



### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X805

Date of Decision: 08 March 2022

#### Party Details

**Customer:** The Customer  
**Company:** The Company

#### Complaint

The customer has a dispute with the company regarding its tardy diversion of a water main under his garden that unduly delayed the completion of an extension to his house. The customer says his neighbours previously erected extensions without informing the company or paying for it to redirect its main. The customer also complains that he received a low level of customer service from the company that caused him stress and distress. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS Scheme and asks that the company be directed to refund increased costs for his construction works, pay him compensation, and issue an apology.

#### Response

The company says the customer did not advise it prior to commencing construction works and only contacted it when his contractor breached the main pipe. The company says it has followed its own water main diversion procedure and completed the works well within the 90 days normally required. It also records that it made a significant contribution to the customer's costs for the diversion, and refunded his application fee paid when requesting a diversion. The company has not made any formal offer of settlement to the customer and denies any further refund is due.

#### Findings

The claim does not succeed. I find that the evidence does not support on a balance of probabilities that the company unduly delayed the customer's construction works programme. The evidence does not show that the customer made any investigations into the location of existing services in the area of his property but does support the fact that he commenced construction works without advising the company in advance. I take note that the company has refunded the application fee in full and made a sizeable contribution to the costs of the diversion works. I find that the evidence does not show that the company has failed to provide its services to a reasonable level or has failed to manage the customer's account to the level to be reasonably expected by the average person.

#### Outcome

The company does not need to take further action.

The customer must reply by 05 April 2022 to accept or reject this decision.

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**Case Outline**

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

- He has experienced an ongoing dispute with the company concerning issues with development and new services. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- He had commenced the construction of an extension to his house and during the works the company's water main, running under his garden, was breached.
- After contacting the company, it attended the property and sealed the leak.
- Whilst attending the property the company informed him that it was necessary to advise it in advance of commencing such works if he intended to build over or within three metres of its water main as it did not permit building within these limits.
- On **XX** April 2021 he submitted an application to the company to have it divert its main, and paid an application fee of £1,740.00.
- The company advised him the total cost of the diversion was estimated to be £22,508.37 + VAT.
- He contested this amount because several of the neighbouring properties had previously constructed extensions and did not advise the company nor pay charges for diversion of the main.
- He acknowledges that following discussions with the company it agreed to contribute the amount of £11,275.22 to the estimated costs for works required to be undertaken beyond the curtilage of his property.
- From this point onwards he became very unhappy with the quality of service received from the company.
- He had ongoing difficulty in connecting with the project manager who would also arrange meetings that he did not personally attend.
- Because of the lack of engagement by both the company and its project manager the construction of the extension was unduly delayed and caused additional costs that increased the total spend by approximately £17,000.00.

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- Neither the company nor the project manager took into consideration his vulnerable status and did not prioritise the diversion of the main.
- He acknowledges the company has provided a contribution to construction costs and returned his application fee but believes the company should contribute towards his additional construction costs caused by its delaying of the procedures to redirect its water main.
- Believing the company had not properly addressed his concerns he, on **XX** May 2021, escalated his complaint to CCWater who took up the dispute with the company on his behalf. The records show that CCWater contacted the company seeking an explanation of events and has been continuously involved in the dispute since.
- On **XX** December 2021, CCWater advised him that the company had responded to its request for information. The company acknowledged it provided a poor level of customer service and stated it had returned the application fee because of this. The company also stated it had made a significant contribution to the customer's costs for diversion of the water main, but it believes it was not responsible for the delay in the construction works.
- CCWater had concluded that the company's response confirmed it would not pay any additional compensation and it could not take any further measures to have the company change its position and was thus closing his case.
- Continuing to be dissatisfied with the response of the company he has, on **XX** January 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to refund the amount of £7,500.00 in increased construction costs, pay him compensation in the amount of £2,500.00 and issue an apology.

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

- It provided its response to the claim in its submission submitted on **XX** January 2022.
- It confirms that it does not permit the erection of structures over or within 3 metres of any of its assets. It states that prior to commencing construction works approval should be sought from it.
- The customer did not make any contact with it prior to commencing the construction of the extension to his dwelling.
- On **XX** February 2021 it was advised that its water main that ran underneath the customer's garden had burst and was spilling water. The company says the burst was repaired on the same day.

- During the repairs its engineers advised the customer that he required permission to undertake the construction works over the main.
- It notes that it was contacted on several occasions by the customer's mum and his retained architect querying if an application was necessary as they understood that neighbouring properties had also erected extensions without seeking prior approval.
- It confirms that on **XX** April 2021 it received an application, along with the applicable fee, from the customer to have it divert its water main from under his garden. On **XX** May 2021 it confirmed acceptance of the application and advised the costs of its works were estimated to be £22,508.37 + VAT.
- Again, it received several e-mails from the customer's mum complaining that she believed the estimate included costs that should more appropriately be paid by the neighbours of her son's property. The company says it subsequently made a goodwill gesture to contribute the sum of £11,275.22 towards the costs of works to be undertaken outside the property boundary.
- The customer accepted the goodwill offer and on **XX** May 2021 he paid the remaining balance. The company says it then explained the necessary procedures to the customer, including the need to obtain approvals from the local authority, the Highway Agency and all affected neighbours.
- It subsequently undertook the works between **XX** June 2021 and **XX** July 2021.
- It refutes the customer's contention that its contribution to the costs was to cover charges that should have been paid by his neighbours.
- In respect of the complaint of poor customer service it records that the customer's mum contacted in on a regular basis and often expected a response on the same day. It says all complaints were addressed within the ten working day period as set down in its Complaints Procedure.
- It also acceded to a request from the customer's mum to have its project manager replaced and it refunded the customer's application fee to apologise for the customer service.
- It records that its normal time frame to complete mains diversion works is up to ninety days following receipt of payment, but in this case the work was completed within sixty-eight days. It contends that this supports that it did prioritise the job.
- In summary, it notes that it made a significant financial contribution to the customer's costs and believes that its efforts to assist the customer means it cannot be held responsible for the increased building costs of his extension construction.

## **The customer's comments on the company's response are that:**

- On **XX** February 2022, 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 states the company did not recognise his vulnerable status and prioritise the work at his property. The customer reiterates his belief that the company overpriced its estimated costs of the works and the timescale of events stated by the company are incorrect and the works took longer than ninety days.

## **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 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 not made a greater compensation payment in respect of delays caused to construction works at his property and the provision of poor customer service.
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.

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3. The parties agree that the customer was constructing an extension to his house and during the works a leaking water main belonging to the company was discovered. I can see that the company attended speedily and fixed the leak.
4. The parties disagree on the cause of the leak, the company asserts that the customer's retained builders breached the pipe during excavation whilst the customer says the pipe was old and leaking when exposed.
5. Notwithstanding that the cause of the leak is not established I take note that the construction works had been undertaken without any prior advice from the customer to the company.
6. The company has detailed that it does not permit the erection of structures over its water mains or within 3 metres of the main. It makes reference to the applicable sections of the Water Industry Act 1991.
7. I can see that upon attending the customer's property to fix the leaking pipe it identified that the customer was erecting his extension over a water main, and that the company advised the customer and his retained architect that it would need to apply to the company to have it divert the main.
8. Subsequently, on **XX** April 2021 the customer submitted an application form to the company and paid the necessary fee of £1,740.00.
9. On **XX** May 2021 the company confirmed acceptance of the application and stated the estimated cost for the diversion would be £22,508.37. The customer says the estimate is too high but does not submit any evidence to support his position.
10. I can see that following representations from the customer and his mum the company offered, as a gesture of goodwill, to contribute the amount of £11,275.22 towards the costs of the works required outside the curtilage of the customer's property. The customer accepted the offer and on **XX** May 2021 the customer paid to the company the remaining balance.
11. The company states that its normal custom and practise is to complete such works within a ninety-day period following the date of payment, meaning the works should be completed on or before **XX** August 2021. I take note the works were actually completed on **XX** July 2021.
12. The customer contends that the company unduly delayed the works. He opines that the company's appointed project manager for the works failed to reasonably communicate with him, did not reply to e-mails, did not answer or return telephone calls, and failed to attend a site meeting he himself has organised.
13. The water main diversion procedure, as set down on the company's website, states that a pre-start meeting will be held, and I can see that such a meeting was held on **XX** June 2021. The

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customer complains that the project manager did not attend the meeting and contends that his absence delayed progress. The procedure states that a meeting will be held but does not define the attendees obliged to be present, and I am not satisfied that the evidence supports the customer's contention. I find that the meeting on **XX** June 2021 satisfied the obligation to hold a pre-start meeting and the evidence does not support that the project manager's absence caused delay to the progress of the works.

14. The evidence shows that the company accepted the customer's position on the issue of the customer service provided by the project manager and thus replaced him. In addition, it refunded the application fee of £1,740.00 in full as a compensatory gesture of goodwill, and I am thus satisfied that the company reacted reasonably to this particular claim of the customer.
15. The customer has further contended that his neighbours have also and similarly built house extensions over the company's water main without obtaining prior approval or paying the costs of diverting the pipe. The customer claims that the donation to his costs covers the work outside of the curtilage of his property and thus it is his neighbours that are benefitting.
16. I am provided with copies of the original cost estimate and the revised cost estimate (dated **XX** May and **XX** May 2021) but I am not provided with a copy of the "Detailed Estimated Cost Breakdown" referred to in the letters. However, I can clearly see that the company has split the work and cost elements between work inside and outside the customer's property.
17. However, I am not persuaded that the evidence supports the customer's contention that the goodwill gesture benefits his neighbours more than himself. The issue, to me, is that the entire work package would not be necessary if the customer was not building a structure over a water main irrespective of whether his neighbours had previously paid costs or not for their extensions. I am satisfied that the customer paid only for the works undertaken inside his curtilage.
18. The customer contends that the works were not completed on **XX** July 2021 as stated by the company, and claims a stopcock needed reallocating on **XX** August 2021. The customer has not supplied any evidence to support this contention.
19. The company completed the works within  $\pm 68$  days from receipt of payment, and have followed its own procedures plus has sought local authority approval, road closure approval, footpath closures, etc. Again, the customer says none of these actions were performed but provides no evidence to support his contentions.
20. Based on the evidence, and my review thereof, I do not find that the company has unduly delayed the progress of the construction of the customer's extension.
21. In his application to the Scheme, the customer requests the company be directed to partly refund the purported increased costs suffered by his contractor in the sum of £7,500.00.

22. The customer has not submitted any documentary support to his contention that his retained contractor suffered losses and has passed appurtenant costs onto him. I have not been provided with a copy of the original programme of works nor a copy of a revised programme following resumption of works after the completion of the company's diversion activities. The customer has not provided details of the length of the purported delay.
23. I take note that the customer has submitted an unsigned document on plain paper without letterhead stating that the amount of £17,000.00 is required for *"increased costs which have, or will be, incurred"*.
24. As I have found the evidence does not support the company delayed the building contractor then it follows that I find that compensation for unsubstantiated increased costs is not appropriate.
25. I also take note that the company has previously contributed the sum of £11,275.22 towards the cost of the main diversion works.
26. I shall not direct the company to make any compensatory payment towards the building contractor's costs.
27. The customer further requests that the company pay him £2,500.00 in compensation for stress and distress.
28. The company has acknowledged that the inputs of its original project manager were not of the required standard, and it thus refunded the application fee in the amount of £1,740.00. I am satisfied that this is a reasonable payment for the inconvenience experienced.
29. I am conscious that the customer commenced construction works without giving advance notice to the company, and that neither he nor his professional advisor identified that a water main ran across the location of the extension. On a balance of probabilities, it seems reasonable to me to understand that had the customer consulted the company prior to commencing excavation works then the delay to his construction programme would not have occurred and the distress purportedly experienced would have been avoided.
30. I do not find that the evidence supports that any act or omission on the part of the company led directly to any stress or distress that may have been experienced by the customer. I find that this part of the customer's claim does not succeed, and I shall not direct the company to pay compensation for stress and distress.
31. 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.



## The Preliminary Decision

- The Preliminary Decision was issued to the parties on 22 February 2022.
- The customer has, on 23 February 2022, submitted detailed comments on the Preliminary Decision.
- The customer refers to the position of CCWater on certain issues. However, I take note that CCWater is an independent mediation service, and the adjudicator is not obliged to agree with or support any of its recorded positions.
- The customer has not submitted any additional supporting documentation.
- Having read the response of the customer I am satisfied that no amendments are required to the Preliminary Decision.

### **Outcome**

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 by 05 April 2022 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.



Peter R Sansom  
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Member, CI Arb Business Arbitration Panel.  
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## **Adjudicator**

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