

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1128

Date of Decision: 20 December 2018

Complaint

The customer states that the company dug up a private courtyard with no notice and without permission. The customer states that the courtyard was left in poor repair.

The customer seeks an apology and £250.00 in compensation.

Defence

The company states that it gave adequate notice and that it has legislative powers to carry out works. It denies that it has left the courtyard in poor repair and states that it has made good any damage done by the works carried out.

The company has made a goodwill offer of £125.00 to the customer, which was declined.

Findings

The customer has not shown that the company has breached its duty of care in its actions. The company acted in accordance with the legislation.

Outcome

The company does not need to take any further action.

The customer must reply by 23 January 2019 to accept or reject this decision.

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Date of Decision: 20 December 2018

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- In February 2017 the company dug up a shared private courtyard at her residence, The Green, causing damage.
- The customer initially complained that the work carried out by the company involved trespass and criminal damage.
- The company failed to reinstate the paving to an acceptable standard.
- The company made five attempts to fix the courtyard, but it was still left in poor repair.
- The company did not get permission for the work that it undertook from the residents.
- The customer claims that she did not receive any notice of the proposed works to be carried out by the company.
- The customer states that she has spent hours trying to resolve this issue, attending meetings and writing emails.
- The customer states that the company has only offered £125.00 in compensation and that amongst 10 residents this is only equates to £12.00 each.
- Customer state she feels this amount is derisory.
- The customer seeks £250.00 in compensation. The customer seeks an apology.

The company's response is that:

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- The company states that, as part of the Water Saving Program (WSP) a meter was installed in the customer's private courtyard in 2017.
- The company states that the private courtyard at The Green is shared by 10 residents. The company states that no other residents have complained.
- The company states that it has legislative powers to carry out necessary works.
- It states that letters were sent to the residents regarding the proposed works.
- The company states that as the tiles were recycled, replacements were hard to source.
- The company claims that it has tried to reinstate the private courtyard on a number of occasions and it feels that the work undertaken satisfactory.
- The company states that it has offered £125.00 to the residents as a goodwill gesture, but that it does not believe that the amount of £250.00 is substantiated in the customer's case.

The customer's reply is:

- That there are other concerned residents who support her actions.

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?

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1. For context and clarity, I here note that the WATRS rules state at section 3.3: *“The Scheme can only be used to settle disputes related to: Bills, payments, collections and debt recovery; metering; water supply services; wastewater/sewerage services; development and new supplies (insofar as they do not fall to be determined by Ofwat); mis-selling (NHH retail customers only); 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.”*
2. Further, the Scheme rules states at Section 3.5: *“The Scheme cannot be used to adjudicate disputes which fall into one or more of the following categories: disputes concerning allegations of fraudulent or criminal activities.”*
3. I note that within the papers to the Consumer Council for Water (CCW) there is reference that the customer did make a complaint that the company had acted unlawfully in digging up the courtyard and that this amounted to a criminal offence. In light of the above, I note here that I shall not be dealing with that aspect of the claim, although I do note that it has not been specifically made in the application before me. I shall deal with this case on the basis of the customer service issues that have arisen, which do fall within the scheme rules.
4. The customer states that the company did not inform the residents that they were going to carry out work at The Green. The company denies this and refers to letters and relevant legislation in its defence.
5. The company states that it has legislative authority to carry out works, virtue of Section 162 of the Water Industry Act 1991 (WIA 1991). Also, a right of entry to the private property to carry out work virtue of Section 172 of the WIA 1991. The customer does not counter this assertion in her comments in reply.
6. The customer has not referred to any legislative provisions, nor has she referred to any guidance, in making her case that the company has failed in its service. I have carefully considered the legislation and cannot find any support for the customer’s case in this regard.
7. The company has produced letters in Appendix 1 of its defence that it states were sent out to residents to inform them of the proposed work and the WSP scheme. The customer states in her comments that she did not receive notice and she reasserts her claim that other neighbors

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support her in this matter and did not receive letters either. I note that the letter referred to by the company makes no reference to digging up the courtyard. I do not find that this is a failure on the part of the company, as the letter is general information regarding proposed works. I believe it is reasonable to accept that such work may involve the type of work eventually undertaken by the company in this case. It occurs to me that the parties are at cross purposes here; the customer understands that she should have received a letter regarding the type of work to be carried out and the company states that it has adequately informed the customer in its letter referring to proposed future work.

8. I take into account that it is very difficult for a customer to show that she did not receive a letter. Although the customer has claimed that the other residents did not receive letters either, there is no evidence in the form of statements or letters from any other residents to support this. I note that the company has produced a screen shot of its general letter being sent out. On balance, with regard to the issue of notice, I am satisfied that the letters were sent out in relation to proposed works and that, in this regard, the letters were sufficient, and the company has not breached its duty of care to the customer. Therefore, it follows that the company has not failed to provide its services to be reasonably expected by the average person.
9. The customer complains that the company has not adequately repaired the courtyard where it was dug up. The company denies this.
10. The customer has produced photographs of the area in evidence and these are included in the CCW papers. I note that the tiles are of different colours and style. The company has explained that it could not source the original, recycled, tiles. The company states that the photograph in the CCW papers is not the final photograph. It refers to a photograph in Appendix 3 of its defence. I note that this is also a photograph taken by the customer and that the email is dated January 2018. I note that the tiles are different. In my own view, I cannot see that there is any health and safety issue in the restitution of the courtyard. I note that the customer is upset that the tiles are not a match, and I accept that they are not a good match. However, I do not find that this is sufficient to find that company has failed to provide its service to the standard to be reasonably expected. While it is aesthetically more appropriate to have the original tiles as replacements, the company has indicated that it could not source those tiles and that it carried out the work to the best standard possible in the circumstances. I accept the company has stated this in good faith. I note that the work was carried out on several occasions and that the final outcome is not inadequate in that it is a practical reconstruction of the general area.

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11. I note that the company has offered to pay an amount of £125.00 to the customer to share between the residents as a goodwill gesture and that this has been refused.
12. I appreciate that the customer is upset and that she has concerns about the upkeep of her residential courtyard, nonetheless, I do not find that she has shown any fault on the part of the company that causes me to attach any liability to its actions.
13. On balance, I do not find that the customer has shown that the company has failed to provide its services to a standard to be reasonably expected by the average person. It follows, therefore, that I do not make any award in this case.

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 23 January 2019 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.



J J Higgins, Barrister, ACIArb.

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Adjudicator

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