

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X126

Date of Final Decision: 14 October 2022

Party Details

Customer:

Company:

Complaint

The company carried out improvement works to a car park next to the customer's car park. As a result, water was trapped in the customer's car park and caused flooding. The company agreed to grade the level of the car park with gravel to let the water drain away; however, when the work began the company made a soakaway instead. The soakaway allows ground water to get through the previously sealed tarmac surface, making the flooding worse than it was before. The company has refused to carry out further work, even though the grading required is quick and simple. The customer would like the company to carry out the required work or, preferably, pay the estimated costs of £1,800.00 so that he can organise the work himself. The customer would also like the company to pay a further sum in compensation for the lack of use of the car park and for the time and effort involved in raising the complaint.

Response

There is no evidence to show that the company caused any damage to the customer's property during the work on the adjacent car park and the company believes that the customer's property was already in a poor state of repair. However, as the company accepts that the customer's car park was used by its contractors to park their vehicles without authorisation, it agreed to carry out the work requested by the customer as a gesture of goodwill. There is no evidence to show that the work carried out caused further flooding and, therefore, it denies responsibility to carry out further work and/or compensate the customer.

The company has not made an offer of settlement.

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Findings

The evidence does not show that the company caused damage to the customer's car park or that the work carried out as a gesture of goodwill caused further flooding or damage. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person and the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

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ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X126

Date of Final Decision: 14 October 2022

Case Outline

The customer's complaint is that:

- The company carried out improvement works to a car park next to the car park he owns and, as a result, water was trapped in his car park and caused flooding.
- He asked the company to grade the level of the car park with gravel to let the water drain away and the company agreed to complete the work, however, when the work began the company started digging a soakaway instead. Despite being repeatedly told to stop digging due to the presence of springs and the high water table, the company would not stop and refused to leave, even though he owns the land.
- The hole made by the company has created a pond and allows ground water to rise through the previously sealed tarmac surface, making the flooding worse than it was before the company arrived to remedy it. Now, half of the car parking spaces are unusable and the gravel is so deep in places that cars get stuck. Also, the pooling water has created a maintenance and safety liability; the water freezes in the winter and causes a skid risk and one resident fell on the ice earlier this year.
- The company has refused to answer any communications and turned down many invitations to attend site meetings.
- The photographs provided by the company showing the car park level and dry were taken the day after the completion of the work. The photographs he has provided show the car park a few days later when it was flooded again. Even during the recent drought there were wet areas due to the springs coming up through the 'soakaway'.
- The company has refused to make the car park right, even though it requires only a simple and quick fix.
- In view of the above, he would like the company to return and do what they were supposed to do, so the users of the car park can once again park their cars without walking through mud, water and debris. However, given the company's lack of help and communication, his preference would be for the company to pay the estimated costs of £1,800.00 for the work to be completed by a private contractor. The customer would also

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like the company to pay a further sum in compensation for the lack of use of the car park and for the time and effort spent trying to get the company to resolve the issue.

The company's response is that:

- Prior to receiving any contact from the customer, it attended the REDACTED which is adjacent to REDACTED car park to undertake repairs. During this work, tankers were used to remove waste and REDACTED car park was damaged by the tanker movements. Therefore, it agreed with the owners to undertake full repairs.
- It then became aware that whilst the work was being undertaken at the pumping station, the customer's car park, next to REDACTED car park, was used by contractors to park their vehicles without authorisation. However, the customer's car park was not damaged so no consideration was given to making any repairs.
- That said, it is accepted that the work undertaken at the adjoining REDACTED car park may have resulted in the customer's car park looking 'shabby', but it believes that the car park was already in a state of disrepair and that the parking of vehicles whilst the work was being undertaken at the pumping station did not cause any further damage. This view is supported by photographs from Google Earth supplied in evidence.
- It received a complaint from the customer's partner soon after work was completed on the car park owned by REDACTED, claiming that damage to their car park had been caused during the repair works on the adjoining car park and by 'plant' machinery. This is denied.
- 'Plant' refers to machinery, equipment or apparatus used for an industrial activity. The customer's partner claimed that the plant machinery being parked on the property had resulted in it being 'in an even worse state' than before, and that it was disappointing that REDACTED car park had been repaired but not theirs. The customer's partner asked whether it could level the ground and lay fresh gravel on the car park.
- On 11 January 2022, it requested photographs of the plant machinery they claimed had been parked on the property. On 12 January 2022, several photographs showing contractors vehicles parked on the property were provided, however, they did not show any plant machinery or equipment.
- The photographs were forwarded to the Customer Case Lead (CCL) and the High Impact Team Lead (HITL) with a request for advice. The HITL advised that whilst it had not given permission for the contractors to park on the customer's property, the fact that they did was unacceptable. However, it was also noted that the car park was already in a

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poor state of repair. In view of this, it was not prepared to accept responsibility for any damage and was under no obligation to make any repairs, but to apologise for the unauthorised parking and as a gesture of goodwill, it agreed to lay shingle over the surface to improve the appearance of the car park. A call was made to the customer on 21 January 2022 to explain this and it was noted that the customer was happy with this offer.

- It called the customer on 4 February 2022 to confirm that the Type 1 shingle had been ordered and would be delivered on 9 February 2022 and it confirmed that contractors would remove the surface layer, install a soakaway and lay the Type 1 shingle. The customer confirmed that he was happy to close the complaint.
- On 11 February 2022, it called the customer to ensure that the crew had attended. The customer confirmed the crew had attended and completed the work and stated that the car park 'looked nice and they had worked hard and done a fantastic job', but the car park had started to flood again and the customer asked if there was anything else it could do. It told the customer that the CCM would be approached to determine if anything further could be done to help.
- On 14 February 2022, it explained that the HITL had attended the property on 11 February 2022 and stated that the area looked very good. Copies of the photographs taken by the contractors prior, during and after completion of works have been provided in evidence.
- The customer disputed this and said that he would provide photographs to show that the work undertaken had made matters worse.
- On 22 June 2022, after further investigations and discussions, the customer was provided with an update and it explained that the whole area is a 'basin' where all flowing surface water collects at a single point. The soakaway that was installed as a gesture of goodwill was intended to allow water to seep through the soil to help alleviate the flooding. The customer was advised that if he could provide evidence to support his claim that the soakaway had caused worse flooding than was present before it was installed, further investigations would be made. However, no further evidence was provided.
- As there is no evidence to show that any damage occurred to the customer's property during the work at the pumping station or during the repairs to the adjacent car park, and as it has already carried out the work requested by the customer's partner as a gesture of goodwill to apologise to the customer for the unauthorised use of their car park, it

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denies responsibility to carry out further work or compensate the customer. However, it apologises to the customer for any inconvenience caused.

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.

How was this decision reached?

1. The customer wants the company to grade the car park with gravel in order to allow trapped water on it to escape. The basis of the claim is that water pooled in the car park after the company carried out work on the adjacent land, and then got worse after the company carried out an unsuitable and unauthorised repair.
2. The company denies that it caused damage to the customer's property and explains that it leveled the car park and installed a soakaway as a gesture of goodwill with the agreement of the customer. The company says that the car park was already in a poor state of repair and it denies liability to carry out or pay for further work.
3. The customer's claim can only succeed if the evidence shows that the company has failed to provide its service to the standard reasonably expected by the average person by damaging the customer's property and refusing to repair it. Therefore, the evidence

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must show on the balance of probabilities that the car park was damaged by water escaping from the adjacent car park during repair works carried out by the company, or by unauthorised work carried out on the car park by the company, or by authorised work carried out to a poor standard by the company.

4. However, the evidence does not include reliable dated images showing the condition of the car park before the work was started at the pumping station or on the adjacent car park. Further, there is no clear explanation or evidence to explain how the work on the adjacent car park caused damage to the customer's property. The company has provided an image from Google Maps purporting to show that the car park was in a poor condition before any works were commenced, but the photograph is undated so I am unable to accept that it shows the pre-existing condition of the car park. Further, there is no clear evidence to show what work the parties agreed would be carried out by the company, or that the company installed a soakaway without permission, or that the soakaway has caused further flooding.
5. Without reliable evidence showing the condition of the car park before any alleged damage occurred, I am unable to make any useful comparison with the photographs provided showing the present condition of the car park. This means that, in the absence of other evidence to support the claim, I am unable to find on the balance of probabilities that the customer's property was damaged by unauthorised parking by contractors, repairs to the adjacent car park, or works on the car park itself.
6. In view of the lack of clear evidence to show that the company damaged the car park and then worsened the problem by installing a soakaway without permission, I cannot find that the company has failed to provide its service to the standard reasonably expected by the average person and is liable to pay for the car park to be repaired. Therefore, while I appreciate that the customer will be very disappointed by my decision, the customer's claim cannot succeed.
7. For completeness, I also add that as I have found no failing on the part of the company, there is no evidence to support the customer's claim for compensation for lack of use of the car park or for the time and effort spent by the customer in pursuing his claim.

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8. Following the preliminary decision, the customer made some further comments and said that the complaint has been misunderstood as “No one is saying work needs to be done as a result of damage caused by their works or vehicles” and the company was never asked to tidy or surface the car park. However, the evidence provided by the company includes correspondence, dated 7 January 2022, sent to the company from Melanie Jenkins, which states; “I live in REDACTED where there is one of your pumping stations. Last year there were huge problems in the area with a collapsed section of sewers and your vehicles were here for weeks on end taking away the waste. Sadly this caused damage to the car parks, one owned by REDACTED and the other belonging jointly to the 29 residents of Basted Mill. You kindly offered to repair their car park for them, but we are so upset that ours was not included. Worse still, while you were repairing REDACTED, for a ridiculous amount of time (over two months) the plant used our carpark and its now an even worse state. We’re not asking for the earth, but if you just came and levelled it and put down gravel we’d be happy. You could probably do that in a day and make the residents of Basted Mill (who jointly own the car park) very happy. The plant has caused the surface to crack up and were now left with huge puddles when it rains. My other half could give you advise, as he is a engineer and specialises in surfacing”.

9. In view of this, I understand why the company addressed the allegation that vehicles, including plant machinery, had damaged the car park, and/or its works had damaged the car park, and why it said it had been asked to surface the area in its response to the customer’s claim. It also follows that, as these issues were raised by the company, I correctly addressed them in my preliminary decision. In view of this, and as the other comments made by the customer have already been considered but I found that the evidence does not support the claim on the balance of probabilities, my decision remains unchanged.

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 28 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.

K S Wilks

Katharine Wilks

Adjudicator

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