

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0350

Date of Decision: 1 December 2016

Complaint

The customer states that ██████ allowed a water leak to persist under the public pavement in 2009 which washed away the sand from the subsoil. The repair was defectively carried out and there is an area of settlement which has caused water to collect at her boundary and cause cracks in her paving. This is icy and dangerous in winter. The company has taken too long to resolve her complaint.

Defence

████ is not liable for the depression in the ground and has responded appropriately to the customer's complaint.

Findings

There is no evidence that the company caused the settlement of the ground or that it carried out an inadequate or insufficient repair. █████ responded to the customer's complaint when it was raised in 2009/2010 and again in 2015/2016.

Outcome

The company does not need to take any further action.

- **The customer must reply by 20 December 2016 to accept or reject this decision.**

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ADJUDICATOR'S DECISION

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Date of Decision: 1 December 2016

Party Details

Customer: ██████████

Customer's Representative: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- The customer's neighbour was affected in August 2009 by a leak outside the customer's property under the public pavement. On 21 October 2009 a leak close to the meter service manifold under the pavement was repaired by ██████████. By 27 October 2009, the area around the carrying out of the repair had sunk. This included the surface of the pavement, the customer's garden and the neighbour's garden. Water now collects on the pavement, in the garden and along the boundary between the customer's fence and her neighbour's path and her concrete has cracked. The customer states that this is due to the fact that the leak had washed away underground sand and so had caused the land around the pipe to collapse. An investigation was carried out in February 2010 and ██████████ concluded that the repair could not be carried out without also repairing the gardens because to do so would cause a tripping hazard between the gardens and the neighbour's pathway. The customer complains about (1) the company's refusal to explain why the leak under the pavement was permitted to go on for so long as to wash away the sub-sand; (2) the company's refusal to carry out the repair and (3) the period for which her complaint has continued without resolution to her satisfaction.
- The customer claims compensation in the sum of £2,270.00 being an estimate for work for repair of the sunken pavement and garden which ██████████ has agreed to carry out and £2,000.00 by way of a contingency for the cost of replacement of the base material.

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The company's response is that:

- The area in question is not in good condition but the fact that the ground has subsided directly above where repair works had taken place is not evidence that this was due to a fault on the part of the [REDACTED]. The company contends that when [REDACTED] inspected in 2009 and 2010, they did not conclude that [REDACTED] was responsible for the repair. On an inspection in early 2016 there are no visible signs of settlement around the area where the ground was reinstated after repairing the water pipe in 2009 and the fact that the joints of the patch are still intact show that [REDACTED]'s reinstatement has not sunk since the repair. The company does not accept liability and suggests that the damage may have been caused by parking vehicles in the area in question.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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?

Factual Background

1. The evidence submitted by both parties shows that a repair was carried out in August 2009 by [REDACTED] to the water supply pipes which ran under the pavement outside the customer's house. The customer says that signs of sinking of the ground were visible within a week of carrying out the repair. It is now agreed that the customer made a complaint within a matter of months and the area was inspected by the water company in February 2010.

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2. By a letter to the customer dated 18 February 2010, ■■■ said that the contractors who had carried out the repair had visited the site and did not believe that the pavement had sunk and that, as the garden had not sunk, there was no damage to the customer's garden. Any repair of the pavement would cause a step between the pavement and the customer's garden which would be a tripping hazard. The customer was offered a goodwill payment of £25.00. In a further letter dated in March 2010, the company stated that if the customer required the company to reconsider its position, a surveyor's report should be obtained by the customer.
3. The customer has not submitted a surveyor's report to the adjudicator and a manuscript note on the documentation submitted to me suggests that it was not possible to obtain such a report because the customer has had no permission from ■■■ to dig up the pavement.
4. By June 2015, Councillor ■■■ of ■■■ had become involved in the customer's case. He suggested that "the fact that the ground has subsided directly above where the works took place is evidence that the ground has not been compacted correctly (sic) or you have failed to use an appropriate back fill material". The company organised a site visit in June 2015 and took photographs. The photograph supplied to the adjudicator shows cracking of the joints around the customer's own waste manhole and water collecting in the lowest point of the paved area, which appears to be on the boundary of the customer's garden, her neighbour's garden and the pavement. This is consistent also with the customer's photographs which show an area of depression of the ground, one of which has been marked up by the customer as extending for the width of two semi-detached houses and which also show cracking of the pavement.
5. Following further contention and a visit by ■■■ in February 2016, ■■■ concluded:

"There are no visible signs of settlement around the area we reinstated and the joints of the patch are still intact which would not be the case if our reinstatement was sinking."
6. The customer contends that this answer fails to take into account that the sub-surface sand was probably washed away by 1000s of litres of water which did not rise to the surface in 2009 and so caused underground damage.

Findings on liability

7. I bear in mind that adjudication is an evidence-based process and that the burden lies on the customer to show that ■■■ did not match up to the standard of service delivery which would be expected by an average person of a water company. I find that ■■■ has investigated the

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customer's complaint on 3 occasions during 2 complaints raised in 2009/2010 and 2015/2016. On each occasion it has concluded that it is not liable to carry out remedial works. Although the customer has shown that there appears to be an area of depression of the ground around the vicinity of the repair which was undertaken in 2009, the company bears no liability for damage to the customer's garden if it has not caused the settlement and it was not responsible for a poorly performed repair that has caused this settlement to affect her own property.

8. The period of the leak: the customer alleges that ■■■ allowed a major leak to continue for a long period and to wash away the sub-sand. I find that the customer has submitted no evidence in support of this contention. There is no evidence that has been submitted to the adjudicator at all as to how long the leak in 2009 persisted. There is no evidence as to how much water was thought to have escaped. In documents submitted to CCWater, the company has made clear that the reports from 2009 show that on uncovering the pipe under the pavement, there was no leak but only "a damp patch". The customer has not, therefore, established that in ■■■ 2009 permitted a leak to persist that would have caused damage to the underground levels outside the customer's garden.

9. ■■■'s refusal to repair: In 2010, the company explained that it would not carry out any reinstatement work because this would cause a tripping hazard between the pavement and the customer's garden. Contrary to the customer's assertion, it is not clear from any paperwork that I have seen that ■■■ accepted the customer's conclusion that the leak had been poorly repaired. ■■■ made clear to the customer in March 2010 that it did not accept that contention and said that if the customer did not accept the company's conclusion, she could obtain a surveyor's report. No report has been obtained. There is no evidence before me that this would have been impossible: ■■■ Council has cooperated in agreeing to carry out works and there is no evidence that they would not have cooperated in obtaining a surveyor's report, nor is there any evidence that the company would not have assisted the customer in this regard. The presence alone of cracking and sinking in the area does not on its own, I find, show that this was due to the company's poor service provision, nor is the customer's perception that the area was seen to sink after the leak was repaired. This is particularly the case as the affected area extends significantly beyond the immediate vicinity of the repair but extends to a proposition that an area as wide as two semi-detached houses has been affected. ■■■'s conclusion, moreover, in early 2016 that the absence of visible signs of settlement around the repair and the integrity of the repair joints was, I find, in the absence of expert evidence to the contrary, a reasonable approach by ■■■ to the contentions raised by the customer. I find that the customer has not proved that ■■■ has failed to

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meet the standard reasonably to be expected of a water company in not carrying out the repair to the large area of cracking and settlement claimed for.

10. Period without resolution: It is clear from the documents submitted by the company that it had considered that this matter had been resolved in 2010 when it determined that it would not carry out a repair and it offered the customer a goodwill payment of £25.00. Although the customer denies that she agreed to a goodwill payment of £25.00, the customer's complaint does not appear to have been actively pursued, so far as the company was concerned. Thereafter, there is no evidence that █████ was asked by the customer to reconsider that position until it was asked to do so and its complaints procedure was invoked in 2015/2016. I find that when the matter was re-opened, the company responded with appropriate speed and carried out an investigation.

Conclusion

11. In these circumstances, I find that the customer has not shown that the company has failed to conduct itself in a manner which would reasonably be expected by an average person, and it follows that her claim for redress is not justified and she is not able to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 December 2016 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.

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Claire Andrews, Barrister, FCI Arb

Adjudicator

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