

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X257

Date of Decision: 13 April 2021

Complain

The customer has a dispute with the company about the condition of a manhole cover adjacent to the driveway at his property. The customer contends the manhole cover is raised too much above the road surface and is a hazard to pedestrians and traffic. The customer says the company denies it is liable to rectify the problem. The customer says that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore he has brought the claim to the WATRS scheme and asks that the company raise the level of the roadway to the level of the manhole cover.

Response

The company states that the manhole has not risen from its original level and that the surrounding block paved roadway has sunk because of passing traffic over many years. The company further says it was not involved in the construction of the sewerage system or the access road. The company has not made any offer of settlement to the customer and does not agree to the customer's request.

Findings

I am satisfied that the company acted reasonably in its dealings with the customer, and I am satisfied that the company is not responsible for maintaining or repairing the access road. Overall, I find that the company has not failed to provide its services to a reasonable level, nor has it failed to manage the customer's account to the level to be reasonably expected by the average person.

Outcome

The company does not need to take further action.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT-X257

Date of Decision: 13 April 2021

Party Details

Customer: The Customer

Company: X Company, a water and sewerage company.

Case Outline

The customers' complaint is that:

- He has experienced an ongoing dispute with the company about problems in connection with a manhole cover adjacent to the driveway at his property. Despite the customer's regular communications with the company, and the involvement of CCWater, the dispute has not been settled.
- The manhole in question is located adjacent to his driveway on a block paved access road he shares with four other properties.
- The manhole currently sits proud of the surrounding block paving on a pronounced mound, and at the highest point is approximately 7 centimetres higher than the adjacent paving.
- He believes that when originally constructed it was designed with a small slight mound but over time the mound has become more pronounced.
- The concrete support to the manhole cover is at right angles to the direction of traffic flow and he believes had it been built in the direction of traffic flow the manhole and cover would have remained more level with the surrounding paving.
- He believes the manhole sitting proud of the road surface is because of poor design and planning and he further believes the raised manhole is a danger to both pedestrians and vehicles.
- He has contacted the property development company that constructed the houses served by the access road and was informed that it had relinquished the land deeds in 1999 and it has no responsibility for the development.
- He contacted the company on 14 September 2020 and a lengthy exchange of communications followed between the parties.

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- The company informed him that it only took over responsibility for the manhole as from 2011.
- He has examined other manhole covers in his neighbourhood and notes that they are all stamped with the words “X Company”, and he thus believes this signifies that the company actually installed the original water infrastructure, including manholes.
- He further notes that the company’s position is that it is not responsible for the level of the manhole because it has not risen but contends that the surrounding block paving has sunk.
- The company has given several explanations as to why the manhole cover sits proud of the road and he believes this indicates the company is merely speculating and making excuses to avoid responsibility.
- Unhappy with the position of the company, the customer, on 07 October 2020, raised his complaint to CCWater, who took up the complaint with the company on his behalf. The customer records that CCWater contacted the company and requested more detailed information from it and to review the customer service provided.
- The customer acknowledges that CCWater later, on 21 December 2020, informed him that it had received a detailed explanation from the company of its position. CCWater also noted that it believed the explanation to be a full response to the points it raised to the company and therefore it cannot take any further steps.
- The customer says that despite the intervention of CCWater, the dispute is ongoing, the company has not changed its position and CCWater are unable to obtain a resolution between the parties. The customer remains dissatisfied with the response of the company and has, on 07 January 2021, referred the matter to the WATRS Scheme where he requests the company raise the adjacent block paving to sit level with the top of the manhole cover.

The company’s response is that:

- The company provided its response to the claim in its paper dated 10 March 2021.
- The company confirms that it contests the customer’s claim submitted to the WATRS Scheme.
- The company says that it did not lay the block paving to the access road leading to the customer’s property, and hence has no responsibility to maintain or repair it.
- The company further states that it did not design or install the sewer network and only took over responsibility for it following the private sewer transfer regulations in 2011.

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- The company says that following the complaint from the customer it sent engineers to inspect the manhole and its cover and found no problem with its asset and no remedial work is currently required.
- The company states that it has advised the customer that the manhole has not risen up as it was originally constructed, probably in the 1990's, to a high standard to ensure a very long life span and thus would not be physically possible to rise from its original position. The company contends that traffic passing over the manhole and adjacent block paving for the entire period between construction and now has resulted in the paving settling and thus becoming lower than the manhole that cannot move.
- The company contends that the customer should seek legal advice to establish who is responsible for the maintenance and repair of the access road. The company states that as it is not responsible in any way for the access road, and it has established that none of its assets is responsible for any damage to the block paving it will not carry out any work to the paving.

The customers' comments on the company's response are that:

- On 13 March 2021, the customer has made comments on the company's response paper. I shall not repeat word for word the customer's comments and in accordance with Rule 5.4.3 of the Rules of the WATRS Scheme I shall disregard any new matters or evidence introduced.
- The customer does not accept that the manhole is unmoved and the surrounding paved area has sunk, and still believes the manhole was originally built incorrectly as an elevated mound. The customer also says that he understands from the response that the company believes that the original property developer/builder constructed the sewerage system and the responsibility for the raised manhole rests with them.

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 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 the customer's dissatisfaction that the company declines to undertake remedial measures in respect of a manhole cover adjacent to his driveway that sits above the level of the surrounding road.
2. I note that the WATRS adjudication scheme is an evidence-based process, and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The customer has submitted his official WATRS application form and supported this with three photographs of the manhole cover in dispute.
4. I can see that the company has stated that it was not involved in the installation of the services and after having checked its records it cannot identify who designed or installed the services. The company confirmed that it only took over responsibility for the sewerage network in 2011.
5. The customer contends that all manhole covers in his neighbourhood are stamped with the words "X Company" and believes that this signifies that the company constructed the network. I am not persuaded by this as it is possible the company has replaced various manhole covers during the past ten years since it took over responsibility for the sewerage system.
6. The customer contends that the manhole has been poorly planned and designed. However, the customer does not provide any substantiation of his position and does not submit any technical information in support of his understanding.
7. The customer has also stated that he believes the company constructed the manhole too high when the sewerage system was installed in 1999. Again, the customer does not supply any evidence to support his belief.
8. The company has stated that it was not responsible in any way for the design and construction of the block paving access road or the stubs of block paving leading to individual garages at

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houses. Consequently, the company states it is not liable to maintain or repair any of the block paving in the area of the manhole. The customer has not submitted any evidence to challenge the company on its position.

9. I can see that the parties agree that the company responded to the customer's complaint and sent engineers to inspect the manhole and its cover and the local sewerage pipework that the manhole is connected to. The company confirmed that there are no problems with its assets, and they had no negative affect on the surrounding block paving. I can see no evidence from the customer to show that the company's findings are not correct.
10. The company also says that the manhole would have been constructed prior to construction of the access road and thus the road level would have been built up such that it finished flush with the level of the manhole cover. The customer has not submitted any evidence to show that this construction sequence was not followed.
11. I take note that both parties have supplied me with photographs of the manhole cover and its surrounding block paving. I have studied the photographs but do not find them pertinent to the matter at hand. The dispute is not about whether the manhole cover sits proud of the paved roadway, that is accepted, but concerns whether the company is responsible to rectify the issue.
12. I also note that the customer says he believes the manhole cover sitting proud is a safety issue in respect of both foot and vehicular traffic. The customer has not supplied any supporting documentation for this position, and I do not see evidence that he has referred the matter to his local authority or the Health and Safety Executive.
13. In his application to the WATRS Scheme the customer has requested that the company be directed to undertake works to the block paving access road to bring it level with the manhole cover. I have based my findings on the information submitted by the parties, and as I noted earlier, it is for the customer to show with evidence that the company has not provided its services to the standard that would reasonably be expected of it.
14. Thus, based on the evidence and my findings on the evidence, I am satisfied, on balance, that insufficient evidence has been submitted to support the claim. I find the claim fails.
15. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person.

Preliminary Decision

- The Preliminary Decision was issued to the parties on 30 March 2021.

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- The customer submitted comments on the Preliminary Decision. However, the comments were of a general nature and do not affect the original decision and so those comments will not be specifically addressed.

Outcome

The company does not need to take further action.

Peter R Sansom
MSc(Law); FCIArb; FAArb; FRICS;
Member, London Court of International Arbitration.
Member, CIArb Business Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Adjudicator

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