

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X678

Date of Final Decision: 24 January 2022

Party Details

Customer:

Company:

Complaint

The customer is unhappy because the company broke a sewerage pipe on his land when conducting a CCTV survey, and then entered his land without his permission to replace the section of pipe with one that was narrower than the original pipe. The customer asks for an order that the company pay the full cost of a quote to replace the narrower pipe with one of the same diameter as the original pipe.

Response

The company acknowledges that it broke the customer's sewerage pipe, and that it did not communicate with the customer before visiting to replace the pipe. It says that the new pipe works correctly. However it also says that it is prepared to pay for a reasonable quotation to replace the pipe - but the customer has not yet provided a quotation and the company cannot agree an amount without first seeing the quotation.

The company says that it has already made a goodwill payment of £150 because of additional calls the customer had to make, four failed visits and inconvenience caused by its actions. It has also paid £30 to cover food and £65 to cover contractor fees. The company has offered a further goodwill payment of £600 because of the delays in resolving the case and the inconvenience suffered by the customer, but the customer has not accepted this offer.

Findings

I find that as the company broke the customer's sewage pipe and did not have his permission to replace it with a smaller pipe, the company is responsible for replacing the new pipe with another one that is the same diameter as the original pipe (or larger). As the customer has not provided a quotation for these works by another contractor, I consider that the company should carry out the works itself, at a date to be agreed in discussion with the customer.

I also find that the company's actions have caused the customer inconvenience, which has been aggravated by the fact that the customer is in a

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Outcome

vulnerable position as he is undergoing chemotherapy for terminal cancer. I consider that the company should pay the customer £600 for the inconvenience he has suffered (in addition to the £150 the company has already paid).

If the customer accepts this decision, the company must make contact with the customer and make reasonable efforts to agree with the customer a date on which the company, or a contractor instructed by the company, shall replace the section of sewerage pipe that it installed without the customer's permission, with a section of pipe that is of the same diameter as the original pipe (or larger), and of a comparable quality. In accordance with Rule 6.4 of the WATRS Rules, the company shall not be required to spend more than a maximum of £9,400 on these works.

The company must also pay the customer the sum of £600 for the inconvenience he has suffered (in addition to the £150 the company has already paid). For the avoidance of doubt, this sum is in addition to any other sums that the company may have agreed to pay the customer for any other previous incidents.

The customer must reply by 21 February 2022 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- The company cleared some roots from his pipework following a sewage seepage in January 2021. It then carried out a CCTV survey of the customer's private pipework, and while doing this it broke a pipe.
- The company agreed to repair the broken pipe, but said that it was unable to find a pipe of the same size. The company therefore installed a smaller pipe without the customer's agreement and without his permission to enter onto his property.
- The customer is unhappy with this and wants the new pipe to be replaced with a pipe of the same size as the original one.
- The company has offered £600.00 in compensation which the customer rejected.
- On the customer's behalf, CCW offered the company three options - they could:
 - Replace the relevant section of pipe with a section of the original size and pay a goodwill gesture of £260.00 (on top of the £340.00 that the company had previously offered) or
 - Replace the entire pipe (not just the smaller replaced section) and pay a goodwill gesture of £160.00 (on top of the £340.00 that the company had previously offered) or
 - If the customer is able to source the correct sized pipe, the company could cover the cost of parts and installation.
- The company responded agreeing to contribute towards the costs of replacing the pipe on receipt of a quote; however, the customer remains unhappy as he considers that the company should pay the full cost of the quote and not just "contribute" to the cost.

The company's response is that:

- The company explains that the customer reported a sewage leak at his property in January 2021. On 3 February 2021, the company cleared some roots from the sewer and lined the sewer to prevent the roots from re-entering it.

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- The company then conducted a CCTV survey to check nearby pipes and when doing this, it broke one of the pipes on the customer's land. The company acknowledged it was responsible for the damage and agreed to repair it. The company also acknowledges that it then missed three appointments with the customer, which it says was due to several reasons such as emergency jobs and restrictions resulting from Covid-19.
- The company then visited the customer's property and fitted another pipe, which it says was operationally suitable and fixed the sewage leak. However, the company acknowledges that it did this without the customer's permission and that the pipe was smaller in diameter than the original one. The company says that it is "disappointed" that it did not communicate with the customer about this visit in advance, but that it wanted to fix the problem as soon as possible.
- The company says that it and the customer both made "extensive searches" to try to find a pipe of a larger diameter but they could not find one. It says that it proposed several options to the customer including that the company or the customer find a larger pipe which the company would install, or the customer provide the company with a quotation for doing these works privately. The company says that on 12 August 2021, the customer told it that he did not want to go ahead with any of these options and that he wanted to leave the current part in place.
- However, the company says that the customer then changed his mind and made a complaint to the Consumer Council for Water (CCW). The company said that it told CCW that it was happy for the customer "to get an itemised quote for this work, send it over to us and we can consider what we are able to contribute". The company acknowledges that the word "contribute" might have been misleading, and says that it is in fact happy to pay the reasonable costs of the customer's contractor, but that it cannot agree on an amount without first receiving a quotation, which the customer has not provided.
- The company says that it has already made a goodwill payment of £150 because of additional calls the customer had to make, four failed visits and inconvenience caused by its actions. It has also paid £30 to cover food and £65 to cover contractor fees. The company has offered a further goodwill payment of £600 because of the delays in resolving the case and the inconvenience suffered by the customer, but the customer has not accepted this.
- The company concludes that it is still happy to cover the full costs of the replacement works, but says that it needs to receive an invoice before committing to pay the costs so that it can be satisfied that the amount is reasonable.

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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 company has acknowledged that it was responsible for damaging a pipe on the customer's land when carrying out a CCTV survey. It has also acknowledged that it replaced the damaged section of pipe with a smaller section, without asking the customer's permission for the replacement and without asking for his permission to enter his land.
2. Although the company has said that the new section of pipe is working correctly, I find that it is not guaranteed that it will continue to do so in future. In any event, I find that the customer is reasonable to say that he is entitled to be put into the position that he would have been in, had the company not caused damage to his pipework in the first place. On this basis, I find that that it is reasonable for the company to replace the new section of pipework that it installed, with a section that is of the same diameter as the old section.
3. The question is therefore how this replacement should be carried out. The company says that it has tried to find a new section of pipe that is of the same diameter as the old section of pipe, but that it has not been able to do so. However, the company has not given any details of the

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attempts that it made to source an appropriate new section of pipe, nor provided any evidence that the appropriate size of pipe is not available, nor explained why this should be the case. I find it difficult to believe that it is impossible to obtain a section of pipe that is of the same diameter as the original one, or at worst slightly larger.

4. The parties have discussed whether the customer should himself provide a quotation for an independent contractor to carry out the works, which should then be paid for by the company. The company has said that it is in principle happy to pay for a contractor appointed by the customer to carry out the works, but that it will not do so if it does not first receive an "invoice" (by which I understand the company to mean a quotation) to check that the price is reasonable. The customer has not provided such a quotation, so the parties have been unable to take this matter forward.
5. I find that it is not reasonable to expect the customer to find his own contractor to carry out these works, particularly given the fact that the customer has explained that he is currently undergoing chemotherapy for terminal cancer. The company proposed this option as early as June 2021, and the customer has to date not been able to provide a quotation. I therefore find that the better solution is for the company itself to carry out the works to replace the new section of pipe with one of the same diameter as the old one (or at worst, slightly larger). For the reasons set out above, I do not accept the company's argument that it will be impossible for it to source such a pipe.
6. In its comments on the Preliminary Decision, the company repeated that it was unable to find a section of pipe of the required diameter or larger. However, it still did not provide any evidence of what steps it had taken to attempt to find the pipe, or provide any explanation of why it said that the pipe was not available. The customer then commented on the Preliminary Decision, saying that he does not accept the smaller pipe and that he is too ill to be able to find a contractor to replace the pipe himself. He also says that the company has previously agreed to pay him £330 for a different and prior incident, and that this amount should not be deducted from the £600 for this incident.
7. I note that the customer has asked to speak to the adjudicator by phone in order to explain the situation further, but I do not consider that it would be appropriate for me to speak to one of the parties in the absence of another party and in any event the Rules do not provide for a hearing to be held.

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8. However, as a result of the parties' further submissions, I note that there seems to be a risk that the company will not comply with a decision that requires it to replace the new section of pipe with one of the same diameter as the old one. I do not consider that the company has demonstrated that it is not possible for it to do so. I therefore find that if the company does not comply with the requirement to itself replace new section of pipe with one of the same diameter as the old one, it should be required to find a contractor who is able to carry out these works on its behalf.
9. I also consider that, in order to avoid the kind of miscommunication that happened when the company first carried out the works to replace the pipe, the company should agree with the customer in advance on a date when it, or its contractor, will attend to carry out these works. When agreeing this date, the company should, in particular, take into account any constraints that the customer might have as a result of his medical condition.
10. The customer has not, on his application form, asked for an order that the company pays him compensation for inconvenience. However, Rule 6.6 of the WATRS Rules allows me, in exceptional circumstances, to award more compensation than has been claimed by the customer. In this case, I take into account the customer's vulnerability as a result of his medical condition, which he has said is making it difficult for him to engage with the WATRS process. I also take into account the fact that the company has acknowledged that it was responsible for missing four appointments with the customer, that it replaced the customer's pipe without his permission, and that it was responsible for delay in resolving this matter. The company has accepted that a payment of £600 for inconvenience would be reasonable. I agree that such a payment would be appropriate, and I therefore order the company to pay this amount (in addition to the £150 that it has already paid). For the avoidance of doubt, this sum is in addition to any other sums that the company may have agreed to pay the customer for any other previous incidents.

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Outcome

If the customer accepts this decision, the company must make contact with the customer and make reasonable efforts to agree with the customer a date on which the company, or a contractor instructed by the company, shall replace the section of sewerage pipe that it installed without the customer's permission, with a section of pipe that is of the same diameter as the original pipe (or larger), and of a comparable quality. In accordance with Rule 6.4 of the WATRS Rules, the company shall not be required to spend more than a maximum of £9,400 on these works.

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Natasha Peter FCI Arb, Barrister, England & Wales

Adjudicator

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