

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0994

Date of Decision: 25 September 2018

#### Complaint

In December 2016, there was a water main burst ("Burst") and the road outside the customer's house collapsed. Over the fifteen months that followed, he had to endure very significant noise, inconvenience and stress whilst the company undertook repair works ("the Works"). He was renovating his house during this time and his builders were not allowed to make deliveries to his driveway. The company has only made a payment of £600.00, which is derisory. The customer would like the company to apologise, to honour its agreement about no water charges being payable for the period when the Works were ongoing and to pay financial compensation totalling £9000.00.

#### Defence

Whilst the company extends its apologies to the customer for the inconvenience experienced because of the Works, none of the events that happened after the Burst could have been foreseen. The length of time that the Works took to complete was outside of the company's control. The company did all that it could to support the residents and to keep them informed of progress. It opened the road whenever it could and when it was safe enough but it could not compromise anyone's safety. It does not agree that any further payment should be due to the customer over and above the goodwill gestures already made.

No offer of settlement has been made.

#### Findings

The company was not responsible for the fact that the Burst occurred originally; this was due to the condition of the soil under the road. There was no significant fault or failing by the company in how the Works were carried out. Whilst the Works undoubtedly caused substantial distress, inconvenience and disruption to the customer, the responsibility for this should not fall to the company. Given the essential nature and complexity of the Works, there was little more that the company could reasonably have been expected to do in the circumstances.

#### Outcome

The company does not need to take any further action.

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

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*



appalling, with the representative from NMA smirking about the situation. At this stage, the company did say that compensation would be paid to residents once the works had been completed.

- On 30 June 2017, the work outside his house was finished and the barriers preventing access were moved further down the Road.
- On 30 October 2017, the barriers were again moved back outside his house, once again preventing access. On 18 December 2017, the barriers were moved further down the Road allowing access to his drive.
- All through this time, the contractors working on site were constantly blocking the Road and his drive. The worst part was the significant amount of noise and disruption. Contractors were sometimes on site at 6:30am and again, sometimes until past 11:00pm. The machinery used was noisy, invasive and dirty. The deliveries by HGV were constant at times, with no consideration for residents.
- He works from home for a significant proportion of the week, running his own business. His wife also works from home, so the works in the Road made life very difficult.
- There were some communications from the company during this time but it was sporadic at best. When speaking to the company's employees, he was often told that they could not answer his questions, as they simply did not know the information. Emails were often never replied to.
- The Road was finally completed and re-opened at the start of March 2018, again after much disruption and lack of access to his property.
- The company has given all residents a £600.00 goodwill gesture, together with a claim form. The £600.00 has (also) been paid to those residents who were not directly affected by the works. He considers this amount derisory: it equates to £1.33 per day for the significant noise and inconvenience that he has had to endure.
- The company verbally agreed that affected properties did not have to pay their water bills for the duration of the works. £181.45 was credited ("the £181.45 Credit") to his account for six months of the works, i.e. for the period between December 2016 and 13 June 2017. It transpired, however, that the company was not able to cover the remaining nine months. He received a demand for payment of £195.02 (relating to a bill that was not sent to him), which he had understood would be reduced accordingly. The company appears to think that the £181.45 Credit formed part of the £600.00 goodwill gesture payment but this was not the customer's understanding of what was agreed with the company's agents, [ ] and [ ].
- He submitted a claim to the company for the extraordinary amount of stress and inconvenience caused by the stabilisation works on the Road but the company categorically said that they were

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

unwilling to consider it. This claim included a nominal amount for depreciation in his property's value caused by the negative press relating to the Road.

- In view of all of this, he would like the company:
  - to give an apology (to all directly affected residents, including those people who do not have access to emails and who have not complained directly to the company) for:
    - the time taken to carry out the repairs; and
    - the lack of overall control of the project; and
    - the disdain shown by the company's operatives; and
  - to honour the agreement about no water charges needing to be paid for the period during which the works were ongoing; and
  - to pay compensation of £4500.00 for the fifteen months of significant noise, inconvenience and stress endured; and
  - to pay a further £4500.00 in compensation to reflect the fact that:
    - for six months, he was completely unable to access his drive; and
    - he was only partially able to access his drive for another six months.

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

- It is sorry that the customer was disturbed and inconvenienced. However, the works that were required to stabilise the Road - and to make it secure, safe and fit for use again - were essential, necessary and extremely complex. It is sorry that they took as long as they did but given their complexity, the works could not be rushed.
- It is/was not responsible for the Road. The landowner has that responsibility. However, the company took control of the repairs and the reinstatement project. Specialist reports ("the Reports") were obtained for its insurance company. The Reports, prepared by NMA and Dr [ ], provided an opinion on how the problems came about. They state that the company's water main was free of corrosion or any defects and it is thought that the subsidence in the Road caused the water mains to burst. The underlying damage, therefore, was not a situation of the company's making.
- Given that there was an expectation that subsidence would continue in the future (due to the chalk soil), it was recommended that the existing pipework be replaced with poly pipe. However, in the event, the company transferred all residents' water supplies to another water main in the vicinity to ensure there would be no future threat to its water main in the Road.
- Despite the information in the Reports and professional guidance received, it discussed responsibility for repairs to the Road with the Council. It was agreed to proceed with the repairs

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

to the whole Road and not just to the damaged areas where the water mains had burst.

- It points to the Water Industry Act 1991, Section 209, where the company has strict liability for water damage from its assets. There was no history of any previous leaks or bursts concerning these water mains. Rather, the burst mains were completely unexpected and could not have been prevented. However, when the bursts occurred, these were repaired quickly and the customers in the affected area had their water supplies reinstated without any unnecessary or undue delays.
- Whilst – admittedly - the issues with the Road were extremely problematic, the company cannot be held responsible for:
  - the type of soil that the water mains are located in; or
  - the time taken in waiting for third parties, such as the Council or professional bodies, to prepare their reports.
- The repair and reinstatement were progressed over several different phases and did take a considerable time to be completed due to the instability of the soil. The meetings and updates provided to all the residents, including the customer, made this clear from the very outset.
- Whilst it acknowledges that the customer was disappointed that the company could not allow the road to be open for builders' deliveries, it has a zero tolerance policy with regards to breaches of health and safety. This not only extends to its own staff but - in the circumstances of this case - also to any person who might try to access the Road whilst it was unsafe. If an accident had occurred, the company would most probably have been held liable (had it given its permission to enter the Road at that time.) Nevertheless, it did offer its own manpower to help the customer with getting the building materials to his property.
- The customer states that on occasions, the work started before 6.30am and continued after 11.00pm. As soon as the company was made aware of this, its Customer Lead for the [ ] Region, [ ], called the customer immediately to let him know why this had happened and to resolve this with him at the time.
- It has apologised, in writing, for any rudeness from the contractors. It has also let the customer know what steps it took concerning those matters. It accepted that it let the customer down following these incidents and also advised that a full internal review would be undertaken so it could learn from this.
- With regards to communication, the customer confirms that it set up an email address specifically for the residents of the Road. The customer states that he was “*constantly battling for information*” and that emails were not responded to. It cannot agree that the customer was battling for information. However, it does note that - on one occasion - he did not receive a

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

timely reply to his email of 11 January 2018. The company apologises for this.

- Following its recognition of inconvenience caused to the residents in the Road, each resident was provided with a goodwill payment of £600.00 to say sorry. This payment also took into account any correspondence and telephone calls that a resident might have had to undertake with it about the issue. In addition, the company agreed that it would waive each resident's first half of their water bills. In this respect, the customer has received both payments.
- It is not the case that the company agreed that the customer's water bills did not need to be paid for the duration of the works. Rather, it was agreed only to provide, as a goodwill gesture, a payment towards water bills for the period of December 2016 to June 2017.
- Throughout the entire period, from December 2016 to the date that the works were completed, the customer received the full benefit of water and wastewater services from the company. Therefore, these charges are correctly due and payable. Any goodwill credits on the company's part (for example, to remove any charges or bills) were not meant as compensation. They were simply gestures to say sorry.
- As to the customer's statement that he did not receive the initial bill, the company confirms that it has checked all its billing systems relating to the customer's account and the initial bill has not been returned by the post office.
- It does not agree that any further payment should be paid to the customer over and above what he has already received (along with the goodwill gestures and offers of help when he needed this.)
- The severity of the damage - and the works needed to strengthen the structure of the soil and Road - meant that a level of inconvenience to all the residents was inevitable. However, the company considers that it did all it reasonably could in the circumstances by:
  - having managers on site; and
  - setting up a special email for the residents to get updates from and to use; and
  - having local meetings, drop in meetings every Friday; and
  - allocating a Customer Representative to the area for the residents to call and/or meet with; and
  - providing managers' telephone numbers so customers could call directly if they wanted to; and
  - making its gesture of £600.00 to say sorry for the inconvenience; and
  - waiving a half year payment of the water bills; and
  - providing a Christmas hamper; and
  - arranging cleaning of residents' windows.

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

- This shows that the company was considerate and cared for the impact this situation had on its customer's lives.
- Finally, the company would like to extend its sincere apologies to the customer for the inconvenience he has experienced because of the work to the Road. None of the events that happened after the 3 December 2016 burst main could have been foreseen but it genuinely believes that it did all it could to support the residents and to keep them informed of progress step-by-step.
- It opened the Road whenever it could and when it was safe enough but it could not compromise anyone's safety.
- It understands that the customer's not being able to park on his drive was inconvenient – and that the works took time - but this was completely outside of the company's control.

### 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?

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

1. I have carefully reviewed:
  - a. the detailed 'chain of events', which is set out by the company on pages 1 to 5 of its defence; and
  - b. all of the materials annexed to the defence ("Technical Materials"). These Technical Materials comprise the NMA report and Summary (Reference 1), an internal email recording the position – as the company saw it – as at 23 January 2017 (Reference 2) and excerpts from a report dated 27 February 2017 from Dr [ ] of [ ] Consulting Group (Reference 3).
2. I have also had the benefit of reading the customer's comments of 6 September 2018 ("Comments"). Helpfully, these Comments have been produced by the customer adding inserts, shown in highlighted text, into the body of the company's defence.
3. The Comments introduce a number of clarifications to the background as summarised by the company. The customer also picks up several points of correction, which I have taken into account. Subject to those clarifications and corrections - and looking at picture broadly – I am satisfied (and find) that the relevant 'chain of events' unfolded as the company describes on pages 1 to 5 of its defence.
4. As to the forensic explanation of why the water main burst in the first place ("Cause"), the company contends that the Technical Materials:

*"...indicate that due to the chalk soil and the fact historically the area where [the customer] lives was on a gravel pit, over time, rain has been instrumental in causing the soil to collapse and cause voids under the [Road]. When the water main burst on 3 December 2016, the water flooded the area and with the voids already under the [Road], this caused the infrastructure of the [Road] to collapse in to those voids and sink holes appeared. It is the opinion of NMA and Dr [ ] that it was the condition of the soil under the [Road] which caused the water mains to burst as the water main was found to be in good condition, free of defects and/or any corrosion ..."*

5. Against this, in his Comments, the customer states that his house is built outside the area of the gravel pit and that the Road falls outside this area too. At a fundamental level, however, I do not understand the customer to be challenging the root Cause. On the strength of the Technical Materials particularly, I find that the Cause was as contended for by the company in its defence.

***This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.***

That is to say, I am satisfied as a matter of fact that:

- a. the water mains burst because of the condition of the soil under the Road; and
  - b. the water main itself was found to be in good condition, free of defects and/or of any corrosion.
6. It follows from my findings above, as to the Cause, that I do not consider that the company can be held responsible (or at fault):
- a. for the fact that the burst occurred originally; or
  - b. for the damage to the Road.
7. I accept the company's submissions when it argues that: "*... there [was] no history of any previous leaks or bursts concerning these water mains ... the burst mains were completely unexpected and could not have been prevented ...*"
8. The next focus is on whether – in undertaking the repair project and the reinstatement works to the Road ("**the Works**") – the company fell below the standard of service one would reasonably expect of it in these circumstances. On this, it seems to me beyond dispute that the Works:
- a. were necessary and unavoidable; and
  - b. were highly complex and challenging in nature; and
  - c. were protracted; and
  - d. caused a great deal of inconvenience, distress and disruption for the customer and some of the other residents on the Road.
9. Against this backdrop, I have focused on whether there was more that the company could reasonably have been expected to do:
- a. to avoid the Works being as difficult and drawn out as they were; and
  - b. to mitigate the distress, inconvenience and disruption that the customer was almost inevitably going to endure.
10. I have also looked at whether, in relation to the Works, there was any decision-making or actions by the company, which potentially made the whole situation worse from the customer's perspective.
11. After examining the evidence presented and the detailed submissions from both parties, I am not persuaded that there was more that the company could have reasonably done in what were

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*

difficult circumstances. I have not been able to identify any significant fault or failing by the company, in this case, in how the Works were carried out. Whilst, indisputably, the Works did cause substantial distress, inconvenience and disruption to the customer, I cannot find that responsibility for this should be placed with the company.

12. I have considered the customer's allegation that the Works and the project lacked overall control but the evidence available to me does not support such a view.

13. As to the disdain and rudeness that that the customer alleges was shown to him by the company's contractors, I am satisfied that the company's response to this (as detailed in the defence) was suitably apologetic and constructive:

*"... We've apologised, in writing, for any rudeness from the contractors, and also let [the customer] know what steps we took concerning this matter. We accepted that we let [the customer] down following these incidents and also advised that a full internal review would be undertaken so we could learn from this ..."*

14. The company's explanation for being unable to open the Road to allow builders' deliveries to the customer's property – i.e. because it needed to adhere strictly to health and safety requirements – is reasonable and justified, I find.

15. In the light of my findings above - about the Cause of the burst water main originally and about the company bearing no responsibility for the consequences of the Works - I conclude that it would not be fair, reasonable or appropriate to require the company:

- a. to give the customer the apology that is sought; or
- b. to write off or credit the customer's water charges for the period during which the works were ongoing. I accept the company's submission that "*... [the customer] has throughout the entire period from December 2016 to the date [the Works] were completed, received the full benefit of water and wastewater services from [the company] and therefore these charges are correctly due and payable ...*"; or
- c. to make any payment of financial compensation in this case.

#### **Outcome**

The company does not need to take any further action

This

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
  - The customer must reply by 23 October 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.
- 



**Nik Carle**, LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**

*This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.*