

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X519

Date of Decision: 31/10/2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer says that his car was damaged by a broken fire hydrant cover. He requests an explanation and an apology, and compensation of £2,500.00.

Response

The company notes that it operates on a reactive basis, and repaired the broken fire hydrant cover quickly after the customer's accident.

The company offered the customer compensation of £889.00, based on the value of the damaged car, but this was declined.

Findings

The damage to the customer's car resulted from the company's failure to provide its services to the standard to be reasonably expected by the average person, and the customer then experienced customer service failings.

Outcome

The company needs to take the following further actions: It must apologise to the customer for the customer service failings he experienced, and must pay the customer total compensation of £7,753.00.

The customer must reply by 29/11/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

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- His car was irreparably damaged by a broken fire hydrant cover.
- The company denied liability on the ground that the broken cover had not been reported.
- There is evidence that the cover was faulty three months before the accident.
- His vehicle was a licensed taxi.
- He has been forced to borrow money to replace the car so that he can continue working.
- The company has offered compensation, but has valued the car as a regular car and not as a taxi.
- He experienced poor customer service.
- He requests an explanation and an apology, and compensation of £2,500.00.

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

- This is the first time the company has mentioned a repair being undertaken in January 2020 and he questions whether this occurred.
- The company was aware from the first time he made contact that the car was a taxi.
- The company's insurer was aware of this, as it included the cost of transferring the taxi plate and meter in the settlement offer.
- He had notified the company that he had lost approximately £500.00 per week, but was never requested to provide evidence of this.
- He made reasonable efforts to minimise costs in replacing the car.

The company's response is that:

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- The customer contacted the company in May 2020 to notify it of damage to his car from a loose fire hydrant cover.
- The company had also been made aware of the same cover being loose in January 2020, and had attended to reset the frame and reduce the noise coming from it.
- No further complaints about the cover were received after January 2020.
- The customer has provided evidence of social media comments relating to the cover, but there is no evidence in those comments of reports being made to the company.
- The company operates on a reactive basis, undertaking repairs when it receives notification that repairs are required.
- The company attended the cover the day after being contacted by the customer and a repair was completed on 4 June 2020.
- The customer's details were passed to the company's insurers to review his claim.
- The customer did not make either the company or its insurer aware that the car was a taxi and this information was not included in the insurance forms returned to the company's insurer.

- On 7 September 2020, the company's insurer sent the customer an initial denial of liability.
- The company's insurer subsequently made an offer of £889.00 to the customer based on the value of the car.
- The company maintains this offer, should the

customer wish to accept it. • Payment of any larger amount would constitute betterment. • The customer purchased a newer car with lower mileage. • The company has not offered to compensate the customer for loss of business as no evidence has been provided by the customer regarding such losses, despite a request being made by the company's insurer. • The company apologises for the email in which he was mistakenly advised that the company would pay the amount he was requesting.

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 its comments on the Proposed Decision in this case, the company argued that the "appropriate forum" for the customer's claim is "the local County Court", and that "WATRS have acted outside of the jurisdiction given to them under the scheme by making an award of such damages in a civil liability claim".
2. The company makes no specific reference to the Water Redress Scheme Rules, but this is best understood as being a reference to Rule 3.4, which grants WATRS the discretion to reject a claim where "a customer should be referred to a more appropriate forum for the resolution of the dispute".
3. The Rules clearly place such a decision within the discretion of WATRS, in distinction to the limitations in Rule 3.5, which place absolute limits on the jurisdiction of a WATRS adjudicator. The company has, however, provided no rationale for this discretion to be used to exclude the customer's claim, other than that it is a "civil liability claim", a category that could have been included in Rule 3.5 if the intention was to exclude such claims from WATRS, but was not. The

company also suggests that the size of the customer's claim justifies referring the claim to a court, but both the amount claimed and the amount awarded fall within the £10,000.00 limit of the WATRS Scheme.

4. I do not, therefore, find that the company has provided a ground for referring the customer's claim to a court.

5. The company also argues that the customer's claim should be rejected under Rule 3.5, which excludes "disputes that are subject to existing court action or on which a court has ruled unless the court's decision has been set aside". However, in its argument the company acknowledges that there is no existing court action, but suggests instead that there is the possibility of future civil litigation. By its clear terms, such a risk of future litigation does not fall within the limits of Rule 3.5. Moreover, were such future litigation commenced, the company would retain the right to bring to the court's attention the present decision, if it is accepted by the customer, to permit the court to determine how this decision affects its own processes.

6. I do not, therefore, find that the mere possibility of future litigation falls within the limits on the WATRS Scheme in Rule 3.5.

7. The company acknowledges that the fire hydrant cover required repair, and has not challenged the customer's statement that his car was damaged by it. The customer has produced evidence of the damage to his car and the evidence of his communications with the company, which support his statement that the damage was caused by the faulty fire hydrant cover. However, the company argues that its responsibility is to respond when it receives reports that repairs to its equipment are needed, and that it did not receive such a report until the customer made contact.

8. While the company is correct that the regulatory system under which it operates permits it to undertake repairs reactively, rather than bearing responsibility to identify problems before they are reported, the company acknowledges that only four months earlier it had performed work on the fire hydrant cover in question for the same problem that resulted in damage to the customer's car. It is, however, inherent in the "reactive" system under which the company is permitted to operate that the company has a responsibility to perform repairs to a certain level of quality. Otherwise, the company could simply wait for a complaint, undertake a quick and cheap repair that will quickly fail, but then do nothing more until another complaint is received. Moreover, the company's responsibility to undertake a reasonable quality repair increases when a recurrence of the problem would create a risk to the general public.

9. I find that the fact that the company's repair to a cover located in a public highway lasted only four months before the problem recurred justifies a conclusion that the repair was not undertaken to an appropriate level of quality, taking into account the potential risk to the general public from a faulty cover on a public highway. The company could counter this presumption by presenting evidence that the recurrence of the problem arose from an unusual circumstance, but no such evidence has been presented in the present case.

10. I find, therefore, on the basis of the evidence provided by the parties, that the damage to the customer's car resulted from the company's failure to provide its services to the standard to be reasonably expected by the average person. The customer is, therefore, entitled to compensation for any damage that he suffered as a result of the company's failure.

11. The company has offered the customer compensation of £889.00, arguing that this amount reflects both the value of the customer's car, which it agrees was appropriately written off, and the cost of transferring the customer's taxi plate and meter to a new car. While in its Defence the company denies that the customer notified it or its insurer that the car was used as a taxi, the evidence makes clear that the customer stated this in his first communication with the company, and that the company's insurer acknowledged this when making its offer to the customer.

12. However, while usually such an offer would be sufficient to meet the company's obligations, as the customer would have received money equivalent to the value of the car he has lost, the goal of the law in this context is to place the customer in the position he would have been in if the company had fulfilled its obligations and his car had not been damaged. The customer, though, did not just have a car, but a taxi. The company's obligation, therefore, is to pay compensation to the customer for the expenses he reasonably incurred restoring his ownership of a taxi.

13. The customer argues that he could not simply replace the damaged car with one of equivalent value, because his local council requires that any new vehicle transferred onto an existing license must be less than five years from the date of its first registration. This is confirmed by the website of the customer's council.

14. The customer, therefore, was not restricted in replacing his car to a new vehicle with a value equivalent to that of the damaged car, but was permitted to incur a reasonable expense to secure a car to which he could transfer his taxi registration, even if this meant purchasing a more expensive car. The only limitation the law placed on the customer in this respect was that his purchase be "reasonable".

15. The following evidence request was issued to both parties: "The customer is to produce evidence of the cost he incurred purchasing the replacement car and

evidence of the date on which the car was purchased. Both parties are to produce evidence of the cost of cars available in the customer's region, either currently or within the past year, that are roughly equivalent to the customer's damaged car (and so could serve as a reasonable replacement for that car in its use as a taxi) and are less than five years from the date of their first registration."

16. The customer produced evidence in response to the evidence request, but the company declined to do so. As a result, a decision must be made based on the evidence provided by the customer.

17. The customer has produced satisfactory evidence that he purchased a replacement for his damaged car on 23 June 2020, at a total cost of £7,509.00, and that this was a reasonable price for a replacement for the damaged car. He has also produced evidence of incurring a cost of £144.00 fitting the meter into the replacement car. No evidence has been provided of the precise value of the customer's damaged car when it was scrapped, however based on the communications from the company at the time, I find that a valuation of £500.00 is reasonable, and this value is appropriately taken off the compensation awarded to the customer, as the customer retained the damaged car after the accident.

18. Consequently, the company must pay the customer compensation of £7,153.00.

19. The customer has also argued that he lost income as a result of the accident, as he did not have a car to operate as a taxi, and he has produced evidence in support of his expected income. I accept that the customer will have lost income, and acknowledge that the customer has been honest in his statement that he was not scheduled to resume using his car as a taxi until a week after the accident. On the basis of the evidence provided by the customer, I find that the customer more likely than not lost income of £350.00, reflecting the customer's lower income due to the impact of COVID-19.

20. Consequently, the company must pay the customer compensation of £350.00.

21. In addition, I find that the evidence shows the customer experiencing substantial failings in customer service, with long periods passing between communications from the company or its insurer, which was acting as the company's agent for the purpose of the customer's claim. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that fair and appropriate compensation would consist of £250.00. This amount recognises the distress that I accept the customer would have experienced from the company's failure to address his loss of livelihood, but also that the customer has been awarded compensation for the actual loss of income he suffered.

22. Therefore, the company must pay the customer compensation of £250.00.

23. The customer has also requested an apology, and given the facts of this case I find that an apology would be appropriate.

24. Consequently the company must apologise to the customer for the customer service failings he experienced.

25. For the reasons given above, the company must apologise to the customer for the customer service failings he experienced, and must pay the customer total compensation of £7,753.00.

Outcome

1. The company needs to take the following further actions: It must apologise to the customer for the customer service failings he experienced, and must pay the customer total compensation of £7,753.00.

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.

Tony Cole
Adjudicator