

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1750

Date of Decision: 9 January 2020

Complaint

Since October 2018, the customer's property has been subjected to H₂S gas invasions that cause an offensive stench. Despite the seriousness of the issue, it took the company until January 2019 to identify the cause of the odour as adequate resources were not dedicated to resolving the complaint. The company's investigation concluded that the stench was emanating from private pumping stations belonging to two neighbouring properties that are illegally connected to the main sewer and inadequately dispose of waste water and sewerage. In February 2019, the private pumping stations were cleaned but the customer wants a permanent solution to prevent a reoccurrence of the odour in the future. The customer accepts that the company does not own the private pumping stations, but asserts that the company has a responsibility to ensure that the pumps and tanks are regularly maintained to prevent H₂S eruptions in its sewers. The customer wants the company to re-direct the wastepipes from the private pumping stations to a redundant sewer, reimburse £329.00 for an air-purifier and pay £328.40 for the time he has spent pursuing the company during the complaint. He also claims £2,500.00 in compensation for the mental distress suffered by his wife and he would like the company to issue him with a formal apology.

Defence

On 4 October 2018, the customer complained about a strong smell of sewerage at his property and subsequently reported many further similar incidents. Thorough investigations followed and it was determined that private pumping stations situated on two neighbouring properties were the cause of the odours. The company does not own the private pumping stations and is not liable to reroute the private rising main away from the private pumping stations to the public sewer. It acknowledges that the complaint investigation took longer than the customer anticipated, however, this was due to the nature of the investigation carried out; foul odour investigations are often difficult and time consuming due to their intermittent nature. The company acknowledges that the customer is disappointed with the service it provided during the complaints process and it has applied a credit of £100.00 to the customer's account and a Guaranteed Standards Scheme ("GSS") payment of £25.00 in

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recognition of service failings. However, it denies further liability to compensate the customer on the basis that the foul odour did not emanate from a company owned asset.

The company has not made an offer of settlement.

Findings

Under the provisions of the Water Industry Act 1991, the company is not liable for providing, extending, improving, maintaining or cleansing sewerage assets that it does not own. In view of this, I cannot direct the company to reroute the wastepipes from the private pumping stations. The evidence demonstrates that the foul odours did not emanate from the company's assets and, therefore, I do not find the company liable for causing the odour and, as such, the customer's claim for a reimbursement of the cost of an air-purifier cannot succeed. I accept the company's assertion that foul odour investigations can be time consuming and find that the company robustly investigated the customer's complaint. Therefore, I cannot conclude that the company failed to provide its service to the standard reasonably expected by the average customer and, therefore, the customer's claims for compensation for time and distress cannot succeed. Furthermore, as I do not find that the company is responsible for the foul odour or failed to provide its service to the expected standard, I find no basis on which to direct the company to apologise to the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 6 February 2020 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Date of Decision: 9 January 2020

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- From October 2018, his property and other properties in his neighbourhood were subjected to H2S gas invasions that caused an offensive stench. Despite the seriousness of the issue, it took the company until January 2019 to identify the cause of the odour.
- The problem started on 26 September 2018 when the Green Road pumping station failed and, two days later, his home was invaded by H2S gas. On 3 October 2018 there was a further H2S invasion, followed by nine other occurrences in October and seven in November.
- The company advised him to ensure his private pipework was clear of blockages. To this end, he instructed a drainage company to examine his pipework with CCTV, but no problems were found.
- The company conducted CCTV inspections of the sewers but found nothing to explain the stench. An odour logger was installed and the Green Road pumping station was overhauled and cleaned on 3 December 2018.
- A further H2S invasion occurred on 14 December 2018 but the odour logger had been removed and, therefore, no data was collected. On 24 December 2018, his wife reported a further incident and, subsequently, on 28 December 2018, odour loggers were installed upstream and downstream of his property in order to prove what direction the stench was coming from.
- On 8 January 2019, the county engineers attended and inspected the sewers and unexpectedly found a black pipe. A more thorough investigation was conducted on 13 January 2019 and a further black pipe was discovered in the garden of a neighbouring property. The investigation

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also discovered that the apertures in the main sewer had been severely narrowed by tree roots, which slowed the flow of sewerage and waste water to the company's pumping station.

- Further H₂S invasions occurred on 16th, 18th, 21st and 22nd of January 2019 and enquiries revealed that two neighbouring properties, known as 'Oaklands' and 'Lark Rise, had private pumping stations that unlawfully pumped waste into the main sewer through the black pipes discovered during the investigations. On 28 January 2019, the company advised that the odour loggers had confirmed that the emissions from the septic tanks, via the black pipes, were causing the odours.
- During February 2019, the company embarked on a massive clean-up of roots and sludge from the main sewer, causing a wide spread stench across the neighbourhood, and the owners of Lark Rise and Oaklands employed a contractor to clean out their septic tanks on 22 February 2019.
- However, this does not provide a permanent solution and the problems could reoccur at any time in the future. He accepts that the pumping stations on Oaklands and Lark Rise are not owned by the company, but the company has a responsibility to ensure that the pumps and tanks are regularly maintained to prevent H₂S eruptions in its sewers.
- To prevent reoccurrences of the odour, the waste from Oaklands and Lark Rise could be rerouted from the septic tanks to a redundant main sewer identified during the company's investigations. The county engineers agreed that this would be a relatively simple task.
- The situation has caused significant upheaval and inconvenience; he and his wife have been forced to cancel visits from friends and have been unable to care for their grandchild at their property. Furthermore, they had to purchase an air-purifying and early warning system at a cost of £329.00.
- However, the company will not take any responsibility to prevent septic waste draining into the public sewer and causing the intolerable stench and has refused to find a permanent solution to the problem, pay compensation or reimburse out of pocket expenses, stating that it is not responsible for private assets.
- H₂S is a dangerous gas and he and his wife were exposed to it from October 2018 to February 2019 and have suffered side effects. His wife, who has no history of mental illness, has suffered depression and anxiety attacks and attended a course of therapy to help alleviate her symptoms. He was rushed to hospital in an ambulance after waking with chest pains and was diagnosed with a pleural infection, despite having no history of similar physical ailments.
- He wants the company to re-direct the wastepipes from the private pumping stations/septic tanks at Oaklands and Lark Rise to a redundant main sewer identified during the company's investigations. He claims a reimbursement of £329.00 for the air-purifier and early warning

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system and £328.40 for the time he has spent pursuing the company during the complaint. He also claims £2,500.00 for the considerable mental distress his wife has suffered and wants the company to issue a formal apology.

The company's response is that:

- On 4 October 2018, the customer complained about a strong smell of sewerage at his property. Engineers attended within four hours but no odour was present. The shared lines and main sewer were checked using CCTV equipment but no issues were found.
- On 8 October 2018, the customer queried whether the odour was coming from the company's wastewater pumping station at Green Road. A pump at the pumping station had failed during the previous week, however, the issue had been resolved. The customer was advised to monitor the situation and get in touch if further foul odours were experienced.
- On 9 October 2018, the customer reported a very strong smell of sewerage. No other reports had been received and there were no issues at the Green Road pumping station. Engineers visited the area and carried out checks but there were no issues within the main sewer. The manholes within the customer's front and back garden were also checked, but no issues or foul odours were found there either.
- On 11 October 2018, the nearby sewers were jetted and cleaned and a CCTV survey was conducted. The CCTV footage showed that the sewer was clear and nothing was identified that could cause the odour.
- On 17 October 2018, the customer reported that the foul odour had returned and on 18 October 2018 the customer was advised that all assets had been checked and no issues were found. On 21 October 2018, the customer advised that the foul odour was still present within the property but could not be smelt outside. It advised the customer to instruct a contractor to check the private pipework.
- Following similar reports from the customer's neighbour, a further CCTV survey was carried out. Again, the CCTV footage provided no explanation for the foul odour, although it did show some tree roots which needed to be removed.
- On 4 December 2018, odour loggers were installed to monitor the levels of H₂S gas and remained in place until 14 December 2018. The data on the odour loggers was inconclusive and unreliable as the data loggers had been moved around during this time.
- On 24 December 2018, the customer advised that the foul odour had returned. Engineers attended the same day but, once again, no smells or blockages were found. Odour loggers were reinstated on 10 January 2019 and these loggers remained in place until 22 January 2019. A number of high odour readings were recorded during this time.

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- It arranged for further CCTV work to be carried out on 18 January 2019 to establish the location of the root mass and to eliminate any possibility that this was the cause of the odour. The root mass was located at Green Road pumping station and was removed on 22 January 2019. The position of the root mass indicated that it was not connected to the issues the customer was experiencing.
- Following a review of the CCTV footage and odour logger data, it was determined that private pumping stations situated within the boundaries of two of the customer's neighbouring properties were the cause of the odours. This was established as the two pumping stations discharged while the sewer was being cleaned and the discharge was very black and pungent. Furthermore, the private pumping stations fed into the manholes where the foul odours were the strongest.
- On 8 February 2019, it held discussions with the owners of the private pumping stations and advised them to undertake cleaning of the pumping stations and wet wells. The owners of both pumping stations agreed and the work was completed on 27 February 2019.
- The customer requested that the wastewater from these properties was rerouted to try and minimise any foul odours that may arise in the future. However, following a full investigation, it advised the customer that the private rising main would not be rerouted away from the private pumping stations to the public sewer as private assets are not the responsibility of the company. Furthermore, it has no authority to compel the owners of the private pumping stations to carry out rerouting of their pipework.
- The customer is unhappy with the time it has taken to resolve his complaint. It acknowledges the investigation was time consuming, however, this was due to the nature of the investigation; the cause of foul odours are often difficult and time consuming to locate due to their intermittent nature, particularly as they are generally more likely to occur during the summer months.
- Although its engineers identified that the foul odours emanated from the private pumping stations and not company assets on 8 March 2019, it continued to investigate the foul odour reports, at no cost to the customer, as it felt it was important to conclude the investigation.
- On 24 April 2019, as a gesture of goodwill, it refunded £145.00 to the customer for the costs of instructing a private contractor to investigate and flush out his private pipework.
- It accepts that the customer is disappointed with the service provided to him during the complaints process. However, on 23 May 2019, as a gesture of goodwill, it agreed to credit the customer's account in the amount of £50.00 in recognition of the time it had taken to identify the cause of the odour. This credit was later increased to £100.00 as it failed to apply the credit to the customer's account when it promised to do so. The customer also received a Guaranteed

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Standards Scheme payment of £25.00 in September 2019 as a result of its delay in responding to a written complaint.

- It is not liable to reimburse the cost of the air purifier and early warning system, compensate the customer for his time or pay compensation for distress and inconvenience, as the foul odour did not emanate from a company owned asset.
- It is unable to reroute the waste pipes from the private pumping stations as it does not own, or have any responsibility for, the private pumping stations and cannot compel the owners of these assets to carry out the requested work.

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 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. Having reviewed all the evidence provided by the parties, I find that the customer accepts that the pumping stations on his neighbours' properties do not belong to the company, but he wants the company to ensure that these private assets do not create foul odours when waste water and sewerage from them discharges into the company's sewer. To this end, the customer wants the company to provide a permanent solution to the problem by redirecting the waste water and sewerage from the private pumping stations into a redundant sewer.

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2. Section 94 of the Water Industry Act 1991 outlines the company's duty to maintain its sewers and states:

“(1) It shall be the duty of every sewerage undertaker—

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.”

3. Therefore, under the provisions of the Water Industry Act 1991, the company is not liable for providing, extending, improving, maintaining or cleansing sewerage assets that it does not own and do not form part of the public sewerage system. Furthermore, the company is not liable for the condition of waste that is discharged into its sewers. In view of this, I cannot direct the company to reroute the wastepipes from the privately owned pumping stations to the redundant sewer, or maintain the private pumping stations. I appreciate that this will disappoint the customer, but his claim against the company in this respect cannot succeed.
4. The customer claims a reimbursement of the cost of an air-purifier and early warning system. The evidence demonstrates that the foul odours most likely came from the private pumping stations on the customer's neighbours' properties and were not associated with the Green Road pumping station or any other asset owned by the company. I make this conclusion on the basis that the odours continued after the Green Road pumping station was cleaned on 3 December 2018 and there is no evidence that the tree roots found in the sewer contributed to the stench. Therefore, I do not find the company liable for causing the odour or failing to remedy the odour and, as such, the customer's complaint in this respect cannot succeed.
5. The customer states that the company took an unacceptable amount of time to identify the cause of the odour because it failed to dedicate sufficiently experienced personnel to the investigation. The customer claims compensation for the time he spent chasing the company and compensation for the mental distress suffered by his wife, which was exacerbated by the delay.

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6. I accept the company's assertion that foul odour investigations can be time consuming due to their nature and, having reviewed the time-line of events provided in defence, I find that the company robustly investigated the customer's complaint between October 2018 and January 2019. I accept that the cause of the odour was not identified until the more senior county engineers attended, three months after the issue was first reported, but I find it likely that the knowledge gained from the previous investigations helped the county engineers diagnose the cause of the problem. In any event, I find it reasonable that senior personnel are reserved until initial investigations have failed to identify the cause of a problem and, on balance, I do not find the duration of the investigation unduly long.
7. Therefore, I do not find that the company failed to provide its service to the standard reasonably expected by the average customer and make no direction to the company in this regard. Again, I fully appreciate that this is not the outcome the customer hoped for, but the customer's claims for compensation for time spent dealing with the complaint and the distress suffered by his wife do not succeed.
8. The customer requests an apology from the company but, as I have concluded that the company is not responsible for the foul odour and did not fail to provide its service to the expected standard, I find no basis on which to direct the company to apologise.

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 6 February 2020 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.

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- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

KS Wilks

Katharine Wilks

Adjudicator

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