

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0995

Date of Decision: 25 September 2018

Complaint

The customer submits that she stepped onto a manhole cover in her back garden, the manhole cover gave way and she fell through. She was able to stop herself from falling completely into the chamber by holding onto her neighbour's fence. She sustained injuries and had to take time off work, unpaid. A part of the fence was also damaged. The company has confirmed that the manhole cover was its responsibility. The customer requests compensation for loss of earnings (£238.00); personal injury (£1,000.00); and fence replacement (£490.00). The customer also requests an apology for poor customer service.

Defence

The company agrees that the manhole cover was in poor condition. However, it submits that, until this incident occurred, it was unaware of the location or condition of the manhole. In 2011 there was a transfer of shared drainage ownership to wastewater companies. However, there is no duty of care owed by it to an occupier to proactively maintain assets that are located on private land, which sometimes (as in this case) the location and condition of which is unknown to it. It cannot accept liability for an asset in poor condition, located on private land, if the private land owner has not notified it that its asset was in poor condition. It has provided compensation and offered its apologies for the level of customer service provided. No offer of settlement was made.

Findings

Personal injury claims fall outside the scope of WATRS. Consequently, the customer's claims for personal injury and loss of earnings cannot be considered. It is not in dispute that the manhole in the customer's back garden was in poor condition, and that it falls under the company's responsibility. However, I accept the company's submissions that due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach. I am not satisfied there is evidence to show that the company is under a duty to proactively maintain assets that are located on private land, unless it is aware of an issue with those assets. The manhole was previously private. There is also no evidence to show that the company was aware or should have been aware of the location and condition of the manhole. I therefore find that the company did not fail to provide its services to a standard to be reasonably expected. As a result, the customer's claim for the cost of repairing the damaged fence does not succeed. The company provided a poor

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level of customer service during the complaints process. However, I accept the company's submission that in its correspondence to the customer dated 17 January 2018, it offered the customer its apologies for its customer service failings. I therefore make no further direction for an apology.

Outcome

The company does not need to take any further action.

The customer must reply by 23 October 2018 to accept or reject this decision.

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She stepped onto a manhole cover in her back garden, the manhole cover gave way and she fell through. She was able to stop herself from falling completely into the 10 foot chamber by holding onto her neighbour's fence. She sustained injuries and had to take unpaid time off work. A part of the fence was also damaged and will require replacement.
- The manhole cover was unfit for purpose and faulty. The company has confirmed that the manhole cover was its responsibility and its property as it is the main inspection chamber for the street. She feels let down by the company and the Consumer Council for Water (CCW) as they have failed to discharge their responsibilities under section 105a of the Water Industry Act 2011.
- The customer requests an apology. The customer states that an apology was received for missed and late appointments but only after continued follow-up. The customer also requests compensation for loss of earnings (£238.00); personal injury (£1,000.00); and fence replacement (£490.00).

The company's response is that:

- It agrees that the manhole cover was in poor condition. It was not a standard Thames Water cover.
- Until this incident occurred, it was unaware of the location or condition of the manhole, and that the lateral drain was its responsibility, as it had never previously been called to investigate any drainage issues by the customer or any of her neighbours.

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- In 2011, there was a transfer of shared drainage ownership to wastewater companies and at the time it wrote to all of its customers to inform them of this. However, there is no duty of care owed by it to an occupier to proactively maintain assets that are located on private land, which sometimes (as in this case) the location and condition of which is unknown to it.
- To place a duty on it (or any other wastewater company), requiring it to enter private land and inspect all manhole covers and condition of drainage, would be too onerous a task.
- It is also widely recognised that due to the vast size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt.
- When there is a maintenance issue raised to a wastewater company they should act promptly to avoid negligence and it did so in this case by repairing the defective manhole cover within four days of being notified. To be negligent, the customer would have had to have reported that the damaged manhole cover required replacement and it would have had to have failed to do so.
- It cannot accept liability for an asset in poor condition, located on private land, if the private land owner has not notified it that its asset was in poor condition. As the manhole was previously private, it was unaware of its existence and therefore must rely on information provided by occupiers/owners of land regarding the condition of its assets.
- It has apologised to the customer. It has paid the customer £50.00 each for late/missed appointments. A further £10.00 was also paid as it accepts that the customer made calls chasing its attendance on more than one occasion. All calls made to it are free of charge; however, it accepts that the customer suffered inconvenience.

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

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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?

CCW

1. I acknowledge the customer's complaints about CCW. However, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any complaints against CCW cannot be considered under this adjudication.

Personal Injury

2. I also acknowledge the customer's submissions about the injuries she sustained due to the fall and the impact the incident has had on her health and wellbeing. However, such issues regarding personal injury or potential long-term effects on health relate to a complicated area of law excluded under s.3.4.3 of the WATRS Rules, and in accordance with s.3.4.1 of the Rules such disputes are better resolved in another forum. The customer's claims for personal injury and loss of earnings can therefore not be considered.

Damage to Fence

3. It is not in dispute that the manhole in the customer's back garden was in poor condition.
4. Section 105a of the Water Industry Act concerns the transfer of the responsibility for private sewers to water companies. The company does not dispute that it is responsible for the manhole in the customer's property.
5. However, I accept the company's submissions that due to the size and nature of the sewage network, a reactive system of maintenance is a reasonable approach for wastewater companies to adopt. The company's submissions are supported by the approach to the regulation and

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supply of water in the UK. It is accepted that the complexity and age of the network means that companies cannot reasonably be expected to proactively maintain all parts of the network and are allowed to operate a reactive maintenance system for much of the infrastructure. Once alerted to an issue that falls within its remit a company is typically under a duty to take action. If a company cannot and does not know that a part of its infrastructure requires repair then they have no duty to repair.

6. Further, I am conscious that there is no evidence to show that the company is under a duty to proactively maintain assets that are located on private land unless it is aware of an issue with these assets. The manhole was previously private. There is also no evidence to show that the company was aware or should have been aware of the location and condition of the manhole. I acknowledge the customer's claim and the distress the incident caused; however, it is a customer's responsibility to notify the company if there is an issue.
7. The company's duty is to make reasonable attempts to resolve reported issues within a reasonable period of time. The company's timeline shows that the company acted to make the manhole safe when it first attended the property and then replaced the cover within four days. I am satisfied that the company met its obligation and acted within a reasonable period of time. (Customer service failings will be discussed below.)
8. In light of the above, and in the absence of any evidence submitted to this adjudication showing otherwise, the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person. Consequently, I am not satisfied that the company is liable to pay for the cost of repairing the fence.

Customer service

9. It is not in dispute that the company provided a poor level of customer service during the complaints process. The company concedes that it missed or attended appointments late and that the customer had to chase it. The company submits that it has paid the customer £50.00 for not attending within two hours of the customer first reporting the issue, as it should have done; £50.00 for not attending a pre-arranged appointment; and £10.00 for calls made chasing attendances. I am satisfied that these sums were appropriate. I also accept the company's submission that in its correspondence to the customer dated 17 January 2018, it offered the

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customer its apologies for its customer service failings. I therefore make no further direction for an apology.

10. Consequently, in view of all of the above, the claim does not succeed.

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 23 October 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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