

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/X426

Date of Decision: 03 April 2023

Party Details

Customer: XX
Company: XX

Complaint

The customer has a dispute with the company regarding an ongoing issue with damage to his driveway caused by a water leak from a company asset. The customer says that he had undertaken remedial works to the driveway the previous year at a cost of £1,200.00 and that the leaking water undid the benefits of the work. The customer says that he has requested the company reinstate the driveway or refund the costs of his remedial works, but it has refused to do so. 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 refund the costs of the remedial works in the amount of £1,200.00.

Response

The company states that it has fully investigated the customer's complaints both on site and by studying historic photographs. As a consequence, it believes that the condition of the driveway before and after the leakage is the same and that the water did not cause any deterioration to the driveway. The company records that the customer rejected its proposal to provide him with stone scalplings such that he could resurface the driveway to an improved standard. The company did not make any other offer of settlement.

Findings

The claim does not succeed. I find that the evidence does not establish that the company has caused damage to the customer's driveway because of a water leakage. The evidence shows that the customer undertook remedial works in December 2021, but it does not establish that the water leakage damaged the works. The company undertook investigations to a reasonable level and made a reasonable goodwill offer to the customer. I thus find that the evidence shows that the company has not failed to provide its services to a reasonable level, and it 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 01 May 2023 to accept or reject this decision.

ADJUDICATOR'S DECISION
Adjudication Reference: WAT/X426
Date of Decision: 03 April 2023

Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company concerning issues with its response to damage to the driveway at his house caused by water discharge from a company asset. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- On 01 August 2022 a water leak was identified in the residential road where his property is situated, and the company was notified.
- The leaking water flowed down his driveway for four days and caused considerable damage.
- He repeatedly contacted the company about the leak, but he says that it took fourteen days before it undertook the necessary repair works.
- He has requested that the company compensate him for the damage done to his driveway, but it refuses to do so and says that it has studied *Google Maps* images of his driveway and these show that the condition of the drive has been the same for many years.
- He disputes the company's contention and states that he had the driveway professionally repaired in 2021 at a cost of £1,200.00.
- He refers to a photograph dated May 2022 that the company says shows the driveway being washed away during a rainstorm. The customer denies its interpretation and says the driveway was merely wet.
- He acknowledges that the company offered to provide him with road stones to resurface the driveway. The customer rejected the offer but believes it was an acceptance of liability by the company.
- Believing the company was not properly addressing his concerns he, on 12 November 2022, escalated his complaint to CCWater and it took up his complaint on his behalf.

- He found CCWater to be unhelpful and believes it too readily accepted the company's position without challenge.
- Continuing to be dissatisfied with the response of the company he has, on 11 February 2023, referred the matter to the WATRS Scheme where he requests that the company be directed to refund the cost of his 2021 repairs to the driveway in the amount of £1,200.00.

The company's response is that:

- It provided its response to the WATRS claim in its submission dated 02 March 2023.
- It accepts that under the Water Industry Act 1991 it is responsible for damage caused by water escaping from its assets.
- It acknowledges that there was an escape of water from its assets for the period 12 to 14 August 2022 in the vicinity of the customer's property.
- It also acknowledges that the customer has complained that the leak caused damage to his driveway, and it confirms having undertaken detailed investigations into the customer's concerns.
- It identified that the driveway was an unmade surface with a loose cover of stone and had remained in a poor condition for more than a decade. Thus, it does not believe that the water escape caused further deterioration of the surface.
- The customer has stated that he had the driveway professionally repaired in 2021 by having road scalpings compressed into the driveway at a cost of £1,200.00. The company believes that the photographic evidence does not show any recent application of scrapings to the drive.
- *Google Earth* images from September 2022, after the leak was repaired, do not show any recent repairs or reinstatements to the driveway insomuch as the image is the same as that from 2020.
- It made a goodwill offer to provide the customer with road stones sufficient to spread over his driveway thus giving it a new surface. The company stresses that the offer was not an admission of liability. The company notes the customer has rejected the offer.
- In summary, the company states that its investigations did not identify any evidence that the leak to its assets caused the deterioration to the customer's driveway that he claims.

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

- Also on 02 March 2023, 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 position that the condition of the driveway is clearly different between September 2020 and December 2021, and this is because of the remedial works he undertook earlier in 2021. The customer reiterates his belief that the water from the leak eroded the new layer of stone he had laid.

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 that the leak from its assets caused damage to his driveway and washed away the surface dressing he had recently installed. The company states that its investigations show that the driveway was in a distressed state for more than ten years and the current status was not the result of the water escape.
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. The parties agree that there was a leakage on the company's assets between 01 and 14 August 2022, and that the customer contacted the company about the leakage on 12 August 2022.
4. The customer claims that water ran down his driveway for four consecutive days and caused serious degradation of the surface dressing.
5. The customer contends that he undertook remedial works to the driveway in December 2021. The customer has produced an invoice from the contractor that undertook the works of excavating the top surface and replacing it with compacted limestone scalplings. I can see that the invoice was in the total sum of £1,200.00.
6. The company accepts that water escaping from its assets ran down the customer's drive, but does not accept that the water caused the level of damage claimed by the customer.
7. I can see that both parties are relying on photographs to support their respective positions.
8. It seems to me that the following photographs of the driveway are considered by the parties, those taken in---
 - October 2014
 - October 2020
 - August 2022 (during the water leak)
 - September 2022
9. The company states that its comparison of the photographs before and after the leak, allied to its onsite inspections, show that the condition of the driveway has remained generally consistent.
10. The parties must understand that I am making my decision primarily based upon my examination of the photographs.
11. I am satisfied, on a balance of probabilities, that the customer did undertake remedial works in December 2021. The customer's claim is that the leaking water damaged the remedial work to the extent that he is requesting full reimbursement of the cost of the works.
12. However, I do not find that the photographic evidence establishes that the claim can succeed.
13. I do not find that the photographs establish any degree of damage to the driveway. For me to be sure that damage had occurred I would need to have been provided with photographs showing the condition of the driveway immediately after the completion of the works in December 2021.
14. I take note that the company offered the customer the opportunity to have it deliver a suitable amount of stone scalplings to resurface the driveway. I find this to be a reasonable gesture and it

can be taken as a reasonable and equitable sharing of the risk where no liability can be established. I can see that the customer rejected the offer.

15. I take note that CCWater has investigated the customer's complaint and has upheld the company's position.
16. In his application to the WATRS Scheme the customer has requested that the company be directed to refund the cost of the remedial works in the amount of £1,200.00. Based on my above findings, I further find that the evidence does not establish that the leaking water had caused the damage asserted by the customer. Thus, it follows that I shall not direct the company to refund the costs of the remedial works.
17. 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 24 March 2023.
- The customer has, on 25 March 2023, responded to the Preliminary Decision.
- The customer believes the burden of proof resting with him to prove the water leak damaged his driveway is not reasonable.
- The customer repeats his position that the company's offer to provide free stones to surface dress the driveway is an admission of liability.
- The company has, on 27 March 2023, responded to the Preliminary Decision.
- The company states it has noted the Preliminary Decision and has no additional comments.
- 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 any action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 01 May 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.



Peter R Sansom
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Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
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Member, CEDR Adjudication Panel.

Independent Adjudicator