

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X309

Date of Decision: 27 January 2023

Party Details

Customer:

Company:

Complaint

The customer has a dispute with the company regarding its refusal to accept responsibility to repair and maintain a road/lane adjacent to his property. The customer says that after damaging the road the company resurfaced it leaving it higher than it originally was and this caused flooding to his garden. The customer further claims that the company installed a drain that is now damaged and it refuses to repair the damage. The customer says 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 repair and maintain the road and to maintain the drain.

Response

The company states it does not own the road and is thus not responsible to repair and maintain it. The company says it installed a drain for the customer as a gesture of goodwill, and again has no responsibility to maintain it. The company did not make an offer of settlement and declines to agree to the remedies requested by the customer.

Findings

The claim does not succeed. I find that the evidence does not establish that the company is responsible for repair and maintenance of the road. Similarly, I find that the evidence does establish that the company did install a drain as a goodwill gesture and again has no responsibility for its maintenance. I thus 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 24 February 2023 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 its refusal to accept responsibility for repairing and maintaining a road adjacent to his property. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- In 2016 the company undertook refurbishment of one of its sewage treatment plants and used the lane at the rear of his property as the main access road for its heavy construction vehicles.
- The company vehicles caused serious deterioration to the condition of the road and, upon completion of the refurbishment, the company reinstated the road but raised the finished level by approximately 450mm.
- The company commenced continual use of the road by its heavy bowsers and these vehicles subsequently caused rutting to the surface of the road that resulted in water flowing into his garden and flooding it.
- He complained to the company, but it stated that it did not own the lane and it was the responsibility of the local authority to maintain.
- He acknowledges that the company installed a French Drain to prevent water runoff into the garden.
- Subsequently, the French Drain ceased to be effective as the plastic run off pipe collapsed because of the continuous company traffic.
- He contacted the local authority to complain but was informed that it had never maintained the lane, and directed him back to the company stating that it was responsible for the damage to the road.
- The lane is currently in a dangerous condition and the flooding of his garden has recommenced. The customer says that he now has to constantly monitor the road and divert water away from his garden.

- Believing the company was not properly addressing his concerns he, on 19 January 2021, escalated his complaint to CCWater who took up the dispute with the company on his behalf.
- The records show that in July 2021, CCWater closed the complaint as the company had agreed to remove the French Drain as requested by the customer.
- He contacted CCWater again on 22 March 2022 to request assistance in getting an update from the company on the progress of removing the drain.
- The records show that CCWater contacted the company on the same date requesting its explanation of events and to check the level of customer service it provided.
- An ongoing exchange of contact ensued between the three stakeholders over several months. The company confirmed that it would not be repairing or maintaining the road, it would not repair the French Drain, and would only remove the drain.
- Because of the company's position he changed his own position and requested that the company do not remove the French Drain. The company agreed.
- On 29 June 2022 CCWater wrote to the customer and 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 19 December 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to repair and maintain the lane and maintain the French Drain.

The company's response is that:

- It provided its response to the WATRS claim in its submission dated 20 December 2022.
- It confirms that the customer has been in continuous contact since 2016 in respect of the access road close to his property.
- It confirms that it has made it clear to the customer that the road is owned by the local authority and thus the company is not responsible to maintain or repair the road.
- It also confirms that it installed the French Drain as a gesture of goodwill, and it is satisfied that the Drain is functioning and there is no recent evidence of ponding water either on the road or in the customer's garden.
- It has stated to the customer and to CCWater that it will not maintain or repair the road, or maintain the French Drain. It confirms that it has cancelled the job of removing the French Drain after the customer changed his position.

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- It notes that CCWater has accepted its position in respect of the road and drain.

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

- On 23 December 2022, the customer submitted 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 reiterates his belief that the company raised the finished level of the road when refurbishing it and this led to flooding in his garden. The customer says the French Drain is not effective because the company inserted a plastic pipe when it should have used a metal pipe. The customer asserts that the reason his garden is not currently flooding is because he has to continuously channel water from the road away from his garden.

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 accept responsibility for repairing a road adjacent to his property that he contends was damaged by its heavy vehicles resulting in flooding to his garden. The company states that it does not own the road, and the local authority is responsible for any remedial works.

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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. It seems to me the crux of this dispute revolves around who owns the road/lane in question and thus has the responsibility for its maintenance and repair.
4. The company has stated that it does not own the road. The customer has not submitted any evidence to establish that the company does own the road.
5. The customer asserts that the company damaged the surface of the road in 2016 and that it re-laid the road surfacing and left the final road level some 450mm proud of the original surface.
6. In its letter to the customer dated 16 December 2022 the company states that it has no record of ever doing work to rectify or modify the road.
7. The customer has not submitted evidence to support that the company did re-surface the road or that it has altered the original finished level of the road.
8. The customer further contends that vehicles under the control of the company damaged the road surface causing rutting and tracking. I understand the difficulty the customer would have in confirming his understanding but unfortunately I would need to see clear evidence in order to uphold the customer's contention.
9. I can see that the parties agree that, following a complaint from the customer about flooding to his garden, the company installed a French Drain in order to have ground water flow away from the garden.
10. The company says it had no obligation to do this, but constructed the drain as a gesture of goodwill. The customer has refuted this on several occasions, and as one example I refer to his e-mail dated 06 August 2022 where he states –

*They installed the French drain because after they relaid the lane after there work on site, my garden began to flood, because they raise level by 450mm approximately.
So it wasn't a good will gesture, it was we had better do something because we caused the flooding problem.*

11. As I have established that the road is not the responsibility of the company and that damage to the road by the company has not been established then it follows that I find that the company was not under any obligation to install any measures to prevent water runoff entering the customer's property. I am satisfied on a balance of probabilities that the French Drain was indeed installed as a gesture of goodwill.

12. The customer contends that the French Drain has ceased to function efficiently. The company denies this and states its recent investigations show the drain is functioning and no standing water was visible either in the customer's garden or ponding on the surface of the road.
13. The customer requests that the company be directed to repair and then maintain the French Drain. The company refuses to do this, stating that as it was constructed as a goodwill gesture it has no responsibility for maintenance. The company further states that it has no objection to the customer maintaining the drain with his own resources.
14. Unfortunately, whilst I again sympathise with the customer's position, I have no evidence in front of me to show that the company was obliged to install the drain or that it has a continuing obligation to maintain the drain. Furthermore, I have to take note that the company has stated that the drain appears to be functioning adequately following a recent inspection.
15. Consequently, I am unable to direct the company to repair and maintain the French Drain.
16. In his application to the WATRS Scheme the customer has requested that the company be directed to repair and maintain the lane/road. As I have noted earlier, the evidence does not establish that the company owns the road and is responsible for its maintenance.
17. Thus, again, I am not able to direct the company to repair and maintain the road/lane.
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.

The Preliminary Decision

- The Preliminary Decision was issued to the parties on 13 January 2023.
- The customer has on, 18 January 2023 responded to the Preliminary Decision.
- The customer says that he is dissatisfied with the quantity and quality of evidence submitted on his behalf by CCWater.
- The customer has submitted additional photographic and video evidence, mainly of vehicles traversing the lane adjacent to his property.
- However, I am not persuaded that the new evidence goes to the heart of the dispute inasmuch as it does not overturn the situation that the local authority, and not the company, owns the lane and is thus responsible for its maintenance.
- Having reviewed the new evidence and I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged.
- Having read the response of the customer I am satisfied that no amendments are required to the Preliminary Decision.

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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 24 February 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.
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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.

Independent Adjudicator

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