

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0664

Date of Decision: 23 February 2018

#### Complaint

The customer submits that he made a complaint to the company with regard to severe water leaks that have been ongoing for over two years. The company dug up the full length of his driveway and did not reinstate it to its original condition. The road is now two inches lower than it was previously and is damaging his tires. The water leak over the two years has also seriously damaged drainage channels in the main road. The company has acted negligently with no regard to the safety of road users.

#### Defence

The company disputes that there has been an ongoing leak for two years in the customer's road. The company states that each time it received reports of leaks, it has acted promptly in completing the repair. Excavations were carried out in the road directly outside the customer's driveway and to the left hand side of the dropped kerb of the customer's property. It did not dig up customer's driveway or touch his dropped kerb. There was an obvious step as a result of a temporary reinstatement following works done. However, this was permanently corrected on 14 September 2017. The road has been in a poor condition for a number of years, which cannot be attributed to leaks from its network. The local authority has confirmed that there is no more work to be done as far as the company is concerned. No offer of settlement was made.

#### Findings

There is no substantive evidence to show that there has been an ongoing leak for the past two years. The evidence shows that following the identification of a leak around August 2017, excavations works took place on the road directly outside the customer's driveway and adjacent to the left hand side of the dropped kerb of the customer's property. There is no evidence to show that any work took place on the customer's property itself. Evidence from the local authority shows that the company conducted the permanent reinstatement works to the standard to be reasonably expected and that the company is not responsible for the poor condition of the road.

#### Outcome

The company does not need to take any further action.

The customer must reply by 23 March 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0664

Date of Decision: 23 February 2018

## Party Details

Customer: \_\_\_\_\_

Company: \_\_\_\_\_

## Case Outline

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

- He made a complaint to the company with regard to severe water leaks that have been ongoing for over two years.
- The company dug up the full length of his driveway and did not reinstate it to its original state. The road is now two inches lower than it was previously and is damaging his tires on entry into his driveway. The company also dug this up for no reason as no leak was found.
- In November 2017, he had to lay down tarmac himself at his own expense as he was fed up with driving on and off his driveway with the sharp edge of the kerb cutting into his wheels.
- The substantial water leak over the two years has also seriously damaged ten large rain water drainage channels in the main road. This has lifted the drainage channels causing trip hazards and trouble for drivers driving into the cul-de-sac.
- He feels that the company has acted negligently with no regard to the safety of road users.
- The customer requests that the company take responsibility for the damage caused and rectify the issues; write a letter of apology to all the residents in Oak Street that have been affected by the damage to the road; and pay compensation in the sum of £336.72 to cover the cost of four damaged tires.

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

- As part of its routine leakage investigations, a leak was identified on its network in Oak Street and a work order was raised for repairs to be carried out on 1 August 2017. Due to issues with cars parking in the area it had pre-coned, there were delays in starting work and excavations could not begin until 24 August 2017. The original excavation was temporarily filled and the job was aborted the same day, as it became apparent that it would need to dig in another location to find the source of the leak. Work started again on 29 August 2017 and it repaired a leak to a communication pipe and a leaking ferrule joint. This excavation was filled and another temporary reinstatement laid on 31 August 2017. On 5 September 2017, a further work order was raised for another fitting which would require another excavation. Work started on 12 September 2017. It finished all work to repair the leaks and a final permanent reinstatement was completed on 14 September 2017. A total of 3 excavations were carried out, 2 of which were in the road directly outside the customer's driveway, and the third was adjacent to the left hand side of the dropped kerb of the customer's property. With all 3 jobs, it did not dig up customer's driveway, or touch his dropped kerb.
- In addition, the reinstatement has been inspected by the New Roads and Streetworks Team Leader at [ ] Council, who has confirmed that there is no more work to be done at this location as far as the company is concerned. It also disputes that there has been an ongoing leak for two years in Oak Street. Its records show that each time it has received reports of leaks in Oak Street, it has acted promptly in completing the repair.
- In addition, the road has been in a poor condition for a number of years, which cannot be attributed to leaks from its network and this has been confirmed by the local authority.
- It has recognised the inconvenience caused to the customer by the work which blocked access to his driveway, and have paid £50.00 in compensation for this. However, it does not agree that any further remedial work is appropriate.

### **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.

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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 adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his/her case on the balance of probability.
2. I must also remind the parties that under WATRS Rule 5.4.3 comments may only be on points raised in the company's response and must not introduce any new matters or any new evidence. Any such new matters or new evidence must be disregarded by the adjudicator. I am therefore unable to take account of the new evidence submitted by the customer in the Reply to the company's Defence.
3. I also acknowledge the customer's submissions about other residents. However, again for the purposes of this decision my remit is to determine the issues between the customer and the company. Any submissions about other residents or requests for redress on behalf of other residents cannot be considered.

### ***Negligence***

4. I note the customer's submissions that the company has been negligent. I consider that the issue of "negligence" is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle; however, I consider that I remain able to consider the dispute by reviewing whether or not the company failed to provide its services to the standard to be reasonably expected.

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### ***Ongoing Leak for over 2 years***

5. No substantive evidence has been submitted to show that there has been an ongoing leak in the customer's street for the past two years.
6. In the absence of any substantive evidence showing otherwise, I accept the excerpts from 22 August 2014 from the company's Work Management Information System which confirms the company's submission that each time it has received reports of leaks in Oak Street, it has acted promptly in investigating and completing any repairs.
7. I also note the email from the New Roads and Streetworks Team Leader at [ ] Council to Councillor ■■■■ dated 6 October 2017, in which the Team Leader confirmed that *"there is no evidence to substantiate the claim that there has been a water leak in Oak Street for over two years."*
8. In light of the above, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard.

### ***Leak identified around August 2017***

9. The company submits that as part of its routine leakage investigations, a leak was identified on its network in Oak Street and on 1 August 2017 a work order was raised for repairs to be carried out.
10. The customer submits that during the works in August 2017 the company dug up the road for no reason as no leak was found.
11. The company does not dispute that excavation works which began on 24 August 2017 had to be aborted on the same day. The company states that this was because it became apparent that it would need to dig in another location to find the source of the leak. I note the company's submissions, in correspondence to the customer, that that water can travel for some distance from the site of a broken pipe to where the water is showing therefore more than one trial hole is often needed as part of its investigations. Having carefully considered the matter, I am inclined to accept the company's submissions on a balance of probabilities. I also note the company's

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submission that when work did re-start on 29 August 2017, it found and repaired a leak to a communication pipe and a leaking ferrule joint. There is therefore no evidence to show that excavations were undertaken unnecessarily and that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard. I note that the company has paid the customer £50.00 compensation for the inconvenience caused by the works. I am satisfied that this was appropriate.

### ***Reinstatement following works***

12. The customer states that the company dug up the full length of his driveway and did not reinstate it to its original condition. The evidence shows that the works took place on the road directly outside the customer's driveway and adjacent to the left hand side of the dropped kerb of the customer's property. There is no evidence to show that any work took place on the customer's property itself. I therefore find that the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard.
13. The customer states that the road is now two inches lower than it was previously and is damaging his tires.
14. The company submits that it does not dispute that there was an obvious step as a result of the temporary reinstatement laid on 31 August 2017. However, it states that this was permanently corrected on 14 September 2017. The reinstatement has also been inspected by the New Roads and Streetworks Team Leader at [ ] Council, who has confirmed that there is no more work to be done at this location as far as [ ] are concerned. The company further submits that in light of the customer's complaint, arrangements were made for current photographs to be taken for clarification and this was done on 31 January 2018. The company states that based on these photographs, there is no longer an obvious step to the dropped kerb that requires further remedial.
15. In his Reply to the Defence, the customer refutes the company's submission and states that in November 2017 he laid down tarmac himself at his own expense to remedy the situation. The customer has not submitted any evidence to support his submission.
16. I also note the 6 October 2017 email from the New Roads and Streetworks Team Leader at [ ] Council, sent after the company submits that it permanently corrected the reinstatement on [ ]

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14 September 2017. In his email, the Team Leader confirmed that following a site visit the local authority does not believe that any further work by the company is required. I am particularly mindful that the evidence shows that the local authority regulates the work done by the company on public highways. In light of which, the customer has not shown that the company has failed to provide its services to the standard to be reasonably expected and is liable to meet the cost of replacement tires.

### ***Damaged drainage channels***

17. Finally, it is not in dispute that there are damaged drainage channels in the customer's road and that the road is in a poor condition. This is confirmed by photographs submitted by both parties in evidence.

18. However, I again note the email from the New Roads and Streetworks Team Leader at Brent Council, in which the Team Leader confirmed that following a site meeting the local authority does not believe that the loose channels in the carriageway can be attributed to any leaks and that again no further work is required of the company.

19. In light of the above, and in the absence of any substantive evidence showing otherwise, I find that the customer has not shown that the company is responsible for the poor condition of the road and is liable to fix the road. The customer has not shown that the company has failed to provide its services to the standard to be reasonably expected in this regard.

20. Consequently, in view of all of the above the customer's claim is unable 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.

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- The customer must reply by 23 March 2018 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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**Uju Obi LLB (Hons) MCI Arb**  
**Adjudicator**

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