

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0702

Date of Decision: 18 October 2018

#### Complaint

In May 2017, the customer noticed that the manhole cover on her shared driveway needed replacing. She appointed a private contractor to replace this cover with a new galvanised steel manhole cover. However, this work was cancelled because the company wanted to replace the cover instead. A few days after the replacement cover was installed, the customer noticed rust on it and immediately reported this to the company. Following a long investigation into this matter, the company ultimately concluded that it would not replace the manhole cover as it was fit for purpose and adhered to the required safety specifications. The customer referred her complaint to CCWater (Consumer Council for Water) and, as a gesture, the company then offered to paint the cover to improve its appearance and rust resistance. The customer's complaint is that she was not permitted to change the manhole cover herself and is now stuck with an ugly manhole cover. She states that this is very unreasonable. The customer wants the company to allow customers to choose their own type of manhole covers (contributing to the costs if necessary) and for the company to replace her manhole cover to one that she likes, without charge.

#### Defence

The company explains that the manhole cover, which is the subject of this dispute, is owned by the company. Accordingly, the company is responsible for its maintenance and repair. There are no material defects with the manhole cover currently installed on the customer's shared driveway. The company acknowledges that there is a minimal appearance of rust on the cover; however, it confirms that this is not unusual for iron covers. The company confirms that it has offered to paint the manhole cover for the customer to improve its appearance and resistance to rust. This offer has not been accepted. The company explains that the manhole cover complies with the BS EN 124:2015 safety requirements and is entirely fit for purpose. The Wrekin Safe Seal B125 Iron Ductile Access Cover is specifically designed for areas where vehicular use is likely (such as a driveway). Any issue regarding the minor appearance of rust is purely cosmetic and does not affect the safety or effectiveness of the manhole cover. The company states that, in light of the above, it does not accept any liability for the customer's claims for redress.

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### Findings

Based on the submissions provided, I am not satisfied that the company's refusal to change the manhole cover based on the customer's dissatisfaction with its cosmetic appearance amounts to a failure to provide its services to the standard to be reasonably expected by the average person. Given the circumstances, I find that the company's offer to paint the manhole cover to improve its appearance and resistance to rust was fair and reasonable. Consequently, I must conclude that the customer's claims for redress are unable to succeed.

### Outcome

The company does not need to take any further action.

The customer must reply by 15 November 2018 to accept or reject this decision.

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- The customer is therefore seeking that the company allow customers to choose their own type of manhole covers (contributing to the costs if necessary) and for the company to replace her manhole cover to one that she likes, without charge.

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

- The manhole cover, which is the subject of this dispute, is owned by the company. Accordingly, the company is responsible for the maintenance and repair of this cover.
- There are no material defects with the manhole cover installed on the customer's shared driveway. The company acknowledges that there is a minimal appearance of rust; however, it confirms that this is not unusual for iron covers.
- The company confirms that it has offered to paint the manhole cover for the customer to improve its appearance and resistance to rust. However, she has not yet accepted this offer.
- The company explains that the manhole cover in question complies with the BS EN 124:2015 safety requirements and is entirely fit for purpose.
- The Wrekin Safe Seal B125 Iron Ductile Access Cover (the manhole cover installed on the customer's shared driveway), is designed for areas where vehicular use is likely (such as a driveway).
- The manufacturer of the manhole cover, Wrekin, inspected the cover and did not agree that it should be replaced. It confirmed that the manhole cover installed by the company was fit for purpose and safer than other proposed types of cover and could last 20 to 30 years (this was explained to the customer).
- The company explains that any issue regarding the minor appearance of rust is purely cosmetic and does not affect the safety or effectiveness of the manhole cover.
- The company states that, in light of the above, it does not accept any liability for the customer's claims for redress.

**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 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. The customer's claim is that the manhole cover installed by the company on her shared driveway has rust on it and therefore appears ugly. The company has refused to replace the cover based on its cosmetic appearance; it has explained that it is functionally fit for purpose. The customer has declined an offer for the company to paint the manhole cover in order to improve its appearance and resistance to rust. However, the customer has not accepted this offer yet. The customer is therefore seeking that the company allow customers to choose their own type of manhole covers (contributing to the costs if necessary) and for the company to replace her manhole cover to one that she likes, without charge
2. I remind the parties that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I must also remind the parties that claims which require the company to change its general customer policy (such as allowing all customers to pick their own manhole covers) are beyond the remit of this scheme and cannot be examined. I will proceed accordingly.
4. I note the customer has not alleged that the manhole cover in question is functionally defective or unsafe; only that it is cosmetically ugly due to the rust on it. In support of her claim, the customer has provided a photograph of the manhole in question. Upon examination of this photograph, I accept that it depicts some minor rust discoloration on the edges of small sections of the manhole cover. In any event, I note that the company does not dispute that there is some minor rust present on the manhole. Accordingly, I find it is an agreed fact that the manhole cover has some minor rust present on it.

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5. It has not been disputed that the manhole cover in question is the property of the company and is therefore its responsibility to maintain and/or replace.
6. I note that the company has provided the technical specification of the Wrekin B125 Iron Ductile Access Cover (the manhole cover installed on the customer's shared driveway) showing that it conforms to the requisite BS EN 124:2015 safety standard (and kitemarked accordingly). Furthermore, I note that the company has provided a guide to the BS EN 124:2015 safety standard requirement. Consequently, based on the evidence provided, I find that the manhole cover installed by the company on the customer's shared driveway is fit for purpose.
7. Whilst I appreciate the customer's submissions that the manhole cover is cosmetically ugly due to the rust on it, I find that the company is not under any obligation (contractual or otherwise) to provide aesthetically appealing manhole covers or to permit customers to pick and choose the manhole cover themselves. Therefore, I am unable to objectively conclude that the company's refusal to change their cover or to generally permit customers to change covers themselves amounts to a failure to provide its services to the standard to be reasonably expected by the average person.
8. In any event, it is not in dispute that the company did offer to paint the manhole cover for the customer in order to improve its appearance and rust resistance. I am satisfied that the company's offer was fair and reasonable in light of the circumstances.
9. Therefore, following careful review of all the submissions provided, I am not satisfied that the evidence shows any failures on the part of the company to provide its services to the standard to be reasonably expected by the average person. Consequently, in the absence of any established failures on the part of the company, I do not uphold the customer's claims for redress.

#### **Outcome**

The company does not need to take any further action.

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## **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 November 2018 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.



**E. Higashi** LLB (Hons), PGDip (LPC), MCI Arb.

**Adjudicator**

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