

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1476

Date of Decision: 19 July 2019

Complaint

The customer submits that a loose manhole cover in the road outside of her house posed a safety risk to the general public and was extremely noisy every time traffic passed over it, causing her and her family disturbed sleep. The company did not take her concerns seriously, sent unskilled staff to assess the safety risk and failed to act promptly. The temporary repairs were ineffectual. The company failed to meet its statutory obligations.

Defence

The company accepts that failed to attend the site within the correct timescale in the first instance, however, it completed the permanent repair within the 28-day timescale given by the Highways Authority. Furthermore, it made the manhole safe with temporary repairs in the meantime. There is no evidence of it failing to meet its statutory obligations or in the duty of care, however, it provided the customer with a £100.00 gesture of goodwill due to the initial delay and in recognition of the number of times the customer contacted it. The company made no settlement offer.

Findings

The defective manhole cover posed a safety risk and caused inconvenience to the public, particularly to the customer who lives in close proximity. The company has shown it addressed the matter by affecting a permanent repair, as per its legal obligation. However, due to: its admitted failure to attend the site within the correct timescale in the first instance; ineffective temporary repairs and; a lack of documentation to show that 13 working days was a reasonable and proportionate length of time to complete the final repair, when measured against the safety risk posed/inconvenience being caused by the loose manhole, the company has failed to provide its services to a reasonably expected standard. The company shall pay the customer an additional amount of £150.00 in compensation.

Outcome

The company shall pay the customer an additional amount of £150.00 in compensation and provide a written apology (please see paragraph 12 for details).

The customer must reply by 16 August 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 19 July 2019

Party Details

Customer: Mrs Janine Whitehead

Company: RST Water, a water and sewerage company.

Case Outline

The customer's complaint is that:

- She notified the company of a defective manhole cover which was a matter of public safety: it was a safety concern that posed a risk to road users and those on the pavement attending the school close to where the cover was.
- The constant banging of the cover when vehicles drove over it has had an adverse effect on her family's quiet enjoyment of their home due to the cover being in close proximity.
- The company failed to take her observations seriously enough and failed to attend promptly to address the manhole that was defective, collapsing and failing. Further, the company had been aware of this issue in the past, but had failed to act adequately to prevent the issue with the cover re-occurring.
- The temporary tarmac that the company put in place twice prior to the permanent repair did not last more than two hours after it was put there before the cover started making a noise again; the tarmac repairs did not stop the manhole frame springing out of the road. The noise was initially the main concern but as the problem evolved, safety became the overriding issue.
- The company only sent unskilled "engineers" (i.e. a man with some tarmac) to assess a potential safety issue on an A road in the vicinity of a primary school, high school, two nursery schools and a leisure centre. The extent of the assessment by its team was to put more tarmac on the manhole and then not wait to assess if this had any beneficial effects.
- She disputes the company's comment in its response that it was only her perception that the situation was unsafe. She possesses a Degree in Quantity Surveying and in her informed opinion it was unsafe. A team of ground workers were working at her house over much of this

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period and they believed it to be unsafe also. It is unacceptable to dismiss her opinion so easily when at no time did it arrange for a M.I.C.E. or someone with a similar level of responsibility to attend to make an accredited assessment. The company “should be more respectful to members of the public who could be more knowledgeable than they realise and their opinions should be taken seriously”. The customer requests an apology on this basis.

- The customer requests that the company “ensure that if a member of the public reports an unsafe manhole or similar – RST Water will arrange for proper skilled assessment in future”.
- The customer requests that the company pay her £750.00 for the annoyance and inconvenience caused and for its “lack of a duty towards care and safety to the public and users of the highway”.
- The customer requests that the company admit that it did not meet its statutory obligations on this occasion and that it left an unsafe situation without proper assessment for more than two weeks.

The company’s response is that:

- On 5 March 2019, it received information from the customer, via a webform, that there was a noisy manhole cover outside her property.
- It contacted the customer the following morning by phone. It made arrangements for an assessment of the manhole cover on 6 March 2019 however on a review, it accepts that the work order should have been raised as a higher priority and that it should have attended within 2 to 4 hours. This was an error and it has been feedback internally.
- It attended the site on 6 March 2019 to assess the manhole and confirmed that a replacement frame and cover was required. It escalated the repair with the Highways Agency.
- The manhole cover was tarmaced over to reduce the movement and noise of the cover. As advised in its response dated 21 May 2019, permanent repairs can take up to 28 days depending on traffic and pedestrian management, permits and restrictions, which must be agreed with the Highway Authority.
- It attended weekly to assess the temporary repair to monitor the site to mitigate any further issues and replaced the tarmac when necessary.
- The permanent repair was completed after 17 days on 22 March 2019; this was two weeks earlier than it had originally scheduled.
- Therefore it undertook repairs within an appropriate timescale and within the dates provided to it by the Highway Authority.

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- It made a goodwill payment of £100.00 to the customer, in recognition of the number of times she contacted it and the initial request for its attendance being raised incorrectly.
- There is no evidence to suggest that it has failed to meet its statutory obligations.
- In relation to the customer's request that it arrange a "proper skilled assessment" when an unsafe manhole is reported, it is confident with the competency of its staff/contractors to make assessments in relation to the safety of its assets.
- In relation to the customer's request for £750.00 compensation for the "annoyance and inconvenience" caused and for its alleged lack of duty of care towards the public and the users of the highway, it asserts that there is no evidence that it has failed in "any way" in its duty of care to the public or the users of the highway or failed to meet its statutory obligations; in order to complete the full repair it had to first apply to the Highway Authority for a permit. In the 16 days (repaired on the 17th day) between the first report and the repair, it laid tarmac over the manhole cover on 4 occasions as a temporary repair and mitigated any further issues by monitoring it.

Reply

- In her Reply the customer reiterates that the company did not make the manhole safe or send anyone qualified to check it was safe. She disputes its submission that it repeatedly made it "safe" by putting tarmac over the manhole; after the first attempt, she pointed out that the tarmac wore away after only a few hours leaving it just as unsafe as before. Rather than sending someone with more experience or knowledgeable to see why there was so much movement in the manhole, it sent the same team to repeat the inadequate "temporary fix" which again only lasted a few hours. Her house is on the A[] road which takes coaches for the schools and aggregate lorries that often speed (particularly first thing in the morning). It was her assessment that if a coach or heavy lorry hit this manhole it could easily depress the surrounding road and manhole a long way and then throw it up and fling the lid aside. Therefore, its failure to make safe a dangerous situation immediately was in breach of its statutory duty.

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.

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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. The dispute relates to an alleged delay by the company in repairing a defective manhole cover.
2. I accept that under section 81 of the New Roads and Streets works Act 1991 (NRSWA), the company has a duty to ensure its apparatus (including manholes) is maintained to the satisfaction of the Highway Authority (HA). In its response dated 21 May 2019 addressed to the Consumer Council for Water (CCW), the company confirms it must also make sure its equipment remains safe and convenient for the public. I find this to be in accordance with section 81(a) of NRSWA.
3. The parties have both supplied photographs of the manhole in question prior to the company having completed the permanent repair. Further, I acknowledge receipt of video evidence submitted by the customer; I find this shows the manhole both when a person is jumping on it and whilst traffic is passing over the manhole (after the tarmac temporary repair). I accept this shows the manhole frame was not securely in place and also that it was extremely noisy when traffic passed over it.
4. I acknowledge from the evidence that the customer reported the issue to the company on 5 March 2019 and the company completed the final permanent repair on 22 March 2019. It is clear that during this timeframe, the company made a temporary repair of adding tarmac over manhole (on the road surface) to reduce the movement and noise of the manhole. It made the first repair on its initial attendance on 6 March 2019, but I acknowledge from the

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evidence that the company had to re-lay the tarmac on 11, 14, 15 and 18 March 2019, following contact on each occasion from the customer reporting that the tarmac had worn away (due to traffic passing over it) and as result, was still noisy and dangerous.

5. The customer is dissatisfied with the timeframe taken by the company to affect the final repair as she asserts that during this timeframe the issue posed a safety risk to the general public and the noise created by traffic passing over the manhole, continued to cause her and her family disturbed sleep at night. Neither party has supplied any independent evidence showing the level of danger caused to the general public by the loose manhole cover, in support of their respective submissions. However, I find that the company's assessment (on its initial attendance on 6 March 2019) that the manhole frame and cover needed replacing supports the customer's contention that it was unsafe. I find this is supported by the company's comments in the job notes supplied in its Defence, that it had been "*made safe*" with temporary tarmac.
6. The company asserts that that undertaking such a repair is dependent on traffic and pedestrian management, permits and restrictions which must be agreed with the HA. Furthermore, it contends that as it completed the final permanent repair within the 28-day timeframe given by the HA, it has adhered to its statutory obligations. I accept that the company adequately addressed the issue within the above stated timeframe and further, I acknowledge its assertion that the repair was completed two weeks earlier than originally scheduled. I also consider that, due to the practical and logistical considerations mentioned above, it is unreasonable to expect the company to have undertaken the repair immediately. However, the company has not submitted any evidence to establish that: the 13 working day timeframe taken, was appropriate and justified in view of the level of danger posed or; this was the timeframe given to it by the HA. Neither has it submitted any evidence show that it took this long to make the necessary arrangements in order to undertake the repair.
7. Furthermore, I am mindful that the company had to keep replacing the temporary tarmac as it kept being worn away by passing traffic; I consider this indicates this particular measure taken to ensure safety and convenience to the public in the short term, was not sufficiently effective. It is also clear that the customer had to keep contacting the company to inform it of the tarmac wearing away, sometimes, on more than one occasion before the company responded. Further, there is no evidence of the company either employing or considering

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alternative temporary measures, for example, installing a sign/sandbag/arrow to stop traffic passing over it, as suggested by the customer. In light of the above considerations, and as the company admits it should have attended to assess the safety of the manhole within 2 to 4 hours of the customer first reporting it on 5 March 2019, I accept that there were service shortfalls by the company whilst dealing with the matter.

8. I acknowledge that the customer has mentioned that there have been issues with the manhole dating back to 2011, however, she also confirms these issues were addressed at the time (the last occasion being April 2014). As such, I consider these incidents are separate to the disputed issue and as such I find that they have no bearing on this dispute.
9. In summary, I accept that the defective manhole cover posed a safety risk and caused inconvenience to the public, particularly to the customer who lives in close proximity and could hear the loud noise caused by traffic passed over it. The company has shown it addressed the matter by affecting a permanent repair, as per its legal obligation. However, due to: the company admitting it should have attended the site sooner in the first instance; the temporary measures put in place not being adequately effective and; the absence of documentation submitted to substantiate its claim that 13 working days was a reasonable and proportionate length of time to complete the final repair, when measured against the safety risk posed and inconvenience being caused by the loose manhole, I am satisfied that this is evidence of the company failing to provide its services to a reasonably expected standard.
10. Based on the evidence, I find that the £100.00 gesture applied by the company for the number of times the customer contacted it and for failing to attend the site within 2 to 4 hours in the first instance, inadequate. However, I am not satisfied the customer's request for £750.00 in compensation has been substantiated. In the circumstances and bearing in mind the WATRS Compensation Guide for Inconvenience and Distress (Tier 2), I find that the company shall pay the customer an additional amount of £150.00 in compensation due to the inconvenience I accept was caused to her and her family as a result of the company's shortfalls when dealing with the matter. I am satisfied that this amount, together with the £100.00 goodwill gesture already applied, is fair and proportionate to the company's failures in the standard of service provided to the customer.

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11. The customer requests that the company arrange a “proper skilled assessment” when an unsafe manhole is reported. This remedy falls outside of the scope of WATRS, as such I cannot uphold this element of the claim.

12. The customer requests an apology for dismissing her (qualified) opinion that the manhole cover was unsafe. Whilst I acknowledge that the company did not address the issue as promptly as the customer felt was necessary in light of the safety risk posed by the loose manhole cover, I do not consider the evidence demonstrates that the company was dismissive in its manner. However, I find it is reasonable to direct that the company provide an apology to the customer in relation to the customer service she received.

Outcome

The company shall pay the customer an additional £150.00 in compensation and provide a written apology (please see paragraph 12 for details).

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 16 August 2019 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.



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

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Adjudicator

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