

December 2023

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

Ofwat

Contents

1. Introduction	3
2. Background	4
3. Legal Framework	8
4. Jurisdiction to determine the complaint	10
5. Responses to our draft determination	11
6. Our final determination	12
A. The Complainants' View	12
B. The Company's View	12

Summary of our determination

This is our final determination of a dispute between Thames Water Utilities Limited ("**Thames Water**") and [REDACTED] ("**the Complainants**"), over work carried out in the garden of the Complainants' property.

This determination relates to Thames Water's exercise of its powers to carry out work on private land under section 159 of the Water Industry Act 1991 ("**the Act**").

This determination considers whether, in carrying out those works, Thames Water failed to consult the complainant, or caused loss, damage or inconvenience to the Complainants.

In summary, we find that Thames Water did cause the Complainants inconvenience by causing the loss of access to their garden which resulted in inconvenience and damage to plants in the garden due to there being restricted access for their maintenance.

We have considered whether Thames Water should pay compensation to the Complainants in recognition of the above. We have concluded that Thames Water should make a payment of £250 to the Complainants.

1. Introduction

- 1.1 This is our final determination of a complaint submitted by the Complainants to Ofwat for a determination under section 181 of the Act.
- 1.2 The dispute is between the Complainants and Thames Water, regarding the exercise of Thames Water's powers under section 159 of the Act, enabling it to conduct work on private land.

Overview of our determination

- 1.3 Our determination and the reasoning for it is out in full, in section 6 below.
- 1.4 In light of the legal framework of the Act, and the evidence we have gathered from the parties to this dispute, we determine that Thames Water did cause inconvenience and damage to the Complainants during the course of the work. Specifically, this inconvenience and damage was caused through loss of access to their garden due to the length of time Thames Water took to complete the works.
- 1.5 In recognition of the above, we direct Thames Water to pay the Complainants a sum of £250.
- 1.6 A copy of our proposed determination was sent to both parties to the dispute, and they were given an opportunity to respond prior to us issuing our final determination on this dispute. A summary of their responses can be found in section 5.

2. Background

A. The complaint

- 2.1 This dispute was referred to Ofwat by the Complainants on 13 March 2023 for determination under section 181 of the Act.
- 2.2 The dispute is between the Complainants and Thames Water and is about Thames Water's exercise of its power to carry out works on private land under section 159 of the Act. In particular, this determination considers:
- a. Whether Thames Water failed to adequately consult the Complainants; and
 - b. Whether, by acting unreasonably in exercising its powers, Thames Water caused the Complainants loss or damage or inconvenience.

B. The Parties

Complainants

- 2.3 The Complainants are the owners of the property where the works by Thames Water took place. The works took place in the garden of the property at [REDACTED] ("**the Property**").

Company

- 2.4 Thames Water is appointed under the Act to provide water and sewerage services to customers in its area of appointment, which includes Orpington, where the Property is located.

C. The Dispute

- 2.5 The dispute relates to work completed in the garden of the Property in the summer of 2022, between 1 June 2022 and 31 August 2022.
- 2.6 On 1 June 2022, the Complainants reported to Thames Water that there was a drainage issue with the facilities at the Property and that there appeared to be

a blockage leading to sewage overflowing from a manhole in the Property's garden.

- 2.7 Thames Water visited the Property on 1 June 2022 and identified that there appeared to be a collapse in the sewer. This was discovered through a CCTV survey of the sewer from approximately 16 metres up the line from the Property.
- 2.8 At this time, it was also identified that the manhole for access to the sewer appeared to be located under decking in the garden. This decking was in situ at the Property when the Complainants purchased the property.
- 2.9 On 2 June 2022, following the CCTV survey it was confirmed to the Complainants that there was a defect in the sewer and that Thames Water would need to complete work in the Property's garden to repair this. Also on this date, a section 159 notice was served to the Complainants, providing notice of their plans to undertake works at the Property.
- 2.10 It was agreed on 3 June that daily tankering would be carried out to drain the system of sewage until the works were completed. It was agreed that this tankering of waste away from the sewer in the Property's garden would take place before 11 am each day due to the Complainants' personal circumstances.
- 2.11 Between 8 June and 15 June, several site visits were carried out by Thames Water and its contractors to carry out surveys and enabling works.
- 2.12 Between 4 July and 20 July 2022, the works to remove the decking, excavate the sewer, and complete the repairs were carried out.
- 2.13 During the same time period there were ongoing discussions between the Complainants and Thames Water to confirm how the decking would be replaced, given that a significant portion of it would need to be removed in order to carry out the required works.
- 2.14 In reinstating the garden of the Property, Thames Water agreed to pay for works needed in order for it to match its previous state and requested that the Complainants provide it with quotes for that work. Thames Water has stated that the Complainants requested composite decking be used to replace the pre-existing wooden decking and that they requested that all of the decking be

replaced (rather than just that section affected by the works) so that all of their decking continued to be made of one type of material. Initially, Thames Water advised that it does not ordinarily provide betterment when reinstating property affected by its works, however it was subsequently agreed that Thames Water would pay for composite decking to replace the wooden decking and that all of the decking would be replaced.

- 2.15 The Complainants have stated that Thames Water found that it was not able to replace the decking to match the decking that was in the garden previously, due to the increased cost of supplies following Covid-19. The Complainants state that for this reason the entirety of the decking had to be replaced, rather than just the area that needed to be removed for the works.
- 2.16 Thames states that on 18 July 2022 it advised the Complainants that the repair to the sewer had been completed and the excavated area had been filled, however works were still required to raise a second manhole at the Property. At this stage Thames Water advised the Complainants that the second manhole would need to be exposed and raised to ensure that, should any future issue arise, access would be available without disrupting the garden at the Property.
- 2.17 Work to raise the second manhole at the Property were completed on 10 August 2022.
- 2.18 Throughout this period of works, there was ongoing communication between Thames Water and the Complainants in relation to the works being carried out, potential reinstatement and the level of betterment that would be provided. Following this communication, Thames Water ultimately agreed that it would reimburse the Complainants for: composite decking to replace the previous wooden decking at the Property, replacement Astro Turf and also a new back door. The Complainants' existing backdoor had been scratched during the works and the Complainants advised Thames Water that it would no longer close correctly as a result of the works.
- 2.19 From the timeline and information provided by Thames Water, it is clear that the Complainants repeatedly raised with Thames Water the fact that they had found the process stressful and that a number of contractors were present on the Property throughout the eight-week period that the works were ongoing. The Complainants have noted that these works caused them inconvenience due to the loss of their access to their garden facilities throughout the

summer, which was exceptionally hot. In addition, the Complainants have stated that they experienced damage of plants and landscaping in their garden which they have had to replace at their own financial cost.

D. Request for a determination

- 2.20 We were initially contacted by the Complainants on 21 February 2023 regarding this complaint, advising that they would like to request compensation for a complaint against Thames Water and that they were not satisfied with the outcome of a determination by WATRS¹. At this stage insufficient information was provided to establish if Ofwat had jurisdiction to consider the dispute, and we therefore requested further information and outlined our powers under section 181 of the Act.
- 2.21 Following this, on 13 March 2023 we received a formal request from the Complainants for a determination under section 181 of the Act. At this stage we began a preliminary assessment of the complaint.
- 2.22 On 31 May 2023, we decided we had jurisdiction to determine the complaint and opened a formal case to do so.
- 2.23 As part of the preliminary assessment process it was established that the Complainants did not dispute that adequate notice was given with regards to the works Thames Water undertook, and that the complaint instead related to the inconvenience caused due to the Complainants' inability to access their garden facilities over the course of the works, and also for damage caused to plants and landscaping in the garden during the course of the works.
- 2.24 The Complainants have not confirmed the amount of compensation they are seeking, however we note they previously made a request to Thames Water of [REDACTED] and their subsequent WATRS application reque [REDACTED]

¹ WATRS is the water sector's voluntary alternative dispute resolution scheme - [WATRS - Resolving Water Disputes](#)

3. Legal Framework

- 3.1 Section 159 of the Act empowers water and sewerage undertakers to lay and maintain pipes in private land. The undertaker is required to give reasonable notice to the owner and to the occupier of the land of its intention to exercise this power.
- 3.2 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 section 159 of the Act.
- 3.3 The duty referred to above is qualified in that we are not required to investigate a complaint if any of the following exceptions apply:
 - a) The complaint appears to Ofwat to be vexatious or frivolous;
 - b) Ofwat is not satisfied that the complainant has given the undertaker a reasonable opportunity to investigate and deal with the complaint; or
 - c) The complaint was first made to Ofwat or the Consumer Council for Water ("**CCW**") more than 12 months after the matter to which the complaint relates first came to the attention of the complainant. We may consider a complaint outside the 12 months period where special reasons permit us to do so.
- 3.4 If, after considering the representations of the parties, Ofwat is satisfied that the undertaker:
 - a) has failed to adequately consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or
 - b) 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;

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

- 3.5 In deciding whether to direct a payment in respect of any failure, loss, damage or inconvenience, we will take into account any sums that have already been paid by the undertaker. We will 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.
- 3.6 Section 182 of the Act obliges an undertaker to have a code of practice in place, dealing with work on private land. A contravention of the code of practice does not of itself require that a payment be directed under section 181 of the Act. However, Ofwat will take into account any contravention of an undertaker's code of practice in determining whether to direct any payment.

4. Jurisdiction to determine the complaint

- 4.1 Ofwat is satisfied that the complaint is about the exercise by Thames Water of powers conferred on it by section 159 of the Act. The Complainants have alleged that Thames Water has caused damage in exercising these powers and has further alleged that they were inconvenienced by the manner in which Thames Water exercised these powers due to restricted access to their garden throughout the work.
- 4.2 We consider that we have a duty to investigate this complaint and that none of the statutory exceptions to that duty are engaged in that:
- we do not consider the complaint to be vexatious or frivolous;
 - we are satisfied that the Complainants have exhausted Thames Water's complaints procedure; and
 - the Complainants contacted Ofwat on 21 February 2023 to complain about Thames Water's use of its statutory powers, which is within the 12-month time period set out in section 181 of the Act.

5. Responses to our draft determination

- 5.1 On 13 October 2023, we sent our draft determination to the parties to the dispute to provide them with an opportunity to respond to the decision we were minded to take.
- 5.2 The Complainants responded to our proposed determination advising that whilst they were not happy with the outcome, they would accept the recommended compensation outlined in our draft determination.
- 5.3 Thames Water responded to our draft determination and confirmed that it accepts our recommendation for an additional payment to be made to the Complainants for the sum of £250 outlined within our draft determination.
- 5.4 Our determination as issued to the parties has been finalised and is set out below.

6. Our final determination

A. The Complainants' View

- 6.1 The Complainants have confirmed that their complaint relates to damage and inconvenience.
- 6.2 The Complainants have stated that this complaint does not relate to the quality, design or execution of the work carried out by Thames Water but that the works generated damage and inconvenience due to the Complainants being unable to access or fully utilise their garden for the duration of summer 2022.
- 6.3 The Complainants advised Ofwat in an email of 5 June 2023, that the works were ongoing for four months and that during this period they were unable to access their garden or tend to their plants. The Complainants stated that this lack of access was stressful due to the hot weather experienced throughout the duration of summer 2022 and that their inability to tend to the plants in their garden resulted in the plants being damaged and a considerable number of plants have had to be replaced at the Complainants' cost. The Complainants have stated that the labour costs they have incurred to reinstate the garden have been expensive. In addition, the Complainants noted that their existing back door had been damaged during the works. However, Thames Water arranged for this to be replaced as part of the reinstatement works.
- 6.4 The Complainants have also advised us of their view that the works to raise the second manhole at the Property should have been completed sooner than August 2022 given that Thames Water knew this work was required at the time the original repairs were carried out in July.
- 6.5 The Complainants have also stated that due to their personal health conditions the works created additional stress and inconvenience.

B. The Company's View

- 6.6 Thames Water states that it made an initial offer of [REDACTED] to the Complainants on 29 July 2022 for the replacement of the decking and Astro turf

in the Complainant's garden. This offer was rejected by the Complainants and a subsequent offer was made of [REDACTED] on 2 August 2022 for replacement of the decking, a balustrade, and the Astro turf.

- 6.7 Thames Water states that it has paid the Complainants a settlement figure of [REDACTED] to cover repair work in their garden, which includes allowance for significant betterment.
- 6.8 This payment of [REDACTED] was made to the Complainants on 12 August 2022 and cashed on 16 August 2022. Thames Water states that it received an email from the Complainants on 2 August 2022 thanking Thames Water for the payment and stating they hoped to now put a closure to a stressful period.
- 6.9 The second manhole was raised on 10 August 2022. Thames Water stresses that this was not intrinsic to the original remedial works it undertook and for this reason was completed later. Thames Water considers that all of the works it completed were done in a timely manner, including the repair work and the uplifting of the second manhole. It states that for any future repairs or maintenance that might be required, access via the second manhole should be possible, however this access was not required for the initial repair.
- 6.10 Following the Complainants raising a complaint with Thames Water on 30 August 2022, Thames Water assigned a Complaints Case Manager to review the matter. As a result of this review, the Complainants advised Thames Water that they were seeking [REDACTED] in compensation for stress.
- 6.11 Thames Water's review of the complaint found that there had been no service failings and that no further compensation would be paid given that [REDACTED] had already been paid to the Complainants for the reinstatement of the garden, including payment for betterment since this payment also included payment for replacement of Astro turf and a new back door, fitted by Thames Water's contractors', to fully compensate the Complainants. Thames Water has stated that it does not usually make betterment payments, however this was done in recognition of the stress and anxiety caused due to the Complainants' health conditions.
- 6.12 Following a further case review by Thames Water, it confirmed to the Complainants on 23 September 2022 that Thames Water would make an additional good will payment of [REDACTED] in recognition of the inconvenience

caused to the Complainants' daily life due to not having full use of their back garden during the works. This cheque was raised on 29 September and sent to the Complainants on 4 October 2022.

C. Our final determination

Consultation and notice of the work

- 6.13 The Complainants do not dispute that Thames Water adequately consulted them before and in the course of exercising its powers to complete the works at the Property.
- 6.14 We have seen a copy of the notice provided to the Complainants and can confirm that this was served on the Complainants.
- 6.15 The Complainants were aware that the works would require access to the back garden of the Property.
- 6.16 Whilst the notice is not being disputed by the Complainants, having reviewed the notice served by Thames Water we consider it important to note that the notice served could have been more descriptive and provided further detail regarding the extent and duration of the works that would be required. This could have helped the Complainants to better understand and accept the period of disturbance they would be subject to as a result of the works. The notice provided appears to be a standard proforma and does not provide details of the specific works or timeframes involved in this case. Whilst the Complainants in this instance appear to have been kept informed by Thames Water as the works progressed, we note that details of this engagement does not appear to have been recorded. Thames Water may want to consider how it might improve the clarity of such notices to help effectively inform customers, manage expectations, and avoid potential complaints of this type.

Loss, damage or inconvenience suffered by the Complainants

- 6.17 The Complainants have stated that they have suffered inconvenience by not being able to access the garden of the Property whilst the works were ongoing, and the Complainants have also advised that damage was caused to plants in their garden due to them having limited access for maintaining them throughout the works (which was itself a period of hot weather). The

Complainants have stated that this resulted in damage to the plants and these have had to be replaced at their own cost, with associated labour costs.

- 6.18 We note from the timeline provided by Thames Water that the issue with the sewer was initially reported to the company on 1 June 2022 and that the Complainants advised that they were not able to access their garden for use until the works were completed on or around 31 August 2022.
- 6.19 Neither party disputes that the garden was not in a usable condition for this period of three months.
- 6.20 Given that the decking and Astro turf in the garden were removed during this period; the tankering which was in place to ensure waste was removed from the defective sewer and was in place for a period of a month; and the works were not completed until late August, we consider that the works did cause inconvenience to the Complainants in terms of their ability to use and enjoy their garden during the summer period, and in addition that the Complainants attempted to make this inconvenience clear to Thames Water throughout the works.
- 6.21 Thames Water's timeline confirms that given the number of operatives present at the Property throughout the works it was not always clear what the Complainants had been told and by whom in relation to the works. We find that this probably added to the confusion as to how long the works would take and the level of betterment or compensation that would be provided to them as a result of the works and why.
- 6.22 We acknowledge that these works were necessary in order to restore the service of the sewer that serves the Property and others in the surrounding area. However, given that the works took a significant amount of time to complete, and resulted in restricted access to and damage in the Complainants' garden, we consider that these works did cause inconvenience and damage for the Complainants. The time taken to complete the works appears to have been lengthened by Thames Water's decision to complete the works to raise the second manhole for access at a later date. At this stage, given that Thames Water was aware of the Complainants' health concerns we consider a decision could have been taken to complete this second piece of work in a shorter timeframe or at the same time as the repairs to the sewer to minimise disruption to the Complainants.

6.23 Whilst outside of Thames Water's control, we consider that the hot weather further emphasised this inconvenience and exacerbated any damage to the plants in the garden. We do not consider the damage to the plants to be deliberate as this appears to have resulted from lack of access for maintenance rather than any disruptive actions from Thames Water. However, we note this has further inconvenienced the Complainants.

Award of compensation

6.24 The Complainants have not confirmed to Ofwat the amount of compensation they are seeking from Thames Water; however we note from information provided by Thames Water that the Complainants originally requested [REDACTED] in compensation from the company and a subsequent WATRS application was made claiming for [REDACTED].

6.25 Thames Water has already made payments of [REDACTED] for the reinstatement and betterment of the Complainants' garden. A subsequent payment of [REDACTED] was made by Thames Water in recognition of the inconvenience caused by the restricted access to the Complainants' garden during the summer.

6.26 We consider that the works undertaken did cause the Complainants damage and inconvenience, given the inability of the Complainants to use their garden for a period of three months and that this resulted in the damage of plants which were later replaced at the Complainants' cost.

6.27 We consider that inconvenience was primarily caused to the Complainants due to lack of access to their garden for a lengthy period due to both the works undertaken by Thames Water and the subsequent required reinstatement. These were necessary works however, and we find that Thames Water primarily acted in accordance with its Code of Practice however it could have reduced the length of time the garden was inaccessible for by completing its secondary works in a shorter or parallel timeframe.

6.28 We recognise that Thames Water has already made a payment of [REDACTED] for the reinstatement of the garden to include, new decking, replacement Astro Turf and a new backdoor. Thames Water has stated that this payment includes betterment as the decking replaced is of a different type to the

original decking and has been replaced in full rather than a repair to the area removed for access. We consider that this payment covers any damage caused directly by Thames Water and that betterment has been provided for to reflect the inconvenience caused. No specific payment has been made for the replacement of the Complainants' plants, however we do note that the plants were not directly damaged by Thames Water.

- 6.29 With regards to the inconvenience suffered, we consider that the loss of use of their garden has caused the Complainants significant inconvenience and this has resulted in loss of plants due to their inability to maintain these from lack of access. Whilst we note the payment of [REDACTED] already made by Thames Water with respect to inconvenience, we direct Thames Water to make an additional payment of £250.00 to the Complainants as further compensation for the inconvenience and resulting damage caused from lack of access during the period of the works, including the delays in completing the secondary works to the manhole in the garden.

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