

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X414

Date of Decision: 14/07/2021

Party Details

Customer:

Company:

Complaint

The customer complains that there is a smell of sewage at her property, which she believes comes from the public sewers. The customer asks for an order that the company fix the odour problem.

Response

The company contests the customer's claim. It explains that it has carried out a number of visits to the property to investigate the problem, and has removed an interceptor which it believes was the cause of the problem. It says that it installed an odour logger which did not register any high or dangerous readings, so it concludes that the problem no longer exists or if it does, that it comes from private sewers.

Findings

I find that there have, in the past, been odour problems coming from a public sewer underneath the customer's garden. While the company believes that these were fixed by the removal of an interceptor, the customer says that there is still a bad smell at her property. I find that the company needs to take further steps to investigate whether there is a defect in the public sewers that could be causing an odour problem.

Outcome

If the customer accepts this decision, the company shall, within 20 working days of receipt of the acceptance carry out a further investigation into the cause of the odour problems at the customer's property, including but not limited to a comprehensive CCTV survey of the public sewers on and in the vicinity of the customer's property, in order to determine whether there are any defects in the public sewers that could give rise to the odour problems. If (but only if) the investigation uncovers any defects on the public sewers that are the responsibility of the company, the company shall repair these defects.

The customer must reply by 11/08/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X414

Date of Decision: 14/07/2021

Case Outline

The customer's complaint is that:

The customer complains about a bad smell from the sewers on her property. She says that she first raised this issue with the company in December 2020 and the company on several occasions tried to fix the problem. However, the odour remains and the customer is worried that this situation is bad for her health and that she is being slowly poisoned. The customer complains that despite the fact that she is a vulnerable customer, she has found it difficult to get the company to take the action needed to fix the problem. She says that the manhole which is causing the problem is the responsibility of the company, and she is frustrated that she has had to constantly chase the company to fix the problem. The customer asks for an order that the company fix the odour problem.

The company's response is that:

The company contests the customer's claim. It explains that the customer has contacted it on a number of occasions and on each occasion it has sent a technician to investigate. At first, the company believed that the problem was coming from private pipework and advised the customer to contact a private contractor. However, the company attended on a number of occasions after this and removed blockages and checked the public sewers and private pipework. Then, on 25 January 2021, the company's investigations uncovered a large chamber connected to the company's sewers, which had an interceptor that was blocked. The company accepts that the interceptor fell under its responsibility. It cleared the interceptor but unfortunately this did not fix the problem and the customer complained of odours on a number of other occasions. The company attended in response to these complaints and cleared blockages in the interceptor; however, on each occasion this was only a temporary solution to the problem. On 4 February 2021, the company repaired a small damaged section of pipework which it thought would fix the problem, but when the company attended on 13 February 2021, the interceptor was blocked again. On 3 March 2021 the company therefore removed the interceptor and replaced it with a liner, which it believes fixed the problem. However, on 30 March 2021, 19 May 2021 and 20 May 2021, the company attended and found blockages which it cleared. The company says that it installed an odour logger on the sewer underneath the lawn of the customer's property from 18 March 2021 to 19 April 2021 which showed that the hydrogen sulphide gas from the sewers was not at dangerous levels. The company notes that

the customer did not want an odour logger to be placed inside her property. The company concludes that there is no longer an odour problem at the customer's property. In conclusion, it says that it has attended the customer's property on each occasion that there was a complaint, and investigated the problem. It believes that the cause of the repeated issues was the interceptor, which has now been removed. It has not found any other faults on the company's pipework, so if there are any remaining problems (although the company does not believe that there are), these must be coming from private pipework.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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. The customer says that the company should be held liable for odours coming from the sewers underneath her property.
 2. As a starting point, it should be noted that responsibility for drains and sewers is shared between the relevant sewerage company and private individuals. Public sewers are the responsibility of the sewerage company, whereas private pipework and drains are the responsibility of individual homeowners. In this case, the company accepts that there is a public sewer under the customer's property, and it is possible that the odour problem at the customer's property arises from this sewer. It is therefore necessary to consider the extent of the company's potential responsibility for this sewer.
 3. The company has a duty, under section 94 of the Water Industry Act 1991, to "provide, improve and extend such a system of public sewers... and so to cleanse

and maintain those sewers... as to ensure that that area is and continues to be effectually drained". However, it is important to note that this duty cannot be enforced by an individual customer. The duty can only be enforced by Ofwat, the water regulator, which can serve an enforcement notice on a sewage undertaker in appropriate circumstances (which has not happened in this case). A customer can only bring proceedings in cases where a sewerage undertaker has failed to comply with an enforcement notice.

4. As explained by the House of Lords in the case REDACTED sewerage undertakers have no control over what enters their sewers, so as a result, parliament has limited the remedies that can be sought by householders as a result of problems arising from the public sewers. Householders cannot make a claim against a sewerage company for a breach of their duty under section 94, and in particular cannot bring proceedings for a failure to build sufficient sewers.

5. The REDACTED case was considered in the context of a claim for odour nuisance in the case of REDACTED In that case, the Court held that there was a line to be drawn between claims relating to policy or capital expenditure (which are not justiciable) and claims relating to operational or current expenditure (which are justiciable): "whether and to what extent any of the matters alleged give rise to a cause of action in nuisance involving the allegations of negligence will depend on the extent to which the allegation concerns policy matters or capital works such as building new or better facilities... rather than operational matters requiring current expenditure on matters such as maintenance" (para. 716).

6. As a result, the company cannot be held liable just because there have been odours from public sewers in its network. The company can only be held liable if it can be found to be responsible in negligence or nuisance in its handling of operational or maintenance matters relating to the way it responded once the odours were reported.

7. In this case, I note that during the period of October 2020 to March 2021, the company received at least a dozen complaints from the customer in various forms, alleging that there was an odour problem at her property. Although the company initially believed that the problem emanated from private sewers, it later became clear that there was a public sewer under the customer's garden and that an interceptor on this sewer was repeatedly becoming blocked. The company quite correctly took responsibility for this problem and, after it became clear that its temporary solutions were not working, it removed the interceptor.

8. While it is clear that the company took quite some time, and a number of visits,

to identify this problem, I do not believe that this is unreasonable. Sewerage systems can be complex and are often, as in this case, not fully mapped, so it can be difficult to find the source of a problem.

9. The question, however, is whether the removal of the interceptor has in fact solved the problem on the public sewerage pipes, leading to the conclusion that any further odour issues must arise from private sewerage pipes. I understand that the customer is still experiencing odour problems, and she wrote to the company on 22 March 2021 to say that she is still waking up to the smell of sewage and having to open the windows to clear the smell, as well as experiencing headaches and stinging eyes. I also note that the company cleared further blockages after the removal of the interceptor, on 30 March 2021, 19 May 2021 and 20 May 2021. Although the company says that the odour logger that it installed did not detect a problem, it cannot be excluded that the odours are arising from a different part of the public sewer.

10. Although, as set out above, I find that the company has acted reasonably to date in the way it responded to the customer's complaints, it has now drawn the conclusion that the odour problem no longer exists, or if it does, that it arises from the customer's private pipework. Given that it appears from the customer's evidence that there is in fact an ongoing odour problem, and given that the company has continued to find blockages when it visited after the removal of the interceptor, I find that the company's decision to stop investigating the problem is not reasonable. Just as the problem with the interceptor was difficult to find, it is possible that there are other issues with the sewerage pipes belonging to the company that have not yet been discovered.

11. I therefore consider that the company should carry out a further investigation into the cause of the odour problems at the customer's property, including but not limited to a comprehensive CCTV survey of the public sewers on and in the vicinity of the customer's property, in order to determine whether there are any defects in the public sewers that could give rise to the odour problems. If (but only if) the investigation uncovers any defects on the public sewers that are the responsibility of the company, the company shall repair these defects.

Outcome

1. If the customer accepts this decision, the company shall, within 20 working days of receipt of the acceptance carry out a further investigation into the cause of the odour problems at the customer's property, including but not limited to a comprehensive CCTV survey of the public sewers on and in the vicinity of the

customer's property, in order to determine whether there are any defects in the public sewers that could give rise to the odour problems. If (but only if) the investigation uncovers any defects on the public sewers that are the responsibility of the company, the company shall repair these defects.

What happens next?

This adjudication decision is final and cannot be appealed or amended.

The customer must reply within 20 working days to accept or reject this final 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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

Natasha Peter
Adjudicator