

WATRS

Water Redress Scheme

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DECISION

by Claire Andrews, Barrister, FCIArb

An adjudicator appointed by WATRS
under the Water Redress Scheme

Decision date: 21 July 2016

Adjudication Reference: WAT/ /0338

Between [REDACTED]¹ and [REDACTED]²

- The claim is made by the customer, [REDACTED], against a water and sewerage company, [REDACTED]
 - The claim dated 10 May 2016 is for the company to give compensation of £10,000.00 and an apology.
 - The position of the company is explained in its defence dated 6 July 2016 to which the customer has not responded.
 - The customer's claim is that the company conducted works in the street outside her home for 7 months without notice, caused damage and loss of enjoyment of her property, caused the loss of a sale with consequences for a planned move to New Zealand and damaged the mental health of her husband. She says that the company has given inadequate compensation.
 - The company's position is that it has fulfilled its legal responsibilities and is not liable for the customer's claim.
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Decision

1. The claim does not succeed.

Main issues

2. I consider that the main issues in this adjudication are:
 - a. Whether the company has failed to provide its services to the standard to be reasonably expected.

¹ Customer's address for correspondence: [REDACTED]

² Company's address for correspondence: [REDACTED]

- b. Whether the reasons given by the customer are sufficient to justify the remedies sought.

Background information

3. In order to succeed in a claim against the company the customer must prove 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 proved, the company will not be liable.
4. The customer and the company are aware of the facts of this case. I do not propose to recount all the facts in the same manner and order as the parties have done in their documents except where it is necessary for the purposes of this decision. I have carefully considered all of the documents submitted by the parties in support of their submissions and presented to me. The parties should also be reassured that if I have not referred to a particular document or matter specifically, this should not be taken to mean that I have not considered it in reaching my decision.

Customer's and company's positions

5. The customer submits that the company, without giving proper notice, started repair/construction work on its sewerage and waste water systems outside the customer's house in October 2015. This work went on for 7 months. The customer had a buyer for her house who withdrew her offer because of the inconvenience while this work continued and because the buyer believed that the company's activities would be a constant nuisance. The customer needed to sell her house to fund a move to New Zealand for her family and her husband had a job offer which he could not take up. The company has admitted a failure in its customer service and has awarded the customer compensation of £1,000.00 but the customer argues that this does not cover the loss that she has suffered. She claims compensation for:
 - Loss of £65,000.00 profit on the sale of her home - £8,000.00;
 - Damage and soiling to the customer's laminated floor - £3,000.00;
 - Damage to the customer's stones on her driveway - £200.00;
 - Soiling to the customer's paint work - £200.00;
 - Wasted solicitors' fees on the sale - £100.00;
 - Leaving bollards against the customer's fence for 1 week - £100.00;
 - Loss of use of the front garden for the period of the work - £50.00;
 - Devaluation of the customer's property due to the building of a stack which gives off emissions - £400.00;
 - Phone calls to the company - £200.00;
 - Damage to the customer's husband's health - £500.00;
 - Upset and general damage for the period of the work - £500.00.

6. The company asserts that the work that it undertook was properly authorised and conducted. It has followed all its policies, processes and legal and regulatory requirements whilst dealing with the issues that the customer has raised and it has not failed to provide services to the standard to be reasonably expected. In April 2016 the company offered compensation as a matter of goodwill as follows:

- £100.00 goodwill payment for carrying out work near the customer's home without proper notice;
- £200.00 for damage to small items including a damaged skateboard, car tyres and wipers;
- £25.00 for the number of times the customer had to pick up the bollards;
- £25.00 for car cleaning;
- £100.00 for the extra time the company took to finish the works;
- £25.00 because the customer did not receive the flyer about the company's intention relating to the increase in the height of the stack.

Adjudicator's findings and reasons

7. I find that:

- a. Although the customer's complaint is not about the provision of water or waste water services to her home, but rather about the environmental impact of work done by the company, the company has not suggested that the customer's complaint is not within the scope of the scheme and there has been an internal company complaint procedure on matters which are not excluded under rules 3.4 or 3.5 of the WATRS scheme rules.
- b. The customer claims additional compensation in respect of the carrying out of certain works next to her property which resulted after some months to improvements to a nearby waste water treatment station and included the building of a stack near her house which discharges gases released by biofuels. The customer says that she has been awarded a total compensatory figure of £1,000.00 but how this figure has been arrived at is not fully explained in the papers. As at April 2016, the company had offered the customer the sum of £475.00 which she had not accepted. This offer is explained in the papers submitted to me by the parties.
- c. The company states that under s169 of the Water Industry Act 1971 it has power to lay a pipe, inspect and maintain a pipe and carry out relevant works. It laid a pipe outside the customer's house which was therefore lawful. In the vicinity of the customer's house it constructed improvements to its waste water plant which were also authorised and lawful. As to this, I find that the customer has not proved that the company acted in any way unlawfully or that (subject to complaints about negligent or inconsiderate workmanship, for which see below) it interfered with the customer's enjoyment of her

own property in any way which was not permitted by law. I find that the actions of a waste water company in maintaining and upgrading its facilities in order to provide a service to the public was not contrary to the standard that one would reasonably expect of such a company. Although this process may cause disruption to individual customers and neighbouring properties and it may change in part the character of a location (for example by the construction of a 35ft stack), it does not follow that the company is liable to compensate an individual affected by this. Complaints by the customer which are derived from the fact that the company carried out work do not, therefore, succeed. This is explained further below.

- d. The company may be liable for loss or damage caused to the customer due to negligent or inconsiderate conduct of the work, however, I note that none of the matters complained of by the customer fall within the Ofwat Guaranteed Standards of Supply because the customer's water supply was not disrupted and waste services continued to be supplied. Nonetheless, the customer complains of lack of notice of work which would turn out to be disruptive and would take a long time. The company has admitted that although it took substantial steps to alert residents generally about the work, the customer was not warned about the pipework which would need to be installed in front of her house. As the conduct of work immediately outside the boundary of a house is a matter which is likely to cause considerable disruption to the occupant including preventing enjoyment of the customer's own garden, damage to the verges, presence of objects in the road, noise and construction traffic, this is significant. I find that a waste water company conducting works outside a customer's home for a long period would reasonably be expected to give adequate notice and it is apparent that such notice was given to other residents who would be affected by the company's activities. Moreover, it is apparent from the correspondence that the work in question took longer than was expected. Again, I find that the company failed in communicating to the customer the full scope of the disruption that she would experience. Both these matters constituted a failure on the part of the company to meet the standard that would reasonably be expected of it.
- e. The customer's claim for compensation falls into several types. The largest claim is for loss of profit on the sale of her home and diminution in its value due to construction of the stack. As to this I find that there are two reasons why this does not succeed. First is that, as explained above, insofar as the loss of profit which the customer has claimed was due to activity on the part of the company which was inherently lawful, no compensation to the customer falls due. Secondly, although the customer has proved that she lost one sale because one purchaser withdrew from the contract due to the disruption and also due to the purchaser's concerns about the construction of the property, the customer has not proved that there was a fall in the value of the property so

that if her home was re-marketed, she would not suffer that loss. This does not prove a fall in the value of the property. She has not proved that the emissions were harmful once the stack had been constructed at the required height. She has given no explanation as to whether the property was placed back on sale or, if not, why not. She has not explained why her husband was not able to re-apply to go to New Zealand either straight away or a short time after the conclusion of the company's work outside her house. Furthermore, in respect of her claim that her husband suffered depression in consequence of the loss of opportunity to sell the house, the customer has submitted no medical information which substantiates this claim. Last, I find that the company is not liable for the solicitor's costs relating to the lost sale because these were not reasonably foreseeable by the company at the time the work was undertaken. Accordingly, I find that the customer does not succeed in respect of these heads of claim.

- f. However, the failure to give notice prevented the customer from making appropriate plans. She submits that the family would not have tried to go to New Zealand during this period if they had understood that the work would take place and she has also supplied photographs showing some damage to her stones on the driveway due to loose soil, items being stacked against her fence and she asserts that soil was also stacked against this so that her fence became dirty. She complains of the presence of bollards and fencing which needed to be picked up on a regular basis and for loss of enjoyment of her front garden. She also says that her laminate floor was damaged and that her house needed to be repainted.
- g. As to the last two matters, I find that the customer has not proved that her laminate floor was damaged by the treading in of dirt. She has not submitted "before and after" photographs or any independent statement supporting that damage was caused. She has not shown that the floor has been replaced and there is no quotation or invoice which demonstrates that this work was done. The position is similar in respect of the need for repainting. Although the customer has pointed out to the company in correspondence that her home has been repainted and is now a darker colour, there is no evidence that this became necessary as a result of damage caused by the company's activities.
- h. As for the loss of stones in her front garden, although the customer has submitted a photograph of the stones she has not shown that these were reduced in number or that that the loss was due to the company's workmanship, nor has she submitted any documents which show the cost of any damage.
- i. In respect of the customer's complaint of damage caused by the presence of bollards and loss of the grass on the verge, the customer has not proved that she owned the

verge, which the photographs show to lie outside her fence. Moreover, the company promised in a letter sent to the customer in February 2016, that the company would make good the damage caused by reseeding the area in question and cleaning her fence panels. It promised that a sweeper would be used to remove surface dirt and its protective fencing but the bollards over the company's verge would remain in order to protect the pipe. There is no evidence that this work was not done, indeed, the company has submitted photographs which suggest that the area was left clean and tidy. There is no basis upon which the customer can complain about bollards left on a verge which is not her own.

- j. Overall, I find that the customer was entitled to be compensated by the company for consequences of having been given no notice of the works and for the fact that these went on for longer than promised. This claim for compensation is in reality one for compensation for the distress and inconvenience caused by the work, including the loss of use of her garden and the need to make telephone calls to the company and, perhaps, to others in order to find out what was happening. I find, having regard to the WATRS Guide to Compensation for Inconvenience and Distress that this claim would fall into and be at the upper end of tier 2, which would give a maximum claim of £500.00.
- k. As the company has already awarded the customer compensation in the sum of £800.00 (plus £200.00 for damage to skateboards, tyres, etc), I find that the customer is not entitled to a further award of compensation. Moreover, on 23 March 2016, the company apologised to the customer for the ongoing disruption and offered compensation. This was followed by further offers of compensation. I find that no further apology is required.

Conclusion

8. My conclusion on the main issues is therefore that:
 - a. The company has failed to provide its services to the standard to be reasonably expected in respect of the failure to give appropriate notice of the works to be done and because the works continued beyond the estimated time.
 - b. The reasons given by the customer are not sufficient to justify the claim because sufficient compensation has already been provided by the company.
9. Therefore, I conclude that the claim does not succeed.



**Claire Andrews
Adjudicator**