



Final Determination of a dispute under section 181 of the Water Industry Act 1991:

Messrs John v Dŵr Cymru Welsh Water

Purpose of this document

This is the final determination of a complaint made by Mr Phillip John (“**Mr John**”), on behalf of himself, his father Alec John and uncle Howell John (“**the Complainants**”) to the Water Services Regulation Authority (**Ofwat**) for determination under section 181 of the Water Industry Act 1991 (“**the Act**”) on 31st August 2005 (“**the Complaint**”).

We referred the matter to Dŵr Cymru on 6th September 2005 to allow the company an opportunity to investigate itself. We put our investigation on hold to allow both parties to resolve matters between themselves. On 12th July 2011 Dŵr Cymru contacted us to confirm that it wished to bring the matter to a close. After further exchanges of correspondence with Mr John we opened our investigation of the Complaint on 3rd August 2012.

The Complaint concerns the exercise of powers to lay pipes on land owned by the Complainants (under section 159 of the Act) by Dŵr Cymru Welsh Water Limited (“**Dŵr Cymru**”).

Before reaching this final determination, we shared with the parties a draft determination on 14th August 2013, which provided the parties with the opportunity to make representations to us. We have taken those representations into account before making this final determination.

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1. Introduction

- 1.1. As detailed above, we received the Complaint under section 181 of the Act on 31st August 2005, which followed a complaint registered in a telephone call around a month earlier. The Complaint alleged that Dŵr Cymru had exercised its powers under section 159 of the Act in an unreasonable manner, which caused the Complainants loss, damage and inconvenience.
- 1.2. We suspended our investigation between 2005 and 2012, to allow Dŵr Cymru to resolve the matter itself. On 3rd August 2012 we wrote to both Mr John and Dŵr Cymru confirming that we would investigate the Complaint under section 181 of the Act. We issued our draft determination on 14th August 2013 and sought comments from Mr John and Dŵr Cymru.
- 1.3. We have a qualified duty to investigate complaints made under section 181 of the Act. We do not consider that the Complaint falls into any of the exceptions to our duty to investigate¹. Accordingly, we have engaged in a process to gather and assess the information necessary to make a final decision in this case.
- 1.4. This document sets out our final decision in respect of the Complaint.

2. Legal framework

- 2.1 Section 159 of the Act empowers water undertakers to lay and maintain pipes in private land. The water undertaker is required to give reasonable notice of its intention to exercise this power to the owner and to the occupier of that land.
- 2.2 Ofwat has a qualified duty under section 181 of the Act to investigate any complaint made or referred to it with respect to the exercise by an undertaker of any powers conferred on it by or by virtue of section 159 of the Act.
- 2.3 If, after considering the submissions made by the parties, we are satisfied that the undertaker:
 - has failed adequately to consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised (section 181(4)(a) of the Act); or

¹ These exceptions are set out in paragraph 2.4 of this document

- by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage, or to be subjected to inconvenience (section 181(4)(b) of the Act);

we may direct the undertaker to pay to the complainant an amount not exceeding £5,000 in respect of that failure, loss, damage or inconvenience.

2.4 We are not required to investigate a complaint if any of the following three exceptions² apply:

- the complaint appears to be vexatious or frivolous;
- the complainant has not brought the complaint to the water and/or sewerage company's attention and has not given them a reasonable opportunity to investigate the complaint; or
- the complaint was brought to our attention over 12 months after the matter to which the complaint relates first came to the attention of the complainant.

2.5 In deciding whether to direct an undertaker to make a payment in respect of any failure, loss, damage or inconvenience, we may take into account any sums that have already been paid by the undertaker. We must not direct an undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment (except in so far as it appears appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to cause the complainant to sustain the loss or damage or to be subjected to the inconvenience).

2.6 It is also relevant to note that section 182 of the Act obliges an undertaker to have an approved code of practice ("**CoP**") in respect of laying pipes in private land.

2.7 Action that is not in line with a CoP does not of itself entitle a person to a payment under section 181 of the Act. However, we will take this into account when determining whether to direct the undertaker to make any payment, and the amount of any payment.

² These exceptions are in section 181(2) of the Act.

3. Factual background

3.1 The parties

3.1.1 Mr John is part owner of the land known as Ynysmeudw Uchaf Farm, Ynysmeudwy, Pontardawe, Swansea (“**the Land**”). The other owners of the land are his father Alec John and uncle Howell John. Since receiving the Complaint Mr John’s cousin, Oswald Hugh John, has also become a part owner of the Land.

3.1.2 Dŵr Cymru is a water and sewerage undertaker appointed under the Act. It provides water supply and sewerage services to customers in Wales and some adjoining areas of England. Dŵr Cymru owns the public sewer (“**the Sewer**”) that was laid in the Land.

3.2 The Complaint

3.2.1 Mr John contends that Dŵr Cymru has acted unreasonably in the way it has exercised its powers under section 159 of the Act, and has caused the Complainants to sustain loss, damage and to be subjected to inconvenience. Mr John consequently contends that Ofwat should direct Dŵr Cymru to make a payment pursuant to section 181(4) of the Act.

3.2.2 Dŵr Cymru laid the Sewer in the Land between October 2003 and ‘early 2004’. Once the Sewer had been laid, work to reinstate the area of the Land affected by the laying of the Sewer (“**the Reinstatement Area**”) began in June 2004 and continued until the summer of 2011 (“**the Reinstatement Works**”), at which point Dŵr Cymru wrote to us to say that as far as it was concerned the Reinstatement Works were complete.

3.2.3 Mr John originally wrote to us on 31st August 2005, referring to a phone call he had had with us around a month earlier, to complain about the fact that Dŵr Cymru had not yet completed the Reinstatement Works and that a number of issues were yet to be resolved. We referred the matter to Dŵr Cymru on 6th September 2005 to allow the company an opportunity to investigate itself. Dŵr Cymru replied to us on 13th September 2005 admitting that it had not handled the Reinstatement Works appropriately and said it would be apologising to Mr John and paying compensation.

3.3 Correspondence with the Parties

- 3.3.1 From 2005 onwards correspondence in relation to the Reinstatement Works was exchanged between the respective land agents acting on behalf of the Complainants and Dŵr Cymru (“**the Parties**”). We also remained in communication with the Parties, referring matters to Dŵr Cymru intermittently to enable the company to take action itself. Mr John continued to contact us to provide an update on the issues he had initially brought to our attention and to raise new issues as and when these appeared. We did not open an investigation under section 181 of the Act whilst a resolution to the issues were still being negotiated by the Parties.
- 3.3.2 Dŵr Cymru wrote to us on 8th June 2006 to confirm that it had paid a total of £5000 compensation to Mr John (£1000 for injurious affection; and £4000 for damage and loss of grazing, maintenance of a hedge and disturbance.) As part of its response dated 2nd September 2013 to our draft determination of this matter, Dŵr Cymru noted that this compensation payment was made in August 2005.
- 3.3.3 On 10th September 2007 Dŵr Cymru wrote to us saying that it had agreed a further compensation payment of £3000 with the Complainants; £1,800 for loss of profits and £1,200 for disturbance. As part of its response dated 2nd September 2013 to our draft determination of this matter, Dŵr Cymru noted that this compensation payment was made in August 2007.
- 3.3.4 On 12 July 2011 Dŵr Cymru contacted us confirming that they wished to bring the matter to a close and hand the Reinstatement Area back to the Complainants.
- 3.3.5 Mr John wrote to us on 13 April 2012 stating that the matter was still on-going as far as the Complainants were concerned as they remained unhappy with the Reinstatement Works carried out by Dŵr Cymru.
- 3.3.6 On 3rd August 2012 we wrote to both Mr John and Dŵr Cymru confirming that we would investigate the Complaint under section 181 of the Act.

3.3.7 Based on the correspondence we have received since the Complaint was first brought to our attention, we have identified the following five issues in relation to which Mr John has alleged that Dŵr Cymru has acted unreasonably:

- the provision of a crossing point through the Reinstatement Area (“**the Crossing**”);
- the provision of adequate fencing around the Reinstatement Area (“**Fencing**”)
- the provision of topsoil and subsoil in the Reinstatement Area (“**Soil issues**”);
- the drainage of the Reinstatement Area (“**Pooling of water/drainage**”); and
- adhering to its CoP on pipelaying (“**CoP breach**”).

A. The crossing

3.3.8 Mr John complained to us on 31st August 2005 about the poor condition of a crossing through the Reinstatement Area stating that this was preventing access to certain areas of the Land and thereby preventing the carrying out of necessary maintenance.

3.3.9 Dŵr Cymru contacted us on 13th September 2005 acknowledging that it had had problems carrying out the Reinstatement Works including the upkeep of the crossing point in the Reinstatement Area. Dŵr Cymru admitted to not managing the situation as well as it might have and said it would be issuing an apology to Mr John and paying compensation.

3.3.10 Dŵr Cymru updated us about the Reinstatement Works on 25th January 2006. It confirmed that before a crossing could be constructed it had to provide an indemnity to British Waterways for entry onto the Land using a canal bridge.

3.3.11 Mr John contacted us on 16th February 2006 to confirm that some work had been done on the crossing but not enough to allow vehicle access.

3.3.12 Correspondence from Mr John and Dŵr Cymru suggested this issue had been resolved in August 2006.

B. Fencing

3.3.13 Mr John complained to us on 31st August 2005 about inadequate fencing that had been put up by Dŵr Cymru which was causing livestock to break into the Reinstatement Area and get injured.

3.3.14 In September 2006 Mr John wrote to us again stating that despite being fenced off, livestock had broken into the Reinstatement Area.

3.3.15 Mr John updated us in October 2007 to say that there was no fence to stop livestock from walking over the Reinstatement Area.

3.3.16 On 17th June 2010 Mr John's land agent wrote to Dŵr Cymru's land agent requesting that it attend to the fence as a matter of urgency to avoid injury to livestock.

3.3.17 In June 2011 Mr John confirmed that the Reinstatement Area fence was still not secure.

3.3.18 In July 2011, Dŵr Cymru contacted us to say that it wished to remove the Reinstatement Area fence and hand the Reinstatement Area back to the Complainants.

C. Soil issues

3.3.19 On 14th November 2005 Mr John complained to us about the need for more topsoil in the Reinstatement Area to enable it to be brought up to the level of the surrounding land.

3.3.20 On 25th January 2006 Dŵr Cymru confirmed that specialist contractors had been employed to carry out this work.

3.3.21 In September 2007 Dŵr Cymru wrote to us confirming that work in relation to adding subsoil had been completed.

3.3.22 In October 2007 Mr John wrote to say that the work in the Reinstatement Area was not acceptable and that not enough soil had been brought in to bring the Reinstatement Area back to its original level.

3.3.23 Over the course of March and April 2008 Dŵr Cymru confirmed that the weather had delayed its proposed work to add topsoil and grass seeding to the Reinstatement Area, which could only be carried out when the weather was favourable.

3.3.24 In October 2008 Dŵr Cymru wrote to us stating that ground conditions had still not allowed the reinstatement to be completed. Dŵr Cymru asked us pass on its apologies to the Complainants for the recent delays.

3.3.25 On 12 July 2011 Dŵr Cymru contacted us confirming that they wished to bring matter to a close and hand the Reinstatement Area back to the Complainants, thereby suggesting that the issue of providing topsoil and subsoil had been resolved from its point of view. Mr John contacted us on 23rd May 2013 noting that he remained unhappy with the work carried out in relation to adding subsoil and topsoil.

D. Pooling of water / drainage

3.3.26 On 14th November 2005 Mr John wrote to us to complain about pools of standing water in the Reinstatement Area which were not draining away.

3.3.27 Dŵr Cymru wrote to us in December 2005 saying it would be undertaking remedial works to prevent the ingress and egress of water from the sewerage network at manholes on the Land.

3.3.28 Mr John contacted us again in August 2006 about reinstatement delays, stating that the Complainants remained unhappy with the pooling of water in the Reinstatement Area.

3.3.29 Dŵr Cymru provided an update on the situation in October 2006. Dŵr Cymru said that pooling of water was the same as in other areas of the field and therefore it would take no action on this.

3.3.30 In February 2008 Dŵr Cymru visited the Reinstatement Area and confirmed that subsoiling which took place in 2007 had improved the land drainage, although one area still required attention. Dŵr Cymru wrote to the Complainants' land agent on 28th February 2008 noting that a drain was to be inserted to enable effective drainage next to a manhole.

3.3.31 In June 2010 Mr John contacted us saying that he remained unhappy with the drainage of the Reinstatement Area.

3.3.32 Dŵr Cymru contacted us in July 2010 to confirm that it believed the Reinstatement Area was ready for handing back to the Complainants, subject to minor works. Dŵr Cymru noted that the Complainants had outstanding issues in relation to drainage and that it had requested a report which outlined the areas of concern.

- 3.3.33 Dŵr Cymru produced a drainage report in October 2010. The report concluded that drainage had improved. Dŵr Cymru added that it believed that this long outstanding matter could now be closed and it was in a position to hand back the remaining part of the Reinstatement Area which was fenced off.
- 3.3.34 Dŵr Cymru contacted us on 5th January 2011. It had established that further exploratory works were required regarding a small area where there appeared to be an issue with the drainage. Dŵr Cymru said it hoped to bring in a contractor to take a look during the course of the coming month.
- 3.3.35 In June 2011 Mr John emailed us confirming that the issue of water ponding had interrupted the natural drainage of the Reinstatement Area and that this had not been remedied.
- 3.3.36 On 12th July 2011 Dŵr Cymru wrote to us to say that it was not responsible for the current drainage issue and that it wished to remove the fence and hand back the Reinstatement Area to the Complainants.
- 3.3.37 In his response of 18th September 2013 to our draft determination of this matter, Mr John stated that no drain had been inserted on the land by Dŵr Cymru to enable its effective drainage despite the company saying it would do this (see paragraph 3.3.30).

E. CoP breach

- 3.3.38 In November 2010 Mr John contacted us to complain that Dŵr Cymru had failed to arrange a joint inspection of the Reinstatement Area, in line with its CoP, to ensure that the Complainants were satisfied for it to be handed back.
- 3.3.39 On 1st December 2010 Dŵr Cymru's land agent contacted Mr John's land agent confirming that he had been asked by Dŵr Cymru to undertake a final walkover of the scheme with the Complainants.
- 3.3.40 On 13th December 2010 Mr John contacted us to confirm that a meeting had taken place with Dŵr Cymru, following which the company was to carry out work on the pooling issue (see section 3.3 D above).
- 3.3.41 On 12th July 2011 Dŵr Cymru wrote to us to say that it wished to hand back the Reinstatement Area to the Complainants. However it remains unclear whether a further meeting took place.

4. The issues to be decided

4.1 We have considered whether, under section 181 of the Act:

- Dŵr Cymru had failed adequately to consult the Complainants, before and in the course of exercising its powers, about the manner in which they were exercised; and
- by acting unreasonably in the manner of its exercise of those powers, Dŵr Cymru had caused the complainants to sustain loss or damage, or to be subjected to inconvenience.

4.2 We have also considered whether any of the exceptions to our duty to investigate under section 181 of the Act apply to the Complaint.

5. Our draft determination

5.1 In our draft determination we concluded that:

- none of the exceptions to our duty to investigate under section 181 of the Act applied to the Complaint;
- Dŵr Cymru had adequately consulted the Complainants before and in the course of exercising its powers under section 159 of the Act, about the manner in which those powers were to be used; and
- Dŵr Cymru had acted unreasonably in the manner in which it had exercised its powers under section 159 of the Act, causing the Complainants to sustain loss or damage, or to be subjected to inconvenience. We noted that compensation had already been paid for the loss or damage experienced by the Complainants. We therefore said we were minded to direct Dŵr Cymru to make a payment of £3000 to the Complainants as Dŵr Cymru had acted unreasonably to cause significant delays to the Reinstatement Works, which resulted in the Complainants being subjected to substantial inconvenience on more than one occasion.

6. Parties' comments on our draft determination

6.1 Dŵr Cymru comments

6.1.1 Dŵr Cymru responded to our draft determination on 2nd September 2013.

6.1.2 Dŵr Cymru said that there was an error in our draft determination in relation to the amount of compensation already paid and that the Complainants had in fact received compensation amounting to £18,150 as opposed to the £8,000 set out in our draft determination. Dŵr Cymru added that the payments made were for '*disturbance, inconvenience and loss of crop*'. Dŵr Cymru provided a summary of the compensation payments made, which were as follows:

- April 2003, £3,000 payment for '*full reinstatement as agreed with landowners agent*';
- August 2005, £5,000 payment for '*compensation for disturbance and associated loss*';
- August 2007, £3,000 payment for '*compensation for disturbance and associated loss*'; and
- September 2009, £7,150 payment for '*compensation for disturbance and associated loss*'.

6.1.3 Dŵr Cymru said that Mr John had been represented by a qualified land agent throughout this matter and if there had been any dispute about compensation, this is determinable by the Lands Tribunal in accordance with Schedule 12 of the Act. Dŵr Cymru added that no referral was made by the Complainants or their land agent to the Lands Tribunal.

6.1.4 Dŵr Cymru said it did not accept the final paragraph of our draft determination in which we stated that it had acted unreasonably to cause significant delays. It added that every effort had been made to re-seed and re-soil the Reinstatement Area but that this could only be undertaken in favourable weather conditions.

6.1.5 Dŵr Cymru noted that delays in this matter were as a consequence of severe weather conditions which could not have been foreseen. It accepted that on occasion there had been a breakdown in communication between the Parties but did not think this rested entirely with Dŵr Cymru.

6.1.6 In the concluding paragraph of its response to our draft determination Dŵr Cymru requested that we reconsider our draft determination to fully take into account the points it had made.

- 6.1.7 We forwarded the comments received from Mr John on the draft determination (see section 6.2 below) to Dŵr Cymru on 25th September 2013. We asked Dŵr Cymru for a more detailed breakdown of the amount of compensation paid to date in this case, in order for us to see how much had been paid in total for disturbance, inconvenience and loss and damage.
- 6.1.8 Dŵr Cymru wrote to us on 1st October 2013, attaching copies of compensation payment reports and noting that payments had been made for *'damage and loss, ground investigation work, reinstatement and loss of profit.'* The compensation reports provided showed that the compensation of £7,150 paid to the Complainants in 2009 was for damage and loss, contractor's reinstatement liability and loss of profits. The compensation of £3,000 paid to the Complainants in 2007 was for loss of profits and disturbance. Paragraph 3.3.2 above sets out the breakdown of the compensation paid in August 2005.
- 6.1.9 In respect of the compensation paid in April 2003, we understand that this amount relates to a different scheme and works carried out in 2002 on the Land. This is based on previous correspondence to us from Dŵr Cymru dated 12th December 2006. Taking this into account we consider that the amount of compensation paid by Dŵr Cymru in relation to the Reinstatement Works described in this document is £15,150 (i.e. the total compensation Dŵr Cymru has said it has paid to the Complainants (£18,150) minus the amount which was in fact paid for different works which are not subject to this determination (£3000)).

6.2 Complainants' comments

- 6.2.1 Mr John provided comments to us about this matter on 18th September 2013, after we had forwarded to him a copy of Dŵr Cymru's comments on our draft determination.
- 6.2.2 Mr John suggested that all of the problems experienced by the Complainants following the laying of the Sewer were as a result of the actions of Dŵr Cymru. Mr John noted that Dŵr Cymru did not seem to be taking any responsibility for the delays associated with the Reinstatement Works
- 6.2.3 Mr John noted that Dŵr Cymru had blamed the bad weather for the delays to the Reinstatement Works on many occasions, even though he had successfully germinated grass on the Land during the same period. Mr John added that Dŵr Cymru has had a number of opportunities to complete the Reinstatement Works since laying the Sewer.

- 6.2.4 Mr John also added that not all of the compensation paid by Dŵr Cymru was for the inconvenience caused to the Complainants, which he suggested was considerable given the length of time this matter has existed.
- 6.2.5 Mr John noted that in respect of the pooling of water / drainage issue (described in paragraphs 3.3.26 through to 3.3.37 above) Dŵr Cymru had yet to provide a drain (see paragraph 3.3.30 above).
- 6.2.6 Mr John concluded that our provisional decision to direct Dŵr Cymru to make a payment of £3,000 to the Complainants was fair.

7. Our final decision

7.1 Consultation on the exercise of powers

7.1.1 There is no suggestion that Dŵr Cymru failed to adequately consult the Complainants, before and in the course of exercising its powers. Neither party made any representations on this point in response to our draft decision. Accordingly we have concluded that Dŵr Cymru adequately consulted the Complainants.

7.2 The exercise of powers

7.2.1 The Complainants believe that Dŵr Cymru has acted unreasonably in exercising its powers under Section 159 of the Act in relation to the issues described at paragraphs 3.3.8 - 3.3.41 above.

7.2.2 Specifically the Complainants were concerned about the significant amount of time taken by Dŵr Cymru to address each issue that was raised over the course of the Reinstatement Works. Dŵr Cymru has acknowledged its failings to us in respect of its efforts in carrying out the Reinstatement Works in correspondence. In certain instances Dŵr Cymru confirmed that it had completed work only to have to carry out further work in relation to the same issue at a later date.

7.2.3 We have carefully considered the correspondence we have received from the Parties to date, including in response to our draft determination. This includes details of the total amount of compensation paid by Dŵr Cymru to the Complainants. We understand the amount of compensation paid in relation to the Reinstatement Works which are the subject of this determination amounts to £15,150 and includes payments made for disturbance, damage and loss.

7.2.4 The Complainants have not provided evidence to suggest that they have not been adequately compensated for the loss or damage caused by Dŵr Cymru as a result of the Reinstatement Works.

7.2.5 We agree with Dŵr Cymru that disputes about land compensation are determinable by the Upper Tribunal in accordance with Schedule 12 of the Act and that the compensation paid has not been disputed. To clarify, Ofwat is permitted, under section 181(5) of the Act, to direct a payment to be made to a complainant where we do not consider that the compensation paid to date (under Schedule 12, or another enactment) adequately reflects the fact that it was not reasonable for the undertaker to cause the complainant to sustain loss or damage or to be subjected to inconvenience.

- 7.2.6 We note that although Dŵr Cymru made a compensation payment in September 2009 (see paragraph 6.1.2 above) the Reinstatement Works were still not complete at that point. It was not until July 2011 that Dŵr Cymru contacted us to say that it wished to bring matters to a close and hand the Reinstatement Area back to the Complainants.
- 7.2.7 In the light of the above we do not consider that the compensation paid by Dŵr Cymru has fully addressed the inconvenience experienced by the Complainants between September 2009 and the summer of 2011. We consider that the inconvenience caused to the Complainants, as a result of the delays in the Reinstatement Works, is unacceptable. In addition to this Dŵr Cymru also failed to take into account its CoP and arrange a joint inspection of the Reinstatement Area before its proposed handover of the Reinstatement Area to the Complainants. Dŵr Cymru had to be reminded by the Complainants about this before it arranged a meeting.
- 7.2.8 We do not accept Dŵr Cymru's argument that the delays to the Reinstatement Works were as a consequence of severe weather conditions which could not have been foreseen. Whilst bad weather is accepted as a reason for some delay, we do not consider that it can be accepted as a reason for the lengthy delays experienced by the Complainants in this case. Dŵr Cymru has also argued that there were delays on the part of the Complainants' land agent. Based on the information and correspondence we have received in this case, we consider that Dŵr Cymru's actions were the main reason for delays.
- 7.2.9 Based on the above we consider that Dŵr Cymru should make a payment to the Complainants under section 181 of the Act.
- 7.2.10 The reasons for our decision in full are as follows:
- A. In relation to the Crossing through the Reinstatement Area, we consider that Dŵr Cymru took too long to ensure that an adequate crossing was in place. Dŵr Cymru acknowledged in September 2005 that it had not managed this well, but it took until the latter half of 2006 to be resolved. The Complainants highlighted that the problems with the Crossing caused them difficulty in accessing parts of the Land and carrying out necessary maintenance. However we consider that the payments made by Dŵr Cymru in 2005 and 2007 to the Complainants (see paragraph 6.1.2) have adequately compensated them for the inconvenience, loss and damage associated with this issue.

- B. In relation to Fencing we consider that Dŵr Cymru had a number of opportunities to put in place adequate fencing around the Reinstatement Area. As described at paragraphs 3.3.13 - 3.3.18 above, inadequate fencing around the Reinstatement Area appears to have been a problem from mid-2005 to at least mid-2011. We do not consider that Dŵr Cymru acted reasonably in relation to this issue and as a result caused the Complainants to be subjected to unnecessary inconvenience. We recognise that compensation payments were made in 2005, 2007 and 2009 for loss, damage and disturbance and we have not seen any evidence that the Complainants experienced any further loss or damage between 2009 and 2011 as a result of this issue. However, we do not consider the Complainants have been adequately compensated for the inconvenience they have been subjected to as a result of the delays in providing adequate fencing around the Reinstatement Area between September 2009 and mid-2011.
- C. In relation to Soil issues, Dŵr Cymru has cited poor weather conditions as the reason for the delays caused. We do not accept that poor weather is an acceptable reason for the delay that went on over a number of years in regards to this issue. We therefore consider that Dŵr Cymru acted unreasonably in relation to this issue and caused the Complainants to be subjected to unnecessary inconvenience. Dŵr Cymru contacted us in October 2008 to confirm that ground conditions had still not allowed the Reinstatement Works to be completed. It paid compensation in September 2009 for damage and loss, contractor's reinstatement liability and loss of profits. However it appears from the correspondence we have gathered in our investigation that although Dŵr Cymru considered the Reinstatement Area could be handed back to the Complainants in July 2011, the Complainants remain unhappy with the topsoil and subsoil work carried out. We do not consider that the Complainants have been adequately compensated for the inconvenience they experienced between 2009 and 2011 in relation to this issue. We have however not seen any evidence that the Complainants experienced any further loss or damage between 2009 and 2011 as a result of the lack of adequate topsoil or subsoil.

D. In relation to Pooling of water/drainage problems experienced by the Complainants we recognise that this issue remains in some dispute. We believe that Dŵr Cymru added to the uncertainty around this issue and should have taken steps to investigate the matter sooner. Whilst Dŵr Cymru has paid compensation to the Complainants this does not appear to have addressed all of the inconvenience they experienced as a result of the drainage problem. In addition Mr John has stated (in response to our draft determination) that no drain had been inserted on the land by Dŵr Cymru to enable its effective drainage despite the company saying it would do this (see paragraph 3.3.30).

E. In relation to the alleged CoP breach we consider that it should not have required an intervention from the Complainant to get Dŵr Cymru to follow the process set out in its own CoP i.e. to arrange a joint inspection of the Reinstatement Area with the Complainants. Dŵr Cymru should have been aware of the steps it needed to follow, particularly given the other problems experienced. We note that a meeting was eventually arranged in December 2010 between the Complainants and Dŵr Cymru, but that as a result of this Dŵr Cymru agreed to undertake further work in respect of the drainage and pooling problem. It remains unclear whether a final walkover meeting took place between the parties to agree handover arrangements. A direction for payment under section 181 of the Act cannot be made for the contravention of the CoP. However, it is noted that by failing to adhere to its own CoP Dŵr Cymru would have caused the Complainants unnecessary inconvenience.

7.2.11 In conclusion we consider that Dŵr Cymru acted unreasonably in the manner of its exercise of the powers conferred on it by virtue of section 159 of the Act, causing the Complainants to be subjected to inconvenience. We do not consider that the compensation paid to date by Dŵr Cymru adequately compensates the Complainants for all of this inconvenience and we therefore direct Dŵr Cymru to make a payment of £1,500 to the Complainants. This amount reflects the fact that Dŵr Cymru acted unreasonably to cause significant delays in carrying out the Reinstatement Works which resulted in the Complainants being subjected to substantial inconvenience on more than one occasion.

7.2.12 We have reduced the amount we are directing Dŵr Cymru to pay since we made our draft determination of this matter (from £3,000 to £1,500) in the light of the additional compensation we have been made aware about that was paid by Dŵr Cymru to the Complainants. Dŵr Cymru has confirmed that a final compensation payment was made in September 2009. However we note that problems with the Reinstatement Works continued until mid-2011. Based on the information we have gathered we do not consider the Complainants have been adequately compensated for the inconvenience they have been subjected to as a result of the delays with the Reinstatement Works between September 2009 and mid-2011.

7.2.13 Specifically we are directing Dŵr Cymru to make a final payment of £1,500 to the Complainants for inconvenience caused for the period between September 2009 and July 2011 due to: inadequate fencing provided around the Reinstatement Area; delays to the provision of sufficient topsoil and subsoil in the Reinstatement Area; delays to the investigation of the drainage problem in the Reinstatement Area; and the failure by Dŵr Cymru to adhere to its CoP by arranging a joint inspection.