

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X363

Date of Decision: 29/06/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer says that the company has not properly reinstated his driveway.

#### Response

The company says that the work provided to the customer is of an acceptable quality.

No offer of settlement has been made.

#### Findings

The company has provided its services to the customer to the standard to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

The customer must reply by 27/07/2021 to accept or reject this decision.

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**Adjudication Reference:** WAT-X363

**Date of Decision:** 29/06/2021

## Case Outline

### **The customer's complaint is that:**

• The company has not properly reinstated his driveway after work was undertaken. • He requests that the company reinstate the driveway correctly or pay a third party to do so.

### **The company's response is that:**

• On 7 June 2019, the company lifted the block paving on the customer's driveway to undertake repair work on the sewer. • The blocks were re-laid on 29 June 2019. • The customer made contact on 9 July 2019 to raise concerns about the reinstatement work performed. • On 18 July 2019, the company inspected the driveway and agreed to undertake additional work. • The customer was unable to source the exact bricks needed for the driveway, but suitable bricks were found by the company and accepted by the customer. • A second reinstatement was performed on 21 January 2020. • The customer again objected to the reinstatement and on 28 January 2020 supplied a diagram of the pattern for the driveway that had not previously been supplied. • The company believes that the reinstatement provided is acceptable and no further work is required.

## 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. While the Water Industry Act 1991 grants to the company the power to perform work on private property where necessary to investigate or maintain a sewer, it also imposes on the company an obligation to reinstate any ground disturbed and make good any damage done. However, this obligation is not absolute, in the sense that the company is not obligated to return any disturbed land or property to a condition completely indistinguishable from its pre-disturbed state. Rather, the company's obligation is to perform such reinstatement and repair to the standard to be reasonably expected by the average person. This standard balances the property owner's legitimate interest in the protection of their property and possessions with the general public interest in ensuring that the company can perform its statutory duties.
2. In the present case, I find that the customer has not produced evidence sufficient to justify a finding that the company did not fulfill its obligation in this respect. It is clear that the customer is unhappy with the work done by the company, but the photographic evidence produced by the company shows professional work done without significant flaws.
3. The customer has raised concerns about the layout of the bricks laid by the company and its deviation from a model provided by the brick manufacturer. However, that model is described in the document in question as a "suggested" layout, rather than one required for the bricks to perform properly. The customer has also not produced evidence of identifying to the company prior to the bricks being laid that there was a specific pattern he wanted followed.
4. The customer has also challenged the quality of the bricklaying by the company, arguing that gaps have been left that will create future problems and that joints are not all full and flush. However, no evidence has been provided that would support a conclusion that the bricklaying was not performed with reasonable skill and care or that prior to reinstatement the customer emphasised the importance of a particular type of joint.
5. Ultimately, the customer has the burden of producing evidence to support his claim, and given the limits on the company's obligation to provide reinstatement, as discussed above, I do not find that sufficient evidence has been provided to justify a conclusion that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person.
6. In his comments on the Proposed Decision in this case, the customer has expressed his view that "The workmanship should not be decided by an average person. 99.9% of people know nothing about laying blocks correctly". It should,

therefore, be emphasised, as explained above, that the relevant question in this case is not whether an average person would conclude that the work performed by the company was acceptable, but whether the company has performed its work to a standard that would be reasonably expected by the average person. This notion of “expectation” allows consideration of the level of expertise to be applied by the company. In short, an average person would expect work professionally performed to meet a higher standard than the same work performed by an amateur.

7. As explained above, then, the decisive consideration in this case is not that the company performed the work to a standard that an average person would accept, but that the customer has not produced evidence sufficient to justify a conclusion that the company did not perform the work to the standard it would reasonably be expected to meet, allowing for the company’s ability to employ specialist workers. This does not preclude that evidence might exist that would be sufficient to meet this standard, but a decision by a WATRS adjudicator must be made based on the evidence actually produced by the parties, not on speculations by the adjudicator that are not based on the available evidence.

8. For the reasons given above, the customer’s claim does not succeed.

### Outcome

1. The company does not need to take any 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.

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**Tony Cole**  
**Adjudicator**