

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1641

Date of Decision: 26 February 2020

Complaint

The customer complains about noise disturbance experienced as a result of the company's failure to repair defective manhole and valve covers on the carriageway outside her home. The company has paid £240.00 in compensation, but this is inadequate in view of the distress caused by the noise itself, the eighteen month delay in remedying the issue, the time and effort the customer invested in getting the company to carry out remedial works, and the appalling service received from the company. The customer seeks a written apology from a senior manager and wants the company to pay compensation commensurate with the level of distress and inconvenience endured, not exceeding £2,500.00 but more than the amount already provided by the company.

Defence

The problematic covers are situated on a very busy main road and permits were required before any remedial works could be undertaken. The company did all it could to progress matters in very difficult circumstances, made temporary repairs and kept the customer updated at all times but, ultimately, the delays were outside of the company's control. The company admits there were service failings but has already paid the customer £240.00 to acknowledge this and denies liability to pay more. The company also disputes the customer's request for an apology on the basis that it has already sufficiently apologised.

The company has not made an offer of settlement.

Findings

I accept that the company could not carry out permanent repairs without the necessary permits. However, the company did not perform effective temporary repairs until June 2019 and the evidence demonstrates that the company was responsible for a substantial part of the eighteen month delay between the customer raising the complaint and the completion of the permanent repairs. Therefore, I find that the company failed to provide its service to the reasonable

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standard expected by the average customer. Furthermore, the customer service provided by the company did not meet the expected standard. The customer's claim for compensation therefore succeeds and, in view of the considerable suffering endured by the customer, I direct the company to compensate the customer in the amount of £1,020.00. The customer's claim for a formal written apology also succeeds.

Outcome

I direct the company to compensate the customer in the amount of £1,020.00 for distress and inconvenience and provide a formal written apology.

The customer must reply by 25 March 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 26 February 2020

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- She endured noise nuisance and sleep deprivation over an eighteen month period due to the company's failure to repair defective manhole/valve covers.
- The defective covers were situated on both sides of a short stretch of road outside her house, between two mini roundabouts, approximately ten minutes from []. The traffic on the road is constant during the standardised rush hours, lighter in between these times, and very light during the night. The covers made a significant noise when struck by traffic; the noise could not always be heard clearly during busy traffic periods or when the traffic was slow moving, but was very noticeable during low traffic times, particularly at night.
- She first reported the noise disturbance to the company by text message in February 2018. On 6 March 2018, she was informed that the manhole cover would be replaced on 31 March 2018, pending approval from the local authority. However, the manhole cover was not replaced on the date promised and the problem continued for another year and a half before the company undertook the basic repairs required to resolve the repeated noise disturbance.
- The noisy manhole had previously been a problem in 2017, but this was resolved very speedily as temporary tarmac was placed over the manhole to reduce the noise and a permanent repair was undertaken within three to four months.
- Unfortunately, the company's employee who arranged the speedy repair in 2017 moved departments and the service she received in 2018 was incompetent in comparison; there was delay after delay, excuse after excuse, and she repeatedly asked the company to cover the manhole with temporary tarmac as had been done in 2017, but it failed to do so. At times, her

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hopes were raised by the company providing dates when the works would take place, but nothing happened and no explanation was provided by the company.

- A clean water valve cover on the opposite side of the road then became very noisy too. This exacerbated the overall noise because the traffic travelling one way frequently hit the initial noisy manhole cover and the traffic travelling in the opposite direction frequently hit the broken and unsafe clean water cover. This caused incessant sleep disturbance and the covers were so noisy that if windows of her flat were open the noise could be heard above conversation, music and the television.
- Despite being promised the repair would take place, the company insisted that she attend a roadside meeting with its advisers and refused to progress the repair until she did so, even though it was hard to make herself available due to work constraints. During the meeting, the advisers immediately stated how noisy both manhole covers were, that it would be impossible not to hear it, it would annoy them and they would instruct urgent works.
- Again, nothing happened and the company later stated that the noise could not be identified. Frustratingly, the company has repeated this in its defence, however, she informed the company on many occasions that in order to fully appreciate the level of noise generated by the defective covers, any inspections would have to be carried out during low traffic periods as the noise was considerably reduced by slow moving traffic. However, the company took no notice of this fundamental advice.
- The defence makes reference to temporary repairs being carried out in April 2018 and on 26 May 2018. She disputes this as she was told that no temporary fix had been applied in April 2018 and no tarmac was visible in either April or May 2018. In the unlikely event temporary repairs were carried out, they were so ineffective that no reduction in the noise level was noticed. This is in contrast to the temporary repair that was carried out in 2017, which was clearly visible and very effective.
- The valve repair was eventually completed by the end of May 2019 and temporary tarmac was placed on the rattling manhole cover in June 2019. The permanent repair to the manhole was completed during August 2019.
- Many excuses were given for the delay, one being that the contractors had attended but had not realised that the noisy covers were on opposite sides of the road and, as such, both could not be done on the same day. Other excuses were that the contractors attended to carry out the repairs but were in the wrong location and, on a separate occasion, contractors turned up but cars were parked over the manholes so they left.
- After the first incident in 2017, when a temporary tarmac was placed over the noisy cover within weeks and the permanent fix was completed within months, the inconvenience she experienced

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was viewed to be worthy of £250.00 in compensation. However, following constant noise from first one, and then two, loose covers, causing continuous sleep deprivation from February 2018 until August 2019, the company has paid £240.00, £90.00 of which was standard payments for failing to communicate when promised and failing to send a cheque.

- The level of compensation offered is insulting and inadequate in view of the distress caused by both the noise itself and the appalling level of service received over such a lengthy period of time from the company. Sleep deprivation, night after night, and loss of peaceful enjoyment of her home, day after day, had a dramatic effect on her well-being. One of the worst aspects was at night during light traffic; on hearing a vehicle approaching she experienced involuntary tensing in anticipation of the noise and, eventually, she resorted to medication to help her sleep. She also had to invest a huge amount of time and energy into communicating with the company in order to pursue her complaint and get the covers repaired; the many emails sent and telephone calls made are evidence of the effort exerted in this respect. The defence states that she did not communicate with the company about the issue between August 2018 and March 2019; this is wholly inaccurate as she was in text and telephone communication with the company during this period.
- The company promised a review but this was also substantially delayed. At one point she received notification that the review had been completed and was awaiting approval, and was then told the review was not complete as evidence still had to be analysed. When the review was eventually received, two to three weeks after it was promised, it was not a substantive review whatsoever, in fact it was cursory and brief. This added another level of insult and upset after such a disruptive and longstanding problem.
- She seeks a written apology from a senior manager for the poor customer service she received from the company as previous apologies were rendered meaningless by the company's failure to take responsibility.
- She also wants compensation for distress and inconvenience commensurate with the level of distress and inconvenience she suffered, not exceeding £2,500.00 but more than the £200.00 already provided by the company.

The company's response is that:

- In February 2017, the customer reported a rattling manhole cover in the carriageway. This took longer to resolve than it would have liked, but there was another utility on site at the time, so it was unable to obtain a permit from the Highways Authority ("HA") to do the work. The permit was eventually granted for 3 April 2017 and it completed the work on that date. The customer

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accepted and received a goodwill gesture of £240.00 for customer service failings and the time taken for the repair to be completed.

- However, the issue returned on 16 July 2017. As soon as it was notified, it investigated the problem and temporary tarmac was placed around the manhole on 27 July 2017. It received a permit for a permanent repair on 6 August 2017 and the work was carried out.
- On 8 February 2018, the customer called to advise that the manhole cover was rattling again so a work order was raised to attend the same day. As this was the third time this particular manhole cover had caused a problem, a Network Engineer was asked to carry out an inspection with its contractors.
- The manhole is located on a Traffic for London carriageway, so it was necessary to apply for a permit to work from the HA again. Regrettably, it was unable to progress the matter swiftly because the HA wanted to have a site meeting to discuss the matter further. Due to the extreme weather conditions on the day of the proposed meeting, the meeting was cancelled and a permit to work application was refused for 31 March 2018.
- In April 2108, it carried out two temporary repairs but, unfortunately, neither of these made any difference to the noise.
- By 11 May 2018, a water valve cover on the opposite side of the carriageway was also rattling. It was advised that the road had been resurfaced and it seems that the covers had been insufficiently bedded in and left loose by the local authority's contractor. This was problematic as the HA do not normally allow any works to be carried out within three years of resurfacing being done. Furthermore, if permission was granted it would need four way traffic lights and it would have to do the work on a Saturday because the repair required the excavation of a four metre square patch around the sewer manhole.
- It kept the customer informed while trying to obtain the essential permits, however, on 17 May 2018 the customer made a formal complaint and a manager called her to discuss the matter. It carried out a further temporary repair on 26 May 2018.
- With regards to the water valve cover, on 29 May 2018, some work was carried out on this and no sound was detected before leaving the site, although it did note that the cover was rocking slightly when cars went over it.
- The permits to work were once again refused for 31 May 2018, however, the customer could not hear any noises at this time and she therefore agreed to monitor the situation and report back if anything changed. The case manager advised the customer that she would contact her again at the end of June 2018 for an update.
- At the end of June 2018, the case manager tried to contact the customer on many occasions but was unable to reach her. However, the customer was also sending texts directly to its High

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Level Complaints Lead Manager (“HLCLM”) at this time. Some of the texts were not read due to annual leave, but when the HLCLM returned from leave she sent a text of apology.

- On 25 July 2018 and 14 August 2018 it contacted the customer to let her know that if it did not hear anything further from her, it would close her file. No further contact was made so the customer’s file was closed.
- It heard nothing more from the customer until 14 March 2019. As a consequence of the renewed contact, a new case manager was assigned to the customer and she was called to arrange a meeting. The customer agreed to meet up on 3 April 2019, however, she later stated that she could not attend the meeting and the date was changed to 17 April 2019.
- Works were carried out on one of the covers but, on 25 April 2019, the customer sent a text message to the HLCLM to say that she could still hear a noise. There had been a misunderstanding with its contractors regarding the location of the noisy manhole cover and it wrote to the customer to apologise for the delay.
- It explained that further permits were needed from HA and Traffic for London, particularly because the water valve cover is located in a bus stop, but informed the customer that the covers would be marked with yellow paint so that, when it did receive the necessary permits, there would be no further issues locating the problematic covers. However, when the contractor’s attended, no noises were heard from the sewer manhole cover so no work was carried out.
- Once it received a permit from [] Transport for [] to repair the clean water cover in the bus stop on 31 May 2019, the work went ahead as planned. It also had a meeting with the local authority regarding the rattling sewer manhole cover, but no timescale for the repair was given.
- Further delays were due to another utility working in the road, and then a water main burst in the area which had to receive priority from the HA for road closures. It managed to arrange a further temporary repair to the manhole but, regrettably, the HA would not approve a permit to work for 4 and 5 July 2019 due to the busy traffic expected for the []. It tried to arrange the work for further dates, but there were further issues with the permits and then cars were parked in the area where it needed to work.
- The required works were eventually carried out on 17 August 2019.
- Following the repair, it wrote to the customer to inform her that a full review of the handling of her case would be undertaken. When it omitted to contact her on the day it promised to do so, it raised a cheque for £30.00 as a goodwill gesture. It also explained that there was going to be a delay in obtaining the full facts as it was waiting for information from its contractors.

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- On 11 September 2019, it contacted the customer to inform her that the review had been completed and it sent the customer a gesture of goodwill in the amount of £200.00; £50.00 for the delays in carrying out the review and £150.00 for the time taken to have the rattling manholes fully repaired. In addition, it transpired that the £30.00 goodwill gesture had not been sent because of a computer issue, so it sent a cheque for £40.00 to replace this and to say sorry.
- It recognises that the customer is unhappy with the delays and understands her frustration, however, it disputes that the customer was treated poorly during the complaint as it kept the customer fully updated with progress at all times. It denies liability to pay compensation for distress and inconvenience as it cannot carry out any work without permits and it cannot be held responsible for the work carried by the HA's contractors who did not ensure its assets were correctly bedded in when it resurfaced the road. Furthermore, this is a very busy main road and bus route and, with traffic persistently running over these covers in all weather conditions, the covers may be continually damaged by tarmac erosion.
- It disputes that any further apology is necessary as the customer has received many apologies from its Executive Office.

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.

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How was this decision reached?

1. Having reviewed the evidence provided by the parties, especially the statement provided by the customer, I must start my adjudication by stating that I fully accept that the noise generated from the loose covers, particularly at night, over the eighteen month period between February 2018, when the issue was first reported to the company, and August 2019, when the permanent repairs were completed, had a serious and detrimental effect on the customer's well-being. Furthermore, I find that the customer clearly outlined the serious impact of the noise on her health to the company and, in view of this, the company cannot have failed to appreciate the urgency of the required repairs.
2. I accept that the company could not carry out the permanent repairs to the loose covers without the necessary permits, and the process of obtaining the permits inevitably took some time. I also accept that the works to permanently repair the covers were considerable and involved traffic management provisions and excavation works. That said, whilst the evidence demonstrates that the company's efforts to carry out the repairs were thwarted by events outside of their control to some extent, the evidence does not allow me to conclude that the delay of eighteen months from February 2018 to August 2019 was wholly outside of the control of the company.
3. Having reviewed the evidence, I find nothing to suggest that the company relayed the seriousness of the issue to the HA, or communicated its belief that the covers became loose following resurfacing undertaken by the HA itself. Furthermore, although the evidence provided by the company is not entirely clear, it suggests that the company's contractor attended to complete the works on several occasions but were frustrated due to a failure to clearly identify the problematic covers, a failure to prohibit parking over the covers to gain the necessary access, and a failure to carry out the necessary works on the basis that no noise could be heard, despite the works being authorised and the customer providing very clear information about when the noise was evident and when it was not. These issues are not outside of the control of the company and, on balance, I find that the evidence does not justify the delay. Therefore, I find that the company failed to provide its service to the standard reasonably expected by the average customer in this regard.
4. Central to this complaint is the customer's request for a basic temporary repair and the company's failure to perform one. As a consequence of the customer's similar experience in

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2017, she advised the company that temporary tarmac had reduced the noise to acceptable levels until the required permit was obtained to carry out the permanent repair. The company states that temporary repairs were performed on the manhole cover in April 2018 and, again, in May 2018. However, in view of the evidence, on the balance of probabilities I find that, although the company may have attended the site on these occasions, no temporary tarmac was placed over the defective manhole cover and no alternative temporary fix was performed on the valve cover, which I accept could not be covered in tarmac due to access requirements. Even if temporary repairs were performed, the customer's continued complaints made it clear that any repairs had not reduced the noise, yet the company took no further action in this regard until June 2019, sixteen months after the customer initially complained, when the manhole was covered in temporary tarmac.

5. The evidence suggests that this temporary fix was a basic task and the defence does not allow me to conclude that it could not have been performed sooner, especially in light of the customer's clear and continued requests. It therefore follows that I find the company failed to provide its service to the standard reasonably expected by the average customer in this regard.
6. The customer also complains about the customer service she received from the company during the complaints process and describes the considerable effort she was forced to invest in getting the company to progress her case. The company disputes that it provided poor customer service and states that the customer was updated throughout the complaints process at all times.
7. Having reviewed the evidence provided by CCWater, I find that the company missed deadlines, provided the customer with conflicting and confusing information, and failed to accurately record communications received from the customer by HLCLM. I accept that updates were provided, but these often outlined the reason why nothing had been done to help the customer, and demonstrate that the company failed to take ownership of the problem and progress a temporary or permanent repair. Therefore, I find that the customer service provided by the company failed to meet the expected standard.
8. The evidence demonstrates that the company has paid the customer in the amount of £240.00; £150.00 for the time taken to repair the loose covers, £80.00 for breaches of the company's guaranteed standards, and £10.00 for the company's failure to send a promised payment. However, in view of the company's failings, and in consideration of the considerable suffering

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endured by the customer, I find that these payments fail to adequately compensate the customer. Therefore, the customer's claim succeeds and I direct the company to pay the customer a further £1,020.00 in compensation for distress and inconvenience.

9. I have based the amount awarded on the Water Redress Scheme Guide to Compensation for Inconvenience and Distress and, as I consider the company's failings caused the customer serious distress and inconvenience over a significant length of time, the award falls within the tier 3 band of payment. The company has already paid £240.00, so the award of £1,020.00 means that the customer will receive £1,260.00 in total, or £70.00 per month, for the inconvenience and distress suffered as a result of the company's poor service. I consider this amount fair and reasonable in the circumstances.
10. The customer also requests a formal apology from a senior manager. In the circumstances of the case, and the fact that the company failed to take responsibility for the delay, I find the apologies already conveyed by the company insufficient. Therefore, the customer's claim in this respect should also succeed and I direct the company to provide the customer with a formal written apology.

Outcome

I direct the company to compensate the customer in the amount of £1,020.00 for distress and inconvenience and provide a formal written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 25 March 2020 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.

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KS Wilks

Katharine Wilks

Adjudicator

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