

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X042

Date of Decision: 04 August 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer has a dispute with the company regarding an ongoing issue with a noisy manhole cover close to his house. The customer says the company has been slow to respond to his complaints and has only undertaken temporary repairs that do not permanently rectify the problem. 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 repair the manhole and cover and pay him compensation in the amount of £10,000.00.

#### Response

The company refutes that it has only affected temporary repairs and notes that the particular circumstances of the manhole prevent a permanent repair. The company says it only received a complaint from the customer in November 2021 and has since taken reasonable steps to rectify the problem. The company has not made any formal offer of settlement to the customer and confirms it has offered £100.00 as a goodwill gesture.

#### Findings

The claim does not succeed. The evidence establishes that the company has taken reasonable steps to remedy the noisy manhole and cover and the company has acknowledged that a permanent technical solution to the problem is not currently available. I find that the evidence shows that the company did provide its services to a reasonable level and has managed the customer's account to the level to be reasonably expected by the average person.

#### Outcome

The company does not need to take any further action.

The customer must reply by 02 September 2022 to accept or reject this decision.

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**ADJUDICATOR'S DECISION**  
**Adjudication Reference: WAT-X042**  
**Date of Decision: 04 August 2022**

**Case Outline**

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

- He has experienced an ongoing dispute with the company concerning issues with a noisy manhole cover in the road close to his property.
- The noise problem has been ongoing since he first moved into the property, approximately seven years ago.
- The noise is caused by a loose manhole cover that makes a loud banging noise whenever a vehicle drives over it. The customer says the road is busy and has vehicular traffic throughout both day and night.
- He complained of the noise on 13 September 2021, but no action was taken.
- He contacted the company on several subsequent occasions, including formal letters dated 20 November 2021 and 17 December 2021.
- The company has attended on several occasions and made repairs to the manhole and cover, but the repairs do not last very long and the loud banging noise resumes. The customer believes the repairs have only been of a temporary nature and a permanent repair has not been undertaken.
- Believing the company had not properly addressed his concerns he, on 14 January 2022, escalated his complaint to CCWater. The records show that CCWater contacted the company for its explanation of events.
- The most recent repair was undertaken by the company was in April 2022, but in May 2022 he was compelled to complain yet again.
- The company advised him that it would carry out another inspection in May 2022, but he has no evidence that this was done.
- On 31 May 2022, CCWater advised him that it had received a detailed response from the company dated 25 May 2022. The company had stated that it had carried out numerous repairs and had made a recent site inspection on 16 May 2022 and was awaiting confirmation of its next actions.

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- CCWater had concluded that the company had submitted a detailed response and offered a compensation payment of £100.00. CCWater stated that it could not take any further measures to have the company change its position and was thus closing his case.
- Continuing to be dissatisfied with the response of the company he has, on 13 June 2022, referred the matter to the WATRS Scheme where he requests that the company be directed to fully repair the manhole cover.
- On 21 June 2022, the customer amended his Application Form to the WATRS Scheme and added a request that he be paid the sum of £10,000.00 in compensation.

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

- It provided its response to the claim in its submission dated on 05 July 2022.
- The first record it has of the customer contacting it is a social media message dated 09 November 2021.
- It has been aware of the problem with the manhole cover since December 2018 and it completed repair works in June 2019.
- In October 2021 it again became aware of a problem with the manhole, but was on several occasions prevented from undertaking repairs due to the actions of local residents.
- In March 2022 it received a further complaint from the customer and completed a repair on 21 April 2022. It acknowledges the repair was not effective.
- It undertook a further inspection on 16 May 2022 and is now awaiting delivery of another cover to replace the existing one.
- In refutes the customer's contention that the previous repairs were of a deliberately temporary nature, and states that all repairs were intended to be of a standard permanent fix, but the heavy traffic and the placement of the manhole has resulted in failures of the repairs.
- The road is very heavily trafficked and is a main road and thus permits needed from local authorities are not issued quickly. Also, the company says that it has investigated the possibility of moving the manhole, but this is not feasible because of the location of the sewer line it accesses.
- In summary, it says that when the new cover is received it will be installed as part of repair works but records that, irrespective of its repairs the new cover will come loose again because of the volume of traffic.

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

- On 14 July 2022, 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 that the company's defence document only states what actions it has previously taken but does not offer any solution to the ongoing problem. The customer is concerned that the company's statement over a national shortage of manhole covers could mean a very long delay before the next repair begins.

### **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 has failed to rectify an ongoing problem with a noisy manhole cover in the road adjacent to his property.
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.

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3. The customer contends that he has repeatedly raised complaints about the problem with the noisy manhole, and has submitted into evidence details of complaints he raised on:-
  - 11 November 2017
  - 03 April 2018
  - 13 September 2021
4. However, I can see that these complaints were sent to his local authority and not to the company.
5. The company has noted that it first received a complaint from the customer via social media on 09 November 2021.
6. The company has stated that it made three separate attempts to carry out further repair works at the manhole but that it was always prevented by the actions of the local residents. The customer, in his comments dated 14 July 2022, has not refuted this.
7. The evidence shows that following a further contact from the customer in March 2022, the company carried out repair works on 21 April 2022. The company acknowledges that the repair works only stayed effective for one week and it carried out another inspection on 16 May 2022.
8. The company says that it has ordered a heavier manhole cover to replace the existing one, but a delivery date for receipt is unknown because of a national shortage of heavy duty covers.
9. The company has stated that once the cover is received it will fit it to the manhole, but says that because of the specific circumstances surrounding the manhole it does not expect the repairs to be a permanent solution.
10. The company also states that it has investigated the possibility of relocating the manhole, but studies show that this option is not feasible.
11. Also, I acknowledge that the customer has given his opinions as to what measures he believes the company should take, but I note that none are supported by any independent third-party professional study and report.
12. I am satisfied that since receiving the customer's complaint on 09 November 2021 the company has taken reasonable steps to address the noise problem. The evidence shows that it made several unsuccessful attempts to make a repair and was finally successful in doing so in April 2022. It has acknowledged that the heavy traffic conditions on the road rendered the repair ineffective after just seven days and that it immediately undertook a fresh inspection in May 2022. The company has ordered a heavy-duty cover that it will install upon receipt, and it has investigated whether the manhole can be relocated.

13. I find that the evidence supports the company's position that because of the particular set of circumstances the manhole will continue to vibrate under vehicle loading and that no current repair system exists to permanently remove the problem. The customer has not submitted any technical proposals to challenge the company's position.
14. Thus, I am unable to direct the company to affect a permanent technical solution to the noise problem.
15. The second remedy sought by the customer is for the company to pay him compensation in the amount of £10,000.00.
16. The customer has not submitted any substantiation for compensation. I do not find that he has established any financial losses caused by any act or omission on the part of the company and whilst I sympathise with his position, I am not satisfied that the evidence supports that any distress or inconvenience he may have experienced was caused by the company.
17. Thus, I find that the claim for compensation does not succeed, and I shall not direct the company to pay such compensation.
18. My conclusion on the main issues is that the company has provided 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 22 July 2022.
- The customer has, on 25 July 2022, submitted comments on the Preliminary Decision.
- The customer states that he does not agree that the company's actions have been reasonable. The customer says that the company should be directed to comply with customers' expectations of reasonableness.
- The customer further refutes the company's assertion that it was prevented from undertaking works because of the actions of local residents. The customer also states that the most recent activities of the company on 21 July 2022 again only provided a temporary relief from noise.
- The customer does not submit any additional evidence in support of his position.
- On 29 July 2022 the company responded to the customer's comments.
- Having read the response of the parties I am satisfied that the facts upon which the Preliminary Decision was based remain unchanged and thus 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 02 September 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, CI Arb Business Arbitration Panel.  
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## Adjudicator

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