

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X356

Date of Final Decision: 3 March 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer complains that the company's works in laying a water main close to his house has disturbed an underground watercourse and caused water to percolate into his sub-floor area. The customer states that he has incurred costs for tanking of £20,800.00. He asks for the company to re-route the flow of subterranean water or compensation of less than £20,800. (The Scheme Rules permit a maximum award of £10,000.00 to domestic customers.) The customer also asks for payment of the costs of surveying, and an apology.

Response

Although the company undertook major work to lay a new water main across roads near the customer's house, it has not disturbed an underground watercourse. The customer's evidence does not show that this occurred. The company obtained a survey report on the customer's bungalow with which the customer does not agree and has offered him the opportunity to obtain an independent report, provided that he should pay for the report if it does not support his theory. The customer has not taken up this offer. The company denies liability for this claim.

Findings

Although there are a number of possible explanations as to why the customer's crawlspace may have become more wet than it previously was, the sole question for me is whether the evidence supports the customer's theory that, contrary to reasonable expectations, an underground watercourse has been disturbed such that water has entered his underfloor space. For the reasons set out below, I do not find that the evidence supports this conclusion and therefore the customer's claim is not able to succeed.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The customer complains of water ingress into his property, which he believes to have been caused indirectly by the company in 2021 when its contractors installed a new 500mm trunk main between **XX** reservoir and **XX** reservoir affecting subterranean water channels that previously drained onto land close to his home and were diverted downhill. The company's works have resulted in a flow of water directly into the crawl area under the floor of his property.
- He now asks for:
 - Diversion of the flow of water;
 - Waterproofing his crawl space at a cost of less than £20,800.00;
 - Survey costs;
 - An apology and compensation.

The company's response is that:

- Work on the project referred to by the customer was completed in his area in August 2021 and the project finished in **XX** in October 2021 – before November 2021 - identified by the customer as the point when his basement area first became flooded.
- The company's design for the project took into account a culvert crossing the road and there is no evidence that any other watercourses were present or could have been affected.
- The history submitted by the customer shows that his sub-floor area has suffered with problems of damp for a long time. The quote dated 19 December 2022 and submitted to WATRS on 23 December 2022 for waterproofing the crawl space notes that the area of the basement suffers from substantial water ingress 'at times'. The customer has previously had a pump installed that discharges into the back garden and the nearby soakaway was said to be almost full and not working due to heavily clay based soil. This supports the company's contention that the cause of the customer's problem is poor drainage rather than a constant flow of water from a natural water course.
- The company has offered to pay the cost of a survey to be commissioned by the customer if the evidence indicates that the water ingress was caused by the company's work, however, the

company says that it would need clear evidence of this before investigating further or paying for the survey.

- The company does not agree that compensation is payable nor that it should be responsible for covering the cost of lining the customer's basement which appears to have a history of damp.

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.

I make clear that I have read and considered the customer's comments on my Preliminary Decision even though I may not have made reference to these below.

How was this decision reached?

1. The customer explains that he has lived at 90 **XX** on the crossroads of **XX XX** and **XX** for over 47 years. During this time, he says that there has been repeated excavation of the roads due to leaks on the junction dating from at least the early 90s. This led on one occasion to water ingress under the floor of his bungalow. The company said at the time that it could not rule out that problems might occur in the future in consequence and the customer thinks that this has caused an entrance for the water problems now experienced. There is, however, no supporting evidence for this belief. Because of all the problems during that time, the customer explains that he had a sump installed at the lowest point with a 4-inch pipe through the wall of the basement area to drain the water toward the garden. Whilst this did not cure the erosion issues it did help to reduce the dampness, although this is now blocked and needs to be re-laid externally.

2. The customer has set out in his application in detail the number of events and incidents. These mainly consisted of burst water mains and other issues and in January 1995, following several problems concerning water ingress a full investigation was made. On 31 January 1995, the customer was told that no structural problems had resulted from this, but it could not be promised that structural problems would not appear. If these did occur, they would take place during the summer months as the subsoil dries out.
3. Turning to the current issues, the customer says:
 - a. In 2021, the company undertook work to install a new pipeline linking the two reservoirs at **XX** and **XX**. This new trunk main was designed to provide a continuous supply of potable water to customers stretching some 6 km in length. The work involved installing a 500mm diameter trunk main via an open-cut and appeared to run parallel to another pipeline, possibly for rainwater drainage. The excavations were at a depth of 2.4 meters. When work reached **XX** in November 2021, the customer started noticing water entering into the basement area of the bungalow.
 - b. The customer complains that although the company had engaged **XX** to undertake a high-level desk-based review of potential environmental constraints for the proposed routes, the report did not take account of environmental issues relating to subterranean water culverts or water courses.
 - c. He says that following his complaint, the company took a sample of the water and stated that it was not theirs. The customer says that this did not reflect the concern. The customer says that the water that is now entering his basement is subterranean water that has been rerouted into his basement as a result of damage to watercourses and culverts that cross **XX** and then flow downhill into his bungalow at the crossroads below.
 - d. The customer says that he has contacted the Environment Agency and **XX** Council (Flooding Department) who responded:

*I need to do some more investigations to determine what has happened. There is no 'EIA' (environmental impact assessment) based on the document you provided. **XX** appears to have unilaterally reached the conclusion one is not needed; therefore, they have concluded the works are permitted development and do not require planning permission. In turn, this means no need for a formal submission to the Council to consider the impacts of the scheme. They would need Lead Local Flood Authority Consent to interfere with an*

*ordinary watercourse and Environment Agency consent for main rivers. I will need to check in with **XX** in the first instance to identify the full scope of their works and where, if any watercourses were impacted.*

I will also seek information on any groundwater risk assessments that may have been done.

- e. The customer also says that the company's explanation that this is improbable due to the clay soil is improbable, for reasons that he sets out in his submission.
 - f. He complains that the company did not send anyone to assess the problem except a building and not a geological surveyor who produced a very bad report. The customer refers to this individual's website, which suggests (in summary) that his primary area of expertise is in assisting water companies to avoid "over-inflated or spurious claims".
4. The company on the other hand, says that it is not liable. In particular, it states that:
- a. All work along **XX** was completed in August 2021 and all work in **XX** completed by the middle of October 2021. Work was completed in 100m sections that were backfilled and tarmacked as the company moved to the next 100m section.
 - b. The customer's wife first contacted the company on 8 November 2021 to report water coming into the basement area under her property which she said was first noticed on 6 November 2021. The customer points out that access to the crawl space is at the side of the house and not easy. His wife would only have thought something was amiss due to damp creeping into the house.
 - c. The company took a sample of the water to ensure that there was no leak, but it was confirmed not to be water from the mains, therefore the company ruled out the possibility of a leak on its network.
 - d. The customer's correspondence expressed concern about the vibrations caused by machinery used during work and water culverts being diverted having caused water ingress in his basement and this letter was passed to the company's insurance team (Claims Team) although no claim was received. The Claims Team explained that, in order to make a claim, the customer needed to provide evidence of damage caused. They invited him to appoint his own experts to conduct a report and, if the company was found to have caused the issues then it would reimburse the costs.

- e. Following discussion with the customer, the Claims Team agreed to appoint an independent chartered surveyor to attend the property and provide a report **XX** attended on 10 March 2022. The company says that his report confirms:
 - i. That at the property a pre-existing submersible pump float no longer worked and there was a blockage in the pipework.
 - ii. The customer had appointed contractors to install a new drain but had aborted the work due to excessive costs involved.
 - iii. That sections 2.02.12-14 of the report explain the drainage arrangements at the front of the property and that the front wall was damp where the downpipe discharges directly on to the drive. The report goes on to the inspection of the basement and states that there was no evidence of surface water flowing into the sump (2.02.17). (The customer says that the report is incorrect in this regard.)
 - iv. The report section 2.03.4 suggests that water increases significantly during rainfall and reduces when it ceases, suggesting a more localised issue rather than water being diverted by works some distance away.
- f. The company refers to the customer's claim that the surveyor was not impartial in his report, despite the declarations outlined and signed by **XX** in section 5 of his report. The company says that it has suggested that the customer engage a surveyor of his own choice, however he has continued to ask that the company should commission a further report by an engineer more familiar with geotechnical matters, despite doubting the impartiality of the previous surveyor.
- g. The company also points out that a map of the sewers that it supplied to CCWater included an historic drain/culvert highlighted red that ran under **XX**. This seems to have been bypassed at some time and the drain diverted along the front of 90, 88 and 86 and routed between 86 and 84 to the rear of the properties. The company says that it is possible the old drain/culvert is flooding if it has not been effectively de-commissioned, although, as the customer points out, there is no proof of this.
- h. Although the customer has said that the company's excavation altered water courses along **XX** there is no evidence of this. The company laid its main under the culvert at **XX**.

This culvert is a low point along **XX** For any water to be escaping the culvert it would need to travel uphill before flowing down **XX** toward the customer's property. The excavations were dry with no evidence of water escaping either over or underground. It says that if a culvert had been breached, the excavations also would have contained water. The company says that its expert design teams and contractors are experienced in working alongside many other utilities underground and the design takes these into account.

- i. The customer has raised concerns that in completing the work, the company has caused the clay soil to be cracked and to allow water to pass through. The company says that the ground was cohesive and unlikely to enable the movement of water. The trenches were backfilled and reinstated compliant to the Specification for the Reinstatement of Openings in Highways statutory requirement.
 - j. The company says that although the customer has referred his concerns to **XX** and the Environment Agency, it has not been made aware of any concerns, or recommended remedial work following their own investigations.
5. I remind the parties that my powers are set out in the Scheme Rules that I must follow in reaching my decision. These place an obligation on a customer applying for adjudication to put forward evidence that he wishes me to consider which must include evidence to support the remedies requested and any amounts claimed. See Rule 4.4:
 6. My role is therefore adjudicatory, not investigatory, and in order for me to be able to arrive at a conclusion in favour of the customer's case, the evidence taken as a whole must support that position. Even if there is an element of uncertainty as to precisely what has caused damp in the customer's crawl-space, the customer cannot succeed in this adjudication unless the evidence shows that on the balance of probabilities that the company has caused or contributed to this in a way that indicates that it has not supplied its services to the correct standard..
 7. Accordingly, while I have considerable sympathy for the position of the customer who reveals in his comments on the company's defence that he has begun to tank the subfloor area of his home due to the ingress of water, it is not my function to decide generally why the customer's crawl-space is wet. The only issue that I have to resolve is whether the company's actions have caused this situation because the company has not carried out its construction work to the standard that would reasonably be expected.

8. I do not find that the evidence presented to me shows that the company is responsible for the damp to the customer's crawlspace. I reach this conclusion for the following reasons:

a. First, although the customer says that the company has interrupted a natural water course, no water course that is likely to have caused the problem has been identified.

i. The only known water course that might have been affected by the work is a culvert that crosses **XX** at the junction of **XX**. Although the customer says that the company knew nothing about this culvert until he told them about it, the company says that its design team was aware of this and the main was laid underneath it. (The customer denies that work was carried out at this point,) The company also says that its excavations were dry, which would be unlikely if underground water was escaping from the culvert in that location. This is also borne out by the company's photographs of the excavations near to the customer's home. The company also makes the point that this culvert is in a low point along **XX**. For any water to be escaping the culvert it would need to travel uphill before flowing down **XX** towards the customer's property. While I take into account that the customer's concern is about the movement of underground water rather than water at surface level (so the concept of water flowing uphill may not be a persuasive consideration), and he also argues that **XX** is entirely downhill with only a level stretch, I nonetheless find that the fact that the company's excavations were not filled with water escaping from the culvert is a persuasive indication that this watercourse was not breached by the company's works and is unlikely to be causing water in his crawlspace.

ii. The customer says that the company has not investigated the possibility that its works would be interrupting another underground watercourse or culvert, but, even if the company did not investigate, this assumed fact on its own would be insufficient to show that that a watercourse had been disturbed. There is no evidence of the existence of another watercourse that might have been disrupted.

I find that in the absence of clear evidence of the presence of an identifiable underground water course that had been cut through or damaged and that caused water to percolate downhill into the customer's crawlspace, his claim is unable to succeed. I take into account the customer's position that **XX** and does not have the money to engage geotechnical engineers or other experts in this field, but also I find that the technical explanation that he suggests is not one that can be inferred merely from the facts that after the company's work was complete, the customer found that his crawlspace was wet.

In coming to this conclusion, I have not misunderstood the nature of a water course as the customer suggests, and I am also mindful that the presence of a watercourse does not necessarily equate to a high water table or an increase in groundwater due to heavy rain..

- b. Furthermore, although the customer says that there is a correlation in timing between the work done by the company and the increased problem of water drainage in his sub-floor area, the evidence, taken as a whole, I find does not support this. The customer says that he discovered the problem on 6 November 2021, at which point the work had been complete for several months. The company says that **XX** was completed in August 2021 and all work in **XX** by the middle of October 2021. The customer suggests that the reference to the work in **XX** was the commencement date for the works and not the completion date, but there is no evidence for this. He asks why an area outside his house was excavated and re-laid three times, but it is not clear what this has to do with the position. The customer also says that one does not look into the crawl space every day – so suggesting, I assume, that the damp might have arrived before 6 November 2021 - but, again, I find, there is no supporting evidence that the water arrived at any date before 6 November 2021.
- c. By agreement with the customer, the company appointed a surveyor. The customer criticises the independence of the surveyor and raises certain inaccuracies in his report. I have taken these points into account. While I note that the wording of the surveyor's website information is (at least as taken out of context and reported by the customer) somewhat unfortunate, I am also mindful that the surveying company that was appointed is likely to undertake a wide range of work for clients other than the company and that the surveyor himself is a professionally qualified person who is likely to have understood the need to report impartially. I do not find that the report provided was tainted by bias. I accept that there may be some inaccuracies in the report (such as to whether the bungalow is detached or semi-detached) but I find that his conclusion is clear that the sub-floor area is not being affected by a flow of water from a subterranean water course. He finds that it is more likely that the area is damp because the pre-existing measures taken to extract damp from the sub-floor area were not working effectively and that it is more likely that the damp was local in its origin. Despite the criticisms that the customer makes of the report and the surveyor's conclusions, I find that there is on the one hand a conclusion by a relevant professional who, even if not optimally qualified, does not support the customer's position. Moreover, I note that the company has offered the customer an opportunity to have a further report, but it will require the customer to pay for the report if the conclusion does not support the customer's firmly held view. The customer has not taken the company up

on this offer. It follows, I find, that even if there are certain deficiencies in the report of **XX** there is no professional evidence that contradicts the opinions of the survey report.

9. While I note, therefore, that the parties have raised and discussed other issues, and the company has put forward some (disputed) suggestions relating to the increased presence of damp in the customer's crawlspace due to other factors, I am mindful that there could be many other reasons and contributing factors for the condition of this area. I cannot draw from the fact that the customer is not persuaded by the company's suggestions that it must follow that the customer's theory is the correct explanation.

10. It follows from the above that, although there is evidence that water is affecting the customer's crawlspace, I do not find that the evidence is capable on the balance of probabilities of supporting the customer's belief that the company's excavation works have caused this. I reach this conclusion despite the significant amount of work that the customer has done (which I acknowledge and thank him for) to put forward and investigate the various collateral issues that have been raised by both parties. I do not, however, find that there is evidence that the company has failed to provide its services to the expected standard. I am not able to find that the company should pay for the customer's tanking works or take other action regarding the groundwater near his home.

Sorry I cannot agree that they have carried out their work to the standard required in respect of the environment and general consideration for the disruption caused. I hope you will reconsider your decision in light of my response. Thank you

11. It follows that I find that the company does not need to take further action.

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.
- 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.

Claire Andrews

Claire Andrews, Barrister, FCI Arb

Adjudicator