

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1389

Date of Decision: 11 June 2019

Complaint

The customer submits that he and his wife have been accused of stopping the company's work to install a new connection for a nearby developer. The company's contractors incorrectly state that they knocked on his door and his wife refused to move her car when requested to do so, which caused delays in completing their works. He and his wife were unaware of the issue until the developer threatened his wife with court action for delaying his property's connection to the mains water supply. The customer requests an apology; that the company confirm that his version of events is correct; and that the company pay compensation in the sum of £2,500.00 for distress and inconvenience.

Defence

The company submits that this matter amounts to the customer's word against its contractor's version of events. It queries the evidence submitted by the customer, submits that its contractors have nothing to gain by fabricating the facts and there is little evidence to support either version of events. However, it acknowledges that there was confusion regarding the area required for its contractors to complete the work, apologised for any upset this may have caused, and offered a goodwill payment of £50.00.


Findings

I accept the evidence submitted by the customer to show that nobody approached the property around the time the contractor informed the company that he knocked on the door. I consider the customer's submissions clear, credible and consistent. No direct evidence from the individual who states that he knocked on the customer's door has been submitted to this adjudication. I am mindful that the company's own position during the period of the complaint has not been consistent. Having carefully considered the matter, I am inclined, on a balance of probabilities, to attach weight to the customer's account of what happened on 30 October 2018. However, I find that the amount claimed is disproportionate to the failings shown. In addition, the company is entitled to take whatever position it wishes, it is not within my power nor do I feel it appropriate to require that the company confirm that the customer's version of events is correct.

Outcome

The company needs to take the following further action:

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I direct that the company pay the customer compensation in the sum of £150.00. (For the avoidance of doubt, this compensation is in addition to the £50.00 already sent by the company. The customer acknowledges receipt of the company's cheque in the Comments on the Defence but states that the cheque was never cashed. The customer should inform the company if he no longer has the cheque so that it can be re-issued). I also direct that an authorised representative of the company provide the customer with a written apology.

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

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company advised it would be working, it would have immediately been obvious to the contractors that the car would not be able to be moved due to the flat tyres.

- He and his wife were completely unaware of the issue until 20 November 2018 when they met with the developer of the neighbouring property to discuss on-going issues, during which the developer threatened his wife with court action for delaying his property's connection to the mains water supply. This caused his wife a lot of distress and anxiety as the developer was shouting in a hysterical expletive-laden manner. When they asked what he was talking about, the developer said that he had received an email from the company informing him of his wife's refusal to move her car.
- He immediately contacted the company to complain about the false allegation made by the contractors. The complaint was escalated on a number of occasions. The company offered him £50.00 as a gesture of goodwill as it accepted that there was no evidence to show that the car was parked inside the coned off area, and therefore he was not the cause of the work being delayed. The company also accepted in further correspondence that there was no evidence to prove it ever knocked on his door.
- However, in subsequent correspondence from its lawyers, the company has amended its position and states that there is insufficient evidence to confirm what actually happened one way or another as none of its employees were at the site.
- The customer requests an apology; that the company confirm that his version of events is correct; and that the company pay compensation in the sum of £2,500.00 for distress and inconvenience.

The company's response is that:

- This matter amounts to the customers' word against its contractor's version of events and unfortunately, there is insufficient supporting evidence provided by either party.
- The three short clips provided by the customer only show that nobody knocked on the door at those times. It is reasonable to assume that the customer's CCTV system is activated upon movement because uninterrupted CCTV coverage of the complete morning has not been provided – this would have been the only definitive way of proving either version of events.
- If the customer's CCTV system is motion activated, as there were works being carried out at the neighbouring property, it would expect it to have been triggered on more than three occasions that morning.
- Each time a motion activated CCTV system activates it will create a recording as a file on a computer/hard drive. It notes that a screenshot of the directory on which the customer's CCTV

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recordings are stored, showing the number of recordings the CCTV system made on that particular day has not been provided.

- Whilst it notes the customers' strength of feeling over this matter and it accepts that they stand by their version of events, its contractors have nothing to gain by fabricating the facts and there is little evidence to support either version of events.
- The customer has not suffered any financial loss.
- It acknowledges there was confusion regarding the area required for its contractors to complete the work and it is sincerely sorry for any upset this may have caused. Its goodwill payment of £50.00 was intended to convey its apology. However, it does not accept that any action, inaction or behaviour on its part, or on the part of its contractors, has amounted to causing the level of distress and inconvenience the customer is claiming for.

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.

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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.

New evidence at Comments stage

4. Notwithstanding the above, I note the new evidence submitted by the customer in his Comments on the Defence. However, under s.5.4.3 of the WATRS Rules, the customer cannot introduce new matters or evidence in their comments on the company's response. Any such new matters or new evidence must be disregarded by the adjudicator.

30 October 2018

5. The customer has submitted in evidence CCTV footage from the property around the time the contractor informed the company that he knocked on the door as evidence to show that nobody approached the property. I note the company's submissions about this evidence. However, I am inclined to accept on a balance of probabilities the customer's submissions, in the Comments on the Defence, about the focal/trigger point of the camera; how the files are stored; and the manner in which builders would have approached and left the neighbouring property due to the cordons placed by the company.
6. The customer has also submitted in evidence a receipt as evidence to support his submissions that he replaced the vehicle's tires on 31 October 2018.
7. I consider the customer's submissions clear, credible, consistent and supported by evidence.
8. No direct evidence from the individual who states that he knocked on the customer's door on the morning of 30 October 2018 has been submitted to this adjudication.
9. I am mindful that the company's own position during the period of the complaint has not been consistent. In an email to the customer dated 24 January 2019 the company states that *"I can confirm we have no evidence to prove we ever knocked on your door while we were working to*

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install a new supply outside your property...” However, as highlighted by the Consumer Council for Water (CCW), the company has now changed its position.

10. It is also not in dispute that the customer’s wife car was in fact parked outside of the area cordoned off by the company’s contractor, the company acknowledges that there had been confusion regarding the area required for its contractors to complete the work.
11. Having carefully considered the matter, I am inclined on a balance of probabilities to attach more weight to the customer’s account of what happened on 30 October 2018. I therefore find that the company failed to provide its services to the customer to the standard to be reasonably expected in this regard.

Redress

12. The customer requests £2,500.00 compensation for distress and inconvenience. In light of my findings above that the company failed to provide its services to the customer to the standard to be reasonably expected, and bearing in mind this issue has been ongoing for nearly six months, I am satisfied that the customer is entitled to a measure of compensation for the distress and inconvenience caused. However, I find that the amount claimed is disproportionate to the failings shown. In addition, I accept the company’s submission that no evidence has been submitted to this adjudication to show that the customer has suffered financial loss. Having carefully considered the evidence provided, I find the sum of £150.00 to be a fair and reasonable level of compensation. No evidence has been submitted to this adjudication to support a larger sum of compensation. I therefore direct that the company pay the customer compensation in the sum of £150.00. (For the avoidance of doubt, this compensation is in addition to the £50.00 already sent by the company. The customer acknowledges receipt of the company’s cheque in the Comments on the Defence but states that the cheque was never cashed. The customer should inform the company if he no longer has the cheque so that it can be re-issued).
13. The customer also requests an apology. In light of my finding above, I find that it would be fair and reasonable to direct that an authorised representative of the company provide the customer with a written apology.

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14. However, in respect of the customer's request that the company confirm that his version of events is correct; the company has stated its position on the matter in its Defence to WATRS. The company is entitled to take whatever position it wishes, it is not within my power nor do I feel it appropriate to require that the company confirm that the customer's version of events is correct. In this Decision, I have attached more weight to the customer's account of what happened on 30 October 2018, based on the evidence submitted and awarded redress accordingly. I do not find that any further direction is required.

Outcome

The company needs to take the following further action.

I direct that the company pay the customer compensation in the sum of £150.00. (For the avoidance of doubt, this compensation is in addition to the £50.00 already sent by the company. The customer acknowledges receipt of the company's cheque in the Comments on the Defence but states that the cheque was never cashed. The customer should inform the company if he no longer has the cheque so that it can be re-issued). I also direct that an authorised representative of the company provide the customer with a written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 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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A handwritten signature in black ink, appearing to read 'G. G. G.', enclosed within a thin, hand-drawn oval border.

**U Obi LLB (Hons) MCI Arb
Adjudicator**

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