

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X149

Date of Final Decision: 25 October 2022

Party Details

Customer:

Company:

Complaint

In April 2022, the company undertook sewer lining work in the vicinity of the customer's property. The customer was not informed of the planned work. Materials used for the sewer lining gave off fumes that permeated the customer's property. The fumes caused health problems, in particular for the customer's daughter who attended hospital as a result.

Fumes were present in the customer's property for at least six days before dissipating. The customer says he had little help from the company in seeking a resolution. The company eventually agreed to pay accommodation costs in a budget hotel. The customer and his family spent one night in a hotel three days after the problem was reported.

The customer is seeking a payment of £2,500.00 as compensation for distress and inconvenience.

The customer also seeks a written apology from the company that acknowledges the impact the incident had on the customer and his family.

Response

The company confirms that it carried out sewer lining work on or around 25 April 2022. It says that it had not informed the customer prior to starting work as the customer's property was outside the area that was expected to be affected. The company says that it could not have known that the work would affect the customer's property.

The company acknowledges the distress caused to the customer and his family and accepts that its response was not to the standard expected.

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The company has paid the customer's costs for accommodation and other expenses arising following the incident. It has also offered compensation for the inconvenience caused.

Findings

The company has paid the customer £219.19 in respect of accommodation costs and other expenses. The company has also paid the customer £50.00 towards electricity costs for an extractor fan provided by the company's contractor. The company has also paid the customer the sum of £20.00 for a missed appointment.

The company has offered the customer the sum of £780.81 for distress and inconvenience. This has not been accepted by the customer.

The company was slow to respond to the issue of fumes when it was raised by the customer. It was also slow to agree to meeting the costs of temporary accommodation for the customer's family. This caused distress and inconvenience to the customer and his family.

The company has not provided its services to the customer to the standard to be reasonably expected. It is appropriate that the customer should receive a payment for distress and inconvenience.

Outcome

The company needs to take the following further action:

1. Pay the customer the sum of £1,000.00 for inconvenience and distress caused.
2. Send a written apology to the customer for the inconvenience and distress caused by the work and the effects this had on his family.

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ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- On or around 25 April 2022, the company was relining a sewer in the vicinity of the customer's property. The relining process involved the use of an epoxy material that produced fumes. Fumes from the operation entered the customer's property.
- The customer says that this affected the health of his family, in particular, his daughter. He says that she had to be taken to hospital where she was assessed by the toxicology unit. He says that the unit advised his daughter's symptoms suggested short term styrene poisoning.
- The customer says that he had to take time off work to try and resolve the issue. He says that although he suffered no loss in earnings, he has had to make up the lost hours.
- The customer says that communication from the company concerning the issue has been poor. He says that he was not informed about the planned work or the impact it would have on his home life. He says that he received no support from the company on how to deal with the fumes. He also says that the company failed to call him back when they had said they would.
- The customer seeks an apology from the company acknowledging the problems they had caused.
- The customer also seeks further distress payments to that offered by the company. The application does not specify any amount. However, in his comments to the company's response, the customer says that he is seeking compensation of £2,500.00.

The company's response is that:

- The company says that on 25 April 2022 it carried out some sewer relining work in the vicinity of the customer's property. It says that the customer was not contacted in advance as his property was not within the area expected to be affected by the work.
- The company acknowledges the customer's distress about his daughter's health and has referred to this in an email apology.
- The company acknowledges that it failed to follow its internal processes to deal with calls relating to fumes of this nature. However, it notes that the customer contacted its contractors directly. It

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says that they attended within two hours to take readings and provide equipment to deal with the fumes.

- The company says that it could not have known the customer's property would be affected by the work due to the distance between the work and the property. It says that no other properties were affected.
- The company says that a blockage on the customer's private drainage system contributed to the problem. It says that it cleared this blockage at no cost to the customer.
- The company agreed to cover the cost of hotel accommodation and meals for the customer and his family while he was unable to stay at his property. The company says that it has also paid the customer £20 for a missed appointment and £50 towards energy costs for fume extraction. It says that it has paid the customer the total sum of £289.19 in respect of these matters.
- The company has offered to pay the customer the further sum of £780.81 in recognition of its failings in the way it handled the initial contact with the customer. This is in addition to the payment the company says it has made.

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.

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How was this decision reached?

1. The customer's complaint concerns fumes entering his property from sewer relining work undertaken by the company. The customer says that fumes were present in his property for several days and caused health problems for him and his family. The company has offered compensation for inconvenience but this has not been accepted by the customer.
2. On or around 25 April 2022, the company undertook sewer lining work in the vicinity of the customer's property. The company says that it had not contacted the customer prior to starting work as his property was not within the area expected to be affected by the work.
3. The customer says that on 24 April 2022 he and his family went out for the day. He says that he saw a traffic management system being set up outside his house and a van with the company's logo. He says that on his return at around 6:15 p.m. his house was filled with strong fumes. He says that he opened all windows and doors and waited outside for about 30 minutes until the fumes had dissipated sufficiently to be able to enter the property.
4. The customer says that the next morning the fumes were still very strong. At around 8:00 a.m. on 25 April 2022, the customer called the company to ask about the work that had been carried out. He also explained that his daughter was very unwell. The customer says that the company said it had no jobs recorded and would arrange a call back. The customer says that later that day he was able to obtain details of the contractor that carried out the work and contacted that contractor directly. He says that the contractor informed him about the relining work and that the fumes were styrene. The customer says that the contractor visited him to investigate the problem around one hour after he called. He says that the contractor confirmed a strong smell of styrene was present and took measurements of styrene concentration. The contractor also left an extractor fan with the customer.
5. The customer says that he received a call from the company at around 2:35 p.m. on 25 April 2022. He says that the company did not offer to visit his property but did offer the sum of £50 towards electricity costs for running the extractor fan.
6. The customer says that his daughter's condition was a concern. His daughter attended hospital on 25 April 2022 where various tests were carried out. The customer says that the hospital confirmed that his daughter's symptoms were consistent with exposure to styrene. He says that

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his family returned home that day but they had all doors and windows open until late evening to reduce fumes. As a result, the house was cold.

7. The customer has provided a detailed timeline for the period between 24 April 2022 and 30 April 2022. The timeline shows that the problem continued throughout the week and notes various communications with the company. The customer says that the company initially would not agree to his family staying at a hotel. However, it did agree to this on the evening of 28 April 2022. The customer and his family stayed in a hotel on the night of 28 April 2022.
8. On 29 April 2022, the customer says that he returned to his house and continued to ventilate the property. To assist in clearing the fumes, the customer says that he also lifted floorboards to allow fumes that had accumulated under the floor to dissipate.
9. After further ventilation on 30 April 2022, the customer says that the fumes began to reduce. He says that although the smell continued for several days, it was getting weaker.
10. The timeline provided by the company generally confirms the situation outlined by the customer. Notes within the company's timeline show that the company accepts that it had not handled the situation correctly.
11. On 12 May 2022, the customer sent a written complaint to the company. The complaint summarised the problems experienced. The customer said that he would be compiling further information to send to the company. This was sent on 8 June 2022. The letter sent on 8 June 2022 also included a summary of costs the customer says had been incurred.
12. The company says that a risk assessment carried out prior to starting the work covered the immediate area. It says that letters were sent to properties advising them of the planned work. The company says that as the customer's property is over 50 metres away from the end point of the work, no disruption to his property had been expected and no letter had been sent to him. The company also says that it discovered a blockage in part of the customer's private drainage system. It says that this may have contributed to the problems experienced by the customer.
13. The company has apologised that it took four days to agree to alternative accommodation for the customer and his family. It says that this should have been offered much earlier and without the need for the customer to follow up with telephone calls.

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14. The company accepts that the service provided was not to a standard to be reasonably expected. In an email sent to the customer on 21 June 2022, the company confirmed it would refund the customer's accommodation and out of pocket expenses totalling £158.56.
15. The company also confirmed it would cover additional costs claimed by the customer totalling £110.63. The company noted that it had already made a payment to the customer of £50 in respect of electricity costs for the extractor fan, leaving a balance of £60.63 to pay. The company also said at that stage that it was looking into compensation for inconvenience and distress.
16. The company's notes show a call from the customer on 21 June 2022 accepting the company's offer to cover costs. The notes for 21 June 2022 also show that an interim payment of £219.19 was made to the customer.
17. The customer sent a further communication on 21 June 2022 expressing disappointment that the company would not pay for time away from work. The customer had not lost earnings as his employer had allowed the lost time to be made up. The customer asked for this to be considered in any compensation offer.
18. The company's notes record that on 4 July 2022, it offered the customer the sum of £780.81 as compensation for inconvenience and distress. The notes also say that the customer was not happy to accept this. The company has not explained how it arrived at the sum of £780.81. It is noted, however, that adding £780.81 to the amount paid for out-of-pocket expenses of £219.19 would make a total payment to the customer of £1,000.00.
19. I note that the company has paid the customer's out of pocket expenses in relation to hotel and associated costs, together with other costs claimed. I also note that the company has made a payment of £20.00 in respect of an appointment that was missed without giving 24 hours' notice of cancellation. This is in line with the Guaranteed Standards Scheme (GSS). The issue remaining relates to compensation for distress and inconvenience.
20. The customer has provided comments on the company's response to his application. He says that he has two main concerns.

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21. The customer's first concern relates to the quoted threshold levels for styrene gas. He notes that the company refers to a level of 100ppm as "safe" but his daughter fell ill when levels measured were at 3ppm. He also refers to alternative products that can be used for sewer lining that do not give off toxic fumes. Reference is also made to the use of alternative odourless materials in the company's response.
22. The company's response refers to short term exposure limits of 250ppm averaged over a fifteen-minute period and 100ppm averaged over an 8-hour day. It would be reasonable to conclude from this that exposure limits would be lower where the exposure time is longer. However, no figures have been provided for longer exposure times. It is acknowledged that the measured levels of 2 – 3ppm resulted in the customer's daughter having to attend hospital. However, there is no evidence to indicate that any exposure limits were exceeded.
23. With regard to the use of alternative products, this is a matter of company policy. According to Rule 3.5 of the Water Redress Scheme (WATRS) Rules, a WATRS adjudicator does not have authority to evaluate the fairness of contract terms and/or commercial practices operated by a water supply company. This includes company policies. However, the company has said that it would be reviewing its procedures in relation to this matter.
24. The second point made by the customer is that the level of compensation offered is disproportionate to the level of distress. He requests a compensation level for inconvenience and distress of £2,500.00, being the maximum possible under WATRS. I have addressed the level of compensation elsewhere in this decision.
25. It is apparent from the information provided that the incident caused significant disruption to the customer and his family. I find that the company's response to the incident failed to meet the standards to be reasonably expected. I find that this failure resulted in inconvenience and distress for the customer and his family. It is appropriate that a payment be made to the customer for that inconvenience and distress.
26. The WATRS Guide to Compensation for Inconvenience and Distress has four tiers for compensation awards. In assessing the level of compensation that is appropriate, I have considered the level of inconvenience, the time the inconvenience occurred and the level of distress caused. Factors considered include:

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- a. The customer had to remain in his house for several days before the company agreed to meet hotel costs for the customer and his family.
- b. The use and enjoyment of the customer's home was affected by fumes arising from the work.
- c. The customer's work was disrupted with time lost having to be made up.

27. In mitigation, I have also taken account of the actions by the company to assist the customer.

These include:

- a. The company did eventually agree to meet the costs of hotel accommodation.
- b. The company provided an extractor fan via its contractor and paid for additional electricity consumed.
- c. The company paid other expenses claimed by the customer.
- d. The company cleared a blockage in the customer's private drain at no charge to the customer. That blockage may have been a contributory factor to the fumes permeating the customer's property.

28. I find that the impact the incident had on the customer was serious. Compensation within Tier 3 is appropriate where the inconvenience and distress is serious. Based on the factors outlined above, I award the customer the sum of £1,000.00 which is within the range of compensation noted in Tier 3.

29. The customer also seeks an apology from the company that acknowledges the difficulties experienced by the customer and his family.

30. The timeline submitted by the company shows records of discussions where the company has apologised for the way the case had been handled. The company also says in its response that it has offered a written apology for the distress and inconvenience caused. It has provided a copy of the text of an email apology. It is not clear from the documents provided whether the written apology has been sent. I therefore direct the company to send a written apology to the customer for the distress and inconvenience caused by the work and the effects this had on his family.

31. No comments have been received from either party on my preliminary decision. There are therefore no changes to that decision.

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Outcome

The company needs to take the following further action:

1. Pay the customer the sum of £1,000.00 for inconvenience and distress caused.
2. Send a written apology to the customer for the inconvenience and distress caused by the work and the effects this had on his family.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 November 2022 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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