

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0413

Date of Decision: 13 December 2016

Complaint

The customer submits that the company damaged a fence whilst replacing the sewer pipe at his property and did not properly reinstate the land, causing a land drainage issue. Further, it refused to pay the remaining account charges of his land agent.

Defence

The company submits that the issues of whether it is legally obliged to install a land drainage scheme on the property and the amount it should pay towards the professional fees of the customer's land agent, fall outside the scope of WATRS as these matters should be dealt with by The Upper Tribunal (Lands Chamber). The customer has provided no evidence that it damaged his fencing and in any event it is under no obligation to repair the fencing; he would only be entitled to a claim for damages which he has not quantified.

Findings

WATRS is unable to consider the dispute regarding land drainage on the customer's property or the outstanding amount owed in land agents fees as The Upper Tribunal (Lands Chamber) is a more appropriate forum to consider these matters.

There is insufficient substantive evidence that the company caused damage to the customer's fencing.

Outcome

The company is not required to take any further action.

- The customer must reply by 10 January 2017 to accept or reject this decision.
- If the customer accepts this decision, the company will have to do what I have directed.
- If the customer rejects this decision, or does not respond, the company will not have to do what I have directed.

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Party Details

Customer: ██████████

Company: ██████████, a water and sewerage company

Case Outline

The customer's complaint is that:

- The company successfully replaced a sewer pipe on his land however the problem arose with the reinstatement of the land. This involves removing the subsoil on the working area; hammering the ground; spreading the surplus clay on top; re-hammering to level; replacing and re-hammering the subsoil and; replacing the top soil.
- The customer asserts the work carried out by the company resulted in drainage issues on the property. The company refused the rectification plan submitted by land drainage contractors ██████████ on the basis that it was too expensive, suggesting an alternative unsuitable scheme.
- The customer submits he then instructed alternative land drainage contractors ██████████ to come up with an alternative scheme, which it did and is the same as the ██████████ scheme.
- The customer requests that the company drain the pipeline and working area to the recommendations of the land drainage contractors.
- The customer submits that the company damaged fencing with its lorries in the course of carrying out the work.
- The customer requests that the company replace the damaged fencing.
- The customer also requests that the company pay the account balance (£2265.00) of his land agent ██████████ which the company has refused to pay.

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The company's response is that:

- The customer is the owner and occupier of farm land at [REDACTED] ('the Property').
- It is empowered to undertake pipe laying work on private land pursuant to section 159 of the Water Industry Act 1991 ('WIA'). It served on the customer the appropriate notices of its intention to enter the Property to undertake (sewage) pipe laying works, namely to replace a sewer pipe that crosses the Property on a new alignment to improve the sewer network flow in the area. This work was completed on 27 July 2014.
- It accepts that it is liable to pay the customer compensation if the value of any interest in the Property is depreciated by virtue of it exercising its power to carry out pipe laying works however the customer is not entitled to receive more than fair compensation taking into account of any betterment to the land or his interest. Since completion of the works its land agent and the customer's land agent have been engaged in negotiating a settlement for the customer's full and final compensation package that would reflect any element of betterment and incomplete reinstatement.
- The company asserts that the claim falls outside the scope of WATRS as the dispute does not concern either a waste water/sewerage service, rather the customer is in the same position that any landowner or occupier of land would be in where for example their land, is compulsory purchased. All the matters in dispute fall to be assessed in accordance with schedule 12, WIA. The company denies that it is legally obliged to carry out works that might nullify or mitigate damage or injury caused by the exercise of its power under section 159, WIA. Although it will often carry out mitigation works to reduce the amount of compensation payable, it is within its discretion not to. The obligation placed on it by Schedule 12, paragraph 2, WIA is to pay compensation.
- Claims for compensation under schedule 12, WIA do not go through its customer service complaints procedure as required by scheme rule 2.4 due to the assessment of compensation raising difficult questions of fact and law. Such requires the input of specialists, including land agents, who are experts in the value of agricultural land. Therefore the dispute does not concern "wastewater/sewerage service" or fall into any of categories as set out at 3.3 of the scheme rules.
- The company asserts that the claim should be referred to The Upper Tribunal (Lands Chamber), which is a more appropriate forum that decides disputes about land including compensation for land drainage works. It is also the forum stated in Schedule 12, WIA to decide any disputes concerning Schedule 12 paragraph 2.

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- In regards to the claim to repair fencing, if it had damaged the customer's fencing (which is denied) it may carry out repairs or alternatively pay compensation in accordance with its Code of Practice for Pipe laying. The company also contends it is more appropriate for this matter to be dealt with by The Upper Tribunal (Lands Chamber).

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?

1. I remind the parties that I am unable to determine disputes that fall outside of the scope of the scheme.
2. I acknowledge that the company undertook pipe work on the customer's private land which the customer alleged resulted in damage to the land. The company conducted some repair work however the customer alleged this caused drainage problems. The company refused to carry out further repair work and paid the customer a measure of compensation (£23,134.00), however the customer is unhappy with the resolution offered.
3. Having reviewed the case papers, I find that the following matters do not fall within the remit of the scheme: i) the claim concerning land drainage works and; ii) the claim for the company to pay the customer's (outstanding) land agents' fees of £2265.00. These aspects fall outside the scope for the following reasons:

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- a. They do not concern the types of dispute which fall within the scope of the scheme as set out at section 3.3 of the scheme rules:

*bills, payments, collections and debt recovery;
metering;
water supply services;
wastewater/sewerage services;
development and new supplies (insofar as they do not fall to be determined by Ofwat);
other issues which have been the subject of an internal company complaint procedure and which are not excluded under Rules 3.4 or 3.5.*

- b. Rather I find they concern: (i) alleged damage caused to the customer's land following the company exercising its statutory power to undertake pipe laying work on the customer's private land pursuant to section 159 WIA and; (ii) a claim in respect to unpaid charges (£2265.00) of the customer's land agent █████ appointed to act on his behalf in relation to the work carried out by the company and to negotiate a suitable rectification plan/compensation package with the company. As such I accept that these matters do not directly relate to any of the areas outlined at section 3.3.

- c. In light of Schedule 12, paragraph 2, WIA, I accept that the company is not obliged to carry out works that might nullify or mitigate damage or injury caused by the exercise of its power under section 159 WIA, rather it places an obligation on the company to pay compensation for any such damage.

- d. In the absence of any contrary submissions or evidence from the customer, I accept that The Upper Tribunal (Lands Chamber) has remit to decide disputes about land including compensation for land drainage works, as evidenced by the company. Furthermore, I accept that this is the forum stated in Schedule 12, WIA to decide disputes concerning Schedule 12 paragraph 2. In light of my above observations, on balance I am satisfied that The Upper Tribunal (Lands Chamber) is a more appropriate forum to consider these claims. I am satisfied this constitutes an exclusion as set out at rule 3.4:

WATRS may reject all or part of an application to the Scheme where it considers that:- a customer should be referred to a more appropriate forum for the resolution of the dispute (3.4.1)

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4. Therefore, I find that the claim regarding land drainage works and the customer's land agent fees do not fall within the scope of the scheme and as such I will not address them further in accordance with rule 3.1.
5. In regards to the claim regarding the damage caused to the customer's fencing, as this claim does not relate to land drainage, I do not accept that The Upper Tribunal (Lands Chamber) is a more appropriate forum to consider this claim and therefore I find this claim is not excluded under rule 3.4 or any other rule. I shall therefore proceed to consider this claim as I am satisfied it falls within "other issues..." in accordance with rule 3.3.
6. I remind the parties it is the customer who must provide evidence to prove the claim. Where assertions are made by either party without supporting evidence, they are unlikely to be accepted as proven. The customer has not submitted any evidence of the damage to the fencing allegedly caused by the company. As such, I am not satisfied that the customer has established that the company caused such damage.
7. It therefore follows that there is insufficient evidence of any failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company is not required to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 January 2017 to accept or reject this decision.
- If you choose to reject this decision, WATRS will close the case.
- 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.

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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb

Adjudicator

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