuster.
- Nonetheless, the company simply closed her complaint.
- The company's own employee confirmed in December 2020 that there was a defect and cracking in the sewer.

The company's response is that:

- The customer made contact in April 2020 to report that the sewer running under her Property may have been damaged.
- The company investigated on 27 April 2020, finding no issues with the sewer.
- The customer made contact again in December 2020, stating that she had experienced subsidence and that a third party had informed her of cracking, displacement and leakage from the sewer.
- The company visited the customer and assured her that no defects had been found with the sewer.
- The customer requested that the company undertake work at its own cost to investigate possible subsidence and carry out repairs.
- The company put the customer in contact with its insurers in case she wished to pursue a claim.
- The customer refused to cooperate with the insurance company's loss adjuster.
- In February 2021, the customer commissioned a report from an independent surveyor.
- This report does not provide evidence that the sewer is or has been leaking.
- The company is satisfied that there is no evidence of problems with the sewer.

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's claim centres on the condition of a sewer that she argues is the responsibility of the company. The company has not denied that the pipe is its responsibility.
2. The customer's argument is that the sewer is damaged and is more likely than not leaking, thereby impacting on her house, under which it runs. The company denies that there is evidence that the sewer is damaged and without such evidence is unwilling to undertake the additional investigative work that the customer requests.
3. Based on the evidence provided by the parties, I do not find that the company acted unreasonably in concluding that there was insufficient evidence to justify undertaking work on the sewer. The customer places substantial reliance on a report by an independent surveyor, however that report expressly relies on the customer's statement to the surveyor that defects had been found in the sewer. That is, the surveyor does not himself conclude that the sewer is leaking, but takes as a given fact that it is leaking and advises of the potential consequences of such a leak. This report, therefore, does not itself provide evidence that the sewer is leaking.
4. The customer also argues that she was told by an agent of the company in December 2020 that there was cracking in the sewer. However, the company denies this and argues that the conclusion after that inspection was that there was no cracking. No direct evidence has been provided by either party of the conclusions reached after the December 2020 examination of the sewers other than three relatively low resolution photographs. However, I acknowledge that in her exchange with the CEO of the company in December 2020, the CEO denied that evidence of cracking was found in the December 2020 examination and the customer did not at that time challenge this statement, as she would have been

expected to do had the CEO's statement been inaccurate. I must, therefore, find that the evidence does not support a conclusion that cracking in the sewer was found in December 2020.

5. In her response to the company's comments in the WATRS process, the customer has produced an email from an independent drainage specialist who inspected the sewer and who expresses the view that there is clear evidence of "a bad displacement and cracked pipe work in many places on the clay 150mm main drainage line, which runs across the rear of your property. The shared main drainage line is the responsibility of **"The Company"**." However, this response was provided to the customer on **XX** June 2021, and so it cannot have been taken into account by the company when deciding not to undertake the work requested by the customer. It cannot, therefore, influence an evaluation of the company's handling of the customer's complaint in this respect.

6. Because of this, I find that the company acted reasonably in refusing to undertake the work requested by the customer.

7. Nonetheless, I also find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its handling of her complaint. Specifically, when the customer expressed an unwillingness to cooperate with the loss adjuster appointed by the company's insurer, the evidence shows the company immediately closing her complaint. That is, the company does not clearly emphasise to the customer that it will only proceed with her complaint if she agrees to use its loss adjuster, thereby giving the customer the choice of whether to accept the loss adjuster or close her complaint. Instead, it simply closed her complaint.

8. I find that the average person would reasonably find this to constitute inadequate handling of the customer's complaint, consistent more with a desire to close the complaint than with a desire to cooperate with the customer in resolving her complaint. To be clear, the company has every right to use whichever insurer it prefers, even if that results in the appointment of a loss adjuster with which the customer is unhappy. Appointment of a loss adjuster is a valid step in resolving a complaint as it allows further investigation to take place. However, the company did not even attempt to ascertain if the customer would be willing to cooperate with the loss adjuster if the alternative was her complaint being closed.

9. Therefore, I find that the company must re-open the customer's complaint. It must give the customer the opportunity to make any further submissions she wishes to make, including any submissions from the independent drainage specialist discussed above or any other evidence that has not previously been submitted to the company. If the company then concludes that appointment of a

loss adjuster remains the appropriate course of action, it may then do so, and may appoint the loss adjuster originally chosen, if that is its preference. It must then make clear to the customer that she must choose between cooperating with the company's processes, and hence its loss adjuster, or withdrawing her complaint. However, this choice must be made by the customer, rather than imposed by the company.

10. To be clear, if the customer cooperates with the company's processes, but believes that those processes have not been operated fairly or that a properly justified outcome has not been reached, the customer retains the right to bring a further claim to WATRS relating to the company's handling of her complaint after the issuance of this decision, if all other requirements of the WATRS Scheme are also met. When making that claim the customer may submit additional evidence beyond the evidence submitted during this claim, if it was also submitted to the company after her complaint was re-opened.

11. In addition, I find that the company's failure to provide its services to the customer to the standard to be reasonably expected by the average person has caused the customer distress, and in consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £200.00. This amount reflects the seriousness of the customer's concerns about her house, and the distress that I accept she has experienced, but also that the company has been required to re-open her complaint.

12. Therefore, the company must pay the customer compensation of £200.00.

13. For the reasons given above, the company must re-open the customer's complaint, allowing her to make any further submissions she wishes to make. If the company concludes that appointment of a loss adjuster remains the appropriate course of action, it may then do so, and may appoint the loss adjuster originally chosen, if that is its preference. It must then make clear to the customer that she must choose between cooperating with the company's processes, and hence its loss adjuster, or withdrawing her complaint. However, this choice must be made by the customer, rather than imposed by the company. It must also pay the customer compensation of £200.00.

Outcome

1. The company needs to take the following further actions: It must re-open the customer's complaint, allowing her to make any further submissions she wishes to make. If the company concludes that appointment of a loss adjuster remains the

appropriate course of action, it may then do so, and may appoint the loss adjuster originally chosen, if that is its preference. It must then make clear to the customer that she must choose between cooperating with the company's processes, and hence its loss adjuster, or withdrawing her complaint. It must also pay the customer compensation of £200.00.

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