

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X523

Date of Final Decision: 26 May 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer claims that the company has not correctly treated and disposed of foul sewage, which has led to pollution of the beach and seas the customer swims in. This has led to the customer becoming sick after swimming. The customer is seeking the company to apologise, not allow untreated sewage into the local seas, remove the sewage charges from his bills and not bill any further sewage charges until the company stops allowing untreated sewage to enter the local seas.

Response

The company says it understands and accepts that it has various obligations to protect and support the environment as a water and sewerage undertaker. However, these obligations exist independently of its direct provision of sewerage services to customers. The customer is not entitled to any refund of his sewerage charges based on environmental issues not directly related to removing and treating waste from his property. The company has not made any further offers of settlement.

Findings

I am satisfied that the evidence shows that the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning the removal and treatment of waste from the customer's property.

Outcome

The company needs to take no further action.

The customer has until 23 June 2023 to accept or reject this decision on.

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Case Outline

The customer's complaint is that:

- The company has not correctly treated and disposed of foul sewage, which has led to pollution of the beach and seas the customer swims in.
- This has led to the customer becoming sick after swimming.
- The customer is seeking the company to apologise, not allow untreated sewage into the local seas, remove the sewage charges from his bills and not bill any further sewage charges until the company stops allowing untreated sewage to enter the local seas.

The company's response is that:

- The company says it understands and accepts that it has various obligations to protect and support the environment as a water and sewerage undertaker.
- However, these obligations exist independently of its direct provision of sewerage services to customers.
- The customer is not entitled to any refund of his sewerage charges based on environmental issues not directly related to removing and treating waste from his property.
- The company has not made any further offers of settlement.

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 another disadvantage as a result of a failure 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 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 dispute centres on whether the company has correctly removed and treated foul sewage from the customer's property.
2. The company must meet the standards set out in the Water Industry Act 1991 and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008.
3. Furthermore, the company also has certain obligations regarding its customer services as set out in the OFWAT Guaranteed Standards Scheme and its own Customer Guarantee Scheme.
4. Under Section 142 to 143 of the Water Industry Act 1991, the company is permitted to charge for water and wastewater services provided and make a Charges Scheme which essentially fixes charges to be paid for services provided. However, as made clear in WATRS Rule 3.5, "*any matters over which OFWAT has powers to determine an outcome*" cannot be considered by WATRS. The question of whether a company has adhered to Sections 142 to 143 of the Water Industry Act 1991 is a matter for OFWAT to determine, and therefore I will make no findings on this matter in this decision.
5. From the evidence put forward by the customer and the company, I understand the customer contacted the company on 8 December 2022, saying he was unwilling to pay his sewage charges as he was made sick by swimming in his local seas where there had been an outflow of untreated sewage.
6. The company responded on 16 December 2022, saying that untreated wastewater would have come from a Combined Sewer Overflow during a high period of heavy rain. The Combined Sewer Overflow only operates due to high volumes of surface water, and the sewage released is significantly diluted, and its impact is temporary. Furthermore, the company provides a BeachLive service that offers information on its Combined Sewer Overflow, and it also works with the beach authorities to ensure appropriate signage is in place to notify beach users of any risks.
7. I understand that the customer remained unhappy, as ultimately, despite the company's comments, the issue with the Combined Sewer Overflow and untreated sewage has not been

resolved. The evidence shows that the customer remained dissatisfied and progressed the matter to CCWater without result.

8. Regarding whether the company has correctly removed and treated foul sewage from the customer's property, as stated within the company's defence documents under section 94 of the Water Industry Act 1991, in the absence of negligence, the company is not liable for the escape of the contents of public sewers.
9. Furthermore, it has been found in *Marcie v Thames Water Plc [2003] UKHL 66* and the Court of Appeal in *Dobson v Thames Water Utilities [2009] EWCA Civ 28* that individuals do not have the right to bring claims against a water company based on the company's performance of its statutory obligations unless there is an allegation of negligence in the performance of its statutory obligations. After carefully analysing the correspondence and evidence, I cannot find any indication that the company has been negligent regarding the sewage.
10. The evidence shows that during heavy rainfall, the capacity of the company's sewer network can be exceeded, which means possible inundation of sewage works and the potential to back up and flood peoples' homes, roads and open spaces unless it is allowed to spill elsewhere. I understand that Combined Sewer Overflows were developed as overflow valves to reduce the risk of sewage backing up during heavy rainfall. The Combined Sewer Overflows are regulated by the Environment Agency, and overflows of diluted sewage during heavy rain are not a sign that the system is faulty.
11. Whilst I appreciate the customer's position, I am only able to find the company failed to supply its services to the customer to the standard to be expected if a failing is found in the supplying of the services to the customer's property, rather than any issues with whether the company performed its statutory obligations.
12. The evidence shows that Combined Sewer Overflows are a necessary part of the existing sewerage system, preventing sewage from flooding homes and businesses. Furthermore, I cannot find any evidence that the overflow from the Combined Sewer Overflow affected the customer's property.
13. I note that the customer says he has fallen ill due to the sewage from his local Combined Sewer Overflow, so he refuses to pay his sewage charges. However, as above, I cannot find any

indication that the company has been negligent nor that the company has incorrectly dealt with removing and treating waste from the customer's property.

14. Therefore, I find that there are no grounds to conclude the company has failed to provide its services to the customer to the standard to be reasonably expected by the average person concerning the removal and treatment of waste from the customer's property and the Combined Sewer Overflow. Accordingly, the customer's claim does not succeed.
15. The company has certain obligations in respect of its customer services. From the evidence provided, I am satisfied that by the end of the company's dialogue with the customer, the company had adequately explained the reasons behind why untreated sewage has entered the local seas and the purpose behind the Combined Sewer Overflow. Considering this, I find no sums are due for poor customer service.
16. The customer has made comments on the preliminary decision and having carefully considered each aspect of the customer's comments, I find that they do not change my findings, which remain unaltered from the preliminary decision.
17. Considering the above, I am satisfied the company did not fail to provide its services to the customer to the standard to be reasonably expected concerning the removal and treatment of waste from the customer's property and the Combined Sewer Overflow. Furthermore, I am satisfied there have been no failings regarding customer service. Consequently, the customer's claim does not succeed.

Outcome

The company needs to take no further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 23 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.

A handwritten signature in black ink, appearing to read 'ML', followed by a long horizontal line extending to the right.

Mark Ledger FCI Arb
Adjudicator