

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X282

Date of Final Decision: 20 December 2022

Party Details

Customer:

Company:

Complaint

The company has not taken action to ensure his neighbour relocates a manhole and sewer from the customer's property, where it was incorrectly installed. This is despite the company previously agreeing to act. He seeks that the company take action to ensure his neighbour relocates the company's assets.

Response

The company says it does not require the neighbour to relocate the manhole. While it initially tried to help the customer resolve the matter, this remains a private dispute between the customer and his neighbour. It denies the claim.

Findings

The evidence shows the company has not provided its customer services to the standard to be reasonably expected. However, the remedy sought by the customer is not justified.

Outcome

The company does not need to take any action.

The customer must reply by 20 January 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- His neighbour moved the company's sewer pipe and manhole onto his own land.
- He complained to the company who initially said they would tell the neighbour to relocate the sewer.
- The company then delayed action and did not keep him updated.
- Eventually the company said it would take no further action and he would need to raise a boundary dispute with his neighbour. However, he denies this is a boundary dispute.
- He seeks that the company take action to ensure his neighbour relocates the sewer.
- In comments on the company's response the customer says:
 - He expects WATRS to access the company's records and ensure it has followed procedures correctly.
 - The company should not have approved the works, which are in breach of Building
 - His neighbour accepts the manhole and sewer encroach on his land.
 - He does not understand why the company has now changed its position.
 - Compensation will not address the actual issues which is why he refused this previously.
- In comments on a preliminary decision the customer says:
 - The assets are owned by the company which admits these encroach onto his land. The company does not have his consent for this development or to access his land in future.
 - The company has not explained why its position has changed; it has misled them and put them to avoidable time and trouble over two years.
 - The company will need to relocate the manhole for access.

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- He seeks the company relocate the manhole; provide a copy of the approved plans; detail its legal powers in relation to its assets should they remain; provide details for future access and how to engage with a surveyor for compensation.

The company's response is that:

- It gave the customer's neighbour consent to relocate a manhole cover.
- Upon the customer's complaint it could not determine whether the manhole encroached on the customer's land; however, it asked the neighbour to move it.
- It does not require the neighbour to move the manhole and, while it tried to assist the customer, this is a private dispute between the customer and his neighbour.

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. I acknowledge the company gave a third party permission to relocate its assets. However, it does not follow that the company is required to take any action if the third party did not act in line with this permission.

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2. I am aware the company has powers to act if it is prevented from accessing its assets, however that is not the case here. I am not aware of any law or policy that says the company has any power or crucially, that is has any obligation to act, to protect the interests of one of its customers.
3. I acknowledge the company sought to resolve the dispute by asking the third party to relocate the manhole. However, I cannot say the company was required to do this or to do more than this. The evidence does not show the company failed to provide its services to the standard to be reasonably expected.
4. I do not need any further evidence of the company's actions as such would not affect my decision. The question is whether the company was required to take enforcement action and then failed to do so. I do not consider it has any such obligation and so it cannot have failed to meet this.
5. It is clear the company could have managed the customer's expectations better. The customer also says the company provided a poor service as it delayed in taking action and did not respond to his communications. The company has not denied this and so I accept on balance this was the case. I therefore find the company failed to provide its services to the standard to be reasonably expected.
6. While I have found a failing, I cannot ask the company to take the action the customer seeks. I might consider an apology or payment, although not claimed. However, the customer has been clear in his submissions that neither remedy would assist him. I therefore make no directions.
7. I appreciate this is not the outcome the customer was hoping for. The customer may wish to seek independent legal advice.
8. I have considered the customer's comments on a preliminary decision. The customer has not provided any new information and therefore his comments do not affect my decision. The customer has claimed for additional remedies. Where the customer seeks information, he should first ask this of the company. And, I cannot ask the company to relocate the manhole as I have not found it obliged to take any such action.

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Outcome

The company does not need to take any action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 20 January 2023 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.



J Mensa-Bonsu LLB (Hons) PgDL (BVC)
Adjudicator

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