

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X648

Date of Final Decision: 16 December 2021

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding its refusal to continue to carry out investigations on its assets to identify and remedy the causes of noise and vibration inside her house. The customer says that company manhole covers located in the road adjacent to her property are the cause of the two issues, and despite testing and investigations the company has not remedied the problems and has stated it will cease to undertake further investigations. The customer claims that despite ongoing discussions with the company and the involvement of CCWater the dispute is unresolved and therefore she has brought the claim to the WATRS Scheme and asks that the company be directed to continue its investigations until the problem is solved, pay compensation, and issue an apology.

#### Response

The company denies any liability to the customer to continue investigations. It says that to date it has spent a considerable amount of money on testing and remedial works. It further states that studies by specialist consultants have confirmed that noise and vibration levels do not exceed those set down in the appropriate legislation and thus it sees no benefit in continuing to investigate further. The company has made two separate offers of settlement to the customer that she declined.

#### Findings

The claim does not succeed. I find that the evidence does not support on a balance of probabilities that the company has failed to take the customer's complaints seriously. The company has retained specialist engineers in addition to its own testing team and I find that the evidence does not support directing the company to continue with its testing operations. Additionally, I have not found that company was incompetent in its handling of the customer's complaints nor that it unreasonably delayed the attempts to find solutions to technical problems. I find that the evidence does not show that the company has failed to provide its services to a reasonable level or has failed to manage the account to the level to be reasonably expected by the average person.

#### Outcome

The company does not need to take further action.

The customer must reply by 18 January 2022 to accept or reject this decision.

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**Case Outline**

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

- She has experienced an ongoing dispute with the company concerning issues with noise and vibrations in her home that originate from company assets. Despite the customer's recent communications with the company, and the involvement of CCWater, the dispute has not been settled.
- She has experienced noise and vibration inside her house and believes the problem lies with nearby company assets. The customer says that the company has manholes in the road adjacent to her house and that when vehicles pass over the manhole covers they cause a loud noise and vibration. The customer claims that the effects reduce the quality of life for her and her neighbours.
- The problems began around January 2016, and she joined with neighbours in submitting a complaint to the company in May 2016. The customer acknowledges that the company effected some repairs to the assets, but these deteriorated quickly.
- In 2017 the local authority re-laid the asphalt on the road, and this made the problem worse. The customer says the company declined to effect further repairs saying the problem was caused by the local authority.
- Problems continued throughout 2018 and she, along with her neighbours, was in constant communication with the company and local authority.
- Similarly, problems and communication continued throughout 2019 and she was disappointed that testing inside her property by the company was only done for a short period and never overnight. The customer believed the noise and vibration was heaviest when experienced inside the property.
- Also in 2019, she requested that the company keep her updated regarding the remedial measures it had committed to undertake, but she contends the company were not co-operative.

- In 2020 the noise and vibration became worse and after more complaints to the company it retained a specialist consulting company to undertake testing both externally and inside her property. The customer says she identified several inaccuracies within the report subsequently produced by the consultant.
- The company advised her that the consultant's investigations found that both noise and vibration were below the required legal thresholds and thus it would not be undertaking any further works. It also offered a £2,000.00 goodwill payment that she rejected.
- Believing the company had not properly addressed her concerns she, in October 2019, escalated her complaint to CCWater who took up the dispute with the company on her behalf. The records show that CCWater contacted the company and has been continuously involved in the dispute since.
- On 14 July 2021, CCWater advised her that following its monitoring of recent e-mail exchanges between herself and the company it had concluded that it could not take any further measures to have the company change its position and was thus closing her case.
- Continuing to be dissatisfied with the response of the company she has, on 28 October 2021, referred the matter to the WATRS Scheme where she requests that the company be directed to (i) continue all necessary investigations and remedial works until the problems of noise and vibration have been fully and permanently rectified; (ii) pay compensation in the amount of £2,500.00; and (iii) issue an apology.

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

- It provided its response to the claim in its submission dated 11 November 2021.
- It acknowledges that the customer has experienced noise and vibration at her property since 2016.
- It acknowledges that the manhole purportedly identified as the main unit causing the noise and vibration houses a pressure reducing valve [PRV], although other manhole covers in close proximity may have contributed to the problems.
- It records that throughout the ongoing investigations it liaised closely with the relevant local authority.

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- Since receiving the initial complaint from the customer in 2018 it has carried out an ongoing programme of investigations and repairs and has incurred costs in excess of £133,000.00.
- It has retained the services of an independent specialist consultancy to undertake testing additional to its own. The consultant undertook periods of testing in February/March 2019, September 2020, and in April 2021, and produced detailed technical reports along with non-technical explanations for readers without appropriate technical knowledge.
- The specialist's reports confirm that its investigations show that noise and vibration levels identified do not exceed the levels permitted by either DEFRA or the local authority's Environmental Health Office.
- It acknowledges the customer requested to have it follow up on the specialists proposal to relocate its assets in the road but confirms that the cost to move the PRV, manhole chambers, associated pipework, etc, would exceed £500,000.00. The company says that as the noise and vibration levels are within the required limits it cannot identify any justification to incur this level of expense in relocating assets.
- It acknowledges certain customer service failings since 2018 and has offered the customer compensation, firstly in the amount of £2,000.00 and subsequently £2,500.00 but has withdrawn the offers following the customer's escalation to the WATRS Scheme.
- It confirms that in its e-mail dated 11 June 2021 it advised the customer that it would not make any further investigations into the noise and vibration issue and was officially closing her complaint.
- It says it has co-operated fully with CCWater and supplied all necessary requested information.
- In summary it confirms that it has always taken seriously the customer's complaints and has taken all reasonable steps to investigate them, incurring considerable expense in the process.

- It notes a significant reduction in both noise and vibration since it commenced its remedial activities in 2019 and it has advised the customer that she remains able to contact the company in future if the noise and vibration levels significantly degrade.

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

- On 18 November 2021, the customer submitted detailed 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 says the company's Response document is both misleading and misrepresentative of the facts. The customer further states that she believes the investigations, tests, and reports of the specialists retained by the company are not exhaustive and in particular did not pay enough attention to the situation inside her property. Additionally, the customer contends that the quantum of expenses detailed by the company is misleading as it inflates the figure by including costs of works necessary to rectify its own previous errors, such as blacktopping over the PRV cover.

**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.

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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 has failed, over a long period, to rectify problems with its assets located close to her property that cause noise and vibration inside her house.
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. I can see from the evidence provided that the parties agree that the customer has experienced internal problems with noise and vibration. The customer has claimed that the two problems originate from company assets, primarily covers to various chambers located in the road adjacent to her dwelling.
4. I can further see that the problems appear to have been ongoing since approximately 2016, and this accounts for the high volume of documents provided by the parties.
5. I take note that the company has undertaken a progressive and ongoing programme of investigations and remedial works, has retained specialist testing consultants, and liaised closely with the relevant local authority (particularly its Environmental Health Office).
6. It therefore seems to me that the crux of the customer's complaint is regarding the efficacy of the testing and the results achieved.
7. In her application to the WATRS Scheme the customer has requested that I direct the company to continue all necessary investigations and remedial works until the problems of noise and vibration have been fully and permanently rectified.
8. The company has stated that in addition to its own investigations it has retained the services of a specialist company that has undertaken testing annually for three years, 2019, 2020, and 2021.

9. The specialist reports state that the investigations show that noise and vibration levels in and around the customer's home do not exceed the levels set down by DEFRA and satisfy the requirement of the local authority Environmental Health Office.
10. The customer, throughout her correspondence exchanges with both the company and CCWater, has expressed her dissatisfaction with the studies and reports of the specialist consultant. I equally note her extensive critique of the reports as contained in her comments on the company's Response document.
11. However, and with due respect to the customer, I note that she does not hold herself out to be an expert in any of the technical fields involved in the investigations and as such I must view her statements as personal opinions and not as expert opinions.
12. Additionally, I see no evidence that the customer has retained her own specialists to challenge the findings of the company's consultants.
13. The company has stated that it relies on the findings of the specialists and based on the conclusions it has taken the decision not to undertake any further investigations because the noise and vibration levels have been confirmed as complying with relevant regulations.
14. I thus find that the evidence does not establish, on a balance of probabilities, that the company has failed to fully investigate the twin problems or that further investigations should be initiated.
15. I shall not direct the company to continue with investigations as requested by the customer.
16. Regarding the customer's position that the company should consider relocating its assets located in the road, I am satisfied that it is outside my jurisdiction under this Scheme to issue directions regarding how the company prioritises its obligations in respect of capital assets and in the making of technical decisions such as moving chambers, supply pipes, etc.
17. Also, in her application to WATRS, the customer requests the company be directed to pay her the sum of £2,500.00 in compensation for the "incompetent manner" in which it has conducted its response to her complaints and for the length of time the dispute has been ongoing.

18. I note that the company has offered £2,000.00 as a settlement offer but the customer has rejected this, citing the company's attempt to construe the offer as being in full and final settlement of the dispute. I further note that the company has withdrawn a subsequent offer of £2,500.00.
19. I am not satisfied that the evidence shows the company has performed in an "incompetent manner" nor has unreasonably delayed the investigation process. The evidence does not show that the customer's complaints have been addressed with incompetence and I am satisfied that the company at all times took the complaints seriously. There has been much correspondence between the parties over a period of several years and I find this indicates the positive responses of the company.
20. Also, I can see that the company has taken all reasonable steps to undertake investigations, used international specialist consultants and liaised with the local authority. I am further satisfied that all such testing, investigation, and third-party interfacing are time consuming activities that in reality take longer to complete than the best intended estimated timeframe. Additionally, the effects of the pandemic lockdowns must be taken into consideration.
21. Whilst I appreciate that the customer may well have suffered inconvenience during the ongoing investigations, I am satisfied that no error or omission on the part of the company has contributed materially to the inconvenience. Thus, it follows that I find compensation is not appropriate.
22. My conclusion on the main issues is that the company has not failed to provide its services to the standard to be reasonably expected by the average person.

### **The Preliminary Decision**

- The Preliminary Decision was issued to the parties on 02 December 2021.
- On 07 December 2021 the company confirmed receipt of the Preliminary Decision and stated that it had no comments thereon.
- The customer has, on 09 December 2021, submitted detailed comments on the Preliminary Decision.
- The customer has noted certain factual inconsistencies, and these have been taken into consideration.

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- The customer refutes the adjudicator’s finding that the company did not fail to provide its services to a standard to be reasonably expected, citing the company’s acknowledgement that at times its service has “fallen short” in respect of customer service. The adjudicator has revisited this issue and is satisfied that the company’s acknowledgement is in respect of customer service in addressing the complaints from the customer, whereas the adjudicator has taken into consideration the company’s overall response including technical, financial, testing, investigating, undertaking remedial works, complaints handling, etc.
- Having read the responses of the parties I am satisfied that no amendments are required to the Preliminary Decision

### Outcome

The company does not need to take further action.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 18 January 2022 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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Member, CIArb Business Arbitration Panel.  
Member, CEDR Arbitration Panel.  
Member, CEDR Adjudication Panel.

### Adjudicator

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