

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X222

Date of Final Decision: 28 November 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer claims that the company has failed to maintain its nearby wastewater recycling station. These failures have led to periodic foul odours, which have caused a nuisance and led to inconvenience and distress. The customer is seeking the company to prevent future releases of noxious odours from the wastewater recycling station and pay compensation for the inconvenience and distress incurred.

#### Response

The company says that the odours experienced in the surrounding area of the customer's property are due to the nature of the work undertaken at the wastewater recycling station. On each occasion the customer has contacted the company, it has taken his concerns onboard and investigated whether there were any defects at the wastewater recycling station which could contribute to the odours. Where an issue was found, the company promptly acted and kept the customer informed throughout. However, it cannot guarantee that there will not be odours experienced in the future. The company has already agreed that it will investigate installing odour meters on site; however, the evidence gathered to date does not support that the customer's property is subject to excessive odours. The company has not made any further offers of settlement.

#### Findings

I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning identifying any defects with the wastewater recycling station and reducing any odours. Furthermore, I am satisfied there have been no failings regarding customer service. Consequently, the customer's claim fails.

#### Outcome

The company does not need to take any further action.

The customer has until 28 December 2022 to accept or reject this decision.

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# ADJUDICATOR'S FINAL DECISION

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## Case Outline

### **The customer's complaint is that:**

- The company has failed to maintain its nearby wastewater recycling station.
- These failures have led to periodic foul odours, which have caused a nuisance and led to inconvenience and distress.
- The customer is seeking the company to prevent future releases of noxious odours from the wastewater recycling station.

### **The company's response is that:**

- The odours experienced in the surrounding area of the property are due to the nature of the work undertaken at the wastewater recycling station.
- On each occasion the customer has contacted the company, it has taken his concerns onboard and investigated whether any defects at the wastewater recycling station could contribute to the odours.
- The company promptly acted and kept the customer informed when an issue was found.
- However, it cannot guarantee that there will not be odours experienced in the future.
- The company has already agreed to investigate installing odour meters on site. However, the evidence gathered by the company to date does not support the customer's property being subject to excessive odours.
- The company has not made any further offers of settlement.

## 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.

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2. Whether or not the customer has suffered any financial loss or another disadvantage as a result of a failure 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 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 dispute centres on whether the company has effectively been carrying out its duties at the wastewater recycling station to prevent the escape of foul odours.
2. The company is required to meet the standards set out in the Water Industry Act 1991.
3. Under Section 94(1)(b) of the Water Industry Act 1991, the company must make provision for the treatment and disposal of sewage.
4. Furthermore, the company also has certain obligations regarding its customer services as set out in the OFWAT Guaranteed Standards Scheme and the company's Customer Guarantee Scheme.
5. From the evidence put forward by the customer and the company, I understand the customer has experienced odours from the company's wastewater recycling station on multiple occasions since 2007.
6. The evidence shows that the customer contacted the company multiple times in 2008. On each occasion, the company investigated, and I understand that it was found the odours were a natural occurrence at a wastewater recycling station.
7. In April 2010, the customer once again contacted the company to report foul odours from the wastewater recycling station. I understand that the company arranged a visit with the customer and requested that the customer keep a log of when the odours occur.

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8. On 9 and 11 July 2021, the customer once again contacted the company to report foul odours from the wastewater recycling station. I understand that the company informed the customer that the odours were due to recent improvement works, which included the tanks being cleaned out, and the customer was told that the works would be finished in the next few weeks. Further odour machines were also put on site to help mask any odours that were occurring.
9. On 29 September 2021, following further contact and a copy of the customer's log, the company met with the local Environmental Health Officer on site, who agreed no significant odours were coming from the site, and the customer was updated with this information by email on 30 September. The company confirmed that it would continue working with the Environmental Health Officer to reduce any future odours.
10. On 18 March 2022, the customer reported to the company that he had been experiencing foul odours surrounding his property. The company investigated matters and informed the customer that the company had been tankering, which could have caused the odour. It was also confirmed that there had been a spillage the week before but that it had been cleaned up and that everything on the site was now running as it should.
11. On 30 March 2022, the company contacted the customer to inform him that the company's Chief Executive Officer had attended the wastewater recycling station and whilst no odour was evident whilst he was there, further mitigation is scheduled to be installed in the financial year 2022/23.
12. Further discussions then took place between the parties. However, the customer remained unhappy with the company's responses and, following further correspondence, on 20 May 2022, progressed his complaint to CCWater to resolve. I understand from the evidence that at the end of the CCWater investigation, the company had explained that it was unable to provide a guarantee that there would not be odours experienced in the future. The customer remained unhappy and, on 27 October 2022, commenced the WATRS adjudication process.
13. Regarding whether the company has effectively been carrying out its duties at the wastewater recycling station to prevent the escape of foul odours. The customer states that he has experienced numerous foul odour incidents since 2007. On each occasion when the customer reported bad odours, the company investigated, and since 2008 it has enlisted assistance from the local Environmental Health Officer, who confirmed that there were no significant signs of odour.

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14. Furthermore, the evidence shows that the company undertook odour surveys, which showed that the odour was not at actionable levels and invited the customer to site visits. The company also provided contact details for specific members of staff that work at the facility to answer his queries and had cleaned out the storage tanks. I understand that the company continued to use its current aeration blowers to reduce odours and was working towards installing new aeration blowers.
15. I note the various correspondence between the parties that the company has not been effectively carrying out its duties at the wastewater recycling station. As explained by the company, in the case of *Dobson v Thames Water Utilities Ltd [2011] EWHC 3253 (TCC)*, the court found that there is an element of nuisance which can be categorised as “*non-negligent*”, for which no damages will be awarded. This occurs when an odour is caused during the sewage treatment process, but nothing more could reasonably have been done to correct it.
16. On careful review of all the evidence, I find that I am satisfied with the company’s position that it has taken reasonable steps to reduce any nuisance by arranging remedial works and working towards installing new aeration blowers. I cannot find any indication the company has been negligent concerning the odours or its repairs to the wastewater recycling station.
17. As demonstrated by the correspondence within the CCWater documents and in the company’s response, the company investigated the cause of the odours and took appropriate action if required. Whilst I appreciate the customer’s position, I believe the company did investigate the smells as best it could and acted appropriately according to the results of its investigations.
18. In light of the above, I find there are no grounds to conclude the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the investigation of the source of the odours at the customer’s property. Accordingly, this aspect of the customer’s claim fails.
19. The company has certain obligations in respect of its customer services. From the evidence provided, I am satisfied that by the end of the company’s dialogue with the customer, the company had adequately explained the reasons behind why the odours occurred and what action the company had undertaken to minimise such odours. Considering this, I find no sums are due for any failings in customer service.

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20. The customer has made comments on the preliminary decision and having carefully considered each aspect of the customer's comments, I find that they do not change my findings, which remain unaltered from the preliminary decision.

21. In light of the above, I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning identifying any defects with the wastewater recycling station and minimising foul odours. Furthermore, I am satisfied there have been no failings regarding customer service.

#### **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 28 December 2022 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.



**Mark Ledger FCI Arb**  
**Adjudicator**

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