

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X458

Date of Final Decision: 21 April 2023

Party Details

Customer: The Customer

Company: The Company

Complaint

The sewers serving the customer's property smell unpleasant, but the company will not maintain them because it says they are privately owned by the developer of the estate. As the company has not adopted the sewers, the customer's property is not directly connected to the company's network for sewerage services. Therefore, the company is charging the customer for sewerage services it does not provide. In view on this, the customer would like the company to reduce his charges.

Response

The sewers on the customer's estate have not been adopted under section 104 of the Water Industry Act 1991 (WIA) and, as such, responsibility for maintaining them rests with the housing developer. However, the private sewers connect to the public sewer network and, therefore, the customer is liable for sewerage charges in accordance with the company's Charges Scheme. It therefore denies liability to reimburse the customer's charges.

Findings

The evidence shows that the company is entitled to charge the customer for sewerage services in full and, therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person. In view of this, the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

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Case Outline

The customer's complaint is that:

- He contacted the company regarding the bad smell coming from the sewers on his estate, but the company said that as it has not adopted the foul and surface water sewers that serve his estate, it is not responsible for maintaining them.
- However, the company says that as these privately owned sewers ultimately connect to the company's sewerage network, full sewerage charges apply.
- **XX** advised him to contact the developer and ask them to get the non-adopted drains adopted by the company, but the developer says they are not responsible for the smelly drains and have told him to contact the company. This has been going on for two years.
- He has provided a diagram from the Ofwat website to demonstrate the ownership of sewerage pipework.
- Under the Consumer Rights Act 2015, if a service is not provided as described or to a satisfactory standard, the consumer can claim a price reduction.
- As the company says that the foul and surface water sewers belong to the developer and it is not responsible for any repairs, and sewerage from his property does not discharge directly into the company's sewerage network, the company should reduce the charges as it does not provide the service it charges for. Also, as the developer owns the sewers that connect to the public sewerage network, not him, he does not understand why he has to pay the charges rather than the developer.
- He would like the company to discount his surface water and highways drainage charges as he is not getting the service he is paying for.

The company's response is that:

- Under sections 142 to 144 of the WIA, a water undertaker is given the power to "fix charges for any services provided in the course of carrying out its functions" and set a Charges Scheme.
- The 'Definitions Section' of its Charges Scheme says:
“(9) (c) “connected property” relates to sewerage services and means any property which benefits from or is;

(i) drained by a sewer or drain connecting either directly or through an intermediate sewer or drain with a public sewer or sewage treatment works provided by **XXX** or:

(ii) occupied by persons having the use of or right to use or benefit of facilities (whether or not for the benefit of the property) which drain to a sewer or drain so connecting;"

- Section 4.1 of the Charges Scheme "General Liability for Charges" provides: "(16) Water charges will be applied to any supplied property and sewerage charges to any connected property, as defined in section 2."
- The sewers on the customer's estate have not been adopted under s104 of the WIA and, as such, responsibility for the maintenance of the private sewers and pumping station serving the customer's property rests with the housing developer until it receives an application to adopt them. The adoption process will involve inspections to ensure the sewers meet all the necessary specifications.
- The customer's estate uses Sustainable Urban Drainage Solutions including a balancing pond to receive surface water from the properties on the estate, but the surface water eventually ends up in the public sewerage network.
- In August 2022, the customer made contact and asked for a reimbursement of his charges on the basis that he should not be liable for full sewerage charges because the sewers to which his private drains connect have not been adopted.
- However, the private sewers connect to the public sewer network and, therefore, the customer is connected "through an intermediate sewer or drain with a public sewer". The customer is therefore liable for sewerage charges in accordance with its Charges Scheme.
- It does not believe that the Consumer Rights Act 2015 applies to adoptable sewers.
- The diagram from the Ofwat website provided by the customer is not relevant in this case as the sewers did not transfer under the Private Drains and Sewers Regulations in 2011. Sewers/drains laid since 1 July 2011 must follow the S104 WIA adoption process and cannot transfer under the 2011 Regulations.
- In view of the above, it denies liability to reimburse any of the customer's charges.

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. The customer would like a refund of his sewerage charges on the basis that the company is charging him for a service it does not provide. The customer explains that the sewerage from his property does not go directly into the company's sewerage network, the company does not own the sewers his property is connected to and will not maintain them and, if a charge is justified on the basis that the private sewers connect to the public sewers, any charge should be paid by the developer who owns the sewers, not him.
2. The company says that under sections 142 to 144 of the WIA, a water undertaker is given the power to fix charges for any services it provides and set a Charges Scheme. The company explains that under its Charges Scheme it is entitled to charge all "connected properties" for sewerage services, and a property is deemed to be connected if it is "drained by a sewer or drain connecting either directly or through an intermediate sewer or drain with a public sewer or sewage treatment works provided by **XX**".
3. The company states that the sewers that serve the customer's property are privately owned by the developers of the estate as they have not been adopted under section 104 of the WIA, but as these sewers connect to the public network, and the balancing ponds on the estate drain into the company's sewerage system, the wastewater from the customer's property indirectly reaches its network and treatment works, and, therefore, the company is entitled to charge the customer for its services.
4. I have considered the relevant sections of the WIA, and the company's Charges Scheme that has been approved by Ofwat, the industry regulator, and I accept that even though the property is not directly connected to the company's sewerage system, the customer's property is a

connected property as wastewater from the property discharges through an intermediate sewer and ends up in the company's network and its treatment plant.

5. Therefore, I do not find that the company has failed to provide its service to the standard reasonably expected by the average person by charging the customer, the owner of a connected property, for sewerage services, and I do not find that the company has breached the Consumer Rights Act 2015.
6. In view of this, while I appreciate that the customer will be most disappointed by my decision, I find that the customer is responsible for paying the sewerage charges in full and his claim for a refund does not succeed.
7. For completeness, I add that I also accept that the company is not responsible for maintaining the privately owned sewers until they are adopted by the company under section 104 of the WIA, so the company's refusal to carry out works to remedy the odour coming from the sewers does not amount to a failing on the company's part.

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 5 May 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