

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X284

Date of Decision: 13/06/2021

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding excavation works undertaken in the road adjacent to her property. The customer says the company was not aware of a culvert below the road surface and its use of a mechanical excavator caused damage to the culvert and secondary damage to a pump inside her basement. The customer is unhappy that the company refuses to accept responsibility and she claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore she has brought the claim to the WATRS Scheme and asks that the company be directed to repair the culvert.

Response

The company states that it was aware of the location of the culvert prior to commencing work. The company denies owning or damaging the culvert and records that the customer has not produced any evidence to show that it has caused such damage. The company has not made any offer of settlement to the customer and states that even if a culvert was damaged it could not repair it because it is not its asset.

Findings

I find that the customer has not established on a balance of probabilities that the company either owns the culvert in question or has damaged any culvert during its excavations to install a water supply pipe. Overall, I find that the company has not damaged a culvert nor has failed to provide its services to a reasonable level.

Outcome

The company does not need to take further action.

The customer must reply by 12/07/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X284

Date of Decision: 13/06/2021

Case Outline

The customer's complaint is that:

• She has experienced an ongoing dispute with the company concerning problems with excavation works it undertook in the road directly outside her property. The customer says that the company has not taken due consideration of culverts buried in the road and has caused damage to them. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled. • In October 2020 the company were undertaking excavation works in the road adjacent to her property. • On 10 October 2020 she spoke to workers from the company who informed her that they were not aware of any culverts underneath the road. • She sent e-mail complaints and queries to the company on 10, 11, and 13 October 2020. • She requested the company provide her with drawings showing all drainage assets located in the area of the excavations. The customer says the drawings have not been provided to her. • She advised the company that she would inform the police should the company continue excavation and damage existing drainage assets. The customer further reserved her rights to seek legal redress should the company proceed to excavate before providing the drawings she has requested. • On 13 October 2020 she advised the company that she had received information from the local authority that was in conflict with previous advice given to her by the company. The customer notes that the company workers were using a mechanical digger that indicated the company was excavating without due care and consideration. • She had to replace a pump in her basement because of increased sediment trapped in the pump. The customer believes the additional sediment was caused by the company using a mechanical digger that damaged the culvert and flushed sediment into the water system. The customer has submitted photographs in support of her contention. • The company sent her a written communication dated 29 October 2020 in which it defended its operations at the excavation adjacent to her property and stated that this was its final decision on her complaint, and it would not respond to any further communications from her on this subject. • Believing the company had not properly addressed her concerns, she, on 02 November 2020, escalated her complaint to CCWater who took up the complaint with the company on her behalf. The customer records that CCWater contacted the company and requested more detailed information from it and to review the customer service provided. • She acknowledges that CCWater were involved in much correspondence with the company. The company provided a detailed response to CCWater and subsequently on 13 January 2021, CCWater informed her that it

believed the company had sufficiently explained its position regarding the excavations.

- CCWater explained that the company denied owning any culverts or of damaging any culverts. The company advised CCWater that it had not been made aware by any other utility company of damage to any of its assets. The company had not finished the works close to the customer's property and confirmed to CCWater that it would be responsible for repairing any damage that may occur before completion of the works.
- CCWater confirmed that it could not take any further steps to alter the position of the company and would be closing her file.
- The customer says that despite the intervention of CCWater, the dispute is ongoing, and 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 25 January 2021, referred the matter to the WATRS Scheme where she requests that the company be directed to repair the culvert.

The company's response is that:

- It provided its response to the claim on 28 April 2021.
- It acknowledges carrying out excavation works in the road adjacent to the customer's property on 10 October 2020 and 01 November 2020.
- It further acknowledges receiving complaints from the customer regarding her assertion that the company has damaged culverts the during excavation works. The company denies that damage has been caused to any drainage asset during the excavations.
- It confirms it is only responsible for the provision of potable water, and other organisations provide wastewater and sewerage services. Consequently, it has no statutory responsibilities for the maintenance or repair of culverts, sewers, or highway drainage assets owned by others.
- It records that prior to commencing the works it was aware of all utilities in the area, including drainage assets in the road. It states it has not been advised by any of the other utility bodies that the excavation works have damaged any of their assets.
- It confirms that its pre-excavation investigations showed a culvert situated some 1.2 to 1.7 metres below road surface level. However, its excavations to install a water supply pipe did not go deeper than 0.75 metres.
- It notes that the customer has submitted an invoice in respect of a replacement pump installed in her basement. The company says the invoice is dated 31 August 2020, several weeks before the commencement of the excavation works.
- In respect of the drawings sought by the customer, it confirms that all water utilities maintain plans of their assets, and these are available to the public. It believes the customer may have been referring to drawings prepared by the developers of a nearby new block, and it confirms that these drawings are private, and it has not been given copies of them.
- In summary, the company records that the customer has not provided any evidence to show that it has damaged any culverts. It believes the photographs produced by the customer to show damage to her basement pump predate the company's excavation works. It further contends that the customer has not provided any evidence to show she owns the culvert in question and thus she cannot show any financial loss.
- It cannot comply with the remedy requested by the customer because it

does not own the culvert and thus it does not have the authority to repair an asset owned and operated by another party. The customer's comments on the company's response are that: • On 17 May 2021, the customer submitted detailed point by point 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.

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. The dispute relates to the customer's dissatisfaction that the company has excavated in the road adjacent to her property and has damaged culverts in the road. The customer says the company declines to repair the culverts.
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. It seems to me that the parties agree that the company undertook excavation works in the road adjacent to the customer's property in October and November 2020.
4. I can see that the company has undertaken the works because of its obligation to supply potable water to a new housing development located close to the customer's house.

5. I also note that the parties agree that a mechanical excavator was used by the company in undertaking the excavation works.
6. The customer claims that the use of the excavator caused sediment to enter the water system and in turn damaged a pump located in her basement. The customer says the pump is necessary to prevent water ingress into her property and thus she was forced to replace it.
7. I take note that the customer has submitted into evidence numerous photographs taken of excavation works occurring in a road. However, I have to record that many of the photographs are undated, and many were taken in April 2015 and are not relevant to this dispute.
8. However, I am satisfied that none of the photographs show any damage to a culvert.
9. The customer contends that the company did not make itself aware of the utility assets located underneath the road surface before it commenced excavation. The company denies this and says its custom and practise before starting any such work is to consult the plans and drawings of all utility companies that are made available for public access.
10. The customer further contends that she requested the company to produce the drawings it reviewed but she claims it did not respond to her. The company has stated that it did not supply drawings to the customer because all relevant drawings are publicly available, and the customer may seek out any water utility drawings that she deems relevant.
11. The customer further states that she supplied drawings to the company showing drainage assets located in the road adjacent to her property. The company acknowledged receiving and reviewing the plans.
12. The company has stated that it was fully aware of the existence of a culvert close to the customer's property. The customer has questioned this, citing the use of the mechanical excavator, but has not produced any evidence to support her claim.
13. I can also see that the company has established that the culvert is not one of its assets. As a water supplier without responsibility for wastewater services it has no need of such a structure. The company has stated that the culvert is owned and maintained by another utility company.
14. From my examination of the documents submitted by the parties, I see no evidence that the owner of the culvert has complained to the company or

requested it remedy any damages.

15. Overall, I find that the customer has not shown on a balance of probabilities that the company damaged a culvert that in turn caused the failure of her basement pump.

16. In her application to the WATRS Scheme the customer has requested that the company be directed to repair a culvert. From my study of the evidence submitted by both parties I am satisfied that the culvert in question is not a company asset and that the company has not damaged the culvert. Thus, I shall not direct the company to repair the culvert.

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

Preliminary Decision

- The Preliminary Decision was issued to the parties on 27 May 2021.
- The customer submitted comments on the Preliminary Decision on 07 June 2021.
- The customer reiterated her original position. However, I am satisfied that the comments are not sufficient to amend the Preliminary Decision.
- The company did not submit comments.

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.

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Peter Sansom
Adjudicator