

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X450

Date of Final Decision: 21 April 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer states that the company did not restore her garden to its original condition following work undertaken to the manholes underneath her garden. The customer requests that the company pay her £2,303.00 in compensation to cover the cost incurred for a private contractor to re-level the garden and replace the artificial grass.

Response

The company states it reinstated the area of the customer's garden worked in and when the customer expressed dissatisfaction with the quality of the works, it reattended and offered to resolve the issue but this was refused. Its subsequent offer to pay the customer £250.00 in compensation towards the quote provided, is reasonable and it is not responsible to pay the claim amount requested. The company made no offer of settlement.


Findings

The company did not reinstate the area of the garden worked on to its original condition as two manhole grates were higher than the level of the garden. This is evidence of the company's service provided not reaching the standard to be reasonably expected. The company reattended but then missed opportunities to rectify the situation. Its offer to pay £250.00 towards the cost incurred by the customer to re-level the garden and replace the artificial grass is insufficient in the circumstances. However, it is not responsible to pay the full cost claimed as this includes the cost of replacing the grass for a much bigger area of garden than it caused damage to. This review found there were other instances of the company's customer service provided not reaching the expected standard when handling the customer's case.

Outcome

The company needs to take the following further action:

- Pay the customer total compensation of £1,301.50.



The customer has until 23 May 2023 to accept or reject this decision.

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Case Outline


The customer's complaint is that:

- The company attended the neighbouring property in August 2021 in response to their report of a drain being blocked and backed up. The company cleared the blockage but on inspection said it needed to place a liner in the drain to repair erosion and it asked to her to carry out the work from access points buried about six feet deep in her garden.
- She agreed for the company to carry out the work on the agreed terms that it would use a professional contractor to lift the artificial grass and re-lay it as she only had the grass laid three years previously which had cost a lot of money. The company assured her it would do this and cover any cost if it was not returned to its original condition.
- The company carried out the work in August 2021 whilst she and her family were on holiday.
- The company did not engage an artificial grass contractor, it took the grass up themselves, cut it in parts and re-laid it with the result being an extremely uneven ground. The two new grates were also inserted six inches above the level of the rest of the garden causing two "huge humps" where it had been cut, causing a trip hazard.
- She complained to the company and two engineers initially returned to lower the grates, however, they advised it was cheaper to level the garden than lower the grates and confirmed the company would arrange for a contractor to also re-lay the grass.
- After three months of calls and emails to the company chasing up this work, with no contractor sent in November 2021, it said she could instruct a contractor herself and advised her to send it the quote which she did, so it could reimburse the cost.
- Her private contractor advised they could not secure the part where the company had cut the grass as there was nothing to secure it to so this could not be fixed and it would always remain a trip hazard. The customer says she has two small children so this was unacceptable. The contractor bought samples of grass but none matched identically the grass that had been laid three years previously. They quoted £2,303.00 including VAT to level the garden and replace all of the grass so there was no trip hazard. She forwarded the quote to the company and it said it would get the quote approved once the work had been done.

- The work was completed in December 2021 and she had to put the cost on her credit card. The company then offered her £250.00 towards this cost which she was appalled by. The company said it was not responsible for the full cost of the grass, only the section damaged. She disagrees as the only reason she had to replace all of the grass was because of the damage it had caused and because it had not brought the level of the garden up to the level of the new access gates installed.
- She raised a complaint and the company advised it had been escalated to stage two and that an inspector would attend. She escalated her complaint to CCW in February 2022 after “many phone calls and emails” and no inspector. In December 2022, the company told CCW it had “thoroughly” investigated this and did not accept it had cut the grass or caused damage.
- The 18-month process has caused “so much stress and upset” and they are financially “out of pocket”.
- She requested copies and transcripts of all phonecalls, file notes and emails relating to her case via a Subject Access Request (SAR). The customer said she was “shocked” to find large amounts of information had not been captured relating to this work. She also found derogatory comments saying she was trying to “get a free garden” which caused much upset. Her original grass came with a 10-year guarantee so she had no reason “to get a free garden”.
- The customer requests that the company:
 - Reimburse her £2,303.00 for the cost incurred to reinstate her garden.

The company's response is that:

- Under section 171 of the Water Industry Act 1991 (the Act), it has a legal right to access public assets that are laid beneath private land. The manholes within the rear garden of the customer's property were buried and needed to be raised to ground level to allow access for the works to be carried out and should any future issues arise.
- All work was agreed with the customer including that it or its contractor would reinstate the area worked in, which was done. The rear garden of the property is covered in artificial grass. Its contractor is qualified to work on this type of surface. Its contractor found that when they attended, the artificial grass was not fastened down and it was already cut in sections.
- When the customer expressed dissatisfaction with the quality of the works, it re-attended at the property on 21 August 2021 and agreed the manholes had been raised a little high. Work was arranged for a team to attend the same day to lower the frames to ground level. The customer advised she was happy with the level of the manholes and just wanted the artificial grass relaying stating it had been cut and laid poorly. The works on the manholes therefore was not carried out. The technicians may have said it would be cheaper to level the whole garden but




they are employed to carry out the work on its behalf and do not have authority to agree to any additional works although they can make recommendations to it.

- Its Customer Relations Manager did ask the customer to get a quote for the work done privately but it was never mentioned that this was to re-lay the whole lawn as it would only ever agree to reinstate the area worked in. This was 3sqm.
- It did not approve the quote received from the customer on 7 December 2021 for a private contractor to carry out the remedial works. On 9 December 2021, it advised the customer it would only be prepared to pay for the 3 sqm where the work was carried out. The customer was offered £250.00 towards the work or for it to reattend and carry out the work. The customer refused to allow it to reattend. It also offered again to lower the manhole to ground level so that the grass would sit flush and this was also declined.
- The customer chose to have a full re-lay of the 43sqm garden by a private contractor. It did not agree to cover the cost of the full 43sqm relay.
- The customer raised a Subject Access Request (SAR) and this was sent to the customer in January 2022. Face to face conversations would not be recorded, everything that is required by law to be disclosed following a SAR, was provided. It apologises for the comments made about the customer's motivation in making her complaints and this has been raised with the technician's manager.
- It considers that it has acted within the auspices of its Code of Practice; the area of the rear garden that was worked on was restored to its previous condition. On that basis it should not have to reimburse the customer for the complete re-lay of the 43 sqm garden.
- As the quote for £2,303.00 for levelling the garden and replacement of artificial grass was never approved, it will not be reimbursing the customer the full amount claimed.

Reply

- The customer reiterates aspects of her claim including that: the company told her before starting the works that a professional contractor would be brought in to remove and re-lay the grass; the contractor used by the company is not qualified for taking up and re-laying artificial grass, she has checked their website and this service is not detailed.
- The customer disputes that the grass was already cut in sections, the photographs show furniture marks only.
- Regarding the company's submission that she advised she was happy with the level of the manhole and just wanted the artificial grass relaying, this is incorrect. All she was requesting was the ground to be re-levelled as it was prior to the work it carried out.

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- She did not intend to get a quote for a relay of the whole garden but her contractor explained on inspection that due to the grass having been cut where the manholes are, there was “no way” it could be re-laid without this always being a trip hazard.
 - Regarding the company’s assertion that she refused to allow its team to carry out relling works (in August 2021), this is “completely incorrect”.
 - Regarding the company’s offer to reattend to lower the manhole to ground level, she had lost confidence in the company’s ability to carry out works properly.
 - The company failed to restore her garden to its original condition. The only way to do this was level the ground (part of the quote from her private contractor) and replace the full area of grass.

Comments on Preliminary Decision

- The customer asks if interest could be taken into account for the final offer amount due to the 17 months that have passed since she paid for the work.

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 remind the parties that in accordance with Scheme Rule 3.4.1 WATRS may reject all or part of an application to the Scheme where it considers that a customer should be referred to a more appropriate forum for the resolution of the dispute. Therefore, I am unable to consider the



customer's comment suggesting there was missing information in the SAR received from the company. This is because the Information Commissioner's Office would be the appropriate forum to consider such a dispute.

2. The complaint concerns the condition of the customer's rear garden following works carried out by the company to its assets located underneath the garden.
3. The customer submits that the company failed to restore her garden to its original condition despite it assuring her that it would. Further, the company has refused to reimburse the cost she incurred for a private contractor to complete the work after telling her that it would approve the quote she provided.
4. Under the Act, I find that the company has a right to carry out works to repair and maintain its assets. Where works are needed within the boundary of private property, I find that it is reasonable to expect the company to consult with the property owner and, following works, to carry out reinstatement work so that the land is restored to its original condition. This is echoed in the company's Pipelaying Code of Practice (Code).
5. The customer has provided photographs of her garden: prior to the works undertaken (three years ago when the artificial grass was newly laid) and; after the company had completed the required works to its assets underneath the customer's garden. I acknowledge that the company has provided supporting evidence at Appendices 1 to 7 of its Response including a timeline, details of visits and works and photographs taken before, during and after the works were completed.
6. It is clear that the company consulted with the customer prior to commencing works which is not in dispute. Further, the company acknowledges that it agreed to reinstate the customer's garden to its original condition and therefore, I find that the company acted in accordance with its Code in this regard. Furthermore, in regards to the customer's assertion that the company promised it would bring in a contractor specifically qualified in removing and re-laying artificial grass, on balance, I accept the company's assertion that the professional contractor it engaged to carry out the works was one it frequently used and qualified to work on this type of surface. As such, I do not accept that by using this contractor to carry out the required works to the customer's garden, this demonstrates any failure in the service provided by the company.

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7. I note that the company then completed the necessary works to its sewer in August 2021. Based on the evidence, I accept that the company did not restore the customer's garden to the original condition due to:
 - a. The two manholes grates being at a higher level than the ground.
 - b. On balance, the photographs indicating there were additional cuts in the artificial grass in the area it had worked on.
 8. Therefore, the service provided by the company in this regard did not reach the standard to be reasonably expected.
 9. After the customer raised a concern with the company about the condition of the garden on 24 August 2021, its timeline shows its Network Controller visited the customer at the property on 29 August 2021. The notes from this visit show the company agreed that remedial works were required to lower the manhole a couple of inches as it was causing a trip hazard. I note that the contractor reattended later that day, however, they did not carry out any rectification work. The customer states they told her during this visit that the best solution would be to level the garden as opposed to lowering the grates. I note their note of this visit states that the customer "was happy with the frame but wanted the astro turf relaying". It is clear that the customer was under the impression following this visit that the company would carry out rectification works on this basis. Whilst the company has explained its contractor did not have authority to agree to vary the follow-on work raised, I consider that it was reasonable for the customer to have relied on their advice as she could not have been expected to have known they did not have authority to provide such advice.
 10. It is clear from the company's timeline that the customer contacted the company on several occasions over the next three months chasing this work, to no avail. As such, its failure to carry out works or explain why it was unable to do so during this timeframe is evidence of it not providing its customer service to the expected standard.
 11. From the note in its Timeline dated 29 November 2021, it is clear that the company agreed at this stage for the customer to obtain a quote for the works which it said it would consider, although I find the extent of the work was not discussed. Following its receipt of the quote from the customer for £2,303.00 including VAT on 9 December 2021, the company offered her £160.00 toward the cost which it increased to £250.00 a few days later.

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12. Based on the evidence, I accept the quote for £2,303.00 was to re-level the garden and replace all 43.2sqm of artificial grass. In its Response, the company states its offer is proportionate to the area of the garden worked on which was approximately was 3sqm. Whilst I accept the company only worked within a small area of the garden, as above, this area was not restored to its original condition as the surface was uneven due to the manhole frames being at a level higher than the garden. I accept this was a trip hazard and unsafe. I am also mindful it did not rectify this within a reasonable timeframe despite having opportunities to do so. I consider it is understandable why the customer subsequently engaged a private contractor to carry out the work in December 2021.
13. Whilst I acknowledge the customer's explanation for replacing the full 43.2 sqm of grass, I am mindful that the damage to the grass was limited to a small area of the garden although it is accepted the additional cuts affected its overall appearance and functionality. Nonetheless, on balance, I find that it would be unfair and disproportionate to hold the company liable for the full cost of this. I find that the quote does not give any breakdown of the individual costs of re-levelling the garden, the artificial grass or laying this. However, in the circumstances, I find that it is reasonable to direct that the company pay the customer 50% of the cost incurred for the rectification work, in the amount of £1,151.50. I consider this is a reasonable amount for works to re-level the garden and a measure towards the cost of the replacement artificial grass and laying it. I am satisfied this is a fair and proportionate remedy in the circumstances.
14. In her Application, the customer has stated she was appalled by the company's comments included in the SAR request, regarding her motivations for her complaint about the condition of the garden. I find that the comments in question are extremely unprofessional and I accept the company's actions in this regard caused the customer distress. I find that this constitutes evidence of the service provided by the company not reaching the standard to be reasonably expected. In its Response the company apologised for this issue and confirmed it has raised this matter with the staff member in question. However, in the circumstances, I find it reasonable to direct that it also pay the customer £50.00 in compensation in recognition of the stress caused.
15. Furthermore, I find it fair to direct that the company pay the customer further compensation of £100.00 in respect of the two other instances of the company's service not reaching the expected standard as set out above.

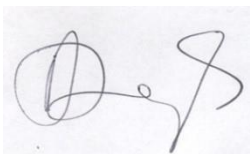
16. In regards to the customer's request for the company to pay interest on the cost awarded for rectification work, I am unable to direct the company to pay interest on this basis as, in accordance with Scheme Rule 6.7, a payment of interest can only be awarded in a dispute concerning incorrectly levied charges.

Outcome

The company needs to take the following further action:

- Pay the customer total compensation of £1,301.50.

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 23 May 2023 to accept or reject this decision .
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notified the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you chose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)

Adjudicator