

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/2016

Date of Decision: 28 July 2020

Complaint

On 19 December 2018, the company contacted the customer about a suspected leak outside his property. The company arranged to attend on 9 January 2019 but failed to arrive. On 10 January 2019, the company arrived unannounced and excavated both the road outside the customer's property and his front garden. The customer had not been informed that his front garden would be excavated and had not given permission for this. After the company left, the property had no running water, the excavation hole remained, and the rockery and underlying membrane in the front garden were damaged. The company returned to reinstate the water, but failed to reinstate the rockery properly or replace the damaged membrane. The customer has received a quote for £825.00 to reinstate the garden to its previous condition and wants the company to compensate him accordingly.

Defence

In accordance with the Water Industry Act 1991, the company is responsible for pipework up to a customer's boundary and a customer is responsible for pipework inside their property boundary. However, in order to prevent water wastage, it offers a Customer Side Leak (CSL) service to detect and repair private leaks free of charge. The customer agreed to the CSL Terms and Conditions and gave the company permission to excavate his property before the work to repair the leak on his pipework commenced. The reinstatement work met the standard expected under the CSL Terms and Conditions and, as such, the company denies liability to pay for further reinstatement of the customer's garden. In any event, photographs of the customer's property taken before the excavation took place demonstrate that the issues the customer complains about were pre-existing. The company acknowledges that its customer service fell below the expected standard at times and has provided the customer with goodwill payments in line with its Customer Guarantee Scheme to apologise for these failings. All further liability is denied.

The company has not made an offer of settlement.

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Findings

Having considered the company's obligations under the Water Industry Act 1991, I accept that the company was not obliged to repair the leak on the customer's supply pipe and conducted the repair as a gesture of goodwill in accordance with its CSL scheme. The evidence demonstrates that the customer agreed to the CSL Terms and Conditions prior to the repair and, having reviewed the Terms and Conditions, I accept that the company's obligations were limited to backfilling the excavation and leaving the site safe and level. The images provided in evidence demonstrate that the company fulfilled its obligations in this respect. In view of this, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer and I cannot find the company liable to pay the costs of further reinstatement of the customer's garden. Therefore, the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

The customer must reply by 25 August 2020 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/TW/2016

Date of Decision: 28 July 2020

Party Details

Customer: (Removed)

Company: (Removed)

Case Outline

The customer's complaint is that:

- On 19 December 2018, the company contacted him about a suspected leak outside his property. The company arranged to attend on 9 January 2019 and asked for authority to dig up the pavement outside his house. It also requested that someone be at the property during the visit so his partner took time off work to attend the appointment. However, the company failed to arrive and failed to communicate to say it was not going to attend.
- On 10 January 2019, the company arrived unannounced and excavated both the road outside his property and his front garden. He had not been informed that the front garden would be excavated and did not give permission for this. After the company left, the front garden was left in a state of disarray; the excavation remained, all the rocks in the rock garden were mixed with mud and the underlying protective membrane was significantly damaged. Furthermore, there was no running water at the property. His partner rang the out-of-hours helpline but was told that there was nothing the company could do that evening.
- On 11 January 2019, he telephoned the company to complain that there was still no water. He took time off work and two representatives from the company attended in the afternoon. The representatives both expressed their concern that the property had been left without water and the garden had been left in such a poor state. They discovered that the property had been connected to the wrong water supply and the water was reinstated at approximately 5.00 p.m. He was reassured that the garden would be reinstated to its previous condition and that this would most likely happen on the following day.
- However, the company failed to attend so, on 18 January 2019 and on several further occasions, he chased the company for an update. On 7 February 2019, the company attended

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to remedy the damage but filled the excavation with a mixture of dirt and the rocks from his rockery and failed to replace the damaged membrane.

- The company paid £110.00 for the missed appointment and the loss of water, but failed to address the damage to the rock garden and membrane. He asked the company to remedy the problem on many occasions throughout the following year but, on 13 February 2020, the company confirmed that they would not reinstate the garden further.
- The damage to the membrane has resulted in an abundance of weed growth in the spring and summer, as well as mud during the wet weather. He will have to pay £825.00 to reinstate the front garden and wants the company to cover this cost.

The company's response is that:

- In accordance with the Water Industry Act 1991, it is only responsible for its water mains and assets up to the customer's boundary; any pipework within a customer's boundary is the customer's responsibility to maintain and repair.
- However, it is obligated by law to ensure that water is not unnecessarily wasted from private supplies and, pursuant to this, it has developed its Customer Side Leak (CSL) Service to detect and repair customer side leaks free of charge. This does not absolve a customer's responsibility to repair private leaks and, if they are dissatisfied with the time it takes to carry out a repair or if they are unhappy with the CSL Terms and Conditions, they can arrange and pay for any repair works themselves. Furthermore, as customer side leaks are not graded as emergency works, it may not be able to carry out the work on a specified date if more urgent repairs are needed elsewhere. In view of this, customers sometime prefer to contact their home insurance company or arrange a private contractor.
- Prior to starting the work to repair the leak at the customer's property, on 20 December 2018, the customer was read the CSL Terms and Conditions over the telephone, verbally agreed to the Terms and Conditions and gave permission to dig on his land. The Terms and Conditions stipulate that it will backfill an excavation with the original material and will leave the site safe and level, but the company is not liable for further reinstatement works.
- Before starting the excavation work on 10 January 2019, it took photographs to show the condition of the area. It had to remove the pebbles and move the weed membrane to excavate and, due to the time of year, it was difficult not to make any mess while the work was in progress. However, as shown in the photographs provided in evidence, the excavation was backfilled and left safe and level. All weeds had been removed during the digging and no mess was left.

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- However, on 4 February 2019, the customer complained that he was unhappy with the way the front garden had been left and wanted it reinstated to the condition it was in before the works were carried out.
- The CSL Manager visited the property to ensure that the reinstatement complied with the agreed CSL Terms and Conditions and was satisfied that the work met the expected standard. In view of this, it sent a final response to the customer stating that it would not carry out further works and the customer's case was closed.
- Photographs of the front garden of the customer's property taken from the public domain show weed growth and sparsely distributed pebbles pre-existed the excavation works. These photographs demonstrate that the weed barrier was not effective prior to the customer purchasing the property in 2018. No evidence has been provided to show that the customer upgraded the weed barrier upon moving into the property or before the works to repair the leak were carried out.
- Furthermore, any claim of negligence cannot be adjudicated upon by WATRS because it raises a complicated matter of law and is out of the scope of the Scheme under rule 3.4.1 and 3.4.3 of the WATRS Scheme rules.
- It acknowledges that there were some customer service issues during the course of the customer's complaint and has provided the customer with goodwill payments in line with its Customer Guarantee Scheme to apologise for these. All further liability is denied.

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.

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How was this decision reached?

1. Having considered the company's obligations under the Water Industry Act 1991, I accept that the company was not responsible for repairing the leak on the customer's supply pipe and conducted the repair as a gesture of goodwill in accordance with its CSL scheme. The evidence presented by the company demonstrates that the customer agreed to the CSL Terms and Conditions and gave permission to dig at the property.
2. Section 5 of the CSL Terms and Conditions provided in evidence states that any excavated area will be backfilled using the original materials and will be left safe and level, but no liability is accepted by the company for returning the surface back to its original condition.
3. I have reviewed the photographs provided and accept that the company fulfilled its obligation to backfill the excavated area with the original materials and left the site of the excavation safe and level. There is no evidence to support the customer's assertion that the membrane was damaged during the works or that the company failed to return the membrane to its original position.
4. In view of the above, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer and cannot find the company liable to pay the costs of further reinstatement of the garden. I understand that my decision will disappoint the customer, but I make no direction to the company in this regard.
5. For completeness I add that the customer also complains that the company provided poor customer service but does not claim a remedy for this. The company acknowledges that its customer service did not meet the expected standard at times and the evidence demonstrates that the customer has already been adequately compensated for these failings. Therefore, I make no further direction to the company with regard to this matter.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 August 2020 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.

KS Wilks

Katharine Wilks

Adjudicator

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