WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0861

Date of Decision: 29 October 2018

Complaint

The customer states that the company undertook work that damaged her garden, and made statements to her neighbour that damaged their relationship. She seeks for her garden to be returned to its original state, and for the company to pay compensation of £1,850.00 for the damage done and additional compensation for stress.

Defence

The company states that its reinstatement of the customer's garden was of acceptable quality, and that the customer is not entitled to the compensation being claimed.

The company has waived the charge of £416.71 owed by the customer for the work undertaken by the company.

Findings

The company failed to provide its services to the standard to be reasonably expected by the average person with respect to statements made to the customer's neighbour. However, the company has already sufficiently compensated the customer for this failure.

Outcome

The company does not need to take any further action.

The customer must reply by 26 November 2018 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0861

Date of Decision: 29 October 2018

Party Details

Customer: [ ]

Company: [ ]

Case Outline

The customer's complaint is that:

- The company's contractors attended the customer's property to fix a pipe without her being notified in advance of the date on which the visit would occur.
- The company changed the originally agreed date with her neighbour, rather than herself.
- As a result, she was not present to prevent damage to her garden, including to plants of great sentimental value.
- Significant damage was done to her garden as the pipes were not where the contractors had expected them to be.
- The company had been aware of the leak for a year before she was informed.
- During that time various other companies had reported that the pipes were in good working order.
- Subsidence has affected her fencing and gateway.
- The company's representatives stated to her neighbour that she was responsible for delays to repairs of the pipework, which was not true. As a result, her relationship with her neighbour has been damaged.
- She has had poor customer service experiences with the company's representatives.
- The company cancelled the invoice of £416.00 for the compulsory repair work undertaken and explained why the work was undertaken when it was.
- An additional payment of £100.00 has also been offered.

- The customer seeks for her garden to be returned to its original state, and for the company to pay compensation of £1,850.00 for the damage done and additional compensation for stress.

The company's response is that:

- The customer contacted the company in April 2014 regarding a possible leak in the supply to her property. A visit was undertaken, but no leak was found. The customer was notified that there were four properties on a joint supply, and additional work would be required to locate the leak, involving all four properties.
- Neither the customer nor her neighbours made contact to arrange further investigations.
- In July 2015 the company was contacted by [ ] Housing Association regarding subsidence in the customer's garden and in the public highway outside the property. The company attended the area but no leaks were found.
- On 2 June 2016 the company identified a leak on the private water supply pipe shared by the customer and three neighbours.
- Letters were sent to the customer and to her three neighbours to inform them of the leak and of their obligation to repair it.
- The customer contacted the company on 20 June 2016 to report subsidence around a manhole in her garden. The company attended and examined the sewer, but found no issues.
- On 4 July 2016 the company sent a second letter to the customer and to her three neighbours, as it had received no response to the first letter.
- The customer contacted the company on 8 July 2016 to notify it of subsidence affecting the lamp post and kerb outside her property, which she suggested indicated that the leak was not in her private supply pipe. The company attended, but no leak was found, confirming that the leak was in the customer's private supply pipe.
- The customer contacted the company on 28 July 2016 to report further issues with subsidence and that she had been unable to find a leak. After checking its notes, the company found that a plumber visiting another property had reported that he believed there was a leak in the supply to the customer's property.
- On 6 September 2016 the company sent enforcement letters to the customer and to her three neighbours.
- A second enforcement letter was sent on 19 September 2016 as no response was received to the first enforcement letter.

- The customer contacted the company on 20 September 2016 about subsidence and damage in her garden. The company notified the customer that an enforced repair of the leak was now due to be carried out.
- On 27 September 2016 the customer contacted the company about a customer service issue, which the company acknowledged could have been handled better. The customer was notified again that an enforced repair was due to be undertaken, and an appointment was arranged for 25 October 2016.
- On 3 October 2016, letters were sent to the customer and to her three neighbours confirming that the repair would be undertaken on 25 October 2016.
- A plumber attended the customer's property on 25 October 2016 and identified that the leak was under the steps in the customer's garden.
- The customer contacted the company later that day about a customer service issue, and arrangements were made to schedule the leak repair.
- After an unsuccessful attempt to undertake the work in November 2016, the company notified the customer and her three neighbours on 16 December 2016 that the work would be undertaken on 5 January 2017.
- A plumber attended the customer's property on 5 January 2017 but could not complete the work.
- On 9 January 2017 the work was rescheduled for 11 January 2017 and messages were left for the customer and her three neighbours to notify them.
- The repair was undertaken on 11 January 2017.
- The customer subsequently complained to the company about her unhappiness with the reinstatement of her garden.
- At this time the company agreed to waive the charge of £416.71 owed by the customer for the work undertaken by the company, although the company's records do not clarify why.
- The customer maintained her complaint, including taking her complaint to the Consumer Council for Water ("CCWater").
- A representative of CCWater visited the customer's property along with a representative of the company. CCWater's representative was happy with the reinstatement undertaken by the company.
- The company argues that its reinstatement of the customer's garden was of acceptable quality, and that the customer is not entitled to the compensation being claimed.

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.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show 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 shown, the company will not be liable.

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. The core of the customer's complaint involves work undertaken by the company pursuant to Section 75 of the Water Industry Act 1991. Under Section 75, where water is being wasted the company may serve notice on a customer requiring the customer "to take such steps as may be specified in the notice as necessary" to stop the wastage. If the customer does not take the steps specified in the notice, the company is empowered to "take those steps itself".

2. The company has sufficiently established that it was justified in concluding that there was a leak at the customer's property. It has also established that it properly served an Article 75 notice upon the customer, but the customer did not undertake the work required by the notice. As a result, the company was legally entitled to undertake the work performed at the customer's property.

3. The customer's concern, however, is not that the work was undertaken, but that it was undertaken in such a manner that damage was caused to her garden, including the loss of

plants that she would have been able to relocate had she been proper notice of when the work was to be undertaken.

4. The customer has displayed convincing honesty throughout the process of making her complaint, as shown consistently in her discussions with CCWater. I accept, therefore, the customer's statement that her garden is important to her, that it was significantly impacted upon by the works undertaken by the company, and that she is unhappy with the efforts undertaken by the company to reinstate her garden.

5. Article 75, however, places no obligation on the company to restore the customer's property to its original condition, or even just to a condition satisfactory to the customer. This does not mean that Article 75 provides no protection to a customer, but this protection comes in the form of the company's obligation to allow a customer to undertake work herself, in accordance with her own specifications, if she is willing to do so. Only if the customer does not take advantage of this opportunity may the company itself undertake the necessary work.

6. Nonetheless, while Article 75 does not impose specific obligations on the company regarding how it undertakes work on a customer's property, the company will be liable to a customer if it undertakes such work negligently.

7. On the basis of the evidence in the present case, however, I cannot find that the company undertook its work on the customer's property negligently. The work was significantly more extensive than the customer reasonably expected, but the company has provided a reasonable explanation for the extent of the works undertaken, relating to the difficulties that can be encountered in locating private pipes.

8. In addition, while I accept that the customer is genuinely unhappy with the reinstatement undertaken by the company, on the basis of the evidence available to me I find that the work was undertaken in a competent and professional manner. This is most clearly reflected in the fact that although a CCWater representative visited the customer's property with respect to the customer's complaint, his notes upon that visit do not report that he found the company's work to have been of unacceptable quality.

9. The customer also objects that she was unaware that the work was to be undertaken on the date on which it was performed, and I accept the honesty of the customer's statement that she

was unaware that the work was scheduled to be performed on 11 January 2018. Nonetheless, the records produced by the company note that a message was left for the customer on 9 January 2018 that the work would be undertaken on 11 January 2018. The company's notes do not state how the message was left, but in the context of the other interactions between the customer and the company I find it more likely than not that the message was left by phone. While there is no guarantee that such a message would be collected by the customer in a timely manner, and the record is clear that the customer had many issues with which she was dealing at the time, I nonetheless find that this was a reasonable approach for the company to take.

10. I find, therefore, that the company fulfilled its duty of care to the customer by leaving a message notifying her that work would be undertaken on her property on 11 January 2017, even if this message ultimately failed to reach the customer, as she states is the case.

11. As a result, although I accept that the customer is unhappy with the impact of the company's actions on her garden, the company was not required to restore the customer's garden to its original condition, and I find that the company has performed the work that it undertook on the customer's property, including with respect to the reinstatement of the customer's garden, to the standard to be reasonably expected by the average person.

12. Consequently, the customer's claims for additional work to be undertaken on her garden and for compensation for damage to her garden do not succeed.

13. The customer also requests compensation for stress, and has consistently argued that a representative of the company spoke to one of her neighbours and placed the blame on the customer for the inconvenience they were experiencing. The customer has been consistent and detailed in her complaints on this point, and I find on the balance of the evidence available to me that the customer's account is true. I also find that this constituted a breach of the company's duty of care to the customer, and that as a result of this breach the customer has experienced significant distress.

14. Nonetheless, the customer acknowledges that the company has already apologized to her for this incident, and the company has also already waived the £416.71 owed by the customer for the work undertaken by the company. While the company itself is unclear why this was done, I have found that the company had the legal right to impose this charge on the customer, and the customer was not entitled to compensation for the work the company undertook on her garden.

15. As a result, I find that the company's decision to waive this charge is best understood as being compensation for the customer service problems the customer experienced, including the improper communication with the customer's neighbor. I also find that £416.71 constitutes fair and appropriate compensation for the company's failure in its duty of care to the customer regarding its communications with her neighbor.

16. Consequently, while the company failed to provide its services to the customer to the standard to be reasonably expected by the average person, no additional compensation is due.

17. For the reasons give above, the customer's claim does not 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 26 November 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.

Tony Cole

Tony Cole, FCIArb

Adjudicator