

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X501

Date of Decision: 15 May 2023

Party Details

Customer: XX
Company: XX

Complaint

The customer has a dispute with the company regarding the payment of compensation for aborted construction works resulting from incorrect information provided by the company. The customer states that the company advised her that she could not construct an extension to her house over a sewer pipe that it claimed was a company asset. After changing her plans and incurring costs the company altered its position and stated that the pipe was a private sewer over which it had no authority. The customer says that the compensation offered by the company is insufficient. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore she has brought the claim to the WATRS Scheme and asks that the company be directed to pay compensation in the sum of £30,000.00 and issue an apology.

Response

The company accepts it gave conflicting advice to the customer but says that she did not accept its recommendation to hold additional discussions and surveys to find an alternative solution. The company says that it has apologised and made a goodwill offer of £950.00 that was rejected. The company says much of the customer's costs would have been incurred before she received the incorrect advice and also many costs would be incurred whichever construction works she undertook. It has not made any additional formal offer of settlement to the customer and declines to pay the compensation requested.

Findings

The claim succeeds in part. I find that the evidence supports, on a balance of probabilities, that the company provided incorrect information to the customer in respect of the ownership of the sewer pipe. However, I do not find that the evidence before me establishes that the customer suffered financial loss as a direct result of the misleading information and that the evidence does not show the changes or additional works necessary because of the customer's decision to alter her plans. I find that the evidence shows that the company has failed to provide its services to a reasonable level and did not manage the customer's account to the level to be reasonably expected by the average person and thus caused her distress and inconvenience.



Outcome

The company needs to take the following actions:-

- (i) Pay compensation in the amount of £2,000.00.
- (ii) Issue a written apology.

The customer must reply by 12 June 2023 to accept or reject this decision.

ADJUDICATOR'S DECISION
Adjudication Reference: WAT/X501
Date of Decision: 15 May 2023

Case Outline

The customer's complaint is that:

- She has experienced an ongoing dispute with the company concerning losses she incurred after being given incorrect information by the company regarding ownership of a sewerage pipe adjacent to her property. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- In May 2001 she retained an architect to process her intention to construct an extension to her dwelling. The architect's design called for construction over an existing sewer pipe that she believed was a private pipe.
- She contacted the company to obtain a copy of its Searches map, and this also indicated that the pipe in question was not a company asset. The customer says that to be certain she applied to the company on 16 February 2022 for planning approval and on 28 February 2022 was advised by the company that the pipe was one of its assets.
- On 03 March 2022 and 08 April 2022, the company confirmed the pipe was a public sewer and because of the nature of the pipe she was not permitted to build over it.
- Consequently, she revised her intentions in respect of the proposed extension.
- Following a CCTV survey of the pipe by the company it became blocked, and she contacted the company to clear the blockage and on 22 June 2022 company engineers attended her property but declared that the pipe was not a company asset.
- On 24 June 2022, the company confirmed in writing that the pipe was private and not the company's responsibility. The customer states that she requested compensation for all wasted work and costs incurred but the company offered only £950.00, an amount she rejected as insufficient.
- Believing the company had not properly addressed her concerns she, on 26 November 2022, escalated her complaint to CCWater who took up the dispute with the company on her behalf.

- The records show that CCWater contacted the company on 05 December 2022 with a pre-investigation letter to request its version of events and its proposals to resolve the dispute.
- On 21 December 2022 the company responded and confirmed that it did not accept any liability and would not increase its previous offer of a goodwill payment. On the same date, CCWater advised her of the company's position.
- CCWater concluded that this was the final position of the company, and it could not take any further measures to have the company change its position and was thus closing her case.
- Continuing to be dissatisfied with the response of the company she has, on 29 March 2023, referred the matter to the WATRS Scheme where she requests that the company be directed to pay compensation in the amount of £30,000.00 and issue an apology.

The company's response is that:

- It provided its response to the claim in its package of documents submitted on 03 April 2023.
- It acknowledges that on 01 February 2022 the customer contacted it for confirmation of ownership of a sewer pipe in the vicinity of her property.
- It confirms that it provided the customer with a copy of a map that did not include the pipe in question because the company was not aware of its existence. The company says that the map contains the disclaimer that the map is for guidance purposes only and that the company accepts no liability for inaccuracies or omissions.
- It acknowledges that on 28 February 2022 the company incorrectly advised the customer that the pipe in question was a public sewer, and that on 08 April 2022 it advised her that the pipe could not be built over.
- It advised the customer to contact it further to discuss the possibility of either diverting or relaying the pipe, but says it has no record of the customer entering such discussions. The company believes that had the customer contacted it as recommended, further investigations would have identified the true ownership of the pipe. The company notes that instead the customer relied on advice from third-parties.
- On 22 June 2022, in response to advice from the customer that the pipe was blocked, its technicians attended the property and identified that the pipe was, in fact, private and not public. The company says it provided written confirmation of this on 24 June 2022.
- The customer has not substantiated her claim for £30,000.00 in compensation, nor has shown comparisons of actual costs against costs that would have been incurred if the extension had

been constructed as originally designed. The company denies being liable for costs incurred prior to the erroneous advice given on 28 February 2022 and records that it has made a generous goodwill offer of £950.00.

- In summary, it believes that the customer made the changes to her planned property alterations based on third-party advice and not on any advice given to her by the company, notwithstanding that she was led to understand that the pipe was a company asset.

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

- On 05 April 2023, the customer submitted detailed comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer reiterates her position that she based her changed plans on the information given to her by the company that the pipe was a public sewer, and she could not build over it. The customer says that the £30,000.00 sum of compensation sought is for the additional works which had to be done within the house that would not have been required had she built the extension as planned. The customer further contends that she has lost money in respect of the potential increased value of her home should the extension have been completed.

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 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 dispute relates to the customer's dissatisfaction that the company gave her incorrect information regarding the status of the sewer pipe adjacent to her property. The customer says she had to change plans for extending her dwelling as a result of the advice and this led to negative financial consequences. The customer says the company refuses to pay her a reasonable level of compensation.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I take note that the parties agree that the customer contacted the company on 01 February 2022 to seek confirmation that the sewer pipe running across her property was, as she believed, a private pipe.
4. The parties also agree that the company provided a map to the customer that did not show the presence of the pipe, and the company explained that it was not aware of its existence.
5. I can see that the company caveated the supply of the map by stating that :-

"The information indicated on this plan is provided only as a guide and no assurance as to its accuracy is given or implied. The Company accepts no liability whatsoever for any error or omission in the information".
6. However, I can give little weight to this statement because on 28 February 2022, the company wrote to the customer stating that the pipe was a public sewer. This was unambiguous.
7. Similarly, the company wrote again to the customer on 08 April 2022 stating that it did not give its consent for her to build over the pipe.
8. I can see that it was not until 22 June 2022 that the company understood that it was not responsible for the pipe and that it confirmed this in writing to the customer on 24 June 2022.
9. I take note that the company has explained the difficulties it can experience in identifying the existence and location of sewer pipes because there was no requirement for property owners to inform it of the existence of private sewers at the time of transfer, in 2011, under the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 when it became responsible for all pipes feeding into the public network.

10. However, this does not mitigate sufficiently the fact that different elements within the company did not appear to have access to the same systems and information. I am satisfied that it was this confusion that led to the company giving conflicting and erroneous information to the customer.
11. The customer, in her application to the WATRS Scheme has requested that the company be directed to pay her the sum of £30,000.00 in compensation. I note that Rule 6.4 of the Scheme limits the maximum amount of compensation that may be awarded to £10,000.00 for household customers.
12. I can see that the company has made a goodwill compensatory offer of £950.00 that the customer rejected.
13. From my reading of the evidence, I can see that the customer has listed certain values of purported losses against certain elements, but she has not submitted any evidence to substantiate the values.
14. The customer has stated that she had to forego the planned extension and instead had to remodel the interior layout of the existing dwelling. The customer contends that this course of action made redundant works that she had undertaken and also caused additional works to be necessary. I can see that she has listed these works in some considerable detail.
15. However, she has not substantiated the necessity for these works by providing professional reports from third-party experts, such as her architect, surveyor, engineer, etc. Neither has she evidenced the costs of the works.
16. I also have to take into consideration that the customer would have incurred both construction costs and construction supervision costs had she gone ahead fully with the planned extension. Again, she has not provided any evidence of costs, nor has she provided a comparison of the different costs showing the before and after situation once she took the decision to cease the extension.
17. Thus, I find, that the evidence does not establish that the customer suffered any financial loss as a direct result of any acts or omissions on the part of the company.
18. However, I am satisfied that the company's actions did contribute to the distress and inconvenience experienced by the customer, and I find that compensation for this is appropriate.
19. I take note that the customer has rejected a goodwill offer of £950.00, and I am thus content to grade the failure at Tier 4 level according to the *WATRS Guide to Compensation for Inconvenience and Distress* and award the sum of £2,000.00.

20. Additionally, I find an apology is appropriate and I direct that the company shall have an authorised representative provide a written apology to the customer.
21. My conclusion on the main issues is that although the company has failed to provide its services to the standard to be reasonably expected by the average person, the evidence does not establish that the customer is due compensation for the aborted construction works and works to the original layout of her house.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 27 April 2023.
- The customer has, on 04 May 2023, responded to the Preliminary Decision.
- The customer states that she has no evidence of financial loss because the company never made her aware that she would have to substantiate such losses. Thus, she did not retain all invoices, etc that would have proven her losses.
- The customer reiterates that the company did not clearly explain its complaints procedure, and it showed a lack of transparency and guidance in its dealings with her.
- The customer refutes the company's statement that it contacted her to discuss possible further investigations and claims that it simply wanted to re-direct and relay the pipe.
- The company has, on 05 May 2023, responded to the Preliminary Decision.
- The company states it believes the customer did not have to abort any of her construction works and refutes that it informed her that she could not complete her planned extension.
- The company reiterates its understanding that the customer altered her plans based on advice from a third-party design company. The company also reiterates that it refunded the customer the build-over fee that she had incurred.
- As stated in the section above entitled "*How is a WATRS decision reached*", I confirm that all the evidence submitted to me was examined and taken into consideration when crafting my decision.
- I remain satisfied that the customer has not established financial loss, nor has she supported the necessity for changing her planned works nor the costs thereof.
- I take note that the company refunded the build-over fee, but I am satisfied that this was unnecessarily incurred by the customer based on incorrect information from the company.
- I am satisfied that the company provided incorrect and inaccurate information to the customer and although I am not directing it to pay compensation for aborted works, I remain satisfied that the company's failure to manage the customer's account with a reasonable level of skill and care resulted in her experiencing unnecessary stress and inconvenience.

- I find that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the responses of the parties I am satisfied that no amendments are required to the Preliminary Decision.

Outcome

The company needs to take further actions:-

- Pay compensation in the amount of £2,000.00.
- Issue a written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 June 2023 to accept or reject this 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.



Peter R Sansom
MSc (Law); FCI Arb; FA Arb;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Independent Adjudicator