

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1570

Date of Decision: 20 January 2020

Complaint

Following refurbishment of a sewage pumping station adjacent to the customer's property and the installation of a generator, the customer has complained about noise from the pumping station and the generator. There were no noise problems prior to the refurbishment.

The customer believes the noise and unsightly nature of the pumping station and generator has devalued his home considerably and that the property may be difficult to sell. The customer seeks to have the generator relocated.

The customer seeks a payment of £7,500.00 as compensation for loss of value of his property and £2,500.00 for stress and inconvenience.

Defence

The company owns the land and sewage pumping station at the rear of the customer's property and has the right to refurbish and upgrade its assets. The addition of a generator is necessary to maintain services in the event of a power failure.

The sewage pumping station was in operation prior to the customer purchasing his property. The customer accepted that when he purchased the property.

The company redesigned the layout for its equipment to accommodate the customer's plans for a new driveway and dwelling. The company has taken various measures to address noise issues and considers that the noise is within acceptable limits.

The company has paid the customer the sum of £2,116.00 which the customer accepted as full and final settlement. The company has also paid fees to the customer's agent in the amount of £2,257.32. The company believes it is unreasonable to compensate the customer further.

Findings

The customer has not demonstrated that the refurbishment work to the sewage pumping station and the installation of a generator is unreasonably interfering with the customer's enjoyment of his land. The customer has not demonstrated that the work carried out by the company has reduced the value of his property.

Problems arising during the course of the work and the time taken to resolve those matters and carry out noise mitigation measures have resulted in distress and inconvenience to the customer. The customer is entitled to compensation for distress and inconvenience.

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The company has made payment to the customer in the sum of £2,116.00 as compensation. The company has shown that such payment has been made in full and final settlement for losses incurred by the customer. Compensation for distress and inconvenience is deemed to be included in that settlement. No award is made for further payments by the company to the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 17 February 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1570

Date of Decision: 20 January 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- Following refurbishment of a sewage pumping station at the rear of the customer's property, the customer has complained about the location of a new generator and about noise pollution.
- The customer has lived at the property for over 17 years and had not experienced any problems until the site was refurbished by the company and a new generator installed in 2017. Prior to the refurbishment there was no generator.
- The generator is situated approximately 17 yards from the customer's bedroom window and produces a sound level of 74dB when operating.
- The generator has encroached on the customer's view from the rear of his property. It has caused noise pollution and produces fumes from the exhaust. This has caused considerable distress to the customer in trying to resolve the matter with the company.
- The customer had proposed that the company locate the generator on adjacent land, owned by the customer, to be further away from his property. The company refused to do this.
- Further noise problems were identified following the refurbishment of the pumping station that were not related to the generator. The company has taken steps to address these problems but the customer still considers the noise is at a higher level than that experienced prior to the refurbishment works.
- The customer experienced issues with damage to his land and nuisance from contractors parking outside his property during the work.

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- The customer considers that the noise and the unsightly nature of the pumping station and generator has reduced the value of his property and that it may be difficult to sell.
- The customer seeks to have the generator relocated.
- The customer claims compensation in the amounts of £2,500.00 in respect of stress and inconvenience and £7,500.00 in respect of loss in value of his property.

The company's response is that:

- The company owns the land and sewage pumping station at the rear of the customer's property and has the right to refurbish and upgrade its assets. The customer was aware of this when he purchased his property.
- The new generator is necessary to ensure the company can maintain sewerage services in the event of a power failure.
- The company liaised with the customer while planning the refurbishment to ensure the customer knew what to expect.
- The company redesigned the layout of the new equipment prior to commencing work to accommodate the customer's plans for a potential new driveway and dwelling.
- The company was not prepared to relocate the generator to a location on the customer's land. The company needs to have all its equipment within the boundaries of land owned by the company in order to retain full control over access for maintenance.
- The company received numerous complaints from the customer while works were carried out. The company responded each time and company did its best to resolve each complaint.
- The customer had a number of issues concerning the reinstatement of his field. The company was eventually able to complete reinstatement to the customer's satisfaction.
- The company erected a new fence behind the customer's property as requested by the customer. The company's site is no longer visible from the customer's garden or windows.
- The customer complained about noise from new equipment. The company replaced an air valve with an alternative type. The company also placed thick rubber matting over wet well covers to reduce vibration. The company has carried out a noise survey of the site and considers the noise levels are acceptable.
- The company has paid the customer the sum of £2,116.00 as compensation. The company has also paid fees charged by the customer's agent in the sum of £2,257.32. The company states the customer accepted payment as a full and final settlement on a without prejudice basis.

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How is a WATRS decision reached?

In arriving at my decision, I have considered the following key issues:

- a. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
- b. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard which would be reasonably expected and 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 I have not considered it in reaching my decision.

How was this decision reached?

1. The company states that in 2016, it proposed a scheme to upgrade the sewage pumping station adjacent to the customer's property. The pumping station serves a large proportion of the nearby village. The company states that refurbishment works were necessary to minimise flood risk in the area during storm conditions and to increase capacity for future development. The company notes that the pumping station located at the rear of the customer's property had been put into operation prior to the construction of the property. The company considers the customer would have been fully aware of the existence of the pumping station before purchasing the property.
2. The company states that it first notified the customer of its refurbishment plans in June 2016 and followed up with several discussions and site visits.

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3. The customer notes that he has lived at the property for over 17 years and had not experienced any problems prior to the refurbishment of the adjacent sewage pumping station by the company.
4. There are two principal elements in this dispute. The first relates to the installation of a new generator and the visual and noise impact on the customer. The second relates to noise from the pumping station during its normal operation. The issues relate to whether or not the refurbishment has caused a nuisance. An indirect interference with customer's enjoyment of his land, where that interference was unreasonable, would be regarded as nuisance.

I will now examine the complaints relating to the generator.

5. The generator is a new feature for the sewage pumping station, installed to ensure the pumping station would continue to operate in the event of a power failure. Prior to the refurbishment, no generator was installed at the pumping station. The customer submits that the large size of the generator, located approximately 17 yards from the customer's bedroom window, has encroached on the view from the property. The customer also submits that the generator has increased noise pollution and produces fumes that enter his garden from the exhaust. The customer seeks to have the generator relocated to a point further away from his property.
6. The customer has stated that the generator has encroached on his view from the property. I note that the company has stated that the photographs submitted by the customer were taken prior to a new fence being provided by the company. References to the new fence installed between the generator and the customer's property indicate the fence is approximately nine feet high. It is therefore not clear whether the generator is still visible from the customer's property.
7. Whilst the generator may or may not be visible from his property and may or may not encroach on the view, it is an established principle in English law that blocking a neighbour's view is not considered to be a nuisance and that there is no right to a view. Exceptions may be possible in cases where a covenant or agreement exists that prevent obstruction of a view from a property. However, I have seen no evidence that a covenant or agreement exists that would prohibit the company from obstructing the customer's view. I therefore make no direction on this matter.

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8. The customer also reports that the generator increases noise pollution and produces fumes from its exhaust. The customer reports that the generator produces a sound level of 74dB. The company states in its email dated 11 October 2017 that the generator noise levels are 79dBA at 1 metre and 65dBA at 7 metres. The company notes that modifications can be made to the exhaust in the event noise becomes a problem. The company also notes that the generator only operates when there is a power failure.
9. The customer states that he objected to the location of the generator prior to its installation. In the customer's letter dated 15 October 2017, the customer refers to an email sent on or around 16 July 2016 raising objections. The company states it has no record of receiving that email. The customer has provided a copy of the email he states was sent. I note that the copy of the email provided appears to have been sent by the customer on 16 September 2016 to another email address for the customer. I could see no other recipients in the email address.
10. The customer states that he was advised by the company at a site meeting that the generator would be silent in operation. I have found no evidence to support this. The company's email dated 18 October 2017 refers to the generator being contained in a super silent enclosure to reduce noise levels. The email does not state that noise will be eliminated.
11. I acknowledge that a generator located approximately 17 yards from a bedroom window is likely to cause disturbance whilst operating. However, the generator is intended to operate only in the event of a power failure. It is reported that there has been one occurrence of a power failure since the generator was installed in 2017. Such frequency of operation is not sufficient to be considered a nuisance.
12. I find no justification to support the customer's request for the generator to be relocated. As such, I make no direction to the company in regard to this matter.

I will now examine the customer's complaint concerning noise from the pumping station during operation.

13. The customer reports that, following the refurbishment works, a noise that the customer describes as a "whooshing" noise could be heard inside the customer's house for approximately 1 minute every hour. The company traced the noise to an air valve that has since been replaced. The customer notes that whilst the noise has reduced it can still be heard in his

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garden. The customer notes that further noise was identified from the pumping station and the company fitted thick rubber matting in an attempt to reduce the noise. However, the customer notes that this has not solved the problem. The customer reports noise in his garden lasting for periods of five to six minutes, occurring approximately every half an hour to an hour, 24 hours a day.

14. In an email dated 7 September 2018, the company states that it conducted a noise survey and found a difference in sound level of approximately 3.56dB between the sewage pumps running and not running. The company also states that a change in noise level by this amount would be categorised as “low risk” and therefore they would not normally take further mitigation action. However, in the same email, the company has acknowledged the need to resolve the issue and referred to installing an acoustic barrier to attenuate the noise by 5dB or more to reduce the likelihood of the customer hearing the pumps in operation.
15. The company’s email to the customer dated 29 January 2019 informed the customer that further options for soundproofing had been researched with the manufacturer. The company referred to its plan to fit thick rubber matting covers on the pumping station, stating this approach had been successfully adopted on other pumping stations. The mats referred to were subsequently fitted.
16. In the company’s email dated 20 March 2019, it notes that customer considered the rubber matting had made little difference. The company states that it had no further alternatives to offer.
17. The company’s noise survey appears to be incomplete. The customer refers to short bursts of increased noise occurring at intervals throughout the day. The company makes no reference to this in its reference to the survey. It is not stated over what period sound measurements were taken. A survey would normally be conducted over a period of time to record fluctuations in noise levels. There is no reference to measurements of sound level being taken after the mats were fitted. I also note no reference is made to a noise survey being carried out prior to the start of the refurbishment works. Such a survey would have provided a reference point to determine what, if any, noise increase had resulted from the refurbished pumping station.
18. The company has provided copies of incident reports showing contact from the customer prior to any refurbishment work. With the exception of one incident, I found no reports in relation to

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complaints about noise. The exception, dated 20 August 2011, related to a specific problem with the pumping station that was rectified by the company. It is reasonable to conclude that the customer made no complaints about noise from the pumping station being an issue prior to the refurbishment works.

19. The customer states that he is not able to enjoy the quiet garden he had prior to the refurbishment. Whilst it is acknowledged that the customer was fully aware of the presence of the sewage pumping station prior to purchasing the property, it is reasonable for the customer to expect that any refurbishment of the pumping station would not have a detrimental effect on his property.
20. The company reports a noise level when the sewage pumps are operating as only 3.56dB above the level when they are not. The customer's expectation is that there should be no increase in noise. However, small increases in noise level may be permitted. If a small increase in noise level is in the form of a continuous noise, that is unlikely to be regarded as a nuisance. However, intermittent noise, as reported by the customer, may be considered to be a nuisance.
21. Communications from the company have acknowledged issues in relation to noise. Communications also show that the company has taken steps to reduce noise levels. The final communications on the matter appear to be on 20 March 2019 and 21 March 2019 where the company advised it had no further comments but was happy to review claims for statutory compensation.
22. It is evident that the customer is unhappy with the result of work carried out by the company to refurbish its pumping station. There is, however, no evidence supporting the customer's position that noise from the pumping station unreasonably interferes with the customer's enjoyment of his land. It is noted that the company has taken steps to mitigate noise but steps taken have not satisfied the customer.
23. On the evidence available I am unable to find that the noise from the pumping station can be regarded as a nuisance and therefore make no direction to the company in this matter.
24. It is possible that noise may be regarded as a statutory nuisance under the Environmental Protection Act 1990. Local authorities have the power to investigate and deal with matters

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considered to be statutory nuisances. The customer has the option to request his local authority to investigate the matter should further noise problems be encountered.

25. The customer has also made a number of complaints to the company regarding issues with damage to his property and parking outside his property that created difficulty for the customer accessing his property. Evidence indicates these matters had been addressed by the company. I note the customer is not seeking further remedies and I therefore make no direction to the company in relation these matters.
26. The customer seeks compensation in the sum of £2,500.00 for stress and inconvenience and £7,500.00 in relation to loss in value of property. Compensation becomes payable in the event that the company has failed to provide its services to the standard which would be reasonably expected and, as a result of any failure, the customer has suffered some loss or detriment.
27. In respect of the customer's claim for stress and inconvenience, whilst I have found no evidence that the work completed by the company can be regarded as a nuisance, it is evident that it has taken some time for the company to bring matters to a conclusion. The customer had made various complaints over a period of approximately two years on matters relating to the work carried out by the company. Complaints include parking by the company's contractors, damage to property, contractors accessing the customer's property, smells and noise. I find that these matters have caused distress and inconvenience to the customer. With regard to compensation payments, please refer to my further findings below.
28. In respect of the customer's claim for loss in value of his property, the customer has provided no supporting evidence from a property valuer or estate agent to support this claim. It is also noted that a sewage pumping station at that location existed prior to the customer purchasing the property. It is reasonable to conclude the presence of a pumping station and any possible impact on property value was taken into account when the customer decided to purchase the property. The customer's claim therefore fails.
29. On 13 August 2019, there was an exchange of emails between the customer's agent and the company in relation to compensation. The email from the customer's agent, timed at 11:55, marked "without prejudice" makes reference to works to resolve noise and vibration issues reaching a conclusion and to submitting the claim for losses on behalf of the customer. A

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breakdown of sums totalling £1,351.00 had been provided. The total amount claimed as referred to in the email timed at 14:44 is £2,116.00.

30. On 16 August 2019, the company sent an email to the customer's agent, marked "without prejudice", in which the company confirms it would make a total payment to the customer of £2,116.00 and states this would be "in full and final settlement of all losses for which [the company] is liable to compensate [the customer], on a without prejudice basis, in the interest of settling all matters with [the customer]". On 5 September 2019, the company sent a further email to the customer's agent confirming that two cheques had been raised in full and final settlement of the customer's losses for which the company is liable.
31. On 25 September 2019, the customer's agent sent an email to the company noting that the customer had received only one cheque. The customer's agent requested that the company chase up the second cheque. The company sent a letter dated 27 September 2019 to the customer enclosing the second cheque. The letter also noted that the company had agreed to pay the customer the sum of £2,116.00 in full and final settlement.
32. In his comments on the company's defence, the customer states that the sum of £2,116.00 related to works carried out in his field during the refurbishment and did not relate to the complaints about the pumping station. The breakdown of costs included within the emails dated 13 August 2019 refer to specific works by contractors. The emails from the customer's agent state in relation to the amounts claimed, "The claim below therefore principally relates to the recognition payment, loss of crop value and the [customer's] considerable time dealing with the matter."
33. The company's email responses on 16 August 2019 and 5 September 2019 and the company's letter dated 27 September 2019 refer to the payment being in full and final settlement of all losses. The company's communications make no reference to payment only relating to specific works. I have seen no communications from the customer or his agent in response to the company's statements that the amount represented full and final settlement of all matters. The company notes that there has been no further communication with the customer on this matter and that the customer accepted the payment as full and final settlement.
34. I have seen no specific confirmation from the customer that payment was accepted as a full and final settlement. However, there is also no indication that the cheques issued by the company

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were returned or not presented for payment. Further, the email from the customer's agent to the company chasing the second cheque indicates that the payment total had been accepted by the customer. In the absence of any statement made at the time to the contrary, it is reasonable to conclude that the customer accepted payment in accordance with the terms of the company's offer. The terms were that payment was made as full and final settlement of all matters.

35. In conclusion, I find that the company's offer of payment of £2,116.00 sent on 16 August 2016 as full and final settlement of all matters has been accepted by the customer. I therefore make no direction for the company to make any further compensation payments.
36. I have also considered the company's performance in relation to the Guaranteed Standards Scheme (GSS). The GSS sets out the minimum standards of service customers are entitled to expect from water or sewerage undertakers. Under the GSS, a company is required to respond to written complaints from customers within ten working days. Where a company fails to provide a substantive reply to a customer's written complaint within the required period, the company must make an automatic payment to the customer.
37. I have found no instances where a written complaint has been submitted to the company where the company has failed to respond within the period prescribed in the GSS. I therefore make no direction for the company to make any payments in respect of GSS failures.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication is final and cannot be appealed or amended.
- The Customer must reply by 17 February 2020 to accept or reject this decision.
- When the Customer notifies WATRS of acceptance or rejection of the decision, the Company will be notified of this. The case will then be closed.

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- If the Customer does not inform WATRS of his acceptance or rejection of the decision by the date required, this will be taken as a rejection of the decision.
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Signed

A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

Adjudicator

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