

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/2025

Date of Decision: 29 September 2020

Complaint

The company undertook work to replace water mains in (removed) between June and December 2019. In undertaking these works, the company damaged the grass verge outside his property and has failed to reinstate it. The impact of heavy plant machinery and the use of the pavement and the driveway by road traffic during the works has led to a reduction in the effectiveness of the rainwater gutter. This is causing flooding. The customer submits that a customer service agent gave an untrue account of a telephone conversation between the parties. The customer requests that the company complete repairs to the kerbside gutter and grass verge outside his property. The customer also requests that the company issue a public and unreserved apology for publication in a place of his choosing. The customer also requests £1,000.00 as compensation for distress and inconvenience.

Response

It has apologised to the customer for the inaccurate and misinterpreted information recorded in its case notes. It is satisfied that the reinstatement of the grass verge is complete. In relation to the rainwater gutter, the kerbstone has been dipping for a number of years and there is no evidence to associate this with its works or its vehicles. The customer will need to take the matter up with the appropriate authority. It has no responsibility for paths or highways. It has paid the customer a £230.00 goodwill gesture for information being interpreted incorrectly following a telephone call and for his overall customer journey, and an additional £50.00 in recognition of the further delays with the reinstatement of the verge.

Findings

The evidence does not show that the company completed the reinstatement of the grass verge to a satisfactory standard, if at all. Statements written by the agent in a file note as having been said by the customer during the call are not true. The company failed to provide its services to the customer to the standard to be reasonably expected in these respects. However, the evidence supports the company's submissions that the kerbstone had been sinking prior to the company's works commencing. The company has signposted the customer to the authority responsible for the maintenance of the kerbstone.

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Outcome

The company needs to take the following further action:

(1) The company should re-attend the property and undertake reinstatement work to the grass verge. However, to clarify, if the company shows that it has made reasonable attempts to carry out the reinstatement but is unable to do so, then the company would still be seen as compliant with my direction in this regard. (2) An authorised representative of the company should provide the customer with a written apology. (3) The company should pay the customer further compensation in the sum of £150.00.

The customer must reply by 27 October 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Party Details

Customer: Customer

Company: XWater

Case Outline

The customer's complaint is that:

- The company undertook work to replace water mains in (removed) between June and December 2019.
- In undertaking these works, the company damage the grass verge outside (removed). The company made an undertaking to reinstate the verge and made two poor attempts to do so in June 2020.
- In the first instance, the company tipped top soil onto a thatch of weeds which had established itself over the winter months, and put grass seed on top of this. In the absence of any weeding this treatment failed.
- The company then sent a team to dig out the weeds, but this work was abandoned because the weeds had taken such strong root. It was decided that a digger was needed to clear the ground and reshape the verge before reapplying fresh grass seed. He was informed on 17 July 2020 that this work had been complete. This claim is untrue. No work has been undertaken since the digging team gave up the task in June 2020.
- At the conclusion of the pipework in December 2019, and after the first rainfall, the driveway entrance to (removed) flooded. After this, it had been discovered that the flooding was due to a reduction in the effectiveness of the rainwater gutter. This reduction coincided with the water mains works. The company has denied liability. The company states that Google Earth pictures show that the gutter has sunk over a number of years. While this may be true, the explanation is inconsistent with the customer's experience of the sudden decline in draining efficiency which

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occurred upon completion of the works. The company remains silent about the impact of heavy plant on driveway surfaces, the use of the pavement and the driveway by road traffic when it closed the highway to facilitate pipe relaying work.

- During the complaints process, a case manager read out file notes to him where it was recorded that he had made derogatory and accusatory remarks about frontline workers on the pipework project. This is a falsified record and one which he challenged straight away. The company later confirmed that it had listened to a recording of the telephone conversation, and the file notes as read out to him were inaccurate. This is not an apt description. They were knowingly untrue and potentially defamatory. The company has ignored this aspect of his complaint. If standards of corporate behaviour concerning being truthful are important to maintaining public confidence, he believes that this is a serious breach of such standards which has gone unacknowledged.
- He also remains dissatisfied with the length of time it has taken for at least four case managers to review the complaint, yet still reach an unsatisfactory outcome.
- The customer requests that the company complete repairs to the kerbside gutter and grass verge outside his property. The customer also requests that the company issue a public and unreserved apology for publication in a place of his choosing. The customer also requests £1,000.00 for compensation for distress and inconvenience.

The company's response is that:

- We have apologised to Mr Chambers for the inaccurate and misinterpreted information recorded on our case notes, the delays with the mains repair work carried out and the reinstatement of the grass verge outside his property.
- We have sent Mr Chambers two goodwill payments totalling £280.00. £230.00 goodwill due to information being interpreted incorrectly following a telephone call, our communication, and his overall journey with us and £50.00 in recognition of the further delays with the reinstatement of the verge.
- We have on two occasions laid topsoil and grass seed on the verge outside Mr Chambers' property. While weeds have grown on the verge, shown in the photograph Mr Chambers submitted with his WATRS application, this could not have been prevented. Topsoil was laid along with grass seed and as advised in our correspondence of 30 July 2020, we are satisfied that our reinstatement is complete. If we were to remove the weeds, it is highly likely that more will grow.
- The kerbstone has been dipping for a number of years and there is no evidence to associate this with the mains repair work we've carried out, or our vehicles. Therefore, if Mr Chambers

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believes work is required to the kerbstone, as this is part of the highway, Mr Chambers will need to take this up with the appropriate authority. We have no responsibility for paths or highways.

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. 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 not part of the adjudicator's function to carry out an independent investigation of the facts, or for instance, contact witnesses. If evidence is said to be relevant, it should have been submitted to WATRS.
4. It is almost inevitable in adjudications that conflicts of evidence arise. An adjudicator may find in favour of one party on a particular issue. However, this does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is submitted.

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The scope of this adjudication

5. Please note that this adjudication can only deal with the issues as set out by the customer in his WATRS application form dated 13 August 2020.
6. Under section 5.4.3 of the WATRS Rules, the customer cannot introduce new matters or evidence in their comments on the company's response. The adjudicator must disregard any new matters or evidence if submitted.
7. Any new matters must be raised and dealt with as a new separate complaint and can only be brought to WATRS after exhausting the company's complaints procedure.
8. Please also note that for the purposes of this decision my remit is to determine the issues between the customer and the company only. Any complaints about the Consumer Council for Water (CCW) or other third parties cannot be considered.

Damage to grass verge

9. The company does not dispute that the grass verge in front of the customer's property was damaged as a result of its works, and that it agreed to reinstate the grass verge.
10. The company's account notes state that work to reinstate the verge began on 8 June 2020.
11. However, the evidence also shows that on 12 June 2020 the company contacted the customer to apologise and inform him that it was unable to confirm that the reinstatement work had been completed as planned.
12. On 17 June 2020, the company apologised to the customer again and confirming that the verge had not yet been reinstated as previously advised.
13. On 26 June 2020, the company informed the customer that it would attend again on 30 June 2020 to clear the weeds, rake the soil, re-seed and tidy the area. The evidence shows that the company also informed the customer that as extremely high temperatures were being experienced for the time of the year, it was unable to guarantee the seeds would take and grow

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as expected. The company stated that should this be the case, it would re-attend towards the end of the year to carry out further seeding.

14. On 30 June 2020, the company states that it attended as planned but was unable to complete the reinstatement.
15. The evidence then shows that the company wrote to the customer on 3 July 2020 explaining that as the grass verge is very high, a machine would be required to level out and successfully remove the weeds. The company informed the customer that this type of work required a permit from the council, and that a request for a permit had already submitted. The company also explained that it had again placed topsoil on the verge on 30 June 2020 to make it look tidy until it could return to complete the reinstatement “to a better standard.” The company apologised for the delay in completing this work.
16. No evidence has been submitted to this adjudication showing that the company then returned to the property after 30 June 2020 to complete the reinstatement.
17. On 17 July 2020, the company wrote to the customer stating that its sub-contractor had re-seeded the verge after adding new topsoil, and that due to this it was now satisfied that it had completed its reinstatement to a satisfactory standard. Although no date is given in this letter, subsequent correspondence from the company on 30 July 2020 indicates that the company believes that this work was undertaken on 30 June 2020.
18. However, having carefully considered the matter, the evidence does not support the company’s submissions that it completed the reinstatement to a satisfactory standard, if at all on 30 June 2020. As discussed above, the evidence shows that work which began on 8 June 2020 to reinstate the verge was not completed. When the contractors attended again on 30 June 2020, it is again stated that the reinstatement was unable to be completed. The company’s 3 July 2020 correspondence confirms the customer’s submissions that he was informed that machinery was required to undertake the reinstatement. The 3 July 2020 correspondence also shows that the company itself acknowledged that it needed to return to complete the reinstatement “to a better standard.” Further, on 3 July 2020, the company states that topsoil was placed on the verge on 30 June 2020 “to make it look tidy”. There is no evidence that the verge was also re-seeded, as alleged by the company in its 17 July 2020 correspondence. The company has not clarified or explained these discrepancies. The customer has also submitted a photograph of the verge

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taken on 13 August 2020. In light of all of the above, I am not satisfied that the company has shown that it reinstated the verge to a satisfactory standard, if at all. The company has failed to provide its services to the customer to the standard to be reasonably expected by the average person.

Rainwater gutter/Kerbstone

19. The customer submits that due to the impact of heavy plant on driveway surfaces and the use of the pavement and the driveway by road traffic during the company's mains work, the effectiveness of the rainwater gutter has been reduced.
20. The company's water mains work began in May 2019.
21. The company has submitted in evidence Google Maps images of the kerbstone in April 2012 and March 2018. These images support the company's submissions that the kerbstone has been sinking for a number of years. The company's machinery or diverted road traffic during the works may have accelerated the issue, but they were not the cause.
22. The customer also acknowledges that this was already an apparent problem, as the customer states that it is the scale of the new flooding which is the issue.
23. There is no evidence to show that the company is responsible for fixing the issue.
24. The company has informed the customer that his local Highways Authority is responsible for the maintenance of the footpath outside his home and directed the customer to contact them.
25. In the absence of any evidence submitted showing otherwise, I find no failing on the company's part in this regard.

22 January 2020 telephone conversation and file note

26. The customer submits that during the complaints process, a case manager read out file notes to him where it was recorded that he had made derogatory and accusatory remarks about frontline workers on the pipework project during a phone call with the company. The customer states that this is a falsified record and one which he challenged straight away.

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27. The evidence shows that the telephone conversation in question took place on 22 January 2020. Both a recording of the conversation and the file note subsequently written by the agent has been submitted in evidence.
28. Having listened to the call recording, it is clear that statements subsequently written by the agent in the file note as having been made by the customer are not true.
29. The company also acknowledges that the written file note is not an accurate representation of the parties' conversation.
30. The company has failed to provide its services to the customer to the standard to be reasonably expected by the average person.
31. However, please note that the remit of WATRS is limited. WATRS has no power to review why the agent misrepresented the conversation with the customer in the written file note, and whether the agent did so deliberately or because he misunderstood the point the customer was trying to make. Staff disciplinary and/or management matters are a business matter for the company to determine and do not fall within the scope of the WATRS scheme.

Redress

32. In respect of the customer's request that the company complete repairs to the kerbside gutter, as discussed above, there is no evidence to show that it is the company's responsibility for fixing the kerbside gutter.
33. In respect of the customer's request that the company complete repairs to the grass verge, as discussed above, I am not satisfied that the company has shown that it reinstated the verge to a satisfactory standard, if at all. I therefore find it fair and reasonable to direct that the company re-attend the property and undertake reinstatement work to the grass verge. However, to clarify, if the company shows that it has made reasonable endeavours to carry out the reinstatement but is unable to do so, then the company would still be compliant with my direction in this regard.
34. In respect of the customer's request that the company issue a public and unreserved apology for publication in a place of his choosing, in light of my findings above that company has failed to

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provide its services to the customer to the standard to be reasonably expected, an authorised representative of the company should provide the customer with a written apology. However, please note that WATRS adjudicators can only direct that the company issue a written apology. We have no power to direct the company must issue a public and unreserved apology for publication in a place of the customer's choosing.

35. The customer also requests £1,000.00 for compensation for distress and inconvenience. I have found that the company failed in its obligations to the customer in relation to the grass verge and the 22 January 2020 file note. Bearing in mind that the customer first raised a complaint in December 2019, and this matter has been ongoing for over nine months, I am satisfied that the customer is entitled to a measure of compensation for the distress and inconvenience experienced. However, I find that the sum claimed is disproportionate to the failings shown. I also take into account that the company has paid the customer £230.00 for its failings in relation to the 22 January 2020 file note and his overall customer journey. I find that this sum is sufficient for this failing and in line with the WATRS Compensation Guidelines. I acknowledge that the company has also paid the customer £50.00 for delays with the reinstatement of the verge. However, bearing in mind my finding that the company has not satisfactorily reinstated the verge, if at all, I am not satisfied that that sum is sufficient, and fair and reasonable for the failings shown. I therefore direct that the company pay the customer further compensation in the sum of £150.00. I consider this sum to be a fair and reasonable level of compensation in the circumstances and in line with the WATRS Compensation Guidelines.

Outcome

The company needs to take the following further action(s): (1) The company should re-attend the property and undertake reinstatement work to the grass verge. However, to clarify, if the company shows that it has made reasonable endeavours to carry out the reinstatement but is unable to do so, then the company would still be compliant with my direction in this regard. (2) An authorised representative of the company should provide the customer with a written apology. (3) The company should pay the customer further compensation in the sum of £150.00.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 27 October 2020 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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