

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0639

Date of Decision: 15 January 2018

Complaint

The customer complains that the company has failed to give him a “straight answer” for why it made a false, defamatory comment to the Consumer Council for Water. He believes the comment was made to discredit his character and to portray him as a serial complainer and he is worried about the implications of its comment. Further, two of the company’s representatives arrived at his house to discuss a particular complaint when he had been told by the company that only one individual would attend. The company has acted in a bullying way to discredit and defame his character. He requests £250.00 for the attack on his character.

Defence

The company accepted that a comment made by its case manager saying that it believed the customer was unhappy with the new development, was misjudged and untrue and it immediately apologised for this and repeated this apology on a number of occasions. The company asserts that it was not said to discredit the customer but because its case manager misread a report. It offered the customer £50.00 to say sorry but it is not willing to increase this offer and this was explained in its correspondence to the customer.

Findings

The allegation about defamation falls outside the scope of WATRS. The company’s comment made to the Consumer Council for Water was not based on fact and was its opinion which the company admits was mistakenly made, without due consideration of the implications for the customer. Also the company did not provide a full explanation in its responses to the customer although this was provided in the defence. This is evidence of the company failing to provide its services to the customer to the standard to be reasonably expected by the average person. The company shall pay the customer £100.00 in compensation for the stress and inconvenience caused to him.

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Outcome

The company shall pay the customer compensation of £100.00.

The customer must reply by 12 February 2018 to accept or reject this decision.

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Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- For a year now he has had an ongoing dispute with the company regarding the change of use of land to a commercial site in a built residential area with no consideration for local law abiding residents. He has been woken up early (06:45) due to noise. He complained about this to the company, then to its Executive Complaints team. He was passed from pillar to post and it did not take his complaint seriously and some of its contractors were aggressive and intimidating.
- He then referred his case to the Consumer Council for Water (CCW) who were really helpful and pointed out many mistakes the company had made during the dispute. This dispute is still on going however there are three separate issues CCW have been unable to resolve that he believes shows the company has acted in a bullying way to discredit and slander his character.
- The first issue is that in a letter to CCW about the fact that the company had sold some land, it stated that "██████ is unhappy with the sale of the land the proposed development". CCW did not ask for the company's opinion on the purchasers *ABC Limited* and he has never written to CCW about that. He was complaining about the noise and therefore its comment was irrelevant and also absolutely factually untrue.
- After he complained about it, the company questioned CCW over why it showed him the correspondence who replied it was a transparent organisation. The company then reluctantly apologised to him and admitted it was a falsehood saying it was just trying to give the bigger picture. But the company has been sorry about many things including: its staff being aggressive and intimidating; taking so long to resolve the issues; since CCW involvement, breaching Guaranteed Service Standards (GSS) twice; its unprofessional response; the delays; the way

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his complaint has been handled; not attending appointments and; for delays in contacting him. Therefore, the customer submits that the company's "sorrysts" are wearing a bit thin.

- The company had no business spreading falsehoods and he believes it was said to discredit and defame his character and to make out he is a serial complainer. It has still failed to give him a straight answer in regards to its comment, on three occasions. He is particularly unhappy about this as the company's Manager Mr Jones often speaks to the owner of the purchaser of the company's land *ABC Limited*, who lives locally now and owns that bit of land. He is unhappy because he lost his planning application and his appeal and has since appealed to the Secretary of State and has now lost that (with costs) so the customer asserts that he does not need the company spreading false allegations about him like that. It is a tense time and it was unprofessional of the company.
- The second issue is that after CCW got involved the company arranged to send the site Manager Mr Jones to see if they could reach a compromise/agreement about the noise issue, however, on the day two people attended. He was not advised of the second person. He could have felt intimidated or bullied and moreover he would have liked to have known as he could also have had a friend or his girlfriend accompany him. The company apologised which he accepted however on reviewing the information from the Subject Access Request, it is clear the company was fully aware of the impact this might have had, yet still did nothing.
- The ongoing dispute regarding noise has not reached a conclusion and so he will wait before submitting a complaint to WATRS about this.
- He requests that the company pay "reasonable" compensation for "the seriousness of this personal attack about my character" (£250.00).

The company's response is that:

- The customer has been corresponding with it about the noise at one of its commercial sites: **██████████** Pumping Station which is fairly close to the customer's property. While it is entitled to use the site for the purpose it is intended, it has taken his complaint very seriously and worked hard to accommodate his requests. The steps taken include: briefing its operatives to keep the noise level to a minimum prior to 7.30am, which means engines must not be left running and activities must be completed as quietly as possible and; operatives mostly accessing the site after 6.45am; an hour later than other sites although it is not practical for its operatives to further delay accessing the site as this will impact on their ability to complete their work and service its customers. In addition, it is looking into fitting isolation switches (with timers) to its vans to turn off the reversing noise, as advised to the customer in its email of 11 August 2017 and more

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recently discussed with him in December 2017. It has also made payments to the customer as gestures which total £530.00 to resolve the complaint. This part of the customer's complaint is progressing well and the customer has confirmed that he is satisfied with the way it is being handled.

- In his application the customer has highlighted issues which he believes CCW have been unable to resolve. The first issue relates to a comment it made in its 8 September 2017 reply to CCW. On 24 August 2017, after the customer had contacted CCW, it received a pre-investigation from CCW which sought answers to several questions. Within its reply it stated that the customer was unhappy with the sale of the land and the proposed development. It felt it was important to explain that the activity of the site had increased and why this was the case, and in addition, it had sold off part of the land for the redevelopment of 9 new homes to *ABC Limited*.
- The customer states that it has failed to give him a straight answer regarding the reason for making the comment. As can be seen in its letter to the customer of 5 October 2017 after reviewing its letter, it accepted that it had misjudged the situation and should not have made this comment. It has apologised for this and acknowledged that it should not have provided its opinion to CCW. It also confirmed that it was not its intention to cause any upset or spread falsehoods about the customer. It apologised again on 16 October 2017 and 17 November 2017. It is unsure what else it could have done to rectify this. The comment was irrelevant in the context it was written, as it was answering the point regarding the changes to the use of the pumping station and it has sincerely apologised for its mistake. It was a comment that was made without thinking about the implications, but it was in no way meant to discredit the customer.
- It offered a gesture of goodwill of £50.00 in recognition of its mistake. The customer did not accept this and made it clear to CCW that he wanted a substantial goodwill gesture however it explained that it could not increase its offer to £250.00 as sought.
- The next issue raised by the customer relates to it sending two members of its staff to visit the customer at his home when it had only confirmed that its Completion and Compliance Manager, Mr Jones, would be attending. As explained to the customer in its email of 17 November 2017, its Customer Representative was in attendance to support the customer and answer any additional questions he may have had. Whilst it did not advise that two people were attending, this was in no way done to intimidate the customer, it was to try and help him. In recognition of the fact that the customer was not advised prior to its visit, it offered a payment of £50.00 by way of an apology, which the customer accepted.
- The company denies that the customer has justified his claim for a payment of £250.00.

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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.

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. I remind the parties that adjudication is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
2. Therefore, in accordance with the Scheme Rules, I am unable to consider the customer's allegation that the company has been defamatory by its comment to CCW that he was unhappy with the sale of the land and the proposed development. This is because this falls outside of the scope of WATRS as it raises a complicated issue of law for which there is a more appropriate, alternative forum. However, I am able to consider if the service provided by company in relation to this matter and the other disputed matters raised by the customer, was to the standard reasonably expected by the average person.
3. The parties, in their respective submissions, have gone into considerable detail regarding an ongoing dispute concerning the company's commercial site ■■■ Pumping Station which is located in close proximity to the customer's home. The complaint raised by the customer is about the noise produced at the site and the impact of this on local residents (particularly when it is early in the morning) and the way the company has dealt with his concerns raised regarding this issue over the past year. Based on the customer's submissions, I accept that this matter does not

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form part of his current complaint and therefore I will not adjudicate on this dispute including his request for company to commence work at the site at a later time (8 am).

4. In relation to the company's comment in its letter to CCW of 8 September 2017, the customer submits the company has not explained why this comment was made. He maintains it was said to discredit and defame his character and it alludes to him being a serial complainer. I have reviewed the above mentioned letter and the parties' subsequent correspondence exchanged in relation to the customer's complaint letter of 26 September 2017, including the company's responses of 5 October 2017, 16 October 2017 and 17 November 2017. I find that in its response of 5 October 2017, the company apologised and admitted the comment was its opinion which should not have been provided to CCW and confirmed feedback had been provided to prevent this happening again. However, I accept that it did not explain why the comment was made as sought by the customer or comment on the points raised by the customer in his 26 September 2017 letter regarding the impact of this on his relations with *ABC Limited* or its owner who lived in the area. The response given in its next letter of 16 October 2017 was brief as it only reiterated its apology and stated that it was a mistake. In its further response of 17 November 2017, the company stated: "we hadn't intended to tarnish your character in any way and this was a mistake" and offered £50.00 gesture in recognition of its error. Therefore, I accept that within its responses, the company did not specifically explain why the comment was made as sought by the customer, although it did admit it was wrong to make the comment, apologise and offer a £50.00 gesture.
5. In its defence however, I consider that the company has provided a more detailed and thorough reply to the customer's questions raised in relation to the disputed comment. This includes an explanation that the case manager who replied to CCW misread its Customer Liaison Report following a visit to the customer's home on 13 March 2017 and included a comment saying it believed he was unhappy with the new development. The customer in his Reply maintains that the company has not provided a reason and that the comment was said to discredit his character. As explained above, I cannot rule on whether the comment amounts to defamation or what the company's intentions were, if any, in making such a remark. However, in light of the company's further comments in the defence I am satisfied that, together with its prior responses, the company has sought to reasonably answer this complaint. None the less, I accept the company's comment was wrong, careless and made without due regard for the potential implications for the customer. The company admits this and I find that the customer has highlighted a genuine concern he has about other people in the area thinking he is against the

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development, including the owner of the development, as a result of the false comment. Therefore I am satisfied that the service provided by the company was not to the standard reasonably expected by the average person and I find that the company's offer of £50.00 was insufficient and therefore I will address the question of a suitable remedy below.

6. The customer complains about the company sending two representatives to his address to discuss the (ongoing complaint) when it had only arranged for its Completion and Compliance Manager Mr Jones to attend. I accept that in the context of the ongoing dispute he was having with the company and in particular in view of an earlier dispute regarding threatening and abusive behaviour by some of the company's staff, the company should have been aware of the risk that it would make the customer feel intimidated or bullied. In light of the SAR evidence, I accept that the company was aware but that it did not take any steps to inform the customer that two individuals would be attending and not one, as arranged. In light of my above observations, I am satisfied that this is evidence of the company failing providing its service to the standard reasonably expected by the average person. However, it admits this was an error and poor judgement on its part and offered £50.00 in compensation. Bearing in mind that the customer has not suggested there were any issues which resulted in the fact that two people attended, I find that the £50.00 gesture offered, is reasonable compensation for this shortfall by the company.

7. The customer in this application has also stated that when the company fails to answer on time it "gives out" £40.00. He asserts this is a more serious situation where the company again fails to realise the intimidating effect it will have on a customer. Whilst it is clear that the company has not answered some of the customer's communications on time and that it has sent the customer's cheques for various failings including responding outside the timeframe stipulated in its Customer Guarantee Scheme, I find these instances have been in relation to the complaint raised about the noise issue (and associated matters). As the parties have made it clear this adjudication should not decide on the substantives of this complaint, I find this includes considering the compensation issued for any late responses issued by the company. Therefore, I make no finding on whether the company has failed to provide its standard to the standard to be reasonable expected in relation to this issue. However, the customer has referred to the effect of the company not providing timely responses being "intimidating". The customer has not given any further explanation on this point. I find that failing to respond to a complaint late is unacceptable however, for the customer's information, water companies are legally required to

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make specific payments to customers under the Guaranteed Service Standard Regulations where it has failed to meet certain standards of service. This includes failing to reply to a customer's complaint within 10 working days. Further, a water company's Customer Guarantee Scheme must, at a minimum, reflect these Guaranteed Service Standards. Therefore, making such payments is a standard practice across the industry and does not, on its own, reflect incorrect conduct.

8. The customer requests £250.00 in compensation for the comment made, as detailed above. In light of my finding that the £50.00 gesture offered by the company for the comment made does not sufficiently reflect the distress and inconvenience caused to the customer by this and also its lack of a full explanation provided to the customer in its responses, I consider that the company shall pay the customer £100.00 in compensation which I find is fair and proportionate.

Outcome

The company shall pay the customer compensation of £100.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 12 February 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.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb
Adjudicator

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