

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X865

Date of Decision: 12 April 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to increase the amount of compensation it has offered him for disturbance he experienced whilst it undertook repair works to its assets adjacent to his property. The customer says he has requested the company to considerably improve its offer, but it refuses to do so. 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 pay him compensation for disturbance in the sum of £1,600.00.

Response

The company denies any liability to the customer to pay compensation for disturbance. It records that it offered the customer a goodwill payment of £40.00 that he has declined, and undertook, free of charge, a structural survey of his property. The company did not make any formal offer of settlement to the customer and declines to increase the level of compensation it has offered.

Findings

I find that the evidence does not support that the company is liable to pay compensation for disturbance. The company has established that it has a statutory obligation to maintain and repair its assets and the work done adjacent to the customer's house was in compliance with its obligations. I find that the evidence shows 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.

Outcome

The company does not need to take any further action.

The customer must reply by 11 May 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 noise and disturbance whilst it undertook construction works close to his house. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- The company undertook maintenance works to its sewerage network adjacent to his residence.
- The works were ongoing for a period of approximately two months.
- He believes the works were poorly planned and poorly executed and this led to him and his family being subjected to excessive noise disturbance and suffering from exposure to foul smells coming from the open sewer pipes.
- The works frequently carried on until late in the evenings and often the company worked through the night. As a result, he and his family suffered sleep problems, and the customer contends that the work should have been restricted to being undertaken between 09:00 and 17:00 Monday to Friday.
- The company did not make any attempts to alleviate the constant bad smell.
- The works caused him difficulties in respect of parking at his property, and that the adjacent road and footpath were continuously dirty from the works.
- On 02 November 2021 he formally complained to the company and was offered the sum of £40.00 in compensation.
- Believing the company had not properly addressed his concerns he, on 15 December 2021, escalated his complaint to CCWater who took up the dispute with the company on his behalf.
- CCWater advised him on 13 January 2022 that it believed the company had not acted incorrectly when undertaking the maintenance works and that its financial payment of £40.00 along with an apology for the inconvenience is reasonable compensation.

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- CCWater concluded that 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 02 March 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to pay him compensation in the amount of £1,600.00.

The company's response is that:

- It provided its response to the claim in its submission dated 14 March 2022.
- It has a statutory obligation to provide and maintain water and sewerage services to every property in its area of responsibility. The company details its responsibilities as set down in the Water Industry Act 1991.
- It acknowledges that it undertook repair work to a 400 metre long section of sewer pipe, and that on 31 August 2021 it gave advance notice to the customer that work would commence on 13 September 2021 and would have an estimated duration of ten weeks.
- It records that the customer requested the company carry out a structural survey of his property prior to commencement of the works. The company notes that although it was not legally required to do so, it arranged for a survey to be carried out on 29 September 2021 and this resulted in a two-week delay in the commencement of the repair works.
- On 08 November 2021 it provided the customer with a mid-scheme update letter to advise him of the state of progress.
- On 07 December 2021 it provided the customer with a further letter confirming that works were complete.
- It confirms that at all times its construction vehicles were parked in accordance with the regulations of the applicable local authority.
- It confirms that no damage occurred to the customer's property and thus it has no evidence that the property has suffered any depreciation in value.
- There is no legal obligation upon it to pay compensation for any disruption that may have been caused by its works. However, the company records that it offered the customer a goodwill gesture in the sum of £40.00.
- In summary, it believes it has not breached any of its statutory duties nor failed to operate its business with reasonable skill and care, and that it has no legal obligation to compensate the

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customer for disturbance whilst it undertook its works. As a result, it declines to pay the compensation requested by the customer.

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 declines to increase the goodwill financial gesture it made following his complaint over its maintenance works undertaken close to his property. The company contends that it has no legal obligation to pay compensation for disruption while undertaking works in compliance with its statutory obligations.
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. I accept from the evidence submitted by the company that it has established its authority to operate and maintain water and sewerage services in its area of responsibility, and that these maintenance works include repair and replacement of assets.

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4. In his application to the WATRS Scheme the customer has requested that I direct the company to pay him compensation in the total amount of £1,600.00 for disturbance.
5. I can see that in its defence submission the company states that it understands that the customer is claiming compensation on behalf of a group of his neighbours.
6. I do not agree with the understanding of the company. I am not persuaded by my reading of the customer's WATRS Application Form, and the evidence submitted in respect of this referral, that the customer's claim is on behalf of more than one person. I shall proceed accordingly.
7. Having accepted that the company has a statutory obligation to undertake maintenance works to its assets, I am satisfied that the company undertook such works adjacent to or in close proximity with the customer's dwelling.
8. The customer contends that the repair works were poorly planned and poorly executed. I do not find that the evidence supports the contention.
9. The customer also asserts that the company carried out the works late into the evening time and sometimes the noise carried on until the early hours of the morning, and thus disturbed the sleep of his family.
10. I can see that the company has acknowledged this but has explained in detail that such working times are necessary because the sewer line was closed when works were ongoing and the time of least flow is, of course, during the overnight hours. Any flow that enters the system is transported by tanker when the system is shut down and hence night-time working results in fewer tanker truck movements.
11. In regard to the presence of foul odour, the company has similarly explained that the repair works necessitated having open sections of pipework from which the odour emanated. I do not find it unreasonable that odours will occur when works are being undertaken on open sections of the sewerage network.
12. The company makes reference to Schedule 12 of the Water Industry Act 1991 and states that this Schedule makes it liable for loss or damage caused by the works but not for any disturbance suffered by any third parties. The company contends that the customer has never complained of any damage to his property or that the property has suffered any loss of value.
13. I am satisfied from my study of the evidence that the company is correct, and I see no assertion from the customer of physical damage to his dwelling.
14. In respect of the customer's complaint over parking difficulties I take note that the company insists that at all times its vehicles parked according to local authority regulations. The evidence does not contradict this.

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15. I also take note that the company arranged, at no cost to the customer, a structural survey of his property prior to commencing works. Additionally, I see that it sent him regular updates on the progress of the works and made a goodwill offer to the customer in the sum of £40.00.
16. Overall, I find that the evidence establishes that the company has dealt with the customer to a reasonable level.
17. I also find that the evidence does not support that the company is liable to pay the customer compensation for any disturbance he may have suffered because of the repair works.
18. 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.
19. My decision is that the customer's claim does not succeed.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 29 March 2022.
- The company has, on 05 April 2022, confirmed receipt of the Preliminary Decision.
- The company confirms that it has nothing further to contribute.
- Having noted the response of the parties I am satisfied that no amendments are required to the Preliminary Decision.

Outcome

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 by 11 May 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.

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Adjudicator

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