

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1055

Date of Decision: 14 January 2019

Complaint

The customer complains that work done by the company to lay a new sewer under the road past his house has increased the risk of flooding to his property by surface water. He also claims that he has experienced poor customer service. He seeks a direction that the company should: take practical action to resurface the customer's driveway; lower the level of the highway including a manhole; and reinstate the ditch in front of The Green, a nearby house. He also seeks a direction that the company should apologise for "lying" on numerous occasions; and compensation for distress and inconvenience of £2,500.00.

Defence

The company says that it reinstated the road as it was and has offered equivalent road drainage in the culvert in The Green. It states that it has not increased the risk of flooding and if it has, it has offered a solution that the customer did not accept. The company says that this complaint is a matter for the highways authority and denies poor customer service. In any event, it says that it has provided the customer with a goodwill payment of £100.00.

Findings

The adjudicator finds that the customer has not established that the company failed to supply its services to the requisite standard. There is not sufficient evidence that the height of the road has changed and nor that the customer's garden will flood following self-help measures that he has taken. The issue is, however, for the highways authority and not for the company to resolve. The company has investigated and offered the customer a resolution that he refused and has made a goodwill payment in respect of late calls and responses. In other ways the customer has not proved that the company gave poor customer service.

Outcome

The company does not need to take any further action.

The customer must reply by 11 February 2019 to accept or reject this decision.

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- Later, the crew returned to run a spur down his drive and this involved a manhole. The manhole was set too high in relation to the existing road level. The customer complained to one of the crew and says that the crew member had to be restrained from attacking the customer. The crew did say, however, that the company would return the road and the drive to their previous levels. The customer complains that they lied because the road has been raised with tarmac to flood his driveway. He says that the grass bank in front of The Barn was flattened with the company's road roller so that the raised tarmac is now level with the top soil. This will send floodwater towards the customer's property.
- The customer says that he has made various telephone complaints but has had no reply. He was called in early January 2018 and was told that two engineers and someone from complaints would visit. The engineers visited in early 2018 but they said that no one from complaints could come. The customer complains that this is a further lie because this department does not exist.
- The customer then met a representative of the company on 31 January 2018 and, although the customer was told that he would receive a response by 9 February 2018, he had not heard by 11 February 2018.
- The company then sent a response on 20 February 2018 stating that it was confident that the road and driveway had been restored to their original state and that there was no increased risk of flooding. The customer challenges this.
- The customer denies that any offer of work was made in July 2018, as alleged by the company.
- The customer seeks a direction that the company should:
 - Take practical action to:
 - resurface the customer's driveway;
 - lower the level of the highway including the manhole; and
 - reinstate the ditch in front of The Green;
 - Apologise for "lying" on numerous occasions; and
 - Provide compensation for distress and inconvenience of £2,500.00.

The company's response is that:

- As part of the [] sewerage scheme, a first-time sewer was installed in the highway outside the customer's property. His property is situated down a private driveway located in between two other residences known as The Barn and The Green.
- Previously, there was an existing open channel in front of The Green that appeared to act as a drain for water from the road via two grips across an intervening verge. The head of the channel was at The Green driveway.

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- Before October 2017, the company dug trial holes in the customer's driveway. Save for this, no work was done to the customer's drive.
- The drainage channel at the eastern end was partly filled and piped by means of a 150 mm diameter pipe. The company provided instead a lateral pipe for The Green and in so doing the pre-existing 150mm diameter pipe and backfill was removed and replaced by a larger pipe with a 225 mm diameter. The company therefore slightly decreased the capacity of the drainage channel but the capacity of the pipe was increased. The company believes that this will have the effect of improving surface water drainage from the road.
- The work done to the highway and to the lateral channel significantly affected The Green. The company removed the hedge in front of The Green as agreed with the property owners. Remaining tree stumps were also removed prior to the laying of the lateral pipe. The company had to site an excavator in the front garden of The Green in order to dig the trench for the lateral pipe. As completion of the works caused damage to the front garden of The Green, this had to be re-instated by the company once the works had been finished. The customer's allegation that the company had bettered the driveway of The Green is denied.
- The road was classified by the highways authority as "type 4", requiring 60mm of base course and 40mm of wearing course that was placed on top of the base course. These works were undertaken by the company during November 2017 and inspected by the county council (the highways authority) without complaint.
- The customer then made a verbal complaint on 23 November 2017 alleging that the company had increased the risk of flooding by filling in the ditch outside The Green and had re-gravelled the driveway to The Green for no reason.
- The company says that the customer subsequently caused damage to the road surface at the access point to the driveway by digging a trench for the purpose of taking water away from his property. It says that this activity exposed the base course of the road, not, as alleged by the customer, the original road that had been covered over with another layer of tarmac. After that, the customer laid bricks in the trench he had created in order to enable vehicles to pass into his driveway.
- In December 2017 representatives of the company met the customer to discuss his concerns about an alleged increased risk of flooding due to the road being reinstated at a higher level than previously.
- A meeting then took place between the company and the county council on 9 January 2018. It was suggested that a course of 12 inch concrete channels could be used to encourage surface water past the front of the driveway and into the ditch. On 11 January 2018 the customer made

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a complaint that surface water now runs towards his property causing flooding issues. On 25 January 2018 the company proposed to him the provision of channels in the road to aid surface water drainage away from his drive. The customer was not happy with the company's proposals and wanted to escalate his complaint.

- A meeting took place at the property on 31 January 2018 with the highways authority. The authority recommended that the company should take no action to remedy the damage caused to the highway outside the property because this had been caused by the customer. It concluded that company had restored the highway to its original state consisting of 100 mm depth tarmac in two layers. As the issue raised concerned the level of the highway and not the sewers, it was further concluded that the complaint was properly to be seen as highway-related and not linked to the reinstatement works carried out by the company.
- In July 2018 as a gesture of goodwill the company offered to undertake further works to resolve the customer's issues. This involved digging out the existing curb, installing 14 concrete dish channels and digging out 16 m² of the road and reinstating this. The customer was not satisfied that this was adequate. The company says that the surveyor's report that was then obtained from [] had not been seen prior to the customer's complaint to the Consumer Council for Water (CCWater) but notes that the surveyor states that the surface water drainage problem is a highways matter.
- In relation to customer service failures, the customer's account has been credited with £100.00 as a gesture of goodwill. Accordingly, the customer has already been compensated for alleged customer service failures that the company does not admit.

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.

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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 dispute between the customer and the company is not concerned directly with the provision of water or sewerage services. Instead, it raises the question of whether the company is liable to the customer for an alleged disturbance of the construction of the highway that, according to the customer, has increased the possibility that the customer's home will be affected by a run-off of surface water from the road onto his land in such quantities as to cause flooding. There is no evidence that a flood has occurred. The customer also complains of poor customer service. This complaint includes that the company did not make good the trial holes that were dug in his driveway.
2. I have considered whether the first of these matters falls within the scope of the WATRS scheme. I note that rule 3.3 of the WATRS Redress Scheme Rules states that the scheme applies to disputes about :
 - development and new supplies (insofar as they do not fall to be determined by Ofwat);
 - ...
 - other issues which have been the subject of an internal company complaint procedure and which are not excluded under Rules 3.4 or 3.5.

Although the main part of the customer's complaint concerns activities that have been carried out by the company on land that does not belong to the customer and is concerned with the potential escape of water from that land on to his own, I find that the customer's application falls within the above headings. I take into account that rule 3.4.1 states that an adjudicator can refuse to determine a case in situations where a customer should be referred to a more appropriate forum for the resolution of the dispute but in this case, where the customer also complains of poor customer service, I find that it is also appropriate for me to set out my decision and reasons relating to the customer's other claim.

Flooding

3. In reaching my conclusions below, I am mindful that the question that I have to consider is not whether the company has failed to act with reasonable care and skill or is responsible for

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causing the civil wrong of nuisance between neighbouring land owners, but whether the company has supplied its services to the customer to the standards that would reasonably be expected of it by an average customer.

4. In considering this, it is notable that the actions of the company were taken in the context of laying a sewer on land that was not owned by the customer so that the residents of a local area could benefit from mains drainage. The evidence submitted to me shows that the work affected the road surface and the land that belonged to The Green, including the drainage ditch that ran in front of that house. There is no evidence that the work undertaken, apart from the digging of trial holes and the provision of a spur and manhole (these matters are not said to have contributed to a flooding risk) was on land owned by the customer.
5. I am mindful that the work done is consistent with a duty placed by law on sewerage companies to provide, improve and extend a system of public sewers and to arrange for their emptying. I also bear in mind that under the legislation in question, challenges to the exercise of a company's powers in this regard can be determined only by OFWAT. I therefore find that there is no basis upon which I could find that the company has acted outside its powers in determining to carry out the work in question and it follows that I find the company has not acted contrary to the expectation of a reasonable consumer in respect of its decision to extend the sewer by constructing it under the road in front of the customer's house.
6. As for the manner in which the work has been carried out in this case, the customer says that water now flows towards his home in a way that it did not before, although this is denied by the company, which says that the reinstatement was checked by its reinstatement manager as well as senior members of the construction team and the highways authority before the customer excavated at the edge of the road in order to create an additional drainage channel. The customer says that without the channel that he has dug at the boundary of the road and his driveway, water from the road would have been in his garden. He says that this is shown from the company's photographs and is also borne out by a letter dated 3 September 2018 from []. Mr [] states that, if the customer is experiencing water ingress to his property that had not been experienced previously, this would probably have been due to the changes made by the company, but I note that he has not confirmed the previous height and shape or drainage of the road from his own observations and measurements. Although, therefore, he identifies that rainwater drains in the direction of the customer's driveway, he has not been able to give confirmatory evidence that there is any difference in the road. This is significant because the

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company denies that there has been any change in the height of the road and argues that the pipe constructed in the culvert is a satisfactory alternative to what was previously there. From my own observations of the photographs submitted by both the company and the customer, I find that these do not show the road to be materially different after the road was restored from its state before the work was undertaken but I acknowledge that there has been a change to the drainage ditch and it is unsurprising that the channel dug by the customer fills with water.

7. I bear in mind that in the context of laying a sewer, it is likely that the ground will be disturbed and disruption caused to properties and land adjacent to the work. Where a sewer is laid under a road, the local authority responsible for the highway is also affected by the work. I find that the documentation submitted in this case indicates that the highways authority has acknowledged that it is responsible for the condition of the road in front of the customer's house. The company has submitted evidence that the relevant highways authority has, furthermore, expressed its satisfaction with the work undertaken by the company and does not require the company to do any further work. As such, I find that the company has discharged any repairing duty that it owes to the highways authority in consequence of laying the sewer outside the customer's home.
8. There is no evidence that the highways authority has objected either to the changes made to the drainage ditch in front of The Green. I bear in mind that the Highways Act 1980 entrusts the highways authorities with powers to take action to prevent flooding from surface water on the road by constructing drains and culverts. I am mindful also that the highways authorities may be liable to neighbouring owners whose land may become flooded by reason of poor drainage of the roads.
9. I turn, therefore, to whether a customer would reasonably expect that, in circumstances where a highways authority has pronounced itself satisfied with work done by a sewerage company, the sewerage company would also be liable to take steps to ensure that there was no escape of surface water onto neighbouring land, such as that owned by the customer.
10. I find that this would not reasonably be expected by an average consumer. If the highways authority as owner of the road and with statutory responsibilities to prevent flooding has expressed itself to be content with the work done to the road surface and drainage ditches, there is no clear reason why the sewerage undertaker should have a parallel liability: save that the company may have been required to agree to reinstate the road in order to lay the sewer, its primary area of responsibility is the management of effluent or water in the new sewer, not the

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management of surface water on the road, unless and until this arrives in the sewerage system. It follows that, even if the company has altered the height of the road surface as alleged by the customer, it is not the sewerage company that would be responsible to adjoining owners for consequential flooding. I find that the company was required to repair the road to the satisfaction of the highways authority and it was for the highways authority to take relevant decisions as to whether the land of neighbouring owners would be affected. I find that, in these circumstances, a customer would not reasonably expect the company also to have assumed that responsibility.

11. Although I take into account that the customer states that work was undertaken at The Green that went beyond what was required by the damage to that land, I find that, even if he were to be correct about this, it is a matter only between the owner of The Green and the company and would not justify redress in the customer's case. It follows that I find that the customer cannot succeed in his claim against the company for redress in relation to the increased risk of flooding that he alleges.
12. As for the customer's complaint about the height of the manhole, it is not clear from his submission whether the manhole was in the road or in his drive. Documents submitted by the company, in particular, the notes of a site meeting on 8 December 2017, suggest that the manhole in question is in the customer's driveway. The photographs submitted by the parties show a manhole in the road but not in the customer's drive. I find that there is no evidence of any measurement by which the manhole stands proud of the surrounding surface and no practical inconvenience has been described. The company has carried out an inspection and says that the manhole is within normal tolerances. If the manhole in question is that in the road, it appears from the photograph to be level with the road surface. I am satisfied that there is no persuasive evidence that the manhole has been incorrectly positioned. In these circumstances, I do not find that there is anything wrong with the height of the manhole and the customer is not able to succeed as to this.
13. Overall, therefore, although I understand and acknowledge the customer's concerns about the risk that flood water will enter his driveway in the direction of his home, I find that the customer has not shown that the company failed to provide its services to the relevant standard in respect of this aspect of his claim.

Customer services

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14. The customer complains that there were a significant number of occasions when the company did not respond appropriately to the complaint made. In his application, he lists that he was told by the site manager to “get lost”, he had called five or six times over 10 days to the customer relations engineer but received no response for 10 days, was told that he had been contacted by the company whereas no message had been left, had been told that the complaints department would contact him whereas there is no such department, was given an inappropriate response when the customer complained about the height of the manhole, was told that someone from “complaints” would visit him whereas this department does not exist, was told that he would be contacted following the meeting on 31 January 2018 by 9 February 2018 whereas he was not contacted until 20 February 2018. He complains that the company did not respond to his complaints. Moreover, the customer also complains that the company did not offer to undertake work in July 2018 that would resolve the problem.

15. As to these matters, in relation to conversations directly with the customer’s workmen, I am not able to reach a conclusion that the workmen behaved inappropriately on the basis of the quotation of a few words from what is likely to have been a more lengthy exchange of views. I do not have detail that supports the customer’s contentions and I find that the customer has not proved this aspect of the claim. Nor do I find that the company’s staff have “lied” because they have made reference to a complaints department when there is no department with that title. I find that it is probable that reference was intended to be made to the department that was dealing with the customer’s complaint, for which the expression “complaints department” is a suitable generic term. Nor do I find that the company was “lying” because the customer was unable to find messages on his answerphone. In relation to the customer’s concern that on some occasions, the company did not respond to him promptly, the company has, without acknowledging liability, made a goodwill payment of £100.00, which reflects the amount that would be payable for five instances of failure to meet the response times that are set out in the company’s service level guarantee. I find that, against the background of this complicated dispute, this is fair and reasonable redress for the inconvenience experienced by the customer, particularly as it is clear that the company has attended to the customer’s complaint, including sending correspondence to explain its position and by meeting him on site and making an offer of resolution in July 2018. Overall, I find that the customer has not shown that the company has in other ways fallen below the standard that would reasonably be expected of it.

16. As to the work offered in July 2018, the documents submitted by the Consumer Council for Water (CCWater) include an email sent to the customer on 18 July 2018 in which it was

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suggested to the customer that it would dig out and restore a section of the road and provide 14 concrete dish channels. The customer engaged in communications with CCWater as to the level of compensation that could be claimed. He suggested that a sum of £6,000.00 would be appropriate. He also responded to the company with a drawing of the solution that he thought would suffice. The customer rejected this offer on 30 July 2018 as he said that the gully proposed was too shallow, although the letter dated 18 September 2018 from [] does not reach this finding. Mr [] says that a channel would be necessary as it would be able to take water away in storm conditions but does not state one way or the other whether that proposed by the company would suffice. In the light of the above, I therefore find that the resolution of building a channel was offered to the customer and the customer has not proved that this was insufficient. It follows that I find that there was no failure to reach the standard of service that would reasonably be expected.

17. In relation to the trial holes made in the customer's drive, the customer says in his application that none were made, although in his comments in reply to the company's defence, he said that these were not filled in correctly. I find, however, that there is no sufficient evidence to show that the company did not fill in the trial holes in a suitable fashion and I find that the customer has not proved that the company failed to supply its services to an adequate standard.

Conclusion

18. It follows from my findings above that the customer has not proved that the company failed to supply its services to the standard that would be reasonably expected of it and it follows that I find that the customer has not proved that he is entitled to redress. Accordingly, the customer does not succeed in his claim against the company.

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 11 February 2019 to accept or reject this decision.

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- 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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Claire Andrews, Barrister, FCI Arb

Adjudicator

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