

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X379

Date of Final Decision: 29 March 2023

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer says that the company has failed to properly fulfil its obligations to process and dispose of sewage.

She requests a refund of the sewerage portion of her bill.

Response

The company says that it has provided the sewerage services to the Property for which the customer has paid.

No offer of settlement has been made.

Findings

With respect to those issues able to be addressed at WATRS, the company provided its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company does not need to take any further action.

The customer must reply by 26 April 2023 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X379

Date of Final Decision: 29 March 2023

Case Outline

The customer's complaint is that:

- She has paid her bills, but is unhappy with the level of sewage pollution being discharged into the watercourse by the company.
- She says that she has not received the sewerage service for which she has paid.
- She requests a refund of the sewerage element of her bill.

The company's response is that:

- The company has provided waste services to the customer, receiving and managing the waste from the Property.
- Therefore, the sewerage charges for the Property have been charged correctly.
- The company acknowledges that it has obligations to protect and support the environment, but these obligations are independent of the provision of sewerage services directly to customers.
- The company denies liability for the customer's claim.

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. As a regulated water retailer, the company is required to bill its customers in accordance with a published charges scheme and to provide its services in accordance with its licence and any applicable Ofwat guidance. The company's charges scheme must adhere to rules made by Ofwat, the Water Services Regulation Authority, the designated regulator in this sector.
2. The consequence of this is that, as specified in Rule 3.5 of the Water Redress Scheme Rules, a WATRS adjudicator does not have the authority to decide on the fairness or correctness of a company's charges scheme, as this responsibility has been given by the Water Industry Act 1991 to Ofwat.
3. In the present case, no evidence has been provided that the customer has been billed incorrectly, or that sewage has not been transported from the Property.
4. The customer's argument, rather, is that the company has not properly fulfilled its obligation to process and properly dispose of the sewage from the Property, and therefore has not performed the service for which she has paid.
5. However, the customer's claim in this respect is unavoidably impacted by the decisions of the House of Lords in Marcic v Thames Water plc [2003] UKHL 66, and the Court of Appeal in Dobson v Thames Water Utilities [2009] EWCA Civ 28. Under these decisions, individuals such as the customer do not have the right to bring claims against a water company based on the company's performance of its statutory obligations, except where the claim relates to certain responsibilities and relies on a contention that the company performed its statutory obligations negligently.
6. Moreover, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called standard negligence. To illustrate, if the argument was that the company was negligent in the way that it processed and disposed of the sewage specifically from the Property, and there was evidence identifying the sewage in question as that from the Property, this would raise a question of standard negligence, and so could be resolved through WATRS. However, where the claim is that the company has more broadly failed to properly

process and dispose of sewage, as is being argued by the customer, this raises regulatory considerations and so in accordance with the Marcic principle such claims must be addressed to Ofwat and cannot be resolved through WATRS.


7. As noted above, no evidence has been provided that the customer has been billed inconsistently with the company's charges scheme. In addition, no evidence has been provided on the basis of which it could reasonably be concluded that the sewage specifically from the Property has not been properly processed and disposed of.
8. In her comments on the Proposed Decision in this case, the customer argued that "although **XX** removes sewage from the premises it dumps in in the waterways and the sea this does not form part of any contract between us and therefore we should not be paying for it". However, as already noted, no evidence has been provided that could reasonably justify a conclusion that sewage specifically from the Property has not been properly processed and disposed of. Ultimately, the customer has the burden of producing evidence to support her claims, and an adjudicator cannot base a decision on unsupported statements by either party.
9. As a result, the customer's claim cannot succeed. If the customer has evidence supporting her argument that the company has failed to fulfil its broader obligations with respect to customer sewage, that is a matter than can only be addressed by the company's regulator, Ofwat.

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 26 April 2023 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.



Tony Cole

Tony Cole FCI Arb

Adjudicator