

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X478

Date of Final Decision: 24 May 2023

Party Details

Customer: XX
Company: XX

Complaint

The company charges the customer for treating sewerage, but it discharges untreated sewerage into the rivers and seas; therefore, the customer is being charged for a service the company does not provide. Also, the company does not adequately monitor the amount of untreated sewerage it releases into the environment, and this may pollute the water supply. The customer would like the company to apologise, pay £1,250.00 in compensation, and monitor how much sewerage is actually treated and charge him accordingly going forward. The customer would also like the company to test the local rivers daily to ensure the water supply is not being contaminated.

Response

The company's Charges Scheme entitles the company to recover the costs involved in receiving, treating and disposing of foul sewerage, surface water and highway drainage. As the company provides these services to the customer, the customer's charges are correct and payable. The company understands that it is obliged to protect the environment; however, there is no evidence to show that the waste from the customer's property has not been treated. In any event, a water company's performance of its statutory obligations must be considered by Ofwat unless it has acted negligently and, in this case, there is no evidence that the company has disposed of any sewerage from the customer's property negligently. Therefore, the company denies responsibility to provide the customer with the remedies he has requested.

Findings

I find that the customer's complaint concerns the company's alleged breach of its statutory duties 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 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. In view of this, the customer's claims do not succeed.

Outcome

The company does not need to take any further action.

ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The 'Environmental Performance Report' by **XX** confirms that the company discharges sewerage into the rivers and seas. The company get the lowest rating of any water company yet it charges the highest price for its services.
- The company has continually overcharged him for the treatment and disposal of sewerage because instead of treating the sewerage as it promises, it dumps it into the rivers and seas.
- This is a failure of the company's corporate responsibility and means that he is being charged for services that the company is not providing. Furthermore, the company does not adequately monitor the amount of untreated sewerage it releases into the environment, or test for toxicity, and it is possible that this causes detriment to the water supply.
- He believes this is negligent and the company is committing fraud.
- The company enjoys a monopoly and although he would love to change to a water company that does not pollute the rivers and seas, he cannot do so.
- He would like an apology from the company for charging him for a service it is not providing.
- He would also like the company to monitor how much sewerage it actually treats and how much it does not treat, and charge him accordingly.
- He would also like the company to test the local rivers daily to ensure the water supply is not being contaminated.
- He would like the company to pay him £1,250.00 in compensation.

The company's response is that:

- It has explained to the customer that under its Charges Scheme, which has been approved by Ofwat, sewerage charges are set to recover the costs of receiving, treating and disposing of foul sewerage, surface water and highway drainage. The charges also cover network maintenance, customer account management, and projects to enhance the natural environment.
- As it has provided these services to the customer, the customer's charges are correct and payable.

- It has addressed the customer's concerns relating to alleged pollution incidents by explaining the use of Combined Sewer Overflows and its investment in reducing their use, and outlining its commitment to other environmental enhancement projects.
- It understands that it is obliged to protect and support the environment; however, these obligations exist independently of its direct provision of sewerage services to the customer. There is no evidence to show that the waste from the customer's property has not been treated, and the customer is not entitled to any refund of his sewerage charges on the basis of wider environmental concerns that are not directly related to the removal and treatment of waste from his property.
- In any event, in the cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] it was 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 been negligent when undertaking these statutory obligations. In this case, there is no evidence that it has disposed of any sewerage from the customer's property negligently.
- In view of the above, it denies responsibility to provide the customer with the remedies he has requested.

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. Having considered the evidence provided by the parties, I must start my adjudication by stating that sewerage undertakers are obligated to comply with the Water Industry Act 1991, and 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.
2. The company states that in the cases of *Marcic v Thames Water* [2003] and *Dobson v Thames Water Utilities* [2009] it was 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, and I accept that this is the case.
3. This means that a customer's claim to WATRS in relation to a breach of section 94 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 or the environment has suffered a detriment as a result of the company's performance of or breach of its statutory duties cannot succeed.
4. 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 under section 94 of the Water Industry Act, as such matters must be addressed to Ofwat, the industry regulator, and WATRS Rule 3.5 states that the Scheme cannot deal with "any matters over which Ofwat has powers to determine an outcome". Therefore, I can only adjudicate on matters where the customer alleges that the company has acted negligently.
5. 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 made adequate provision for emptying and dealing with the contents of its sewers, this raises regulatory considerations (as it is a regulatory requirement for the company to make provision for emptying and dealing with the contents of its sewers). 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.

6. On the other hand, if the claim is that an issue was reported to the company, 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 flood but did nothing to remedy it, and the flood then caused damage to a customer's property or damage to the environment, this raises issues of standard negligence that can be considered by a WATRS adjudicator.
7. The customer says that the company has been negligent, and the evidence provided shows that the customer believes that the company has failed to make adequate provision for treating sewerage responsibly and, instead, it systematically dumps it into the rivers and seas and causes pollution. Therefore, I find that the customer's argument is most likely that the company has been negligent in the performance of its statutory duties as it has failed to make adequate provision to treat all of its sewerage. However, as explained above, this must be addressed to Ofwat, and cannot serve as the basis of a claim at WATRS.
8. In view of the above, while I appreciate that the customer will be disappointed by my decision, I am unable to consider the customer's claim that the company has breached its statutory duty to make adequate provision for dealing with sewerage. Should the customer wish to pursue this claim further, he should refer his case to Ofwat.
9. If the customer's claim is that the company has been negligent because it knows its systems for dealing with sewerage have caused sewerage from his property to pollute the environment, but it has done nothing to change/repair its systems and untreated sewerage from his property is still being discharged into the rivers and seas causing further pollution, the claim could be interpreted as one of standard negligence, which can be considered by WATRS. However, the customer has provided no substantive evidence to show that the company has been negligent in this way. I acknowledge that the customer has included a quotation from the 'Environmental Performance Report' by **XX** however, there is no evidence to show that sewerage from the customer's property has been discharged into the rivers or seas.
10. In view of this, I am unable to find that the actions of the company amount to standard negligence, or that the company has failed to provide its service to the standard reasonably expected by the average person.

11. The customer also states that the company's actions in charging him full sewerage services when it discharges untreated sewerage into the rivers and seas amounts to fraud, and the customer implies that the company is breaching environmental laws by failing to monitor the amount of sewerage it discharges into the waterways. However, WATRS Rules 3.4.1 and 3.4.3 state that WATRS may reject all or part of an application to the Scheme where it considers that a customer should be referred to a more appropriate forum or the dispute raises a complicated issue of law. As the law relating to fraud, the environment and misrepresentation are complex areas of law, and the water industry is regulated by both the Environment Agency and Ofwat, I find that I am unable to consider these claims. Again, should the customer wish to pursue these matters further, he should refer his case to a more appropriate forum.

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 7 June 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