

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X658

Date of Final Decision: 29 November 2021

Party Details

Customer:

Company:

Complaint

The customer states that a number of years ago, the company promised that it would replace fences and a gate which it installed close to his property on a temporary basis. The company has not replaced the temporary fences and gate as it promised that it would, and there have been anti-social behaviours around the fence. The company has also damaged a grass verge close to the customer's property when attending to the fences and gate. The customer's claim is for the company to remove the existing fences and gate and replace them with a new structure.

Response

The company disputes that it is liable to settle the claim. Any alleged negligence/breach of duty that occurred prior to 7 October 2015 is statute barred. The customer does not have the jurisdiction to complain about the grass verge because he does not own the verge. Anti-social behaviour is a matter for the police. It has completed all required remedial works to the pumping station and the fence surrounding the pumping station. Its repair works have been completed to a satisfactory standard. There are no defects in the fencing and no further remedial works are required at the pumping station.

Findings

There are four procedural issues arising in this complaint. Firstly, I cannot consider any alleged failings by the company which occurred before 7 October 2015 because these alleged failings are now statute barred. Secondly, I cannot consider a new complaint which the customer raised in his reply to the company's response. Thirdly, I cannot consider the customer's complaint about the grass verge because on the basis of the available information, due to the lack of a legal relationship between the customer and the ownership of the verge. Fourth, I cannot consider the customer's complaint about anti-social behaviour because the complaint falls outside the scope of the Scheme. I find

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that the evidence does not show that the company's services to the customer in respect of the fences and gate fell below the standard to be reasonably expected, and consequently the claim does not succeed. There is no evidence that the company promised that it would replace the entire fencing. The company is entitled to reach its own decisions regarding the nature and extent of works required to maintain the fences and gate, and the evidence does not show that the remedial works the company has carried out are inadequate or insufficient.

Outcome

The company does not need to take any further action.

The customer must reply by 29 December 2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- In 1995, the company installed a pumping station at the end of the customer's driveway. At the time, the pumping station was enclosed within a fenced and gated area, and the company informed the customer that the fences and gate were a temporary installation which would eventually be replaced.
- The condition of the pumping station deteriorated over time and the enclosure was broken in to, resulting in the gate and locks being damaged and the overall appearance of the area unsightly.
- The open access to the pumping station has attracted anti-social behaviour, youths congregating and drug use near the customer's property.
- The company informed the customer that the fence and gates would be repaired/replaced and maintained regularly, but this has not been done.
- The company has replaced the gate and locks, but the customer is unhappy with the overall condition of the surrounding enclosure.
- Engineers accessing the pumping station have damaged the grass verges outside the customer's property.

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- The customer's claim is for the company to remove the full enclosure structure and replace it with a new structure.

The company's response is that:

- The customer's application was submitted to WATRS on 7 October 2021. The customer is prevented from claiming compensation for alleged negligence/breach of statutory duty that occurred prior to 7 October 2015, because any such allegations are statute barred under Section 2 and Section 9 of the Limitation Act 1980.
- It owns and is responsible for the pumping station, but it does not own the land on which the pumping station is situated. The customer does not own the land on which the pumping station sits and he has no legal cause of action against it resulting from any alleged negligence.
- It has completed all required remedial works to the pumping station and the fence surrounding the pumping station. Its repair works have been completed to a satisfactory standard. There are no defects in the fencing and no further remedial works are required at the pumping station.
- The customer has not provided any evidence to confirm that the pumping station or the fence has been left in a state of disrepair.
- The customer does not own the grass verge which was allegedly damaged by company vehicles and he has no legal cause of action resulting from any subsequent damage caused to the grass verge.
- It cannot be held liable for third parties congregating in the vicinity of the pumping station and any resulting anti-social behaviour. Any such matters should be referred to the police.
- It has acknowledged its customer service failings and it has paid the customer compensation where appropriate. The customer has not provided any evidence of additional customer service failings.
- The customer is not entitled to claim any form of compensation as it has not breached any of its statutory duties or been negligent in providing its services. It denies that it has failed to operate its business appropriately or without reasonable skill and care. In law, there is no general duty of care for statutory water and sewerage undertakers and any award based on an assumed duty of care will have no legal foundation.
- The customer has not stated any valid legal basis upon which to found his claim.

The customer's reply is that:

- His property was built before the company installed the pumping station.

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- At the time the pumping station was installed, the company informed him that the fences and gate were installed as a temporary security measure to secure the pumping station, and a “more pleasing and aesthetic surround” to the station would be installed.
- The company has failed to maintain the original fences and gate, and it has not fulfilled its promise to replace the temporary fences and gate. He wants the company to carry out its the promise of 25 years ago and replace the whole surround structure.
- The company’s complaints process is not fit for purpose. It has had to fine itself three times for failing to deal with his complaints, and the company insulted him personally when it responded to the caseworker at the Consumer Council for Water (the CCW).
- He is not sure where his letter was sent to within the company, because when the company responded to his letters, the letters were “always signed with an autopen or signing machine” so he is not sure if his letters of complaint were being intercepted.

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. The customer's complaint concerns one main issue, namely whether the company is liable to carry out further works to the fences and gate close surrounding the pumping station. I consider this issue below, but I firstly address four procedural points that arise in this complaint. The first procedural issue concerns the Limitation Act 1980 which is a point the company has raised. The second procedural issue concerns a new complaint the customer has raised in his reply to the company's response. The third procedural issue concerns whether the customer has the jurisdiction to complain about the grass verge. The fourth issue concerns the customer's complaint about anti-social behaviour, which falls outside the scope of the Scheme.

The Limitation Act 1980

2. The company states that under Sections 2 and 9 of the Limitation Act, the customer needed to have brought his claim to WATRS within six years from when the cause of action in tort and statute accrued. Therefore, any claim for alleged negligence/breach of statutory duty that occurred prior to 7 October 2015 is statute barred, because those alleged breaches would have occurred more than six years before 7 October 2021 when the customer submitted his claim to WATRS.
3. It appears from the company's records that the customer submitted his first complaint concerning the area surrounding the pumping station to the company on 10 June 2013. The customer made a subsequent complaint on 16 September 2015, with subsequent complaints made on 5 October 2016 and thereafter. The evidence indicates that the company resolved each of the customer's complaints shortly after the complaints were reported. For the purposes of the Limitation Act and given this evidence, I consider that it is appropriate to regard the customer's complaints as separate complaints, as opposed to being a complaint about a continuous tort and breach of statutory duty capable of postponing the start of the limitation period. On this basis, the customer had six years from 10 June 2013, 16 September 2015, and 5 October 2016 to pursue each of his complaints against the company.
4. I find that the customer's complaints dated 10 June 2013, 16 September 2015, and any other alleged failings by the company in relation to this dispute occurring prior to 7 October 2015 are statute barred. This is because the alleged breaches occurred more than six years before the customer pursued his complaint to WATRS. I am therefore unable to consider any alleged failings by the company that occurred prior to 7 October 2015.

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Complaints handling

5. The customer has introduced a new complaint in his reply to the company's response. The customer has stated in his reply that the company's complaints process is not fit for purpose, the company insulted him in correspondence to the CCW, and he expresses dissatisfaction regarding the signing of the company's responses to his letters of complaint. I consider that the customer's complaint concerning the company's complaints handling is different from his complaint about the fences, gate and grass verge. The customer did not raise this specific complaint about the company's complaints handling in his application to WATRS, and the company has not had the opportunity to respond to the complaint.

6. In accordance with Rule 5.4.3 of the Water Redress Scheme Rules 2020, I am unable to consider this new complaint. Rule 5.4.3 provides that:

"The customer cannot introduce new matters or evidence in their comments on the company's response; the adjudicator will disregard any such material if submitted."

Grass verge

7. The company has stated that the customer does not have the jurisdiction to complain about the grass verge because he does not own the verge. The customer has explained in correspondence that he maintains the verge because the Council has not maintained the verge regularly. This could potentially give rise to an argument that the customer has a right to complain about the verge as a person who has assumed the responsibility to maintain the verge. However, I do not consider that I can make any findings regarding any rights or interest the customer may have in the verge without submissions from the Council who is reported to own the verge.

8. I note that in its correspondence prior to the application to WATRS, the company has addressed the customer's complaint about the verge and in response to the customer's complaint, it has provided some services in respect of the verge. I could potentially consider the customer's complaint under Rule 3.3 of the Water Redress Scheme Rules 2020 as a matter that "has been the subject of an internal company complaint procedure". On balance, in circumstances where I am unable to make a finding on the customer's rights or interest in respect of the verge, I find that under Rule 3.4.1 of the Water Redress Scheme Rules 2020, the complaint is suited to a more appropriate forum (for example, the relevant Council or other entity who own the verge) for

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the resolution of the dispute. For this reason, I do not make any findings or directions on this aspect of the customer's complaint.

Anti-social behaviour

9. The customer's complaint about anti-social behaviour falls outside the scope of the Scheme under Rules 3.4.1 and 3.5 of the Water Redress Scheme Rules 2020. Therefore, I do not make any findings or directions on this aspect of the customer's complaint.
10. To the extent that the customer appears to link the anti-social behaviours to the condition of the fences and gate, I would briefly note that in its correspondence dated 4 June 2021 to CCW, the company has stated that it would install locks to reduce anti-social behaviour around the pumping station, and it will carry out routine maintenance including a site health and safety check.

Fences and gate

11. I find that the evidence does not show that the services the company provided to the customer in respect of the fences and gate fell below the standard to be reasonably expected of the average person.
12. Firstly, the customer has stated that the company informed him that it installed the fences and gate on a temporary basis and it promised that it would eventually replace the entire structure. I have not been provided with any documentation which records the promise the company is reported to have made to the customer. I find that the evidence does not prove that the company promised the customer that it would replace the entire gate and fencing surrounding the pumping station.
13. That said, the company owns the pumping station and the surrounding fencing and gate, and it is responsible for maintaining its property. In the absence of evidence to prove that the company made a specific promise to replace the entire fencing, I find that the company is entitled to reach its own decisions regarding the nature and extent of the works required to maintain the fences and gate. The evidence (including the correspondence between the parties and CCW, job notes and photographs of the fences and gate) shows that the company responded to the customer's reports that the fences and gate had deteriorated, and it has carried out reasonable steps to maintain the fences and gate. Below is a summary of some of the relevant evidence I have taken into account.

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14. I note that the customer contacted the company in October 2015 regarding the fence, and it painted the fence which the customer is reported to have been happy with at the time. In September 2016, the customer complained about the fence, and the company painted the fence. In September 2019, the customer contacted the company and following a site visit, the company had intended to paint the fence in January 2021. It appears that the plans to paint the fence in January 2021 were delayed due to wet weather conditions at the time, and the company issued the customer with a refund of £30.00 in recognition of the delay and the fact that the customer needed to contact it again regarding the matter. Between December 2020 and April 2021, the company issued the customer with £80.00 in total in recognition of the delays in carrying out remedial works and the distress and inconvenience caused to the customer.
15. On 4 June 2021 the company stated in correspondence to CCW that it intended to repair the front gate, install a new padlock, re-stain the fence all around, repair/replace loose kickboards, and it would assess and carry out any further works identified whilst on site. The company carried out its proposed works on 9 September 2021.
16. I appreciate the customer's submissions that the works the company has carried out does not provide a long-term solution and I appreciate his request for the company to replace the surrounding fencing with a structure that is more "aesthetically pleasing". However, the evidence does not prove that the works the company has carried out are inadequate or insufficient, or that the company's property is in a state of disrepair.
17. I am not satisfied on the evidence that, in relation to this dispute, the company needs to carry out any further works to maintain the fences and the gate. It is likely that any alternative structure that the company may install will require some level of maintenance. The evidence does not show that the existing structure, with routine maintenance which the company has stated that it would carry out, cannot operate as a long term enclosure for the pumping station.

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 29 December 2021 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.
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Ile Ezeogu LLB (Hons), Solicitor

Adjudicator

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