

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0898

Date of Decision: 7 September 2018

Complaint

The customer submits that on 6 January 2018, a mains water pipe burst outside her home. The company carried out repair work and as part of this repair work dug up a part of the road and her dropped kerb. She had personally paid for the kerb to be dropped. She made it clear to the company that when it completed the work she did not want it to just patch the area it had dug up, she also wanted all of the kerb to be re-laid back to how the company had found it prior to the works. However, the company just patched up the hole with tarmac. She has constantly requested that the company re-do the dropped kerb and re-tarmac the kerb, and has had to chase the company during the complaints process. The customer requests that the company re-tarmac the drive and replace the dropped kerb to a satisfactory standard.

Defence

The company submits that the work carried out outside the customer's property was on the public highway. No excavation was made on the customer's private property. It has fully reinstated the area that was excavated. It has not received notice from the highways authority that the reinstatement is defective. It is under no obligation to do the work requested by the customer. However, as a gesture of goodwill, it has offered to reinstate the footpath across the width of the driveway [*the correspondence indicates that this does not meet the customer's request to re-tarmac the entire footpath*] and reset the kerbstones.

Findings

The company failed to provide an acceptable level of customer service in its handling of the customer's complaint. In addition, I am satisfied it is fair and reasonable to expect that, following the completion of any necessary works, that the company would return an area to the same condition in which it found it. I find that a reasonable person would expect the company to have reinstated the dropped kerb and to do so to a satisfactory standard. The company failed to provide its services to the standard to be reasonably expected by the average person in these regards. In light of which, it is fair and reasonable in the circumstances, on this occasion, to direct that the company re-tarmac the whole footpath immediately in front of the customer's driveway. Photographs show that this is a rectangular box of tarmacked ground, bordered by the customer's driveway at the front, the road at the rear, and grass, tarmac and concrete paving slabs to the sides.

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Outcome

The company needs to take the following further action:

I direct that the company reinstate the dropped kerb. I also direct that the company re-tarmac the whole footpath immediately in front of the customer's driveway. Photographs show that this is a rectangular box of tarmacked ground, bordered by the customer's driveway at the front, the road at the rear, and grass, tarmac and concrete paving slabs to the sides. This is the area that should be re-tarmacked.

The customer must reply by 5 October 2018 to accept or reject this decision.

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The company's response is that:

- On 6 January 2018, the customer reported a leak outside her property. It attended the site the same day and identified a burst 600mm water main. A temporary repair was carried out on 6 and 7 January 2018, but due to the size and depth of the pipe and the engineering difficulties this presented, the repair could not be fully completed. Following further works on 9 and 11 January 2018, repairs were fully completed and the area reinstated on 15 January 2018.
- The customer has advised that she is not happy with the reinstatement that has been carried out. At some point in the past the customer paid to have a dropped kerb installed outside her property. In addition, the reinstatement left a patch of tarmac that was a different colour to the rest of the footpath.
- Before carrying out any work in the public highway, it has to obtain a permit from the local highway authority to do so. On completion of any work it must carry out a satisfactory reinstatement of any areas that have been excavated. If the local highway authority deems that a reinstatement has not been carried out to the required standard it can serve notice to correct it. It has not received notice from the highways authority that the reinstatement is defective.
- The work carried out outside the customer's property was on the public highway. No excavation was made on the customer's private property. It has fully reinstated the area that was excavated and is under no obligation to extend this to include the area requested by the customer. This has been confirmed in discussions between it and [] Highways. Whilst the customer paid to have the dropped kerb installed several years ago, this remains part of the public highway. It has reinstated the area as required. It does not consider it necessary to carry out any further reinstatement.
- However, as a gesture of goodwill, it has offered to reinstate the footpath across the width of the driveway [*the correspondence indicates that this does not meet the customer's request to re-tarmac the entire footpath*] and reset the kerbstones. The customer has not responded to this offer. It has not carried out any work on the customer's private property, therefore it does not consider it necessary to re-tarmac the customer's drive.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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. I acknowledge the additional photos submitted by the customer in her Comments on the Defence. However, 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.

Customer service

2. The company's timeline of the parties' contact supports the customer's submissions that she has had to chase the company during the complaints process, as in its notes the company accepts that the reinstatement team delayed in its communications with the customer during the complaints process. I therefore find that the company failed to provide its services to the standard to be reasonably expected in this regard.

Dropped kerb

3. No evidence has been submitted to support the company's submissions about the reinstatement process required by the local highway authority.

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4. In any event, I find that it is fair and reasonable to expect that, following any works done, a company will return an area to the same condition in which it found it.
5. The company does not dispute that there was a dropped kerb to the footpath leading to customer's private driveway prior to its excavations. The company also does not dispute that on completion of works that the dropped kerb was not returned in the same condition as the condition in which it was found.
6. I find that a reasonable person would expect the company, on completion of the works, to have reinstated the dropped kerb to the same standard to which it found it. I am not satisfied that the company provided its services to the standard to be reasonably expected by the average person in relation to the dropped kerb.

Re-tarmacking of footpath

7. However, in relation to the re-tarmacking of the footpath, having carefully considered the matter, I am not satisfied that the customer has shown that the company has failed in its obligations to her in this regard. I find that the issue of re-tarmacking of the driveway differs from the issue of the dropped kerb in that the company has re-instated the tarmac excavated and there is no evidence to show that this new tarmac is defective. For clarity, in my view, had the company not re-tarmacked the hole or had the new tarmac not been laid to a reasonable standard, then the company would have failed in its obligations to the customer.
8. It is not in dispute that the company's reinstatement left a patch of tarmac, half the width of the customer's driveway, which was a different colour to the rest of the footpath. The photograph shows a clear difference in colour between the patch and the surrounding area. I am mindful of the fact that a newly tarmacked area will not be weathered to the same degree as the original area around it. Although the patch takes up a fair proportion of the driveway and is unmissable, I take note of the fact that it is not in dispute that the footpath leading up to the customer's private driveway is part of the public highway and does not belong to the customer. I am also particularly mindful that, for example, where an area of a road is re-tarmacked following excavations for any number of reasons, the whole road would not be re-tarmacked to match the newly laid tarmac.

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9. Notwithstanding the above, the evidence shows that the company provided an unsatisfactory level of customer service during the complaints process, further I have also found that the company failed to provide its services to the standard to be reasonably expected by the average person in relation to the dropped kerb. I note the company's offer to extend the width of the existing patch of new tarmac on the footpath to the full width of the customer's driveway. However, in light of my findings, based on the customer's request I find that it would be fair and reasonable in the circumstances, on this occasion, to direct that the company re-tarmac the whole footpath in front of the customer's driveway. I will return to this in my findings for redress below.

Redress

10. The customer requests that the company re-tarmac the drive and replace the dropped kerb to a satisfactory standard.

11. In light of my findings that the company failed to provide its services to the standard to be reasonably expected by the average person in relation to the dropped kerb, I find that it is fair and reasonable to direct that the company reinstate the dropped kerb.

12. The customer also requests that the company re-tarmac "the drive". The evidence indicates that the customer means the footpath leading to her private drive. However, for the avoidance of doubt, in light of the evidence submitted, I accept the company's submission that it has not carried out any work on the customer's private property. The evidence shows that the works were carried out on the public footpath leading to the customer's drive. The company is not obliged to re-tarmac the customer's drive. However, as discussed above, in light of my findings that the company failed to provide its services to the standard to be reasonably expected by the average person in relation to the dropped kerb and in relation to the customer service provided during the complaints process, I find it fair and reasonable to direct that the company re-tarmac the whole footpath in front of the customer's driveway. For the avoidance of doubt, photographs show that this is a rectangular box of tarmacked ground, bordered by the customer's driveway at the front, the road at the rear, and grass, tarmac and concrete paving slabs to the sides. This is the area that should be re-tarmacked.

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Outcome

The company needs to take the following further action(s):

I direct that the company reinstate the dropped kerb. I also direct that the company re-tarmac the whole footpath immediately in front of the customer's driveway. Photographs show that this is a rectangular box of tarmacked ground, bordered by the customer's driveway at the front, the road at the rear, and grass, tarmac and concrete paving slabs to the sides. This is the area that should be re-tarmacked.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 5 October 2018 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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