

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X261

**Date of Decision:** 16/03/2021

#### Party Details

**Customer:** The Customer

**Company:** X Company

#### Complaint

The customer says that she is experiencing noise and vibration from the company's nearby sewage pumping station. The company has not properly investigated her complaint.

#### Response

The company says that it has investigated the customer's complaint and has taken some remedial actions. It has not found any evidence of an ongoing problem that can be attributed to the sewage pumping station.

#### Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to the thoroughness of its investigation of the customer's complaint and with respect to delays in its response.

#### Outcome

The company needs to take the following further actions: It must contact X Power Grid and request any available evidence relating to the statement in its report that there was noise detected from the company's sewage pumping station; must repeat the 3 December 2020 survey, on a date agreed with the customer and in a manner reasonably designed to detect the noises identified by the customer, continuing the survey throughout the night unless it can satisfactorily establish that this cannot reasonably be done; and must pay the customer compensation of £300.00.

The customer must reply by 13/04/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

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## Case Outline

### **The customer's complaint is that:**

1. The customer's complaint is that: • She lives near a sewage pumping station owned by the company. • Since September 2019 she has experienced noises and vibration in the Property and she believes this is an impact of the sewage pumping station. • X Grid has reported noise from the pumping station. • Although the company undertook vibration and noise surveys, they were done from 10pm-1am, and so did not cover the period of peak noise. • The company has provided poor customer service and has shown a lack of empathy. • She has suffered substantial inconvenience and distress, as well as incurring expenses attempting to address possible causes within the Property. • She requests an apology, that the noise/vibration problem be resolved, and unspecified compensation. The customer's comments on the company's response are that: • She repeatedly notified the company that the problems she was experiencing were worse in the early hours. • The surveys undertaken by X Power Grid also only detected noise overnight. • The company has made no attempt to get information from X Power Grid on the results of its surveys. • Certain noises are louder when it is raining. • The company's own survey included recommendations for further action.

### **The company's response is that:**

1. The company's response is that: • The customer first made contact about the issue on 3 March 2020. • A response was delayed due to the national lockdown, but the operation of the pump was adjusted on 24 April 2020. • The customer repeated her complaint on 27 April 2020 and after further communications a survey was carried out on 3 December 2020. • That survey found no evidence of noise from the pumping station. • The company has undertaken site visits without detecting noise and has changed the non return valves in the pumping station, as well as adjusting the off levels within the wet well. The company has also changed the customer's water meter and has checked the customer's water pressure. • No issues have been detected by the company's technicians. • The customer has provided a report from X Power Grid referring to noise from the pumping station, but no supporting evidence has been provided. • The customer specified that the noise issues were present all day, not that they were present after 1.30am. • The company acknowledges that there have been delays in its handling of the

customer's complaint, and an apology was issued to the customer for these delays in response to the customer's complaint to the Consumer Council for Water (CCWater). • The company offers the customer a further goodwill gesture of £150.00.

### How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

### How was this decision reached?

1. In *Marcic v Thames Water plc* [2003] UKHL 66, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
2. In the words of the court, "The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise."
3. The customer, of course, is not complaining about flooding, and so the factual basis of the customers' claim is different to that considered by the Supreme Court in *Marcic v Thames Water plc*. However, as emphasised by the Court of Appeal in *Dobson v Thames Water Utilities* [2009] EWCA Civ 28, the "Marcic principle" applies broadly to exclude claims for nuisance based on a water company's performance of its statutory obligations, except where the claim relates to certain responsibilities, including cleaning and maintaining sewers, and relies on a contention that the company performed its statutory obligations negligently.

4. The consequence of the House of Lords' ruling in *Marcic v Thames Water plc*, then, as interpreted by the Court of Appeals in *Dobson v Thames Water Utilities*, is that a WATRS adjudicator simply has no jurisdiction to determine whether or not the company's sewage pumping station is creating a nuisance for the customer. To be clear, this does not mean that the customer has no means of raising this complaint, but it must be raised to Ofwat, not WATRS.

5. Nonetheless, while a WATRS adjudicator cannot address the customer's complaint about nuisance, questions of the company's response to the customer's complaint do fall within the jurisdiction of WATRS. As a result, this decision will be restricted to whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to its responses to the customer's complaints, with no determination being made regarding the validity or otherwise of those complaints.

6. Based on the evidence provided by the parties, I acknowledge that the company has been overwhelmingly responsive and proactive in addressing the customer's complaints, both undertaking investigations and performing work to address possible causes of the customer's complaint.

7. I find, nonetheless, that the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person in two respects.

8. Firstly, despite being notified by the customer that an inspection performed by X Power Grid detected noise from the company's sewage pumping station, the company has made no effort to contact X Power Grid about its inspection or otherwise secure the evidence that inspection generated. Instead, in its Defence the company has highlighted the lack of supporting evidence for the X Power Grid report as a reason to discount the report. If there were genuinely no supporting evidence available, then this would be a reasonable argument, but not where the reason supporting evidence is not available may only be because the company has not asked for it.

9. I find that by failing to contact X Power Grid to ask for access to evidence supporting the comments in its report that noises were arising from the company's sewage pumping station, the company failed to provide its services to the customer to the standard to be reasonably expected by the average person. Had its own investigation provided such evidence, then evidence from X Power Grid would have been duplicative, and so unnecessary, but when its own investigations failed to confirm the results of the X Power Grid survey, the company acted unreasonably in not attempting to secure this additional evidence.

10. Consequently, the company must contact X Power Grid and request any available evidence relating to the statement in its report that there was noise detected from the company's sewage pumping station.

11. In addition, the customer has objected to the company's decision to only perform a noise survey for part of the night, and the evidence produced by the customer clearly shows her recording noise at unpredictable times throughout the night. If the company had detected noise in the 10pm-1am period, then it may have been justified in not continuing to monitor the situation, as it would have already confirmed the customer's complaint. However, given the unpredictability of the noise, as reflected in the logs kept by the customer, merely choosing a period of the evening in which to undertake a survey created a predictable risk that the survey would fail to detect noise that nonetheless occurred later that same evening.

12. I find, therefore, that given the evidence available to the company regarding the problems experienced by the customer, the company failed to provide its services to the customer to the standard to be reasonably expected by the average person when it failed to undertake an overnight survey.

13. Consequently, the company must repeat the 3 December 2020 survey, on a date agreed with the customer, continuing the survey throughout the night unless it can satisfactorily establish that this cannot reasonably be done. The specific manner in which the survey is to be undertaken is to be determined by the company, but it must be reasonably designed to detect the noises identified by the customer.

14. Finally, the company has acknowledged that there were at times delays in its responses and investigations and has offered the customer compensation of £150.00.

15. The customer has provided convincing evidence of the level of distress she has experienced from the problems that she describes, and so I accept that the delays acknowledged by the company will have caused her significant distress and inconvenience. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress I find that fair and appropriate compensation would consist of £300.00. This amount is limited because it relates only to the delays acknowledged by the company, rather than to the entire problem described by the customer, but is increased by the customer's personal circumstances, which I accept will have resulted in her experiencing more distress and inconvenience than would be the case for most customers.

16. Consequently, the company must pay the customer compensation of £300.00.

17. For the reasons given above, the company must contact X Power Grid and request any available evidence relating to the statement in its report that there was noise detected from the company's sewage pumping station; must repeat the 3 December 2020 survey, on a date agreed with the customer and in a manner reasonably designed to detect the noises identified by the customer, continuing the survey throughout the night unless it can satisfactorily establish that this cannot reasonably be done; and must pay the customer compensation of £300.00.

### Outcome

1. The company needs to take the following further actions: It must contact X Power Grid and request any available evidence relating to the statement in its report that there was noise detected from the company's sewage pumping station; must repeat the 3 December 2020 survey, on a date agreed with the customer and in a manner reasonably designed to detect the noises identified by the customer, continuing the survey throughout the night unless it can satisfactorily establish that this cannot reasonably be done; and must pay the customer compensation of £300.00.

### What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

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**Rohan Ramola**  
**Adjudicator**