

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X644

Date of Final Decision: 11 November 2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer purchased his property in 2014. Prior to the purchase, searches were carried out which included a CON29DW report from the company. The report showed that the surface water drain from the property was connected to the public sewer.

A surface water flooding incident occurred at the customer's property in 2019. After investigation it was established that the surface water drain was not connected to the public sewer. The customer must now undertake various works to address the problem. These works are expected to cost between £3,000.00 and £5,000.00.

The customer says the company's report was incorrect. He says that if the company's report had been correct, he would have had the opportunity to negotiate a lower purchase price. Alternatively, he could have had the work carried out at the same time as other building work he had undertaken which would have significantly reduced costs.

The customer considers the company is responsible for his costs as it gave misleading information in its report.

The customer seeks compensation in the amount of 3,000.00.

Response

The company says that its records showed that the property had been subject to surface water drainage charges since April 2005. It says that it used that information to answer the question about surface water drainage in the CON29DW report. The company says that its answer was appropriate based on the information held on record. It says that it was not aware at the time the

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report was prepared that the property was not connected for surface water drainage.

The company says that additional information was provided in the report that allowed the customer to understand the basis on which that information was provided. The company considers that its report was clear.

The company does not agree that any compensation is due to the customer.

Findings

The CON29DW report prepared by the company was incorrect. It was reasonable to conclude from the statements made in the report that surface water from the customer's property drained to the public sewer.

However, there is no evidence that the costs the customer will incur are a direct result of incorrect information provided by the company. The company therefore has no liability in respect of the work the customer has to undertake.

The company failed to respond to a complaint by the customer within the ten working day period required by the Guaranteed Standards Scheme. The company did not make any automatic payment following this delay.

Outcome

The company needs to take the following further action:

Pay the customer the total sum of £30.00 made up as follows:

- i) £20.00 for its failure to respond to a complaint within the timeframe required by the Guaranteed Standards Scheme.
- ii) £10.00 for late payment of that sum.

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Case Outline

The customer's complaint is that:

- The customer purchased his property in 2014. Searches were carried out prior to the purchase.
- The search report from the company stated that surface water from the property drained to the public sewer. The customer took the company's report to be correct. It was later found that the surface water drain was not connected to the public sewer.
- In October 2019, surface water collected at the front of the property. This followed a prolonged period of wet weather and a heavy storm. Investigations following the incident showed that the surface water did not drain to the public sewer but discharged within the boundaries of the customer's property.
- The customer needs to carry out work to alleviate the problem. The cost of the work required is estimated as being between £3,000.00 and £5,000.00.
- The customer's complaint is that the information provided by the company was incorrect. The report was not based on any inspection of the property, but on historic billing records. He says that had the company's report been correct, he would have been able to negotiate a reduction in the asking price of the property. Alternatively, he could have had the required work carried out at the same time as other building work, significantly reducing the cost of the work.
- The company's report should have made clear the basis of the information on which it was based. The customer would then have been prompted to take additional action had he considered it necessary.
- The customer seeks compensation from the company in the sum of £3,000.00. He considers the company should cover at least 50% of the cost of the required work.
- Following the issue of my preliminary decision, the customer raised a question concerning evidence required. I have addressed the question at the end of this final decision.

The company's response is that:

- In 2014, the company provided a CON29DW Land Search Report to a search agency in respect of the customer's prospective purchase of his property.

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- The company's records at the time indicated that the property had been subject to surface water drainage charges since 1 April 2005. That information was used to answer the question in the CON29DW report concerning surface water drainage.
- The company says that the report was prepared based on information held in the company's records and available to the company at the time the report was requested. It says that it only became aware the property was not connected to the public sewer for surface water drainage sometime after the report was prepared.
- The company does not agree that the report was unclear or that it did not identify information to allow the customer to understand the basis on which the report was based.
- The company does not agree that any compensation is payable to the customer. The company is not prepared to reimburse the customer the £3,000.00 he claims.

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.

How was this decision reached?

1. The key aspect of this dispute relates to the accuracy of information provided by the company to the customer in response to a search enquiry. The question is whether it was reasonable for the customer to rely on the statements made by the company in the report when considering the full report content. It is also important to consider whether the company has any liability for inaccurate statements that may have been made in the report.

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2. The customer's position is that the report prepared by the company advised that surface water from the property discharged into the public sewer. He says that a visual inspection of the property showed no indication that the report was incorrect. He relied on the statements in the report and assumed that surface water from the property discharged into the public sewer.
3. The company's position is that the statements made in the report were based on its records. It says that each response incorporates the words "records indicate..." or "records confirm...". The company says that additional information was provided supplementing the answers given by the company.
4. It is noted that the company has now amended its records to show that surface water does not drain to the public sewer. The company says that it has provided a rebate to the customer in relation to surface water charges.
5. The company's response sets out responsibilities in relation to public and private pipework. It highlights that it has no responsibility for the private pipework of customers. The company also explains the background to changes that occurred in 1999 and 2000 in relation to separating charges for surface water. It describes the regulator's position that wastewater companies would not be aware of private surface water drainage arrangements. It says that it was agreed customers would need to apply to their providers for surface water drainage rebates. The company also sets out its view of the purpose of a water and drainage search and the information included in a CON29DW Search Report.
6. The issue does not relate to responsibility for public or private pipework. It does not relate to changes that occurred in separating charges for surface water. The issue relates only to the information provided in the CON29DW report issued by the company.
7. The company's communication to the customer dated 5 August 2021 confirms that the information provided in the CON29DW report was based on the billing records for the property. The company says that billing records identified that the property was being billed for surface water drainage. The company advised that it was not under any obligation to carry out a survey to verify the position.

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8. A copy of the CON29DW Report has been included within the documents provided. Question 2.2 says, *“Does surface water from the property drain to a public sewer?”* The company’s reply says, *“Records indicate that surface water from the property drains to a public sewer.”* The company refers to additional information included below the response to the question. It says that the purpose of that information was to supplement the answers. The company also refers to extracts from mapping records showing the locations of apparatus known to the company.

9. The company refers to the terms and conditions included at the end of the CON29DW Report. It refers specifically to paragraph 2.3 of the terms and conditions. Paragraph 2.3 states:

“The report does not give details about the actual state or condition of the Property nor should it be used or taken to indicate or exclude suitability or unsuitability of the Property for any particular purpose, or relied upon for determining saleability or value, or used as substitute for any physical investigation or inspection. Further advice and information from appropriate experts and professionals should always be obtained.”

The customer considers this paragraph is not appropriate to the dispute as it refers to the state or condition of the property. The customer’s issue is that the company stated a service existed when it did not.

10. I have considered the statements in the report and the additional information the company refers to in its answer to question 2.2. The additional information is general in nature and not specific to the property. References are made to responsibilities to private drains that are not relevant to the matter in dispute. Paragraph 4 of the additional information states, *“If on inspection the buyer finds that the property is not connected for surface water drainage, the property may be eligible for a rebate of the surface water drainage charge. Details can be obtained from the company.”* This is the only reference to a surface water drainage connection within the additional information. It is a general statement.

11. I have also considered the company’s answer to question 2.3 of the report. Question 2.3 says, *“Is a surface water drainage charge payable?”* The company’s answer says, *Records confirm that a surface water charge is payable...* Additional statements below the answer to this question includes the same information as that given under the answer to question 2.2.

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12. I do not consider that paragraph 2.3 of the terms and conditions related to the CON29DW report is relevant to this dispute. It refers to the property's condition, its suitability for any particular purpose and its value or saleability. Whilst it does say that further advice should be obtained from appropriate experts, it would be reasonable to take this in the general context of the first sentence of the paragraph.
13. I could find nothing within the report to support the company's position that the answer to question 2.2 was based solely on the company's billing records. There is nothing that indicates how the company arrived at the answer given. I could find no qualifications within the report suggesting that information may not be accurate or that further checks should be made. In contrast, the company's answer to questions 2.7 and 2.8, which relate to building over public sewers and flood risk from sewers, are qualified. The answer to question 2.8 specifically recommends that enquiries are made to the vendor.
14. Property searches are carried out to provide purchasers of property with information relating to the property. The information helps to ensure the purchaser is aware of any potential issues relating to that property. A purchaser can then make an informed decision about what action to take, if any. It is important that purchasers can be confident in the responses received from searches. Any uncertainties or unknowns may be highlighted in the responses, allowing a purchaser to make further enquiries. In this case, it would have been a simple matter for the company to have explained in its answers that the information was based only on historical bills for the property. It would also have been simple to advise the customer to make other enquiries to confirm the position.
15. I find from the answers given in the report that it was reasonable for the customer to believe that the surface water drain was connected to the public sewer. I find there was nothing in the report to suggest the customer needed to conduct further enquiries.
16. I have now considered whether the company has any liability to the customer for the costs of carrying out the work required to resolve the flooding problem. For the company to be liable, it would be necessary to show that the factors that caused the customer to have to carry out work and incur costs were a direct result of incorrect information provided by the company.

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17. Whilst it is reasonable to expect the content of the CON29DW report to be correct, this is only one of several searches and investigations a purchaser can undertake. It was open to the customer to carry out other investigations and make other enquiries before purchasing the property.
18. The company has noted that a drainage report produced separately included a section concerning flooding from surface water. A copy of that report dated 28 May 2014 is included in the documents. The drainage report identified a potential risk of flooding from surface water in the range of 25m to 250m from the property, although it does state that this is low risk. Following the issue of that report, the customer could have made further enquiries concerning the risk of flooding from surface water. Such enquiries may have led to further conclusions concerning the general situation of surface water drainage around the property.
19. I note that the purchase of the property was completed in 2014. The incident where surface water built up at the front of the property was in 2019, approximately five years later. It is therefore reasonable to conclude that the surface drainage was functioning satisfactorily from the time the customer completed the purchase on his property until 2019. This is irrespective of the point of discharge of the surface water.
20. It is not possible to determine from the evidence available whether the flooding came from the property's surface water drainage system, from outside the property boundary or a combination of the two. Since the drainage report referred to above indicates a risk of surface water flooding in the area, a prolonged period of rainfall may have been a contributory factor. The customer said that the flooding dispersed soon after the rainfall stopped.
21. If the company's report had been correct, it may have led the customer to make certain decisions concerning the purchase of the property. However, it was also open to the customer to conduct further enquiries. The report concerning land drainage dated 24 May 2014 indicated a low risk of flooding. This could have led the customer to investigate further.
22. I am not able to establish from the evidence that there was a direct link between the incorrect information given by the company and the work the customer now needs to undertake. I am therefore unable to find any liability on the part of the company for the costs the customer now faces. The customer's claim for compensation therefore fails.

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23. 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.
24. A complaint was sent to the company from the customer's solicitor on 17 May 2021. The letter was sent to the company's registered office address. The company's email dated 7 July 2021 refers to a follow up call from the customer made on 25 June 2021 as no response had been received. It says that the company's office was not manned at the time the letter was sent due to Covid 19 restrictions. The letter was therefore not picked up.
25. The company's response to the application says that a letter dated 17 May 2021 was received on 18 May 2021. The company says that a response was issued to the customer on 5 August 2021. The response sent on 5 August 2021 refers to a complaint from the customer's solicitor being received on 26 May 2021. It also refers to a complaint from the customer dated 21 July 2021 and the letter from the customer's solicitor dated 17 May 2021.
26. It is evident that the complaint sent in May 2021 was not addressed by the company until 5 August 2021. This is outside the ten working day period set in the GSS. The company should have made an automatic GSS payment to the customer. The GSS payment due in this situation is £20.00. Where payment is not made in a timely manner, a further payment of £10.00 is due to be made. There is no indication in the documents that any GSS payment was made.
27. The company failed to respond to a written complaint within ten working days. I order the company to make a GSS payment to the customer in the sum of £20.00. I also order the company to pay an additional £10.00 under the GSS in respect of the late payment of that amount. The total to be paid by the company to the customer is £30.00. The company may, at its discretion, pay this amount to the customer or credit the amount to his account.
28. The customer has not made any comments on my preliminary decision but has asked about evidence linking costs to the work required. The issue is not about linking costs to the work required, it is demonstrating that the work required was necessary as a direct result of the company providing incorrect information. This is referred to in paragraph 22 above. I also refer

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the customer to the section headed “How is a WATRS decision reached”. For the company to be liable, there must be evidence that showed that the requirement to undertake the work arose directly from the company’s failure to provide correct information to the customer. As explained, I could find nothing that demonstrated that the flooding incident, which required the customer to carry out work, was a direct result of incorrect information provided by the company.

Outcome

The company needs to take the following further action:

Pay the customer the total sum of £30.00 made up as follows:

- i) £20.00 for its failure to respond to a complaint within the timeframe required by the Guaranteed Standards Scheme.
- ii) £10.00 for late payment of that sum.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 December 2021 to accept or reject this 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 on 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.

I H Raine

Ian Raine, CEng, MIMech E, FCIArb, MCIBSE

Adjudicator

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