

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X429

Date of Final Decision: 13 April 2023

Party Details

Customer: XX

Company: XX

Complaint


The manhole for the sewer serving the customer's neighbour's property is in the customer's backyard. When the sewer gets blocked, which it does regularly, an awful odour comes out of the manhole and the customer is unable to use her back garden or open her back windows. The company has investigated the problem but refuses to move the manhole, despite the serious impact the smell is having on the health and wellbeing of the customer and her family. To resolve the problem, the customer wants the company to move the manhole to the front of the property.

Response

The customer has only reported the odour twice since she moved into her property, and on both occasions the company attended, removed a blockage, and checked that the manhole and sewer were operational. The cause of the first blockage could not be determined, but the second blockage was caused by sewer misuse. The company cannot spend money on moving the manhole as there is no operational need to do so; however, if the customer experiences the odour again, the company will attend and remove any blockages found. The company will also send the Network Protection Team to speak to the customer's neighbours about problems caused by flushing unsuitable materials down the toilet.

Findings

I find that the customer's complaint concerns the company's alleged breach of its statutory duty to maintain effectual drains and, in accordance with the WATRS Scheme Rules, this falls outside of the scope of this Scheme and I have no jurisdiction to adjudicate on it. However, I am able to consider whether the company has acted negligently or has failed to provide its service to the expected standard. Having reviewed the evidence, I do not find on the balance of probabilities that the company has acted negligently, or failed to provide its service to the standard reasonably expected by the average person, with



regard to the actions it has taken in response to the odour reported by the customer, or its refusal to relocate the manhole cover. In view of this, the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT-X429

Date of Final Decision: 13 April 2023

Case Outline

The customer's complaint is that:

- The manhole cover for her neighbour's drains is at the rear of her property, and it causes a terrible odour and an infestation of flies at the back of her house, especially in the summer months. It is so bad that she is unable to sit outside, put her washing out to dry, or open her back windows or doors. She is also unable to let her cats out of the back door, so they have to go out of the front door, which is very dangerous due to the traffic.
- The company says that the drain keeps getting blocked due to sanitary products being flushed down the toilet by the neighbours, but neither the company nor the neighbours have done anything to resolve this matter and the drains continue to smell.
- The company offered her £50.00, so it knows it is at fault.
- As the smell is affecting the health and well-being of her family, she wants the company to move the drain out of her backyard to the front of the property. If the drain is not relocated, she intends to take this matter to court.

The company's response is that:

- On 23 August 2021, the customer reported an odour and said that a manhole needed to be moved from inside her property boundary.
- On 25 August 2021, it visited the property and investigated the odour. A blockage was found in the sewer line and it was cleared by jetting the line with water, but the items which were blocking the sewer line could not be identified. The manhole and sewer line were checked for defects or other operational issues, but none were found. The customer was told what had been found and done, and a card was also left.
- The customer did not make further contact between 22 August 2021 and 7 June 2022 to report any other issues.
- On 7 June 2022, the customer reported an odour again. It visited the property and checked the manhole and sewer line, and found that the Windsor trap was blocked with sanitary products. Sanitary products are deemed unsuitable materials for flushing into the sewer as they can cause blockages and, in turn, blockages can cause odours to develop.

- After the visit, it sent letters about unsuitable material to the customers who use that specific sewer line. Unsuitable material letters explain what should and should not be put down the toilet or introduced into the sewer. They are considered a way of trying to educate customers to dispose of sanitary products, wipes and other unsuitable items responsibly.
- A job to replace the lid of the vented manhole was raised, however, it was cancelled because it was decided that if the smell of a blockage was not noticed, it could cause flooding.
- On 21 June 2022, it raised a Stage 1 complaint for the customer as they were unhappy about the length of time it was taking to investigate the odour, which had been reported on the 7 June 2022. Emails and calls were made to escalate the issue, so it visited the property again on 28 June 2022.
- After the visit, it called the customer and confirmed that the manhole would not be moved. The customer was unhappy but it explained that the refusal to move the manhole was due to there being no other operational issues with the manhole or with the sewer line, apart from unsuitable materials being flushed down the sewer by the people who use it. It also explained that it did not install the manhole as it had been transferred to its responsibility under the 2011 Private Sewer Transfer Regulations.
- On 15 July 2022, the customer sent a text message saying that she remained unhappy with its previous response and she wanted the matter escalating. It explained again that as there were no operational issues with the manhole or the sewer line, and the cause of the odour was sewer misuse, the manhole would not be moved as requested.
- In line with its procedures, a Stage 2 complaint was raised on 15 July 2022. It received a letter from the customer on 18 July 2022, and responded on 22 July 2022 to confirm that it had visited the property when it received the report of odour, it had checked the line and cleared any blockages, and had sent sewer misuse letters to the relevant customers. Once again, it let the customer know that it would not move the manhole.
- The customer made contact by email on 26 July 2022, expressing dissatisfaction at the response. On 5 August 2022, a closure letter was sent to the customer as it considered that it had answered all of the customer's queries and nothing further could be done.
- The customer wrote again on 10 August 2022, but as no new issues were raised and a closure letter had been sent, it did not respond.
- The customer then contacted CCW, who made contact on 25 October 2022 and requested it to carry out a Pre-Investigation. Its reply was sent to the customer and CCW on 28 October 2022, and it visited the property again on 9 November 2022. No blockages or other operational issues with the manhole or sewer were found.
- CCW asked if it could install an odour logger, but it explained that it would not do this following only two reports of odour caused by unsuitable materials.

- As it works on a reactive basis, it encourages the customer to report any further odour issues so it can build up a picture of what is happening and how frequently the issue is arising. It can then investigate and clear any blockages. However, even in circumstances where there are numerous reports of odour caused by blockages of unsuitable materials, it could not commit funds to move a manhole where there is no operational need.
- It has arranged a visit by the Network Protection Team to the local residents in an attempt to prevent further misuse of the system.
- It has done everything possible to help the customer and sympathises with her situation, however, it denies responsibility to move the manhole.

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. Sewerage undertakers are obligated to comply with the Water Industry Act 1991. Section 94 of the Act places a general duty on sewerage undertakers to provide, improve and extend a system of public sewers to ensure their area is, and continues to be, effectually drained, and to make provision for emptying and dealing with the contents of the sewers. This duty is only enforceable by Ofwat, the Water Industry Regulator, using Section 18 of the Act. As such, this duty is not something that individuals can try to enforce or make a claim under.

1. The cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] decided that claims based on a water company's performance of its statutory obligations must be considered by Ofwat, the industry regulator, except where it is claimed that the company has, when undertaking these statutory obligations, done this negligently.
2. This means that a customer's claim to WATRS in relation to problems caused by blocked sewers can only succeed if the customer is able to show, on the balance of probabilities, that the company acted negligently when carrying out these duties, and a claim based solely on the argument that the customer has suffered damage or inconvenience as a result of the company's performance of or breach of its statutory duties cannot succeed.
3. This also means that as an adjudicator operating under the WATRS, I do not have the authority to consider whether the company has breached its statutory duty to maintain its sewers to ensure that an area is effectually drained, as such matters must be addressed to Ofwat, the industry regulator, and I can only adjudicate on matters where the customer alleges that the company has acted negligently.
4. Further, any negligence displayed by the company must not raise regulatory issues, but must instead reflect what might be called 'standard negligence'. To explain this further, if the argument is that the company has been negligent because it has not been inspecting its sewers regularly enough, this raises regulatory considerations (as it is a regulatory requirement to inspect sewers regularly). This would mean that, in accordance with the decisions in the cases cited above, such claims must be addressed to Ofwat and cannot be resolved through WATRS.
5. On the other hand, if the claim is that a blockage or flood was reported and the company negligently failed to notice or remedy a problem, this raises a question of standard negligence, and so can be resolved through WATRS. To explain this further, if the argument is that the company was aware of a blockage in its sewer that had caused damage or inconvenience, but did nothing to clear it, and the blockage then caused flooding at the customer's property or other problems at the customer's property, such as odour, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
6. The evidence provided shows that the customer may believe that the company has failed to maintain its sewers to prevent blockages and has caused the odour at the back of their property. However, I am unable to consider whether the company has failed to maintain its sewers as this raises a question of the company's performance of its statutory obligations, which, as explained above, must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.

7. However, the customer says that she has reported the odour caused by the repeated blockages to the company, but the company will not take the action required to prevent the odour reoccurring. As this complaint amounts to an allegation of standard negligence, I can consider it.
8. Having reviewed the evidence provided by the parties, I find that the customer reported an odour coming from the manhole in August 2021 and in June 2022, and on both occasions the company attended within a reasonable timeframe, cleared a blockage, and checked the manhole and sewer line for any operational issues but found none. The cause of the first blockage could not be determined, but the second blockage was found to be caused by sanitary products, so the company sent letters about sewer misuse to the residents that use the sewer. In view of this, I accept that that the second blockage was most likely caused by sewer misuse, and as sewer misuse is outside of the control of the company, I do not find any evidence to justify a conclusion that the company caused the blockage and the odour, or failed to clear the blockage and the odour, and has been negligent in this respect. I also note that the company has committed to send its Network Protection Team to speak to the neighbours about the problems experienced by the customer.
9. The company says that it cannot justify the expense involved in moving the manhole to the front of the property because there is no operational need to do so, and it is accepted that water companies operate a reactive policy towards sewer and manhole maintenance. I agree that sewerage undertakers do not normally operate a proactive policy towards maintenance and I accept that, due to financial constraints, this is a reasonable approach. Therefore, as the customer has only reported the odour to the company twice, the cause was found on both occasions, and the sewer is now free-flowing, I cannot accept that the company's refusal to move the manhole amounts to negligence.
10. As there is no evidence to show that the company has acted negligently, I do not find that the company has failed to provide its service to the standard reasonably expected by the average customer in this respect. Therefore, while I appreciate that the customer will be disappointed by my decision, especially as I accept that the odour must be most unpleasant when it occurs, the customer's claim cannot succeed.
11. Following the preliminary decision, the customer has made some further comments, however, most of the issues raised in the comments have already been considered, so I find no need to

consider them further. The customer also states that the manhole cover and drain are in poor repair and pose a safety hazard. However, this issue was not raised on the customer's application form to WATRS, and the WATRS Scheme Rules do not allow new issues to be raised at this stage of the process; therefore, I am unable to consider this issue in my final decision. In view of the above, while I understand that this decision is not what the customer hoped for, my decision remains unchanged.

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 27 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.

K S Wilks

Katharine Wilks

Adjudicator