

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X083

Date of Decision: 11 September 2022

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to refund him the cost of fencing he erected at his garden following damage caused by the company to an existing hedge. The customer says the company did not fix a leaking pipe adjacent to the hedge within a reasonable time period, and this delay caused part of the hedge to die. 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 him the costs of erecting a fence.

Response

The company denies liability to refund the costs claimed. The company states that it repaired the leaking pipe, returned the garden to the condition it was in prior to the repair works, and that it kept the customer informed at all times. The company has explained to the customer the preparatory steps it is required to make prior to commencing work and believes that it has undertaken the repairs within a reasonable time. The company has not made any formal offer of settlement to the customer.

Findings

The claim does not succeed. I find that the evidence does not support that the company is liable to refund the customer's costs. The evidence does not establish on a balance of probabilities that the hedge has died or that any act or omission by the company caused the bush to deteriorate. I find that the evidence shows that the company has provided its services to a reasonable level and has managed 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 07 October 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 a hedge at his property that was damaged by company workings. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- In April 2021 he identified that water was ponding adjacent to a hedge in his garden and thus contacted the company.
- It was approximately three weeks before the company attended his property to inspect the water ponding and to confirm that it was caused by one of its leaking pipes.
- The company made several attempts at hand excavation to identify the location of the leak, but without success.
- The company eventually removed a section of the hedge so that it could widen the excavated area.
- Prior to removing the hedge, he advised the company that it was approximately twenty years old and could not be satisfactorily replaced and the company proposed to erect a section of fencing to replace the length of hedge removed.
- However, subsequently, the company dug out by hand a small section of hedge when on 28 May 2021 it repaired the leaking pipe and replanted the section of hedge.
- He acknowledges the company reinstated his garden to a neat and tidy condition.
- Subsequently, the customer identified that a four-metre section of hedge was in a distressed condition and believes this was caused by the leaking water washing soil away from the roots. The customer states that the repair works were completed in 2.5 hours after commencement and questions why it took the company several weeks to undertake such a small short repair job.
- The customer says that he has since erected a fence at his own expense because a section of hedge is dying. The customer says the company refuses his request to refund the cost of the fencing.

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- Believing the company had not properly addressed his concerns he, on 05 May 2022, escalated his complaint to CCWater who took up the dispute with the company on his behalf.
- The records show that on 12 May 2022 the company contacted the company and requested its explanation of events and to check the level of customer service it provided.
- On 24 May 2022 CCWater advised him that the company had responded to its request for additional information with its detailed communication dated 19 May 2022 in which it confirmed the chronology of events and its belief that it had returned the customer's garden to the same condition as it was in prior to the excavation works. The company stated that it would not recompense the customer for the fencing he installed.
- CCWater concluded that this was the final position of the company, 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 14 July 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to refund him for the costs he has incurred in erecting fencing to replace the damaged hedging.

The company's response is that:

- It provided its response to the claim in its submission submitted on 25 July 2022.
- It confirms that on 20 April 2021 it received a complaint from the customer that he had identified water ponding in his garden.
- It inspected the water and identified that hand digging would be required because there was no suitable access for a mechanical digger.
- It commenced digging on 17 May 2021 and identified that hand excavation would not be sufficient. The company says that it held discussions with the customer about replacing the hedge with a fence, but it could not agree to the customer's request to have fencing erected along the full length of the hedge because it was only removing a small section.
- On 28 May 2021 the repairs were successfully completed after carefully removing a small section of hedge that was replanted. The company confirms that the garden was fully reinstated, and that the customer expressed his satisfaction with the work done.
- It confirms that on 08 June 2021 it received a complaint from the customer concerning the length of time taken to complete the repairs and it responded to the customer to explain that the work was more complicated than first understood due to the location of and access to the leak.

- It notes that the customer has not supplied evidence to confirm the removed and replanted section of hedge is in a distressed condition nor has he established he suffered any financial loss because of company actions.
- In summary, it says it repaired the leaking pipe, restored the customer's garden to its original condition, and had kept him fully informed at all times. The company confirms it will not refund the costs of the fencing purchased.

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

- On 10 August 2022, the customer submitted detailed handwritten 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 that he believes there are many inaccuracies in the company's defence submission. The customer states that the defence submission confirms that the company was aware that it was not a good idea to remove and replant the hedge. The customer denies holding discussions with the company over the height of fence panels.

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.

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How was this decision reached?

1. The dispute relates to the customer's dissatisfaction that the company has declined to refund him for costs he incurred erecting a fence at his garden after company excavations destroyed a section of existing hedge.
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 that the company has established that it is a statutory appointed water and sewerage undertaker and is governed by the Water Industry Act 1991 (the Act).
4. I can see that the parties agree that the customer contacted it in April 2021 to complain of water ponding in his garden close by an existing hedge line. The company states that the complaint was received on 20 April 2021 although I note that the customer disagrees with this date but provides no evidence to the contrary.
5. The parties agree that the company completed repairs to the leaking pipe on 28 May 2021.
6. I can see from photographs submitted that the leak appears very adjacent to an existing hedge line.
7. The chronology of events shows that the company considered hand excavation would suffice to access the leaking part of the pipe, but after some initial digging it interrupted its work to consider using a small mechanical excavator.
8. Following discussions with the customer the company elected to continue more expansive but careful hand excavation.
9. I can see that to undertake the repair the company removed a short section of the hedge, including its root ball, and set it aside.
10. Upon completion of the repair the company replanted the hedge section it had removed.
11. The customer subsequently complained, approximately four months later on 31 August 2021, that the section of hedge that had been removed had shed its leaves and was looking in a distressed condition.
12. I note that the customer has not supplied any evidence to support this status. I accept the company's response that it would expect to receive at least photographs of the then current condition of the hedge.

13. Additionally, I take note that the customer did not request that the company reinspect the hedge nor has he supplied any third-party professional report to substantiate his contention that the length of time taken to repair the leak contributed to the demise of the hedge section.
14. I can see that the customer has stated in his letter to the company, dated 29 November 2021, that he was advised by a horticulturist that exposing the roots had a detrimental effect on the bush, but I see this is not supported by any written statement.
15. In his application to the WATRS Scheme the customer requests that the company be directed to refund him for the costs incurred for fence panels he has since installed at the hedge line.
16. I do not find the evidence supports the customer's position. I can see that the parties have conflicting understandings of the discussions concerning the possible use of fencing, such as length to be erected, height of panels, etc. However, I find on a balance of probabilities that the evidence does not establish what was actually discussed and if any agreement was actually reached.
17. The evidence does not establish if the replaced hedge section has deteriorated and more importantly what is the likely cause of the deterioration.
18. The customer has supplied evidence of actual financial costs incurred but the evidence does not support that the company is liable to refund these costs.
19. I shall not direct the company to pay the compensation requested by the customer.
20. 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, and the evidence does not confirm that the customer experienced a poor level of service.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 26 August 2022.
- The company has, also on 26 August 2022, submitted comments on the Preliminary Decision. The company confirms it has no additional inputs to submit.
- The customer has, on 04 September 2022, submitted comments on the Preliminary Decision.
- The customer contends that the timeline of events as set down by the company is not accurate or correct.

- The customer states that the company has not examined his hedge despite his requests to do so when it began to show signs of distress. The customer also says that he has had to erect a fence at his own expense.
- As no new evidence has been submitted, I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the responses of the parties 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 07 October 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
MSc (Law); FCI Arb; FA Arb;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Adjudicator

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