

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1373

Date of Decision: 19 June 2019

#### Complaint

The customer complains that the company has not honoured an agreement to maintain a non-return valve in the sewer outside his house and that he is at risk of flooding by sewage, as had occurred frequently before this was installed. He also complains of poor customer service and says that the company's decision to remove the non-return valve has been made because he complained.

#### Defence

The company says that the network has been the subject of monitoring and telemetry and that, following its acquisition of the pumping station and sewerage from a private developer, the non-return valve is not required. The agreement to maintain the non-return valve takes resources away from other parts of its network. The company denies failure in its customer services.

#### Findings

An adjudicator under the Scheme cannot direct the company as to its allocation of resources. The company's decision to remove the non-return valve is evidence-based and that evidence was not available when the company agreed to install the valve. The company has reached its decision by reasoning that an average customer would expect. Moreover, the customer has not shown that the company's customer services, in the particular circumstances of this case, fell short of the standard that would reasonably be expected.

#### Outcome

The company does not need to take any further action.

**The customer must reply by 17 July 2019 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference:

Date of Decision: 19 June 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer has experienced sewer flooding issues since 2014. The sewer manhole is located in the driveway outside the customer's property. In consequence of the flooding, the private sewage pumping station serving the customer's property was adopted and upgraded by the company, which also installed a non-return valve (NRV) to provide some additional protection against further flooding and to provide reassurance to the customer.
- Over the next couple of years issues arose with the NRV itself. The first was a fault in its installation and the second was a failure of the NRV.
- In 2017 a monthly maintenance programme was agreed by the company.
- The customer complains that there have been problems with the company's maintenance programme and in particular he complains about the attitude of certain site operatives, their competence and training. He states that there had been some issues with the planned maintenance in the past but over the two to four months preceding the application, the services were shocking. The crews were unfamiliar with the layout of the drainage system and were not following instructions. The customer has challenged the company on several occasions to ensure that the crew members understood what was required so as to avoid any damage to the NRV and to his property. The customer sought assurance that the operatives would be correctly trained. He was also unhappy about the way in which some of the operatives spoke to him.
- The company has not accepted the criticisms raised and has relied on its assertion that the customer's property has never been flooded as a result of a service failure on the public sewer.

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- The company argued that the root cause of the flooding incidents preceded the company's ownership of the network but says that now that the company has reviewed the planned maintenance history it does not believe that there is a need for planned maintenance on a monthly basis at this property. It proposed to adjust the inspection frequency to six monthly and to remove the NRV. The company also contends that the sewerage pumping station prior to its ownership by the company was probably the cause of the issue.
- A site meeting was agreed to discuss the maintenance and jetting procedures in December 2018. This was cancelled and rescheduled for early 2019. There was further difficulty in arranging the meeting.
- During this period the customer experienced a further blockage incident that meant he could not use the facilities in his home. He contacted the company, which found no issues on its network. The sewer was found to be running freely and the NRV was open. The company therefore concluded that it was an internal blockage on the customer's private drain.
- A site meeting then took place on 27 February 2019. The customer was not reassured by the explanations and felt that the company had made its decisions because he had complained about the maintenance programme and about the company's employees.
- The company then indicated that it would remove the NRV to prevent the risk of blockage in the network, move the location of the Cello unit to offer more coverage of the network and monitor and respond to alarms generated on the network, but would stop planned maintenance.
- The customer would like the company to reconsider its decision and to retain the NRV. He has agreed that the maintenance programme could be moved to a quarterly basis. The customer also seeks an apology for the poor service that he has received and seeks compensation of £4,950.00.

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

- The property occupied by the customer is on a development constructed by a Home Builder. The sewers belonged to this Home Builder and a Sewer Pumping Station (SPS) formed part of that network. The company states that the manhole in question is in the public road and not on the customer's own land.
- On 26 August 2016, as part of the Private Sewer Transfer Regulations 2011, the company adopted the SPS. On 26 June 2018, the company also adopted the surface water sewer for the development under Section 102 of the Water Industry Act. In order for the adoption to take place, the Home Builder had to ensure that the sewerage system met appropriate standards.

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- A robust maintenance plan was put in place for the SPS following its transfer to the company and subsequent upgrade. The SPS is fitted with a telemetry system to alert the company of any equipment failure at the site.
- Additionally, a remote telemetry unit (“Cello unit”) was also fitted on the sewerage network serving the property, to alert the company of any trends within the network, and a NRV was fitted in the sewer manhole chamber in the road outside the property. The company says that the NRV was intended as a failsafe until it was better able to understand the performance of the transferred network. The maintenance of the NRV forms part of the maintenance programme, to ensure it functions as it should.
- The duration of each maintenance visit is approximately one hour for the NRV and two hours at the SPS. Because of the location of the NRV, the company parks its attending vehicle in the road outside the property. The customer asked that he be provided him with prior notice of the company’s attendance.
- The company has responded to, and investigated, all reports from the customer of sewer blockages and flooding. The investigations have concluded that the issues reported were mainly limited to the property itself (private drainage) and the sewerage system (SPS and surface water system), while it remained in the ownership of the Home Builder.
- The property has never been flooded as a result of a service failure on the public sewer.
- As for the redress specifically sought by the customer, the company submits that, in his application, the customer has stated that he is happy to agree to a six monthly maintenance programme, but would like the NRV to be kept in place. However, since transfer, the company has regularly maintained the sewers so that there have been no elevated levels of flow, or adverse storm response patterns due to rainfall within the network and there are no operational issues. Telemetry and planned maintenance visits have proved that the NRV is not needed and that it could also potentially cause a blockage risk in the future. Therefore, the NRV is not required to continue to act as a failsafe and there was no benefit (but an increased risk) in keeping it in situ. The company met the customer on 27 February 2019 at the property, jointly with CC Water, to explain its findings. CC Water has confirmed that they are satisfied with this outcome.
- The customer was emailed by the company on 5 April 2019, to advise that the NRV would be removed during week commencing 15 April 2019, and it would confirm the exact date by no later than 11 April 2019. The customer requested seven days’ notice.
- On 9 April 2019, the company provided seven days’ notice, confirming that the NRV would be removed at 9am on 16 April 2019. This notice was met with dissatisfaction from the customer.

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- As for the customer's complaint of poor customer service, the company says that it has endeavoured to work flexibly with the customer to minimise disruption and help manage his expectations. It has altered its working practices at his request. In particular:
  - Although the assets are not on the property, and his attendance is not needed, the company agreed with the customer that its monthly maintenance plan would be on the first Tuesday of the month only, and that advance notice would be provided.
  - Following concerns raised about the competency of staff, the company provided the customer with a detailed checklist, to show the steps that staff have to complete during any maintenance.
  - It agreed that only certain staff would attend the Property, despite all staff being appropriately trained and competent, to carry out the tasks.
  - It has investigated and apologised for each occasion where it has been claimed that the company has provided poor service;
  - The company has responded to the customer's communications, both email and phone calls, 24 hours a day.
- As for the customer's claim for recompense to attend meetings, the company says that it offers an appointment. Appointments are in the morning (8am-12pm), or in the afternoon (12pm-6pm) Monday to Friday, or from 8am-12pm on Saturdays. Guaranteed Service Standards, offer compensation for any missed appointments or one cancelled at short notice. The company has not requested the customer to be at home whilst it undertakes any maintenance of its assets in the public highway.
- The customer also seeks recompense for cleaning up in the sum of £650.00. The company is not aware of the customer having to do this. The customer did report an incident of 'mess' left in the highway, to which the company responded and returned to clean the area.
- As for complaints about staff conduct, the company has investigated and apologised even when claims were unsubstantiated.
- The company denies liability for the claim.

### How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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.

#### How was this decision reached?

1. The documents show that the customer is the occupier of a property, [                    ], a home in a private development of houses, which has had a history of flooding from the sewer from approximately 2013. The customer suggests that this has occurred eighteen times in four and a half years.
2. The background of disputes has involved two previous complaints to the Consumer Council for Water (CCWater), and this dispute between the parties has escalated through 2017 to 2019. In each case, the dispute has followed the adoption of both the sewers and the SPS on the development by the company from the Home Builder or another body associated with the developer. (There is a dispute as to the precise identity of the organisation or person who was in charge of the SPS prior to the acquisition, but this is not relevant to the issues that I am called upon to decide: I reach no conclusions as to this.) The significant fact, which the customer does not challenge and that I therefore find to be the case is that, in 2016, the company acquired responsibility for the SPS and that, in 2018, it also acquired responsibility for the sewerage. During the course of the two previous complaints, the company agreed in 2017 to install and maintain an NRV in conjunction with acquiring the responsibility for the SPS and sewers. The case officer from CCWater who was involved with the second

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complaint summarised for the case officer dealing with the third complaint the agreement that was reached by the parties at the end of that process:

*I have advised case officer that the original flooding was caused by the failure of a private pumping station. This was adopted by [ ] through a fast track process. The NRV was installed before this at the customer's request despite the company being unsure (due to the danger of self flooding when closed). There was a discussion that once the pumping station was working well and maintained and had all the correct telemetry then the NRV may no longer be needed. But as the customer needed the reassurance they kept it in place and agreed a monthly maintenance programme as belt and braces. It seems there may have been some blockages on the NRV (although I'm not sure if these were caused by a fault on the NRV??). This may have resulted in spills at the manhole in the street but the customer has not mentioned any further internal flooding thankfully.*

3. The central issue in this case is the customer's challenge to the company's subsequent decision to reduce the number of inspections affecting the sewer serving his property and its proposed removal of the NRV, but there are a number of subsidiary issues that affect the arguments advanced by each party. These include:
  - a. The location and ownership of the manholes; and
  - b. Whether the company's current proposal to remove a protection for the customer's property, namely the NRV outside his front door, is fully researched and appropriate.
4. The customer also complains that the company has provided poor customer service. I deal with the question of customer service further below.

#### Location of the manholes

5. The company has submitted a plan that shows the location of the manholes in the development. This shows that the customer's house is located off, what appears on the plan to be a turning space in Oak Road. In his comments in reply, he refers to a dispute with the company about the ownership of land. There is insufficient information, however, to enable me to be clear as to the precise scope of this dispute or whether the customer was seeking to show that he owned the "shared driveway" or the turning space. From the information that is available to me, it is clear that the customer does not own the land that looks on the plan to be part of the turning space. The customer also refers to his own driveway, which, although no plan as to this has been produced, I find to be outside his front door, leading to the pavement.

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6. The flow of waste water appears to pass from the customer's house, where there is an un-numbered manhole in the garden area to the west of his house that links to the sewer. Following the direction of flow, the sewer then passes through numbered manholes (AB36[ ]51 and AB36[ ]50) in two gardens to the south of the customer's garden and out into the turning area or shared driveway where AB36[ ]30 is located, seemingly outside the customer's front door. The NRV is located in this manhole and, according to the plans submitted by the company, it is in the street (the turning space). The downstream manhole is AB 26[ ]57.
7. It therefore follows that the manhole immediately outside the customer's property to the west serves only the customer's property. The customer has not shown a map or plan of any other manhole and I take this manhole to be that referred to by both parties as that in the customer's "back garden". In the absence of any other evidence, I find that it is therefore probable that, following adoption, this manhole remained a private manhole.
8. The SPS is upstream from the network of sewers through that part of the estate.

#### Removal of the non-return valve

9. The customer does not appear to challenge the causes of flooding summarised above by the case officer handling the second complaint. Although he has criticised the actions of the company in carrying out the maintenance process (see below) he argues that his property has been benefited since 2017 from the NRV and maintenance schedule and agrees that the maintenance schedule can be reduced but does not agree to the removal of the NRV. This challenge was prompted by that proposal.
10. As to this issue, I find that the powers that I have are limited. As was made clear by the decision of the House of Lords in the case of *Marcic v Thames Water*, although the company has a duty by law to maintain and develop the sewerage, it is for Ofwat and not for the courts to oversee the decisions made by a company as to how to achieve the operation of the network and balance the, sometimes competing, interests of its customers. The courts can only engage in this process, generally, where the issue that has arisen is not strategic or where a question of negligence arises. In the case of an application under the WATRS Scheme, where the question of "negligence" is not within our remit, I find that I am precluded from considering the company's strategic decisions, although I can consider whether any

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decision made by the company has been consistent with the reasonable expectations of the average customer. In this context, I find that this enables me to review the company's decision-making to ensure that it has met the service standards that would reasonably be expected, but it is not open to me to conclude that the company should have reached a different decision.

11. The customer has made plain that he considers that the decision to remove the NRV and alter the sewer maintenance programme is associated with the change of managers and is consequential on his complaint about customer services issues (see below). He says:

*within the last 6-12 months we have had a new regional manager and his behaviour towards my situation has been shocking and his actions/conduct has led into a lot of stress and at times, I have had panic attacks. He had not been involved for day old and had he stuck to the verbal agreement that we had with the old regional manger this case would still be with CCW and not escalated to this stage.*

12. Having regard to all the documentation submitted by the parties and CCWater I find that the background to this decision was as follows:

- Following the initial fitting of the NRV, regular inspections had taken place and, over time, the process of carrying out these inspections was refined so that it was not on each occasion necessary to undo the bolts to the valve.
- Two incidents with the valve had arisen: first it was found to have been wrongly installed, and secondly some damage had been caused by incorrect jet washing that had caused the valve flap to become detached.
- In late 2018, the customer made a complaint about the way in which the operatives who attended site to carry out the monthly maintenance visit conducted themselves both in relation to the standard of their work (because it was said that at least one operative had carried out the jet-washing from the wrong direction and caused harm) and their attitude.
- The company agreed to provide job details to the customer and confirmed that some of the works undertaken by one operative were not completed correctly. The company agreed that a site meeting would be held on site on 4 December 2018 and confirmed that in future it would request photograph evidence of all works done. At the meeting on 4 December 2018 it was to be proposed that the telemetric data

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would also be collated so that the company could assess the impact of its interventions.

- The customer approached CCWater about his concerns, who required the company to review the customer's (and its) position and to revert to it.
- The meeting planned for 4 December 2018 could not take place, however, because it was not convenient for both parties. A further date was agreed that, also, was not possible.
- On 9 January 2019 the company explained to CCWater that the flooding issue had been solved and no flooding had occurred in the last two years, but that recently the company could have communicated better with the customer. The company said, however, that it could not keep attending every month to investigate possible flooding as this is not a good use of resources and the network should be maintained as it needs to be. The company told CCWater that the proposed site meeting was rescheduled for 5 February 2018 and that it was proposed to scale down the inspections on the NRV to twice a year for two further inspections and then to once a year. At this point, therefore, there was no proposal to remove the NRV.
- However, following an event on 17 January 2019, the company revised its proposals for the relevant area. On that date, the customer had complained that his downstairs toilet was backing up. The company attended but no issue was found in the public sewer, although the manhole in the rear garden was found to be blocked. As indicated above, this manhole was part of the private sewer for which the customer, but not the company, was responsible.
- In carrying out this further review, the company concluded that it would attend only on an annual basis and the NRV, which had been the cause of a need for more frequent maintenance visits, would be removed.
- This was communicated to the customer by the company on 23 January 2019.
- The customer stated in an email to CCWater dated 23 January 2019 that he was told by the company that the NRV was causing more blockages but he challenged this as there had been no NRV blockages for at least six months. The customer contended that the NRV was being removed without justification and wanted an assurance that his property would not flood. The customer said that he was 100% confident that if the NRV were to be removed then the chambers would block up, which would lead to his property flooding and he would be without washing facilities etc within the property. He said that he had history of not having the NRV in place,

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which led to those blockages when heavy rain occurred and the drains blocked up into his property.

- He sent a letter of complaint dated 22 January 2019 and it was agreed that there would be a meeting on 31 January 2019. The customer asked for answers to the questions as to (1) the grounds for removal of the NRV; (2) the new system that would be installed in its place; (3) who had reviewed the operation of the NRV; (4) when it would be removed and (5) why it was believed that the NRV was a cause of blockages. He sought an answer within the following five to seven working days.
- The meeting on 31 January 2019 did not take place but the company responded on 1 February 2019. The company told the customer that: (1) the grounds for removing the NRV were that it had been installed as a failsafe only and that due to the subsequent upgrade that has been undertaken by the company at the SPS, regular maintenance has been undertaken and this has ensured that there were no elevated levels in the sewers or adverse storm response patterns within the network. The company indicated that because the cause of flooding was thought to be due to storm conditions and elevated water levels, this would mean that the additional protections that had been put in place were no longer required. It said that it had carefully reviewed the performance of its sewerage including a review of all crews through feedback following planned maintenance visits and a review of the telemetric data captured following the installation of the Cello unit. (2) The company stated that there would be no requirement for a new system because no issues had arisen on the public sewer but it intended to reposition the Cello unit to provide live feedback to the alarm management call centre if an issue arose. This would enable the crew to attend site and investigate the network. (3) It stated that the operation of the NRV and performance of the public sewer has been reviewed by the writer of the letter and the network team, including the crews who have attended to carry out the planned maintenance. The company said that it also took into account that there had been one reactive job attributed to the installation of the NRV and a further report of damage following a planned maintenance inspection in May 2017. (4) The company said that it would like to remove the NRV by the end of February 2018. (5) The company conceded that there have been no reports of blockages caused by the current NRV.
- The site meeting that had been planned eventually took place. CCWater attended. It is notable that its record of what occurred included that the customer said that he

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would do whatever it took to prevent the removal of the NRV, including parking over the manhole. As CCWater was there in its capacity to try to resolve the dispute between the parties in the interests of the customer, I accept the accuracy of that record (see below).

- The customer asked for a review, and said that he would be willing to accept quarterly visits.
- On 27 March 2019, the company indicated that it had reviewed its position (and the papers show that it had also taken advice from its solicitors) and re-affirmed its decision to remove the NRV, move the Cello unit to monitor the network better and actively monitor its telemetric information and respond to any alarms that would indicate a risk to the customer's property.

13. I find, therefore, that the decision of the company to remove the NRV was based on its belief, founded on evidence that was available to it in 2019 but had not been available at the time of installation of the NRV, that surcharging of the sewers through flood water was less probable and that the risks to the customer's home were reduced. This was borne out by the fact that there had been no incidents in the preceding two years. I find that this was a reason for considering that the agreement reached in 2016/2017, (which involved a valve that itself introduced risk as well as benefits and had required intensive attendance by the company's crew, so taking the teams away from other areas that might need attention) was no longer required. Although the customer says that the agreement that had been reached in 2016/2017 had involved a five year timetable of diminishing involvement by the company, I find that, if this was so, such expectation was not a contractual commitment, but is likely to have been made on the assumption that further information would not become available during that period or would not demonstrate so clear a change so quickly. I find that an average customer would reasonably expect that the company would approach its strategic decisions to achieve as best it could, its overall objectives from time to time for the benefit of its customers generally. The reasons given by the company indicate that its change of view resulted from weighing up the commitment on resources to the customer's specific case and the perceived risk as against the interests of its other customers. I find that this is consistent with the reasonable expectations of an average customer. Accordingly, although I note and understand the customer's fears about this situation, applying the test that it is incumbent upon me to consider, I conclude that the company has not fallen short of the standards that would reasonably be expected and I can make no direction for redress.

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### Customer Service

14. Although the customer has not listed the items about which he complains, he has referred to the issues arising in the correspondence, especially that submitted by CCWater. The documentation submitted by the customer to WATRS and by CCWater shows that he has complained about:
- i. the language and attitude of staff;
  - ii. that the company has not correctly followed the agreed maintenance schedule;
  - iii. that the company has not kept him correctly informed about the works that it intends to do, for example, in removing the Cello unit and replacing it elsewhere;
  - iv. whether the company had been in breach of the General Data Protection Regulations by telling a neighbour that the customer had obstructed the company from carrying out works;
  - v. a complaint that the company had called the police on 9 May 2019 because the customer had parked his car over the manhole.
  - vi. An alleged breach of Health and Safety Regulations because a single person was left to work in the manhole on 9 May 2019;
  - vii. Failure to reply to correspondence, such as his request to receive information about contact details for the company's legal department and other matters.
15. Some of these customer service issues, I find, fall outside the scope of the WATRS Scheme. For example, complaints about the General Data Protection Regulation and the alleged failure to provide subject access to the customer's data records are matters that are more appropriately dealt with by the Information Commissioner's Office and therefore I make no findings as to these. Similarly, I do not make any findings as to an allegation relating to a breach of Health and Safety Regulations, which is an issue which is not related to the subject matter of this Scheme.

### Maintenance

16. The customer complains that the maintenance schedule that was agreed has not been maintained and supervised and, by one operative, "Joe", the jetting was carried out incorrectly and from the wrong direction with the consequence that the flap valve to the NRV was damaged. The customer wrote a formal letter of complaint on 8 November 2018 about both Joe and the regional manager whom he says talked over him during two telephone calls

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and refused to accept his account of [ ]'s conduct. He said that he had asked for [ ] not to be sent to carry out the works but the company had ignored this.

17. I find as to this that there are two aspects to this complaint. As to whether the company was answerable to the customer in relation to the conduct of the maintenance work, I find that the company had in part by reason of its relationship with the customer and the history of that property, agreed to give information to the customer about the conduct of works to the NRV. However, while I find that the information given to the company about the conduct of one of its staff could have been handled more sensitively, an average customer would not reasonably expect that a customer should be free to compel a company to act in a particular way towards its staff, to refuse to assign them to fulfil statutory functions or to insist on particular training. I find that an average customer would expect this to be an operational matter for the company for which it was not answerable to the customer. The company had made an enquiry of Joe and had accepted his word. I find that was within a range of responses that an average customer would reasonably expect. Additionally, in its letter to the customer of 16 November 2018, the company also agreed to provide the customer with photographs of work done. This, I find, exceeded what an average customer would reasonably expect. Accordingly, on balance, I find that the company has not fallen short of the standards that would reasonably be expected of it because it did not act more vigorously in relation to the customer's expressed concern.

18. As to the customer's concern about the way in which the company had responded to the letter of 8 November 2018, I find that the company accepted in its letter of 16 November 2018 from the Managing Director of Waste Water services that the complaints made about Joe were in part correct and that on further investigation Joe had not fully been carrying out the maintenance work. The regional manager had been spoken to, and he had passed on to the customer that his intention had not been to offend but to make the situation better for the customer and, as indicated above, the company promised photographs of the conduct of the works. An apology was offered for the customer's experiences. I find that, in all the circumstances, this was sufficient redress for the customer's complaint at the time and therefore I conclude that the company has not fallen short of the expected standard in relation to the customer's complaint of 8 November 2018.

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Other staff conduct

19. As for other staff conduct such as swearing and telling the customer that he is “a pain in the ass” as is alleged by the customer in the application form, the company says that it has had insufficient information about these incidents to be able to investigate and I find that insufficient information has been given to enable me to reach conclusions as to this. I find that the customer has not proved that the company fell short of the required standard in this respect.

Information provided to the customer

20. The customer says that he has not been given correct information about the location of the Cello unit and the company has moved its intended placement without letting him know, in that it has moved this into the public road rather than, as he was initially told, placing it in his driveway. I have considered this with some care, including the fact that the company has given significant quantities of information to the customer about the ways in which it would hope to provide protection to his property and that this process of providing information has gone on for some years. However, applying the test of the likely expectation of an average customer, I find that an average customer would not expect that the company would be required to inform the customer of the location of its equipment on its network and nor would it be willing to place its equipment in a location where there might be a problem in obtaining access. Bearing in mind the statement expressed by the customer (referred to above) that he would park his car over the manhole containing the NRV to prevent its removal, this was potentially a legitimate concern for the company.

21. On balance, I find that the precise location of the Cello unit was an operational matter with which the customer is not directly concerned. For this reason, I find that the company has not fallen short of the standards that would reasonably be expected of it if in fact it has located the Cello unit elsewhere than the precise place that was intended at the time of the company’s explanation to the customer of its plans.

22. The customer also complains that he was not given correct notice of the dates when the NRV would be carried out. In particular, he complained that an email was not adequate notice of the works, that he had been promised seven days and he had been given fewer days and that the company had not correctly obtained permission from the local authority. I find that the consequence of these concerns was that the company was unable to undertake the work. I find that the customer has not put forward a reason why an average customer would not

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consider an email to be adequate notification and, if the company did not give adequate notice to the local authority, I find that this is a matter that concerns the local authority and not the customer. As for whether the customer was initially given a sufficiently long period of notice, I find that on the second occasion, when notice was given on 5 April 2019 for work on 16 April 2019, a sufficient period of notice as promised to the customer was provided. Accordingly, I find that the company has not failed to meet the standards that would reasonably be expected of it.

23. The customer also complains that the company reported the customer to the police because his car was parked over the manhole. The police took no action because they regarded this as a civil matter. The company does not address this concern in its defence, but it is clear from the documentation that the company interpreted the presence of the car over the manhole as an attempt to prevent the company from removing the NRV as had been indicated by the customer in the earlier site meeting. The customer says that the vehicle was present because it had been legitimately parked there and insufficient notice had been given to remove it. He said that as he is a learner driver he was not able to move the car without the assistance of his husband who was absent. He says that the actions of the company were inconsistent with reasonable expectations.

24. While I find that an average customer might not have expected the presence of his vehicle to have resulted in a report to the police of an obstruction, I also find that such a customer might also have, in the light of the statements expressed by the customer at the site meeting, interpreted the presence of a car on the manhole as the fulfilment of the threat made to impede the company from having access to its assets. In these circumstances, I am not satisfied that the customer has shown that the company fell short of the standards that would reasonably be expected of it, notwithstanding that, as the company discovered, the police considered that it had or should exercise no powers. I express no view about whether the police had powers or not, because I find that this falls outside the scope of the WATRS Scheme.

*Alleged failure to reply*

25. It is notable that there are a number of occasions in which the customer has expressed frustration that the company has not responded more quickly to his correspondence. The company says, however, that no Guaranteed Service Standards payments are due. Having regard to the correspondence submitted, I have been unable to identify, and the customer

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has not clearly stated, that the company has failed to respond to a complaint within ten working days of its having been made. I find that as this is the period indicated by law as that with which the company shall comply without making a Guaranteed Service Standard payment, an average customer would reasonably expect that the company might be permitted that length of time to respond. I find that the customer has not, therefore, proved that the company fell short of the standard that would reasonably be expected.

### Conclusion

26. It follows from the matters set out above that, as I have not found that the company has fallen short of the standards that would reasonably have been expected of it, the customer is not able to succeed in his claim for redress.

### **Outcome**

The company does not need to take further action.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 17 June 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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Claire Andrews, Barrister, FCI Arb

**Adjudicator**

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