

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX50

Date of Decision: 29/07/2021

Party Details

Customer: The Customer

Company: The Customer

Complaint

The customer is experiencing foul odours from the company's manhole, which is connected to his property. The problem arose when a new housing development was connected to the public sewer in 2018. Neither the company nor the housing developers have accepted responsibility for the foul odours. The customer requests the company to remedy the cause of the odours, which may require the company to adopt the private sewer. The customer also queries how the private sewer was allowed to be connected if it was not fit for purpose.

Response

The company stated that after investigating the matter it confirmed that the foul odours stemmed from a nearby private sewer pumping station (SPS) installed by the housing developers. The company said that it cannot adopt the private SPS unless it is requested by the owner and meets the installation criteria, for which it would first need to be significantly upgraded. The company stated that it advised the developer to increase the chemical component to reduce the foul odours, but since this is a private sewer, there is no more they can do about this complaint.

Findings

The odours come from the company's manhole. The company allowed the connection of a SPS, which it considered not to be fit for purpose, to the public sewer. The company would be liable if at the time of allowing the connection they could have foreseen that such connection could have caused problems, including foul odours, to its existing customers. Since the company have acknowledged that the SPS is not fit for purpose, then they ought to have expected that the connection could raise problems, affecting their customers. Therefore, the company is jointly liable to

resolve the cause of the foul odours experienced by their customers.

Outcome

I direct the company to liaise with the developers with a view to resolving the cause of the foul odour, and provide the customer with a written report outlining the agreed actions and the time frame for those actions.

The customer must reply by 26/08/2021 to accept or reject this decision.

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Date of Decision: 29/07/2021

Case Outline

The customer's complaint is that:

• He has experienced terrible odours from the company's manhole for the last two to three years. • After living in his property for over 30 years, he started experiencing the foul odours since a new housing development was connected to the public sewer in 2018. • He complained to the developers and to the company, but neither of them accepted responsibility. • The company said that the problem comes from a private sewer and the developers said that the company should have adopted the sewer. • He wants the company to resolve the cause of the foul odours by adopting the sewer.

The company's response is that:

• After investigating the origin of the foul odours, it found that it came from a nearby private sewer pumping station (SPS) installed by the housing developers, which is connected to the public sewer via a manhole near the customer's property. • It cannot adopt the SPS because it requires an application made by the owners and meeting the specific technical criteria. • The developers can make an application for the company to adopt the SPS, but it would require first to undergo a significant upgrade as it is currently not fit for purpose. • Since the cause of the foul odours comes from a private sewer, there is nothing more that the company can do to resolve the problem.

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 company stated that it started receiving complaints from the customer after the developers of a new housing development connected a private SPS to the public sewer network. The company stated that under Section 102 of the Water Industry Act 1991, it is not responsible for a private SPS and are unable to adopt it in its current form as it has not been designed or constructed to meet the required company standards. It also stated that it has investigated the origin of the odour and ruled out the possibility that the odour was coming from the public sewer and concluded the issue relates to the private SPS.
2. When the company investigated the cause of the odours, it installed odour loggers in the public sewer outside the customer's property with a view to capturing the time and intensity of the smell. The company found that during the time when the facilities were used more, the odour loggers registered a spike, which proved that the SPS was not working efficiently. The company further stated that the odour loggers showed no evidence of any problems with the public sewer. The company stated that it also sealed the manhole for two weeks in June 2020 to see if this made a difference to the level of odours, but it did not remove the bad odours. The company's investigation concluded that as the foul odours come from a private SPS, the customer should contact the developer to seek a resolution. In spite of that, the company made suggestions to the developer about how they can reduce the odour. The company advised more frequent pumping, or chemical dosing to reduce the septicity; but the company noted that as this is a private SPS, it does not have the power to enforce any changes.
3. The customer requested the company to adopt the SPS, but the company has not received a new application and it cannot adopt the SPS in its current state. The company advised that the developer to submit a new Section 104 application for the company to adopt the private SPS, however, a significant upgrade would be required before the company could consider adopting the SPS. The company stated that it has advised the developer that the location and design of the SPS does not meet the WRC Plc Design and Construction Guide (A Design and Construction Guide for Developers) or the company's specification requirements for an SPS, and it is not suitable for adoption at this time. I am mindful that the developer requested the company to adopt the SPS via the section 104 application on 28 March 2017, but the application was not successful because it did not meet the criteria for adoption. This was because the SPS did not meet the company's specifications back in 2017 either.
4. In the response to the defence, the customer pointedly asked who was

responsible for the approval of a SPS, which the company recognised was 'structurally not fit for purpose' in its defence. Therefore, the question arises as to whether the company is liable for the foul odours experienced by its customers after it allowed the connection of an unsuitable SPS into the public sewer. The company stated in Annex I to the defence, which contains information about the unsuccessful section 104 application made in 2017 for the adoption of the sewer, that under the Water Industry Act 1991 private sewers have an automatic right to connect to the public sewer for foul water. In other words, the company stated that it allowed the connection because it could not deny the connection to the public sewer. However, the company has not identified or explained the legal provision that requires it to allow the connection of an unsuitable SPS to the public sewer.

5. Furthermore, I note that in the response to the defence, the customer stated his local Planning Authority informed him that the company had approved the connection. The company has not explained how this connection was granted, but its website < **XX Removed XX** > explains that connections are subject to an application process for which a fee is payable. The purpose of this application is to ensure that the connection would not cause problems to its existing customers, including foul odours and other issues such as flooding. Since the company has acknowledged that the SPS was not fit for purpose, then it must have been foreseeable to the company that such a connection could cause problems to its existing customers. There is a causal link, which is not too remote, between allowing an unsuitable connection of a SPS to the public sewer and the foul odours that emanate from the manhole. Accordingly, I find that the company must be liable for the foul odours experienced by its customers, and therefore, it is required to remedy the grievance caused to its customers.

6. In view of the above, I find that the company has not reached the standard reasonably expected by the average person and it is therefore required to liaise with the housing developer with a view to resolving the cause of the foul odours affecting the customer.

7. In response to the preliminary decision, the customer asked how they will be informed about the outcome of the discussions between the company and the developer. Therefore, after the company has discussed how to resolve the foul odour with the developer, I direct the company to provide the customer with a written report outlining the agreed actions and the approximate time frame for those actions.

Outcome

1. I direct the company to liaise with the developers with a view to resolving the cause of the foul odour, and provide the customer with a written report outlining the agreed actions and the time frame for those actions.

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.

Kate Wilks
Adjudicator