

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1387

Date of Decision: 11 June 2019

Complaint

The customer submits that he is unhappy with the consultation process following the company's notice to install a water main on his land. He requested that the company keep him updated in writing. However, the company contacted him by telephone. It was also not clear to him who was calling him from the company or their job roles. He feels that he was *dictated* to rather than *consulted*. He does not feel that he was given enough time to seek his own counsel. The customer requests that the company disclose the cost of the water main. The customer also requests £2,500.00 compensation for the lack of consultation and distress and inconvenience, and compensation for the pipe being moved onto his land.

Defence

The company submits that the correct consultation and notification process has been followed. The option chosen was based on cost, engineering difficulty, health and safety, environmental matters, and associated risks. It is unable to provide the cost of the work to the customer as this information is commercially sensitive. It is not willing to offer any monetary compensation for distress or inconvenience. It is happy to negotiate compensation for the installation of a new water main on the customer's private land. It recommends the customer appoints a land agent to act on his behalf and negotiate with it in respect of the proposed work. This is normal practice for working on private land. No offer of settlement was made.

Findings

The costs of installing the water main are a business matter for the company alone. I have no power to direct that the company disclose this information. Section 159 of the Water Industry Act 1991 gives water companies the power to install pipes on private land. The company's Code of Practice sets out good practice with regard to the company's powers and duties when it lays or carries out work on pipes in private land. I have no power to review or challenge the company's Code of Practice. The company has acted in accordance with its Code of Practice in relation to its contact with the customer and the timescales set down. However, the company did not provide the plan to the customer with the formal notice as required by the Code of Practice. The company also failed to provide a reasonable level of customer service on a number of occasions.

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Outcome

The company needs to take the following further action:

I direct that the company pay the customer £100.00.

The customer must reply by 9 July 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1387

Date of Decision: 10 June 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- He is unhappy with the consultation process following the company's notice to install a water main on his private land.
- A preliminary notice was issued on 25 October 2018. The company then issued a signed and dated notification on 21 January 2019, and advised that no work would commence until three months after this date.
- He requested that the company keep him updated in writing. However, the company contacted him by telephone. It was also not clear to him who was calling him from the company or their job roles.
- He feels that he was *dictated* to rather than *consulted*. He does not feel that he was given enough time to seek his own counsel.
- The company has refused to provide him with the cost of placing the main on his land because it is commercially sensitive. The customer requests that the company disclose the cost of the main so that he may seek independent legal advice and use this to inform his negotiations with the company. The customer also requests £2,500.00 compensation for the lack of consultation, and distress and inconvenience. In addition, the customer also requests compensation for the pipe being moved onto his land to save the company money. The customer states that he should receive 50% of the saving made by the company.

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The company's response is that:

- It identified a water main that needed to be replaced due to corrosion; the main has burst at least 11 times in the last five years. The work to repair the bursts can cause the customers it serves to go without water for 6 hours on average, this affects 20 properties and businesses on each occasion. In looking at what could be done regarding the main, it considered three options for renewing the main in the vicinity of its current location.
- The correct consultation and notification process has been followed. It has adhered to its own policy; "Code of Practice for the exercise of pipe laying powers on private land" ("the Code of Practice"). The Code has been prepared under s182 of the Water Industry Act ("the Act") and has the approval of the Secretary of State.
- On 21 January 2019, it provided the correct three-month notice period for the installation of a water main on private land. This period allows time for any objections to be addressed and for the customer to seek legal advice before it undertakes the proposed work.
- On 25 January 2019, it also provided details to explain why it is doing the work, the options considered, the risks involved and the reasons for selecting the preferred option. A plan of the work was also sent at the same time.
- This information was sent as soon as the details for the plan had been finalised. It did not want to furnish the customer with a plan earlier as any such plan would not have been final and may have caused confusion should the plan have been amended.
- It acknowledges that it did aim to send the customer land entry notices and a separate letter detailing the considered options before Christmas 2018. However, it refutes that it was reluctant to put anything in writing and was happy to send all the required information.
- The option chosen was based on cost, engineering difficulty, health and safety, environmental matters, and associated risks.
- It is unable to provide the cost of the work to the customer as this information is commercially sensitive. The option chosen for the proposed work is the most suitable and takes into account several factors. It is not just based on cost as suggested in the customer's application.
- It is not willing to offer any monetary compensation for distress or inconvenience. It has followed the correct consultation and notice procedure for the installation of a water main on private land.
- It is happy to negotiate compensation for the installation of a new water main on the customer's private land. It recommends the customer appoints a land agent to act on his behalf and negotiate with it in respect of the proposed work. It will agree compensation with the land agent and it will also pay the land agent's fees. This is normal practice for working on private land.
- It does not agree that the customer should receive 50% of the saving of the option chosen.

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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?

1. I must remind the parties that adjudication is an evidence-based process.
2. 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.
3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.

Cost of installing the water main

4. I note the customer's submissions about the cost of installing the water main and the customer's request that WATRS require that the company disclose the costs and the cost savings it will make by installing the main on his land. However, my remit under WATRS is limited. I have no

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power to direct that the company disclose this information. For the purposes of the WATRS Scheme, such information is a business matter for the company alone and does not fall within the scope of the Scheme. The customer's submissions and any requests for redress in this regard cannot be considered.

Consultation

5. Section 159 of the Water Industry Act 1991 gives water companies the power to install pipes on private land.
6. A copy of the company's Code of Practice has been submitted in evidence. The Code of Practice sets out good practice with regard to the company's powers and duties when it lays or carries out work on pipes in private land.
7. Under s.182 of the Water Industry Act 1991, the Code of Practice must be submitted to the Secretary of State for his/her approval. There is no evidence to show that the company's Code of Practice was not approved the Secretary of State. It is important to note that it is not within my remit to review the company's Code of Practice. The WATRS scheme is limited in scope and I have no power to review or challenge the company's Code of Practice.
8. Under the company's Code of Practice, the company is required to give customers *"formal notice, of [its] intention to carry out works on [their] land. The notice, which has to be in writing, will be accompanied by a plan."* The Code of Practice also states that *"If the works involve laying a new pipe we will always try to contact you before we issue the notice. Unless it is an emergency or in response to a requisition we will give you at least three months' notice."*
9. The evidence confirms that the company issued its formal notice of works on 21 January 2019. The notice states that the water main will be laid not sooner than three months after service of the notice. No evidence has been submitted to this adjudication showing that work began on the customer's land prior to the end of the three month period. The evidence also shows that the company contacted the customer prior to issuing the formal notice. The Code of Practice does not prescribe how the company should contact the customer before the issuing of the notice. The company contacted the customer by issuing a preliminary notice in October 2018; visiting the customer's property in November 2018; and speaking to the customer on the telephone on a number of occasions in November 2018 and December 2018. Accordingly, I find that the

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company acted in accordance with its Code of Practice and provide its services to the customer to the standard to be reasonably expected in these regards.

10. However, I am mindful that the Code of Practice states that *“The notice, which has to be in writing, will be accompanied by a plan.”* Although in its accompanying letter of 21 January 2019, the company states that a plan was enclosed, I note the company’s own submissions in its Defence to WATRS that a plan was not sent until 25 January 2019 as the details for the plan had not been finalised until then. However, no clear evidence has been submitted to show that the company explained this to the customer or apologized for the delay. I am therefore not satisfied that the company acted in accordance with its Code of Practice or provide its services to the customer to the standard to be reasonably expected in this regard.

11. For the avoidance of doubt, I note the customer’s submissions that he has not been given enough time to seek his own counsel. However, as discussed above, I have no power to review or challenge the timescales set out in the Code of Practice. I also note the customer’s submissions that he feels that he was dictated to rather than consulted. However, the evidence shows that the company has contacted the customer and now provided the customer with information as required under the Code of Practice. The legislation and the Code of Practice show that the customer’s approval or permission is not required to undertake the work. Therefore in the absence of any evidence showing otherwise, I find no failing on the company’s part in this regard.

Customer service

12. The evidence submitted to this adjudication shows that on 27 November 2018, the customer requested that the company provide details of the options being considered and why the option chosen had been selected in writing. The customer chased the company on 17 December 2018 and was informed that the land entry notices and a separate letter detailing the considered options would be sent to him before Christmas 2018. However, the company did not issue these documents until 21 January and 25 January 2019 respectively. Nor did the company provide the customer with an explanation for the delay or an apology at the time. Further the evidence also shows that despite the customer requesting that a member of staff not contact him by telephone, the member of staff contacted him by telephone. The evidence also indicates that the company did not clearly inform or explain members of staff’s roles to the customer. I find that the company

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failed to provide its services to the customer to the standard to be reasonably expected in these regards.

Redress

13. As discussed above, the customer's requests that the company disclose the cost of the water main falls outside the scope of the Scheme and cannot be considered.

14. The customer also requests that the company pay £2,500.00 compensation for the lack of consultation, and for distress and inconvenience. As discussed above, the evidence shows that the company has acted in accordance with its Code of Practice in relation to its contact with the customer and the timescales set down. I find no failings on the company's part in these regards. However, the company did not provide the plan to the customer with the formal notice, and did not provide an explanation or apology for the delay at the time or when the plan was issued. In addition, the company did not issue the notice and a separate letter detailing the considered options as promised before Christmas 2018. Nor did the company provide the customer with an explanation for the delay or an apology. Further, the company failed to provide its services to the customer to the standard to be reasonably expected in relation to contact by a member of state by telephone and information about staff's roles. I am satisfied that the customer is entitled to a measure of compensation for the distress and inconvenience caused. However, I find that the sum claimed by the customer is disproportionate to the failings shown. Having carefully considered the matter, I find that the sum of £100.00 is fair and reasonable in the circumstances. No evidence has been submitted to this adjudication to support a higher amount. I therefore direct that the company pay the customer £100.00.

15. In respect of the customer requests for compensation for the pipe being moved onto his land, the company states that it is happy to negotiate compensation and has recommended the customer appoints a land agent to act on his behalf and negotiate with it in respect of the proposed work. No evidence has been submitted to this adjudication to show the customer's loss in this regard. Further, in accordance with WATRS Rule 3.4.1, I am not satisfied that WATRS is the appropriate forum for the resolution of this aspect of the customer's claim. Consequently, this aspect of the customer's claim cannot be considered.

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Outcome

The company needs to take the following further action(s):

I direct that the company pay the customer £100.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 8 July 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



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Adjudicator

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