

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X592

Date of Decision: 04 October 2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer has a dispute with the company regarding the refund of costs incurred and the paying of compensation for stress and inconvenience. The customer says that in 2011 the company failed to seal holes in one of its manholes and this resulted in ongoing problems at his property with smell and rodent infestation. The customer contends he was forced to undertake his own investigations and seeks the reimbursement of costs incurred. The customer claims 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 be directed to refund all costs incurred and pay compensation for stress and inconvenience.

Response

The company states that it identified and sealed the holes in its manhole in 2011, and thus believes the subsequent ongoing odour problem is not because of the holes. The company says that it has responded to all the customer's complaints and has taken reasonable and appropriate action. The company has not made any offer of settlement to the customer and declines to refund any costs or to pay compensation.

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Preliminary Findings

The claim does not succeed. I find that the evidence does not prove on a balance of probabilities that the company failed to seal the holes in 2011. I further find that the evidence does not prove that the company's investigative actions after 2011 have not been of a reasonable standard. Overall, I find that the company has not failed to provide its services to a reasonable level nor has failed to manage the customer's account to the level to be reasonably expected by the average person.

Preliminary Outcome

The company does not need to take further action.

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

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Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company concerning issues with wastewater and sewerage services. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- He first took up occupation of his property in May 2005.
- The property is an end of terrace dwelling, with an alleyway running adjacent to the side of the property.
- Within the alleyway are located three number inspection chambers (manholes) that the customer says are assets of the company. The customer states that one of the manholes serves only his residence, the other two serve neighbouring properties.
- During the preceding period of approximately ten years, the customer says that he has suffered with bad smells, rodent infestation, and swarms of flies. The customer says he complained on several occasions to the company but after its investigations it stated that the problem was not with any of its assets and originated within his own private household plumbing.
- Following this advice, he, at considerable expense, undertook various investigations and repairs but the problems continued despite his efforts.
- In June 2020 he retained the services of a pest control company that identified a hole inside one of the manholes that served neighbouring properties. The customer says he brought this information to the attention of the company in July 2020 and acknowledges that the company sealed off the hole in August 2020.
- Since the hole was blocked off all the problems with smell, rodents, etc have ceased.
- Following a Subject Access Request made in November 2019 he has identified that the company was aware of holes in the manhole lining as far back as 2011, but did not take contemporary action to fill the holes.

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- Believing the company had been at fault by not fixing the holes at any time since 2011 he contacted the company and requested that it reimburse the expenses he had incurred over many years in attempting to rectify the ongoing problem. The customer asserts that the company declined his request.
- Being of the opinion that the company had not properly addressed his concerns he, on 14 March 2021, escalated his complaint to CCWater who took up the dispute with the company on his behalf. The records show that CCWater contacted the company on 04 June 2021 and requested more detailed information from it and to review the customer service provided.
- The company responded to him and CCWater on 18 June 2021 with a detailed submission, but he stated that he was not satisfied with the company's explanations and requested that CCWater continue to seek a resolution from the company.
- The customer says that he has not received any further communication from CCWater, that the dispute is ongoing, and the company has not changed its position. The customer remains dissatisfied with the response of the company and has, on 20 August 2021, referred the matter to the WATRS Scheme where he requests that the company be directed to pay him the sum of £5,748.00 in compensation for the works he has undertaken in dealing with the problem caused by its inefficiencies and for the stress and inconvenience experienced.

The company's response is that:

- It provided its response to the claim in its submission dated 02 September 2021.
- Regarding the customer's contention that it was aware of holes inside the manhole in 2011 but did not repair them, the company says its records show that in July 2011 holes were identified in a manhole and repaired on 05 July 2011.
- It notes that the customer first complained of bad odours in 2014, and thus it contends that it could not be the holes repaired in 2011 that were causing the smells.
- It confirms that it has received twelve reports from the customer since May 2014, ten of which referred to odour and one for the presence of rodents.
- It responded in good time to all twelve reports and took appropriate action. It records that only on two occasions was work required to remove debris from the sewer, but no human waste was

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identified. The company says that odour is almost always caused by the presence of human waste that is not flowing away.

- It denies being negligent in its response to and investigation of the complaints raised by the customer since 2014. It further notes that the customer has not supplied any evidence to show negligence on the part of the company. The company states that it fully complied with regulations regarding the maintenance and cleaning of sewers.
- It is not the relevant authority in respect of rodent infestations, and this responsibility rests with the applicable local authority. It records that the first occasion the customer complained of a rodent problem was on 03 July 2020 and it immediately responded and inspected the manholes on 07 July 2020. It confirms that a hole was identified in a manhole that did not serve the customer's property and that it blocked the hole with concrete on 14 August 2020.
- It takes note that the customer employed third-party building contractors to seal up holes around his property to prevent rodent access. This indicates that rats were invading the property through access points other than the sewer system.
- In summary, it confirms that it has responded speedily and reasonably to all the complaints received from the customer, and when informed of a rodent problem in July 2020 it quickly sealed up holes that were identified as possible ingress points for rats. It confirms that it disputes the customer's claim and says it is not liable to reimburse the customer's costs or pay compensation.

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

- On 06 September 2021, the customer submitted 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 the company's statement that holes in the manhole were repaired in 2011, and submits a screenshot of a company workorder in support of his claim. The customer also refutes that his private third-party building contractor was engaged to fill in holes and says it investigated the areas adjacent to the house to ensure the integrity of the sewer pipes where they entered the manhole. The customer reiterates his previous position that had the company sealed off the holes in the manhole in 2011 it would not have been necessary for him to continue his own investigations and incur substantial costs.

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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 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 did not seal holes in its manhole in 2011 and this resulted in him expending funds unnecessarily to rectify the subsequent problems of odour and rodent infestation.
2. I note that the WATRS adjudication scheme is an evidence-based process, and that for the customer's claim to be successful, the evidence should show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The customer contends that for more than ten years he has been experiencing problems with a bad odour and rodent infestation and believes these issues emanated from company assets.
4. The customer has stated that he contacted the company on numerous occasions to complain, and whilst he acknowledges that the company investigated his complaints, he believes that its failure to identify a hole inside one of its manholes resulted in him having to spend money undertaking his own investigations.
5. In particular, the customer has identified that in 2011 the company inspected one of three manholes adjacent to his property, discovered a hole in one wall but failed to seal it. He

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contends this failure by the company resulted in the ongoing issues over the subsequent ten years.

6. I am provided by both parties with copies of extracts from company worksheets. The customer contends these show that although the hole was identified in 2011 a raised work order was cancelled prior to it being actioned. The company submission shows the work being confirmed as successfully completed.

7. After reading the extracts my understanding of the events is as follows :-

Work request REDACTED

02 July 2011

at 15:42 sewer repair ordered

at 15:52 company contacts its contractor to ensure its team will attend site to do repair works

at 18:48 company confirms a survey is not required

05 July 2011

at 15:21 company confirms that "holes in mh's repaired"

8. I note the work request code shown on the customer's submission is REDACTED, and is thus different from the code shown on the company submission.

9. I take note of the customer's comments set down in his reply to the company's Response document. He asserts that he "*cannot recall being informed about these holes and we do not remember contractors coming to repair them and we certainly would not expect the work to be carried out on the same day*". I am not satisfied that the customer's memory from an action more than ten years ago can take priority over the written record of the company, and I further point out that the repairs were not done on the same day but three days after being identified.

10. I am thus satisfied on a balance of probabilities that the company identified and sealed the holes in the manholes on 05 July 2011.

11. I also note that the company has recorded that on 28 July 2012 it cleared a blockage in a sewer pipe adjacent to the customer's property.

12. The company, on page 50 of its Response submission, has tabulated the contacts received from the customer subsequent to 2011 and its responses to the contacts. The table shows twelve number contacts from the customer between May 2014 and July 2020. I am satisfied that at

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each contact the company responded in reasonable time and took measures such as surveying the pipes, removing any debris found, pressure washing, etc. I take note that the customer has confirmed that he was satisfied with the company's responses in respect of cleaning and jetting the system.

13. I also take note that the company is not the applicable authority for pest control and rodent infestations. Nevertheless, I can see that on 03 July 2020 the customer contacted the company to report that his private third-party contractor had identified holes inside a manhole adjacent to his property and he believed the rat ingress was via these holes.
14. The company responded, investigated, and sealed the holes on 14 August 2020. Again, I find this to be a reasonable response and action by the company.
15. The customer has requested in his application to the WATRS Scheme that the company be directed to reimburse him costs incurred whilst privately investigating the source of odour in the total amount of £2,748.00 and compensate him in the amount of £3,000.00 for stress and inconvenience.
16. The customer has detailed the measures he took both inside and outside his property.
17. However, I do not find that the evidence establishes on a balance of probabilities that the company was responsible for the odour at the property. The customer has stated that he believes the company did not seal the holes in the manhole in 2011 but sufficient evidence has not been put forward to show his belief to be correct. Neither has he substantiated that during its numerous inspections of the manholes the company did not conduct its investigations to a reasonable standard. Consequently, I find that the company is not liable to refund the costs incurred by the customer during his own private investigations and as such I shall not direct the company to make the reimbursement as requested.
18. I am satisfied that the company has reacted in a reasonable manner to the customer whenever he submitted a complaint of odour problems. It responded to all of his contacts and took appropriate actions. I find that no act or omission by the company has contributed to any stress or inconvenience experienced by the customer. It thus follows that I shall not direct the company to pay compensation as requested.
19. 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.

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The Preliminary Decision

- The Preliminary Decision was issued to the parties on 22 September 2021.
- The company responded to the Preliminary Decision, also on 22 September 2021, and confirmed it had no comments.
- The customer has submitted comments on the Preliminary Decision on 27 September 2021.
- The customer reiterates his belief that he undertook numerous investigations inside his property because of the company's failure to identify and locate a hole in a manhole chamber despite numerous inspections of the sewer system serving his and neighbouring properties.
- The customer also reiterates that it was a retained third-party that eventually discovered the hole in the pipe and that once it was sealed the problems with smell and vermin ceased.
- The customer did not submit any additional evidence in support of his original claim.
- Having read the customer's comments I am satisfied that no amendments are required to the Preliminary Decision.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 29 October 2021 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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Peter R Sansom

MSc (Law); FCI Arb; FA Arb; FRICS;
Member, London Court of International Arbitration.
Member, CI Arb Business Arbitration Panel.
Member, CI Arb Pandemic Business Dispute Resolution Arbitration Panel.
Member, CEDR Arbitration Panel.
Member, CEDR Adjudication Panel.

Adjudicator

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