

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1244

Date of Decision: 1 April 2019

Complaint

The customer complains that the company, when carrying out street works, caused damage to her garden wall and to slabs outside her house for which she should be compensated. She also complains that the manner in which the company carried out the work was unsatisfactory. She claims compensation equivalent to the cost of repairing the wall and slabs in her garden (£1,700.00) and compensation for stress in the sum of £500.00.

Defence

The company states that it was carrying out maintenance and replacement work to a water main that required access to the valves in the pavement outside the customer's house. The pavement works were dug by hand with a spade and a compactor was used to remake the ground. The vibrations from this would not have caused damage to the customer's wall. The damage was due to deterioration over time. The slabs in question were too far away to be affected. Although this work caused inconvenience, it was necessary and the customer had been notified. The company had offered a goodwill payment of £50.00 that the customer has refused.

Findings

I find that the company has supplied its services to a standard that would reasonably be expected. A photograph from April 2016 showed that the mortar in the wall was already deteriorating. Although this had become worse, it is probable that the cause was due to weathering and age rather than to the company's activities. It is improbable that the slabs were affected because these were more than 6 metres from the works. The company had sent letters of notification prior to the work. Although the customer did not receive this, there is no evidence that a letter was not sent. The company had offered a goodwill payment of £50.00 because the work was outside her house, which was fair and reasonable.

Outcome

The company does not need to take any further action.

The customer must reply by 28 April 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1244

Date of Decision: 1 April 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The company carried out works outside her home in Green Court. She complains that insufficient explanation was given by the company about this and that it was not carried out in a safe and secure way and caused inconvenience.
- She says that power tools were used outside her garden that have caused the slabs in her garden to rise and have created cracks in her wall.
- The customer says that this can be seen by comparing a Google maps image taken before the work was done with its condition now where large cracks in the wall are evident.
- The customer seeks:
 - The cost of repairing the wall and slabs in her garden (£1,700.00). She says that the £50.00 offered by the company as a goodwill payment is "an insult";
 - Compensation for stress in the sum of £500.00.

The company's response is that:

- The company replaced a water main in Green Court, outside the customer's house, in September 2018. This was planned mains rehabilitation work, where the old water main needed to be renewed to stop the risk of any bursts. As the main was in the middle of the road, the road needed to be closed.
- Due to the collapse of a sewer a large sinkhole had appeared.

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- The company sent a letter to 359 residents affected including the customer, which contained a telephone number and contact details so that any further questions could be asked. The customer contacted the company on 27 September 2018 to state that she had not received this and a further copy of the letter was sent to her.
- On 25 October 2018, the customer made a further complaint about the on-going works. She advised she had received no communication, she and her family could not park their car on the drive, the temporary plates that were put down were not sufficient, the barriers were moved by other customers, and during the high wind the barriers blew over. The customer wanted to know how long the work would be going on. This was passed to the Community Communication Officer who called the customer back on 25 October 2018 to discuss. The customer was offered a £50.00 gesture of goodwill for the stress caused. The customer rejected this and advised that she had raised an official complaint.
- On 5 November 2018, the customer called the company to complain of damage caused to her wall and slabs. The company carried out an inspection on 18 November 2018. The company denies causing damage to the customer's wall or slabs.
- The company says that it has offered the customer a goodwill payment in respect of her complaint about the inconvenience caused by the works and that it is not proposed to offer any further payment.

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.

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.

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How was this decision reached?

1. The customer complains of two matters, first of damage that she states has been caused to her wall and certain paving slabs outside her home and secondly of the manner in which works affecting the company's assets were conducted outside her house.
2. The company's response refers to the need to carry out works of repair, the fact that its activities would not ordinarily be expected to cause damage to adjacent structures and the steps taken to minimise inconvenience to its customers.
3. I address each of these issues in turn.

Damage to the wall and slabs

4. The company has submitted evidence that the works carried out to the area outside the customer's house were part of its normal operations and were thought necessary as part of its ongoing activities. Having regard to this explanation, I am satisfied that the company carried out such works for a legitimate reason and there is nothing in the photographs submitted within the Consumer Council for Water's (CCWater's) documentation that would indicate that there was anything unusual about the works, save that they involved a significant area, at least one deep hole had been dug and they were not minor works. The company says that the excavation that was made to replace the service pipe and fittings on the footpath were cut out and removed by spade. When the company re-surfaced the area, a small compactor was used to smooth out the tarmac. Vibrations from the compactor were not strong enough to damage a wall and there was no damage to the customer's neighbour's wall.
5. The customer says that heavy duty cutting equipment was also used in front of her house. She has submitted photographs in support of her statement that damage has been caused to the wall. She has submitted first an image of her house downloaded from Google that appears to have been taken in April 2016. This shows a slabbed pavement with a large area of tarmac around an access point cover and other inspection point for services. It appears from the photograph that the garden wall is not new but bears signs of age and weathering. The focus of the photograph is not good but it is adequate to show that there are some mortar gaps at the right hand end of the wall in the area of the tarmac and inspection and access points and there appears to be a vertical crack in the wall. In photographs from Google submitted by the company it is also clear that damage to the wall had started in April 2016 with the loss of mortar

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from the joints. Photographs taken after the company had undertaken work in 2018 show that the tarmac part of the pavement outside the customer's garden wall had been replaced. It is fair to note that this has not been restored to give a totally even surface and the kerbstone is also uneven. The images suggest that there is a small depression around the access and inspection point, although this does not appear from the photograph to be of such severity as to give rise to a tripping hazard. As for the customer's wall, however, whereas the customer says that large gaps have opened up in the wall, what is shown in the photographs is that there has been a continuing loss of pointing around the brickwork. This is marginally more obvious around the area above the manhole but is not limited to this area. In contrast to the customer's wall, the wall to the property on the right hand side, which has a newer wall, appears substantially unchanged in photographs from both periods.

6. In the documentation submitted by the CCWater, there are photographs of the slabs to which the customer refers. These are located some feet away from her front wall and form stepping stones in front of her house wall. The company has taken a measurement and says that these are 6.7 metres away from the work done by the company. I find that this distance appears consistent with the photographs. Although the slabs are not completely in alignment with each other, I note that there is no evidence to suggest that there had been recent movement of the slabs at the time that the photographs were taken.
7. Having regard to the above considerations, as well as to the evidence submitted by the company of the work undertaken, I find that notwithstanding that the photographs taken in 2018 show deterioration of the condition of the wall, it is improbable that this was due to the actions of the company. It is clear from the Google photograph taken in 2016 that deterioration at the end of the wall nearest the works had already commenced at that stage, with gaps in the mortar beginning to open up and cracking to the wall beginning to show. There is no evidence that any repairs to that end of the wall had been undertaken in the intervening period. I am mindful that in two and half years, and particularly over two winters, it is probable that further damage to that wall would have occurred with increased loss of mortar in the brick joints. While I am prepared to accept that some additional vibration may have been caused to the wall by reason of the compaction, and possibly cutting work carried out by the company, I find that there is no evidence that this was at a level that would have caused damage to a wall that was previously in good condition and of reasonable robustness. This, I find, can be demonstrated by looking at the adjacent wall. I am satisfied, therefore, that the cause of damage to the customer's wall was due to advancing deterioration of the mortar caused by weathering and other wear and tear.

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8. As the company is required by statute to carry out remedial and maintenance work to its assets so as to supply householders with water, and must therefore be expected to carry out works in the street, and as the company has investigated the customer's complaint that damage had been caused to her wall, I am satisfied that the company has supplied its services in respect of this complaint to the standard that would reasonably be expected.
9. My findings are the same in relation to the slabs. The distance of the stones from the works is considerable and I find that there is no persuasive evidence that the slabs were affected at all by the works undertaken by the company. It therefore follows that the customer has not shown that the company fell short of the standard of service to be reasonably expected in this regard.

The manner of conduct of the works

10. The submissions of the company indicate that a general letter was sent to the company's customers in Green Court in August 2018 to explain that works in the street would commence on 3 September 2018 and that these would be to replace old pipes to prevent bursts. It agrees that the customer had contacted the company on 27 September 2018 to complain that she had not received this and another copy of the letter was sent. The company has also acknowledged during the stage 2 complaint process that there were some events that may have made the conduct of the works more problematic. These included a sinkhole occurring because a sewer had collapsed, problems with the network and an occasion when a high wind had blown down the barriers around the hole. The company explained that it had needed to keep the excavation open for the period of the works so as to be able to obtain access to the valves in the pavement outside the customer's house.
11. I find that an average customer would expect a water and sewerage company to undertake works to maintain its assets, including undertaking replacements of its old pipes to avoid future inconvenience due to burst water mains and wastage of water. An average customer would also expect a sinkhole due to a collapse sewer to be addressed as well as any other network complications that might have arisen in the context of the works. An average customer would reasonably expect that such works would cause disruption and inconvenience to local residents. The company has submitted evidence that customers generally were warned about this and were supplied with a contact number, and therefore I find that the company had met the standard that would reasonably be expected of it, even if, for some reason that is unknown, the customer did not receive that letter.

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12. There is additionally no evidence that the company gave inappropriate instructions to its contractors in respect of the carrying out of the works, even if, during those works, the barriers had blown down and, according to the customer, barriers had been moved by others. The customer has not submitted evidence that she was injured or caused additional inconvenience due to this. The company has taken into account the inconvenience caused by the works that are outside her house and may have interfered with her access and has offered the customer compensation in the sum of £50.00. I find that such offer of compensation was fair and reasonable in all the circumstances, but the customer has refused this.

13. Taking all these considerations into account, therefore, I find that in relation to the customer's concerns about the conduct of the works, she has not shown that the company failed to supply its services other than to the standard that would reasonably be expected and has not shown that she has suffered any loss.

14. It therefore follows, I find, that the customer is not able to succeed in her claim for redress.

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 28 April 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.

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A handwritten signature in black ink, appearing to read 'Claire Andrews', is positioned in the upper left quadrant of the page.

Claire Andrews, Barrister, FCI Arb

Adjudicator

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