

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X900

Date of Final Decision: 3 May 2022

Party Details

Customer:

Company:

Complaint

The customer claims that the company commenced works on the privately owned road behind his property without proper signage or permission. Furthermore, the company's works caused damage to the road which has not been satisfactorily repaired. The customer is seeking the company to apologise and resurface the privately owned road.

Response

The company says under Section 159 of the Water Industry Act 1991, it has the power to lay, inspect, maintain, adjust, repair or alter any relevant pipe. However, the company is required to serve notice under Section 159 to the landowner, which in this instance was thought to be the Local Authority. The Local Authority approved the application for the work, and the company cannot be held responsible for the Local Authority having the privately owned road behind the customer's property listed as one that they are responsible for. The company's legal obligation is to repair any damage caused so that the land is back in the condition it was previously, and this is what the company has done. The road has not been level surfaced for at least 14 years, and the company is not willing to provide a new freshly tarmacked road for the customer as it has no legal obligation to do so, and any damage that was caused because of the company's work, has been repaired. The company has not made any further offers of settlement.

Findings

I am satisfied that the evidence shows the company did not fail to provide its services to the standard to be reasonably expected regarding the privately owned road behind the customer's property. The reasons and evidence provided by the customer are not sufficient to justify that the company apologise and resurface the privately owned road.

Outcome

The company does not need to take any further action.

The customer must reply by 24 May 2022 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X900

Date of Final Decision: 3 May 2022

Case Outline

The customer's complaint is that:

- Without proper signage or permission, the company commenced works on the privately owned road behind his property.
- Furthermore, the company's works caused damage to the road which has not been satisfactorily repaired.
- The customer is seeking the company to apologise and resurface the privately owned road.

The company's response is that:

- Under Section 159 of the Water Industry Act 1991, the company has the power to lay, inspect, maintain, adjust, repair or alter any relevant pipe.
- However, the company is required to serve notice under Section 159 to the landowner, which in this instance was thought to be the Local Authority.
- The Local Authority approved the application for the work on the road behind the customer's property, and the company cannot be held responsible for the Local Authority having the privately owned road listed as one that they are responsible for.
- The company's legal obligation is to repair any damage caused so that the land is back in the condition it was previously, and this is what the company has done.
- The road has not been level surfaced for at least 14 years, and the company is not willing to provide a new freshly tarmacked road as it has no legal obligation to do so, and any damage that was caused because of the company's work in that road, has been repaired.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

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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 another disadvantage as a result of a failure 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 centres on whether the company should provide a new freshly tarmacked road behind the customer's property.
2. The company must meet the standards set out in the Water Industry Act 1991 and the Water Industry Regulations 1999.
3. The company also has certain obligations regarding its customer services as set out in OFWAT Guaranteed Standards Scheme and its own Guarantee Standards Scheme (GSS).
4. From the evidence put forward by the company, I understand that on 29 September and 14 October 2021, the customer and the owners of the other properties that had a boundary with the road behind the customer's property were sent a letter informing them that works to replace the company's pipework within the road would commence on 18 October 2021.
5. On 25 October 2021, the customer contacted the company, concerned that the road behind his home was being damaged by works carried out by the company's contractors. I understand that the customer advised that the road was privately owned and not owned by the Local Authority. The company advised the customer that once its contractors had finished their work, they would reinstate any excavations so that the ground would be left in the condition it was found in, as is standard practice.

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6. On 12 November 2021, the customer wrote to the company advising that the works on the privately owned road behind his property were commenced without proper signage or permissions. After further discussions, the company reattended the site and carried out further reinstatement works to help the patches already reinstated blend into the original surface. However, the customer remained dissatisfied with the company's works and requested that the road be tarmacked.
7. The company advised the customer that it would not tarmac the road as this would be betterment as the road had not been level surfaced for at least 14 years before the company's works. The customer disagreed as he believed that the company still had not repaired the damage sufficiently and, on 15 February 2022, progressed the matter to CCWater to resolve. I understand that CCWater was unable to resolve the dispute and, on 15 March 2022, commenced the WATRS adjudication process.
8. Regarding whether the works on the privately owned road behind the customer's property were commenced without proper signage or permissions, the company say that under Section 159 of the Water Industry Act 1991, the company has the power to lay, inspect, maintain, adjust, repair or alter any relevant pipe. I find that would cover replacing the company's pipework underneath the privately owned road behind the customer's property.
9. I note that under Section 159 of the Water Industry Act 1991, the company must seek the landowner's permission to commence the works. In this instance, it was thought that the road was owned by the Local Authority, and the evidence shows that the company approached the Local Authority for permission to commence the works. The evidence shows that the Local Authority granted permission to commence the works on the road behind the customer's property.
10. On careful review of all the evidence, I find that I am persuaded that the company would have had no knowledge that the road was, in fact, privately owned and not owned by the Local Authority. The Local Authority reinforced this by granting the company permission to commence the works. I find it reasonable considering the circumstances, that once receiving permission from the Local Authority the company did not then go further, such as to the Land Registry to double check the Local Authority's ownership of the road.
11. I note that the company advised the customer and the owners of the other properties that had a boundary with the road that they were going to commence works, and it was not until after the

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commencement of the works that the customer highlighted to the company that the road was private. I note the customer's comments that the letters cannot be regarded as a Section 159 or seven-day notice to carry out works on private land. However, as above, at the date the letters were sent the company was of the view that the land was owned by the Local Authority and there would be no need for a Section 159 notice. Accordingly, having reviewed the evidence in full, I find that the company's actions were reasonable considering the circumstances.

12. Concerning whether the company should tarmac the road due to damaging the road whilst undertaking its works, the photographs put forward in evidence show the road before the works as partly covered in tarmac, uneven and in poor condition and had been for some considerable time. Having reviewed the photographs on completion of all the works, I find that I am not persuaded that it is in worse condition than before the works.
13. I note the customer's comments that the tracks of the company's machinery damaged his property. The company must restore any property to the condition it was before the company undertook its works. Whilst I sympathise with the customer's comments, in my view, the evidence shows that the company had restored the road to the same condition it was before the works commenced. Accordingly, the customer's request that the company tarmac the road fails.
14. The company has certain obligations in respect of its customer services. After careful review of both the customer's letters and the company's responses, I am satisfied that, by the end of the company's dialogue with the customer, the company had adequately explained the reasons why it would not tarmac the road behind the customer's property. Accordingly, I am satisfied there have been no failings concerning customer service.
15. Both the customer and the company have made various comments on the preliminary decision including providing additional photographs and evidence. Having carefully considered each aspect of both the customer's and the company's responses I find that they do not change my findings, which remain unaltered from the preliminary decision.
16. Considering the above, I find the customer has not proven the company failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the privately owned road behind the customer's property. Furthermore, I am satisfied there have been no failings regarding customer service.

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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 24 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



Mark Ledger FCI Arb
Adjudicator

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