

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0572

Date of Decision: 12 September 2017

#### Complaint

The customer submits that there was a problem with the shared sewer pipes located underneath his driveway. This has resulted in a part of his driveway being dug up to fix the problem and re-tarmacked. The driveway is over 20 years old, it has all weathered at the same pace and all looks uniform. The new tarmac is in stark contrast to the rest of the driveway and is an eyesore. It is only right that the whole driveway is put back in the same position it was prior to the problem with the company's pipes occurring.

#### Defence

The company submits that the issue in this case is whether "damage" has been caused to the customer's driveway. Under Paragraph 3 of Schedule 12 of the Water Industry Act (WIA) 1991, any dispute arising as to the fact of damage, or as to the amount of compensation shall be referred to arbitration or determination by the Director. A reasonable person would not consider a difference in colour of the tarmac as damage. The issue is purely cosmetic and attributable to the customer's own personal preferences. The alleged damage is not in fact damage and no compensation is due.

#### Findings

No complaint alleging that the driveway has been damaged by the company's works has been raised by the customer, therefore this claim is not an allegation of "damage" in relation to Paragraph 3 of Schedule 12 of the WIA. In light of all of the evidence submitted, particularly bearing in mind the size of the patch and a staff member's own observations about the impact on the customer's driveway, I am not satisfied that a reasonable person would consider it appropriate to leave the driveway as the company has done. I find that it would be fair and reasonable in this particular case for the company meet the customer's request for compensation to re-paint the driveway.

#### Outcome

The company needs to take the following further action:

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I therefore direct that the company pay the customer compensation in the sum of £451.20.

The customer must reply by 10 October 2017 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ 0572

Date of Decision: 12 September 2017

## Party Details

Customer: ██████████

Company: ██████████

## Case Outline

### **The customer's complaint is that:**

- There was a problem with the shared sewer pipes located underneath his driveway. This has resulted in a part of his driveway being dug up and replaced. He has lived in the property since 2009 and estimates that the driveway is over 20 years old, it does not look new in the slightest. It has all weathered at the same pace and all looks uniform. His concern was that after this work was completed, he would have a patch of brand new tarmac in the middle of the driveway. The work to fix the problem started on Wednesday 7 June 2017 and was completed Friday 9 June 2017. Initially there was an "L" shaped hole but at his request the company made it into a square as he hoped it would look better. However, the finished product is still an eyesore. The company's website says colour matching will be done on outside work. It is clear that no effort has been made to match the colour or minimise colour differences. He feels it is only right that the whole driveway is put back in the same position it was prior to the problem with the company's pipes occurring.
- The customer requests that the company provide a service, specifically, *"ideally I would like all the driveway to be replaced but as a compromise I found a company that would paint the driveway so that it would all look uniform. The quote for this work was just over £451.20. I would like this to be paid for so that my driveway does not look like such an eyesore."* The customer requests compensation in the sum of £451.20.

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### **The company's response is that:**

- It has a statutory duty to undertake works in order to prevent damage to its apparatus, damage to the area in which its apparatus sits or personal injury. Should damage be caused as a result of such works under Paragraph 3 of Schedule 12 of the Water Industry Act (WIA) 1991, any dispute arising as to the fact of damage, or as to the amount of compensation shall be referred to arbitration. Further, under Paragraph 3, if the compensation claimed does not exceed £5,000, all questions as to the fact of damage, liability to pay compensation and the amount of compensation may be referred to the Director for determination.
- The issue in this case is whether “damage” has been caused to the customer's driveway. A reasonable person would not consider a difference in colour of the tarmac as damage. The issue is purely cosmetic and attributable to the customer's own personal preferences. The alleged damage is not in fact damage and no compensation is due.
- The complaint was referred to the Director's review team on 4 August 2017, who considered that the appropriate course of action had been taken and found that damage had not occurred.
- Whilst it is agreed that the sum claimed by the customer is relatively minor, such a claim would open the “flood gates” for similar claims for compensation. It would be inequitable to allow one customer to effectively have a new driveway because maintenance work had been completed. If such an allowance was made other customers would seek similar provisions which would result in increased operational expenditure which would ultimately be borne by its customers.

### **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.

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### How was this decision reached?

1. I must remind the parties that under s.5.4.3 of the WATRS Rules, the customer cannot introduce new matters or evidence in their comments on the company's response. Any such new matters or new evidence must be disregarded by the adjudicator.
2. The company submits that the issue in this case is whether "damage" has been caused to the customer's driveway. The company refers to Paragraph 3 of Schedule 12 of the WIA which states that any dispute arising as to the fact of damage or as to the amount of compensation shall be referred to arbitration, or if as in this case, the amount claimed does not exceed £5,000; it should be referred to the Director for determination.
3. Under WATRS Rule 3.3, WATRS can only disregard a statutory reference to arbitration if it relates to metering and/or water supply. Any other statutory references to arbitration including claims about property damage in relation to Paragraph 4 of Schedule 12 of the WIA fall outside the scope of the WATRS.
4. However, having carefully considered the matter, no complaint alleging that the driveway has been damaged by the company's works has been raised by the customer. The complaint that has been raised is that the aesthetic appearance of the driveway is not to the customer's satisfaction. I am therefore not satisfied that this claim concerns an allegation of damage in relation to Paragraph 3 of Schedule 12.
5. I shall proceed on this basis.
6. It is not in dispute that there is a difference in colour between the customer's existing driveway and the new tarmac patch.
7. Photographs of the customer's driveway have been submitted in evidence. These photographs show a large square patch of tarmac. There is a clear colour difference between the patch and the surrounding area. The patch is black in colour in stark contrast to the surrounding area which is a weathered light brown. The patch also takes up a fair proportion of the driveway and is unmissable.

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8. I am also particularly mindful of comments made by a member of the company's staff in an account note of a telephone conversation between the parties which took place on 26 June 2017. The member of staff stated:

*"The conversation quickly turned to our decision and ██████ made it clear that he remains unhappy with our explanation and the fact that we propose no solution. I do agree (its hard not to when you see it) that there is a stark difference in colours and that it has had a big impact on his driveway and the general appearance."*

9. Further, I am also mindful of the information on the company's website submitted by the customer. The company acknowledges that *"all reinstatement material is new and therefore has not undergone ageing or weathering to the same degree that the original material has."* However, the company states that it will *"endeavor to match as close as possible to the existing material in order to minimise colour differences."* In light of this, I find that the company gives customers a reasonable expectation that colours will match as much as possible, but this has not been done in this case.

10. Having carefully considered the matter, in light of all of the evidence submitted, particularly bearing in mind the size of the patch and the staff member's own observations about the impact on the customer's driveway, I am not satisfied that a reasonable person would consider it appropriate to leave the driveway as the company has done. I am therefore not satisfied that the company provided its services to the standard to be reasonably expected by the average person in relation to the reinstatement of the tarmac and colour difference.

11. For the avoidance of doubt, I note the company's submissions that a decision in this vein would set a precedent for other customers to bring similar claims for compensation. I remind the parties that each case is dealt with on its own merits, and that previous WATRS decisions do not set precedents. Therefore, any findings or awards of compensation made in this case will have no bearing on any future claims made by this customer or any other customers. I do not conclude that any and all colour differences following works carried out by a water company should be compensated. I expressly acknowledge that companies cannot reasonably be expected to restore the appearance exactly as it was prior to works, but in this particular case, for the reasons given in this decision, I find that the appearance of the customer's driveway was

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detrimentally affected to such a significant extent that it is appropriate in this individual case for the company to cover the reasonable cost of rectifying its appearance.

12. Accordingly, I find that it would be fair and reasonable in this particular case for the company to meet the customer's request for redress. The customer requests compensation in the sum of £451.20 to paint the driveway. In light of the company's own submissions, I find that this sum is fair and reasonable in the circumstances. I therefore direct that the company pay the customer compensation in the sum of £451.20.

### **Outcome**

The company needs to take the following further action:

I direct that the company pay the customer compensation in the sum of £451.20.

### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 October 2017 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.

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**U Obi LLB (Hons) MCI Arb  
Adjudicator**

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