

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

**Adjudication Reference: WAT/ /1189**

**Date of Decision: 20<sup>th</sup> February 2019**

#### Complaint

The customer states that there is a sewer cover belonging to the company on his property that is causing an obstruction on his drive. He claims that this has caused damage to his car and that he has tripped over the sewer cover and has been injured. He states that this meant he had to pay a health practitioner and miss out on a job offer.

The customer seeks a direction for the company to remove the sewer cover and to pay £3,900.00 in damages.

#### Defence

The company states that it has investigated the complaint and can find no fault with its asset. It states that the problem lies with the general repair of the driveway. It states that the complaint regarding the customer tripping has been added late to the process and has not gone through its internal procedures.

No offer is made by the company.

#### 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 20<sup>th</sup> March 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1189

Date of Decision: 20<sup>th</sup> February 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- There is a sewer cover and frame (the "Asset") on the driveway of his property, situated at [ ], that is a hazard due to it being too highly placed.
- The customer states that he has damaged his car due to the Asset.
- He states that he has tripped over the Asset and injured himself.
- He claims that this caused him to miss out on a job offer and that he had to have treatment with a chiropractor for his lower back.
- He claims that the driveway has always been the same and that he cannot alter its height as the garage door would not operate properly.
- He states that he has requested the company to lower the Asset, but that it has refused.
- The customer seeks £3,900.00 in compensation.

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

- It cannot lower the Asset as that would require the whole level of the sewer to be lowered.
- It states that it has carried out an inspection of the Asset and it is in "excellent condition" with no repairs required.
- It states that the cause of the problem is the general condition of the drive.
- It states that it cannot deal with the claim for tripping as this is the first time that the customer has raised this issue.

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- It states that it has no information as to how the damage to the car occurred.
- The company states it has properly investigated the customer's complaint and does not believe that it is responsible for the problem.
- The company does not accept that the customer has supported his case for compensation.
- The company has paid the customer £50.00 under the Customer Guarantee Scheme for missing an appointment.

#### **The customer's comments:**

- The customer states that the photographs are not a true representation of the way in which the Asset is situated in reality.
- He states that it is a hazard and that everyone using his drive has difficulty with this Asset.

#### **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. I note in relation to paragraph 1 above that the customer has included a personal injury claim in his WATRS application. The company has stated that this is the first time such a claim has been raised and it has declined to make a defence. This is not included in the original complaint to the Consumer Council for Water (CCW) and is only mentioned in its bundle of papers as having been added to the application during the checking process. As this part of the complaint has not been through the company complaints procedure, and as it is a significant and potentially complex matter, I do not intend to deal with it in this decision and refer to the scope of the scheme set out above for justification. I am also conscious that, even had the customer made an earlier complaint to the company, under rules 3.4.1 and 3.4.3 of the scheme, this type of personal injury claim would not be dealt with in the WATRS scheme. This is not a judgement in anyway on the truth or otherwise of the customers claim regarding his personal injury assertion.
3. The customer states that the company Asset sits too high on his driveway causing an obstruction to him when he is maneuvering his car. He states that on one occasion this caused him to damage his car against a post as he turned to try and avoid the Asset. He has submitted a photograph of his car in evidence.
4. The company has submitted photographs of the driveway. I do not have any photographs from the customer, although I do note his comments in his reply. I note from the photographs that there is a degeneration of the driveway surface at the end of the drive nearest to the gate. This concrete area appears, from the photographs, to have caved in and leaves the Asset at the right hand side of the picture, at a higher level. I can see that there is not a large space to maneuver a car, trying to avoid the raised Asset. I have noted the post on the left of the drive, looking at the pictures. I note that the pictures taken looking down at the Asset show that the concrete around the Asset is flush with the top of the Asset. This is persuasive evidence to me that at one time, perhaps before the customer’s ownership of the property, the driveway was at the same height as the Asset, and that it is the driveway that has collapsed, not the asset that has been installed wrongly.

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5. There is no evidence before me, or any suggestion, that the company's asset has deteriorated or changes its original setting in any way since it was first installed.
6. I have no information before me to suggest that there is anything wrong with the function of the Asset. The company has carried out a detailed investigation and inspection and has concluded that the Asset is in good working order and does not need any alteration.
7. I note that the customer's evidence is clear regarding the difficulty caused to him when using the driveway. I accept his concerns are honestly presented and are important to him. However, when making a decision on the WATRS scheme I must first look at the evidence and assess whether or not there is any fault on the part of the company and, further, whether or not this fault is responsible for the damage caused. While I accept that the customer has difficulties with his drive, I do not find that the fault for this falls with the company or with the Asset belonging to the company.
8. The customer has not referred me to any legislative provisions, nor has he referred to any guidance, in making his 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.
9. I note that throughout the process of the complaint the company has reacted by carrying out investigations that included photographing and assessing the possibility of moving the Asset, as the customer wished. Regarding its inability to move the Asset the company has provided an explanation that I find is reasonable in its defence. It states that to lower or alter the Asset may have serious knock on effects on the rest of the sewerage system.
10. The customer has stated that he has felt mocked during the process. I entirely appreciate the customer's frustrations, but I do not find any objective evidence that the company has treated his complaint with anything less than courtesy and due diligence.
11. I appreciate that the customer is upset and that he has concerns about the Asset and the use of the drive, nonetheless, I do not find that he has shown any fault on the part of the company which causes me to attach any liability to its actions.

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12. It follows, therefore, that 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 and so the 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 20<sup>th</sup> January 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.



J J Higgins, Barrister, ACI Arb.

Adjudicator

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