

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X367

Date of Decision: 05/05/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The customer has a dispute with the company about noise and inconvenience he experienced during construction works carried out in close proximity to his property. The customer asserts that the company acted outside the legal process in many instances, and did not make reasonable efforts to mitigate noise, vibration, and pollution at his property. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought his claim to the WATRS Scheme and asks that the company pay £2,500.00 for distress and inconvenience.

Response

The company states that the construction works were urgent following a third-party blockage of its main sewerage pipe with concrete. The company says that the customer's complaints in respect of noise, vibration, pollution, legal permissions, etc are outside the scope of the WATRS Scheme and it declines to submit a response to them. The company has responded to the complaint concerning assertions that it failed to take seriously the complaints of the customer and denies the complaint. The company has not made an offer of settlement to the customer and declines to pay the compensation as requested in the customer's application to WATRS.

Findings

I find that the customer's complaints are outside the scope of the WATRS Scheme with the sole exception of the complaint regarding the company not treating his concerns seriously and not replying timeously. I am satisfied the other complaints should be addressed to different and more appropriate authorities. I also find that the company acted reasonably in its dealings with the customer and has taken his complaints seriously, and

I cannot identify any customer service failings in its responses to the customer's communications. Overall, I find that the company has not failed to provide its services to a reasonable level nor has failed to manage the customer's account to the level to be reasonably expected by the average person.



The company does not need to take further action.

The customer must reply by 02/06/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X367

Date of Decision: 05/05/2021

Case Outline

The customer's complaint is that:

• He has experienced an ongoing dispute with the company concerning its procedures and activities in dealing with a major sewerage pipe blockage close to his residence. The customer contends that the company acted outside of legal processes when rectifying the blockage. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled. • On Friday 24 April 2020, the company commenced operations to clear an obstruction inside a foul water sewer that had been blocked with concrete by a third-party. • The company positioned generators and overland pumps directly outside his property, and these pumps were left running all of the weekend without pause. The customer states the noise and vibration from the pumps lasted for a continuous period of sixty-five hours. • The customer says that on Monday 27 April 2020 a company representative attended his property to apologise for the noise, but he says that the inconvenience lasted for a further eight weeks with the noise, vibration, and pollution ongoing for twenty-four hours a day. • The works lasted until 12 June 2020 at which time the company removed all its equipment from outside the customer's house. The customer states that he was subject to unacceptable levels of noise and disturbance during the period of the works causing him stress and inconvenience. • He believes that the company, in conducting the remedial works, acted outside of legal process in several areas. • He believes the company did not follow the correct legal process when closing the road outside his property. The customer is not satisfied that the correct permissions were obtained from the relevant local authority prior to closing the road. • He believes, despite assurances from the company, inadequate risk assessments were carried out prior to commencement of the works. The customer contends that the company has provided him with conflicting information in response to his questions, stating that assessments were done, not done, or done by third-party sub-contractors. The customer contends that had the company correctly carried out risk assessments he would not have suffered the negative effects that followed. • He believes that the company did not comply with emergency legislation introduced by the UK Government to deal with the Covid pandemic. • He believes the company used workers that had not been trained correctly because they ran equipment continuously when this was not necessary. • He believes the company did not complete all the correct and required paperwork necessary for different aspects of the works, and cites as an example that documents were not correctly and fully supplied to relevant local authorities. • The

company undertook testing for both noise and for the products of combustion but did not do them in or close to his property. He asserts that the company used the wrong equipment for testing and declined to test inside his property. • The company did not correctly investigate his complaints and were very slow in responding to his written communications. The customer also says that the company were slow to respond to CCWater calls for information and on several occasions it requested extensions to deadlines set by CCWater for receipt of responses. • Believing the company had not properly addressed his concerns the customer, on 10 September 2020, escalated his complaint to CCWater who took up the issue with the company on his behalf. The customer records that CCWater contacted the company and requested more detailed information from it and to review the customer service provided. • He acknowledges that the company responded to CCWater with a detailed submission dated 08 January 2021 but notes it refuted his complaints. It confirmed that the sum of £130.00 had been awarded to the customer for the inconvenience suffered. • Subsequently on 22 January 2021, CCWater informed to him that it believed the company had now addressed to a suitable standard all the points he had previously raised. CCWater confirmed that it could not take any further steps to alter the position of the company. • Despite the intervention of CCWater, the dispute is ongoing, the company has not changed its position and CCWater are unable to obtain a resolution between the parties. The customer remains dissatisfied with the response of the company and has, on 17 March 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to pay compensation in the amount of £2,500.00 for stress and inconvenience. • The customer states that he is requesting the maximum amount of compensation for distress and inconvenience permitted under the WATRS Scheme to partially compensate for the time he has spent preparing his submission to WATRS and partially to compensate for the inconvenience suffered.

The company's response is that:

• The company provided its response to the claim on 29 March 2021. • It believes the majority of the customer's complaints are outside the scope of the WATRS Scheme and should not proceed to adjudication. • In respect of the complaint over the road closure, the company states the customer should refer his complaint to the applicable local authority or the Highways Agency. • In respect of the complaint over inadequate risk assessment the company contends that any concerns the customer has regarding the health and safety of residents or company employees should be better addressed to the appropriate local authority or to the Health and Safety Executive. • In respect of the complaint over non-compliance with Covid regulations the company does not believe the WATRS Scheme is the appropriate body to examine any purported non-compliance. • In respect of the complaint over inadequate training of staff, the company again believes this is outside the remit of WATRS and it is not for an adjudicator to make decisions on the company's staff training procedures. • In respect of the complaint over inadequate and incorrect paperwork submitted to local authorities, the

company contends this matter would be more appropriately raised with the local authorities in question. • In respect of the complaint over noise levels and the products of combustion and the testing done to measure levels of noise and fumes, the company states that it believes the customer is alleging negligence by the company and its contractors. This being the case, the company asserts that the customer should seek legal advice and refer his complaints direct to the appropriate local authority and to the Environmental Health Officer for his area. • In respect of the complaint that the company did not correctly investigate his complaints and were very slow in responding to his written communications the company has submitted a response in defence. • Its records show that the customer first complained to it on 22 May 2020. The company states that it continued dialogue with the customer throughout June, July, and August 2020, until such time as it received notification from CCWater on 15 October 2020 that the customer had escalated his complaint to them. • It continued dialogue with CCWater throughout October, November, and December 2020, before submitting its final detailed response on 08 January 2021. • It has received a great many complaints from the customer about varying matters. It states that it has always replied within the ten-day limit set down by CGS, and the customer has received the sum of £130.00 in compensation for communications not deemed to be of a satisfactory level. • In summary, the company denies the customer's assertion that his complaint has not been investigated or that it provided poor customer service. The company does not accept to pay the compensation requested by the customer in his WATRS application. The customer's comments on the company's response are that: • On 05 April 2021, the customer submitted detailed comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced. • The customer reiterated in detail his position on all matters previously raised and added photographs, maps, and plans.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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. 1. The dispute relates to the customer's dissatisfaction with the company's actions and procedures while undertaking remedial work to a blocked foul water sewage pipe located close to his property.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The customer has stated that the company, while undertaking the remedial works, has operated outside of legal processes and has detailed several incidents in his application to WATRS.
4. I take note that the company in its response document has not directly addressed any of the customer's complaints other than the complaint of receiving poor customer service and the company not correctly investigating his complaints. The company contends that all the complaints, other than the poor service complaint, are outside the scope of the WATRS Scheme.
5. The WATRS Rules state at Rule 3.4 the following :-
3.4 WATRS may reject all or part of an application to the Scheme where it considers that:
3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute;
6. I shall proceed to examine each head of complaint submitted by the customer hereunder.
7. Complaint #1: The correct procedure for closing the road at the customer's property was not followed by the company nor by the local authority. The company has stated it believes this issue is outside the scope of the WATRS Scheme and should be referred to the appropriate local authority or to the Highway Agency. I am satisfied that the complaint is outside the scope of Rule 3.3 of the Scheme as it refers to an issue of official road closure and is not directly associated with the provision of sewerage services. I find this complaint to be outside the scope of the WATRS Scheme.
8. Complaint #2: Inadequate risk assessments were carried out by the company

prior to commencement of the works. The company has stated it believes this issue is outside the scope of the WATRS Scheme and should be referred to the appropriate local authority or to the Health and Safety Executive. The customer contends that an appropriate risk assessment is a legal requirement under the Health and Safety at Work Act 1974, and the Management of Health and Safety at Work Regulations 1999 and that the company has not complied with these regulations. I am satisfied that this complaint is outside the scope of the WATRS Scheme by reason of Rule 3.5 that excludes regulatory enforcement disputes.

9. Complaint #3: The company did not comply with emergency legislation introduced by the UK Government to deal with the Covid pandemic. The company contends that WATRS is not the appropriate body to make judgements on its working practices and its compliance with Government Covid legislation. Again, I am satisfied that this complaint is outside the scope of the WATRS Scheme by reason of Rule 3.5 that excludes regulatory enforcement disputes.

10. Complaint #4: The customer contends that the company had not correctly trained its workers because the operatives left pumps running overnight. I am not persuaded that the running of pumps can be construed as a failing of staff training, and more significantly I am satisfied that the training of the company's staff does not fall inside the scope of Rule 3.3 of the Scheme rules. The training of staff does not directly fall under the provision of wastewater and sewerage services. I find this complaint to be outside the scope of the WATRS Scheme.

11. Complaint #5: The customer contends that the company did not complete all the correct and required paperwork necessary for different aspects of the works. The customer has not detailed what documents he believes were omitted by the company nor has he explained why submitted documents were incorrect. I am satisfied that the paperwork referred to by the customer would have been in respect of seeking permits and possessions, and in respect of complying with various regulations, etc. Once again, I am satisfied that this complaint is outside the scope of the WATRS Scheme by reason of Rule 3.5 that excludes regulatory enforcement disputes.

12. Complaint #6: The customer claims that the testing done by the company to detect and measure noise and products of combustion emissions was both inaccurate and carried out with incorrect testing equipment. The company has stated it believes this issue is outside the scope of the WATRS Scheme and should be referred to the appropriate local authority environmental health officer. As before, it seems to me that such testing would be done to assess compliance with the relevant regulations covering noise and exhaust emissions and as such falls outside the scope of the WATRS Scheme by reason of Rule 3.5 that excludes regulatory enforcement disputes.

13. Complaint #7: The customer claims that the company did not correctly investigate his complaints and was slow to respond to his requests for information. The company has submitted a response to this complaint, and I find this complaint to be in scope of the WATRS Scheme.

14. Under the terms of the company's Customer Guarantee Scheme [CGS], the company has ten working days to reply to communications from customers. I shall use this metric in my review of the company's responses to the customer's communications.

15. On 22 May 2020 the customer contacted the company, and the company says it responded by having its sub-contractor at the site of the works attend the property and look to increase the quantity of sound barriers around the overland pumps. I can also see from the evidence supplied that the company initiated contact with the customer on 03, 04 and 11 June 2020.

16. The company says it had its sub-contractor write to the customer on 12 June 2020 to update him on testing being carried out in respect of noise, vibration, and exhaust emissions.

17. On 19 June 2020, the company sent an e-mail to the customer giving detailed information on the status and progress of the construction, and its actions to mitigate the impact to him directly. The customer responded with his e-mail dated 20 June 2020, to which the company in return replied on 30 June 2020. This was within the ten working day period under CGS.

18. On 23 July 2020, the company sent the customer a detailed report addressing the issues he had raised in respect of noise, vibration, fumes, etc. On the same day the company submitted a response from its EIR team and provided information previously requested by the customer.

19. On 03 August 2020, the company sent to the customer another fully detailed update on the progress of the works and again addressed his complaints on noise, vibration, and exhaust fumes.

20. I can see that on 15 October 2020, the company received contact from CCWater and was informed that the customer had escalated his complaint to them. From my study of the evidence, I am satisfied that the company liaised with CCWater throughout October, November and December 2020, and on 08 January 2021 the company issued its final detailed response to CCWater. I can see that CCWater advised the customer that the company's response was fully detailed and had reasonably addressed all his issues. CCWater then closed the complaint.

21. I note that the customer contends that the company were tardy in responding to CCWater and had requested additional time to respond to their questions and requests for information. Having read the detailed questions posed by the customer and seen the need for deep investigation required by the company to be able to fully answer those questions (that were often highly technical and needing a technical response outside of the customer services remit) I am satisfied on a balance of probabilities, that the company was not intentionally delaying responses but was attempting to provide the fullest possible answers.

22. Thus, on a balance of probabilities, I find that the company has taken the customer's complaints seriously and has responded in a reasonable manner. I have also taken note of the reasonable interaction and response it made to the involvement of CCWater.

23. Thus, having reviewed the customer service provided to the customer I am satisfied, again on a balance of probabilities, that no customer service failings can be identified.

24. The customer has stated that his compensation claim of £2,500.00 is partially to cover his time in preparing his adjudication application and partly to compensate for the inconvenience suffered during the construction works. The WATRS Scheme does not compensate for preparing an application.

25. Overall, I do not find on balance that the company has behaved unreasonably in its dealings with the customer. I have found it took the customer's complaints seriously, and it appears from my study of all evidence that it responded to communications within the ten working days allowed under its CGS. I am satisfied that the company took all reasonable efforts to keep the customer informed of progress on works that had impacted on many other neighbouring properties because of the blocked sewer pipe.

26. I am satisfied that the customer has not supplied sufficient evidence to support his complaint and to show that the company has not responded reasonably to his complaints.

27. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person.

Preliminary Decision

- The Preliminary Decision was issued to the parties on 28 April 2021.
- The customer submitted comments on the Preliminary Decision on 29 April 2021. The submitted comments will not be addressed specifically. The customer did not

supply any input to change the outcome of the Preliminary Decision.

Outcome

1. The company does not need to take further action.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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.

- 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.

Peter Sansom
Adjudicator