

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X430

Date of Final Decision: 10 April 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer says that she has experienced a longstanding problem with sewage odours.

She requests compensation of £2,500.00.

Response

The company says that it has responded to the customer's complaints appropriately and has provided an appropriate remedy.

The company has refunded to the customer one year of wastewater charges.

Findings

The company did not provide its services to the customer to the standard to be reasonably expected by the average person with respect to payment of the promised goodwill gesture.

Outcome

The company needs to take the following further action: It must refund to the customer one year of wastewater charges for the Property, unless it can provide satisfactory evidence that this refund has already been paid.

The customer must reply by 9 May 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- For over 20 years she has been experiencing a long-standing problem with strong sewage odours.
- The problem was reported to the company several times in 2015 by phone, in response to which she was told that the dosing rig at the nearby treatment works had been removed, and that this might be linked to increased fumes.
- The company inspected the sewer pipes and found no blockages, and put new sealed manhole covers on the drive and in the garage.
- This reduced the problem, but the smell remained strong in warm weather.
- On 10 September 2022, following a hot summer with very strong fumes, the customer and her neighbours met with the company in the town, and the company's agent at that meeting acknowledged that there was an odour.
- This problem has persisted for years due to an outdated sewerage system, and she is unconvinced that the problem will be resolved soon, particularly in light of housing development planned in the area.
- She has been offered a refund of a year's wastewater charges, but does not believe this is sufficient. She has also received no notification that this has actually been paid.
- She requests compensation of £2,500.00.

The company's response is that:

- The company has investigated the customer's concerns and has carried out works on anything that could be a contributing factor.
- Since those works were concluded no further smell complaints have been received.
- The company believes that the issue has been caused by a third party, and so was outside the company's control.
- The company has gone above and beyond its obligations in finding ways to rectify the issue, despite it being something to which the company has not contributed.

- The company has installed a dosing rig at the sewage pumping station at its own expense to help reduce the sewage odour.
- The customer has received compensation of a year's wastewater charges.
- The company denies that additional compensation is owed.

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. In Marcic v Thames Water plc [2003] UKHL 66, the House of Lords held that the statutory nature of the work undertaken by water companies entails that a different liability regime is applicable to water companies than to entirely private actors.
2. In the words of the court, "The existence of a parallel common law right, whereby individual householders who suffer sewer flooding may themselves bring court proceedings when no enforcement order has been made, would set at nought the statutory scheme. It would effectively supplant the regulatory role the Director [i.e. Ofwat] was intended to discharge when questions of sewer flooding arise."
3. The Appeal subsequently reiterated in Dobson v Thames Water Utilities [2009] EWCA Civ 28, that the "Marcic principle" applies broadly to exclude claims based on a water 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.

4. The consequence of the House of Lords' ruling in Marcic v Thames Water plc, then, as interpreted by the Court of Appeal in Dobson v Thames Water Utilities, is that the customer's claim can only succeed if the company has acted negligently or otherwise wrongfully. The simple fact that the customer has suffered damage as a result of the company's operation of its business would not suffice.
5. 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 operating its sewage services in a manner that impacted the customer negatively, 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. On the other hand, if the claim was that the company was negligent in its response to the customer's complaints, such as by failing to respond appropriately or to take appropriate remedial action, this raises a question of standard negligence, and so can be resolved through WATRS.
6. In the present case, the customer says that she has experienced problems with sewage odours for over twenty years, and no evidence has been produced that is inconsistent with this statement. However, under the Marcic principle a WATRS adjudicator cannot award compensation to a customer based solely on the impact on the customer of the manner in which the company has operated its business. As explained above, this would be a regulatory concern that must be addressed by Ofwat, not WATRS.
7. On the other hand, the customer can be awarded compensation if the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person in its handling of her complaints. However, while the customer says that she has been experiencing strong sewage odours for over 20 years, she describes first reporting the problem to the company in 2015. She acknowledges that in response the company took actions that reduced the problem. I find that in this respect the company provided its services to the customer to the standard to be reasonably expected by the average person.
8. While the company's actions did not eliminate the problem, no evidence has been provided of the company being told this until 2020, at which time the company met with the customer and her neighbours and then undertook further studies and works to address the issue, ultimately re-

installing a dosing rig that the evidence indicates it had previously removed. While providing this remedy took time, and I accept that the customer will have experienced further unpleasant sewage odours in this period, I cannot on the basis of the available evidence conclude that this delay was avoidable and resulted from failings by the company, rather than reflecting the reasonable time required for testing and identifying a solution and then providing it. As a result, I find that the company has provided its services to the customer to the standard to be reasonably expected by the average person with respect to these complaints by the customer as well.

9. The customer has expressed a concern that the problem may intensify again when additional properties are built in the area. However, no such problem has yet occurred, and the customer retains the right to bring a further claim to WATRS if later problems do arise, are reported to the company, and the company fails to address them to the standard to be reasonably expected by the average person. Any such claim will be addressed by an adjudicator at that time.
10. In her comments on the Preliminary Decision in this case, the customer stated that she still has not been paid the promised refund of one year of wastewater charges. This was not denied by the company, which has acknowledged stating to the customer that this payment would be made.
11. I find that it constituted a failure by the company to provide its services to the customer to the standard to be reasonably expected by the average person to not make the goodwill payment that it had promised would be made.
12. Therefore, the company must refund to the customer one year of wastewater charges for the Property, unless it can provide satisfactory evidence that this refund has already been paid.

Outcome

The company needs to take the following further action: It must refund to the customer one year of wastewater charges for the Property, unless it can provide satisfactory evidence that this refund has already been paid.

What happens next?

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

- The customer must reply by 9 May 2023 to accept or reject this 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 on 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.
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Tony Cole

Tony Cole, FCI Arb

Adjudicator