

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0721

Date of Decision: 02 August 2018

Complaint

The customer submits that she has been experiencing sewage odours at the property since 2014. In 2017, the company discovered defects. However, it has yet to fix these and so the odour continues. The company has agreed to mitigation work, to jet the sewer every four months. However, this does not work as multiple defects have been discovered in or beneath the sewer. She had a CCTV survey of the sewer taken on 20 December 2017. Sewage is getting trapped in the chamber and seeping beneath the floorspace. This has been permeating the property for a number of years. The customer requests that the company provide: repairs; a correct map of all pipes; an odour free environment in and around her home; and, an apology. The customer also requests that the company reduce or waive bills, and pay compensation in the sum of £2,834.00.

Defence

The company submits that it has attended the property on numerous occasions since 2014 and no odour has been observed. Following investigations in 2017, a defect was found on a manhole in the property and work was undertaken to rectify this. No further work is required to any of its assets and it states that any odour is not being caused by its assets. Its 2017 report also identified a number of actions that were required to the private pipework at the property. These actions had also been identified by specialists commissioned by the customer in September 2015. It has no responsibility for private pipework. No offer of settlement was made.

Findings

There is no evidence to show that the odours complained of are being caused by the company's assets. However, the company failed to provide its services to the standard to be reasonably expected in relation to its investigations into the odour; the time taken to investigate the manhole at the beginning of 2017; and, the initial works carried out to the manhole on 27 June 2017.

Outcome

The company needs to take the following further action:

I direct that the company pay the customer £500.00 compensation. An authorised representative of the company should also provide the customer with a written apology.

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The customer must reply by 31 August 2018 to accept or reject this decision.

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Date of Decision: 02 August 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She has been experiencing sewage odours at the property since 2014.
- In 2017, the company discovered defects. However, it has yet to fix these and so the odour continues. The company has agreed to mitigation work, to jet the sewer every four months. However, this does not work as multiple defects have been discovered in or beneath the sewer, such as a belly in the sewer and incorrect benching of the chamber that is affecting the flow of the sewage. She had a CCTV survey of the sewer taken on 20 December 2017. Sewage is getting trapped in the chamber and is seeping beneath the floorspace. This has been permeating the property for a number of years.
- The customer requests that the company:
 - i. Provide a service, specifically, *“repairs and correct map of all pipes. Sewage and sewage odour free service to and from home”*;
 - ii. Give an apology for *“distress, inconvenience and ill health from sewage odour and flooding.”*;
 - iii. Do something about her bill, specifically, *“heavy reduction or wiped bills due to using water to dilute odours not from home, from 2 road gullies with no traps – very poor service.”*; and
 - iv. Pay compensation in the sum of £2,834.00.

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The company's response is that:

- Under the Water Industry Act 1991, in the absence of negligence it is not generally legally liable for sewer flooding.
- In addition, it is not obliged to survey, locate or record information in relation to customers' private pipework.
- It has received numerous reports from the customer regarding issues at the property. On several occasions between 2014 to date, it attended the property to investigate reports of odour and flooding. During these visits no odour was observed.
- In January 2017, the customer reported a foul odour in the property. It attended the property on 4 January 2017. At the time it was suggested that there was an odour of sewerage in the customer's dishwasher, the cause of which was unknown but that was not related to its apparatus. During the visit, it carried out an inspection of manhole number 3309 ("manhole 3309"), located in the garden of the property. Manhole 3309 falls under its responsibility. It was discovered that debris was collecting within manhole 3309. Works were carried out to clear the build-up of debris.
- It was also observed during the visit that the inside of manhole 3309 had dropped slightly and that large amounts of toilet paper were gathering in the chamber. The matter was referred for investigation.
- Its investigations found that water was discharging directly across the manhole chamber to the opposite side and was not passing into the channel.
- It also identified a slight drop in the S105a sewer (known as the belly) approximately 14 meters. However, it was noted that this was too far from the property to be causing any operational issues.
- Whilst investigations were ongoing, it jetted the sewer every four months. In May 2017, the jetting frequency was increased to every 30 days. After February 2018, jetting reverted to once every four months.
- Its report also identified a number of actions that were required to the private pipework at the property. These actions had also been identified in a report commissioned and obtained by the customer from AB Drainage in September 2015. Of particular note was a crack in the foul stack pipe from which AB Drainage believed foul water had been leaking. On 8 June 2017, it wrote to the customer to explain the work that needed to be undertaken to the private pipework.
- On 13 June 2017, it contacted the customer to discuss possible options for work to the manhole to alleviate the debris build-up. The options suggested were either to replace the manhole and install new slippers (to help channel the debris from the property), or alternatively move the

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manhole further up the customer's garden, which would alter the angle at which water would enter the manhole. The customer preferred that the manhole be moved and it obtained consent from her landlord before any work was carried out.

- On 27 June 2017, it attended the property to carry out works to the manhole. As the issue was with the slipper in the manhole, it was possible to rectify this without relocating the chamber.
- On 22 November 2017, the customer reported an incident of flooding at the property. It attended and it was noted that manhole 3309 was surcharging due to a blockage in the chamber, caused by debris continuing to stick to the benching within the chamber.
- A further investigation was raised. It attempted to attend the property to undertake works to modify the slipper within the chamber on 5 December 2017. However, the customer was not happy with contractors being at the property and so no works were completed on that day. It attended again on 14 December 2017 and works were taken to modify the slipper. It also installed an odour logger in the manhole chamber to monitor the level of Hydrogen Sulphide within the sewer network. The logger was removed on 28 December 2017. No odours were detected during this period.
- The customer commissioned a second drain survey by AB Drainage in December 2017. The report refers to further works being required to the manhole. However, its own investigations have not identified the need for any further work. There is no evidence of faults with apparatus or pipework under its responsibility.
- It has attended the property on numerous occasions since December 2017. It has not located any remnants of flooding or noted the presence of an odour. It has received no reports of odours from neighbouring residents in the street. It is not aware whether all repairs required to the private pipework have now been completed by the customer or her landlord.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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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. I note the new evidence submitted by the customer with her Comments to the Defence and the customer's new complaints about a salt glazed pipe. However, I must remind the parties that under Rule 5.4.3 of the WATRS Rules, comments may only be on points raised in the company's response and must not introduce any new matters or any new evidence. Any such new matters or new evidence must be disregarded by the adjudicator. I can therefore not take account of the new matters raised and new evidence submitted by the customer in the Comments to the company's Defence.
2. I must also remind the parties that adjudication is an evidence-based process.
3. Submissions made by either party without supporting evidence are unlikely to be accepted as proven.

Potential impact on health

4. I acknowledge the customer's submissions about the impact on her health caused by odours and/or sewerage flooding. However, I consider that such issues regarding personal injury or potential long-term effects on health relate to a complicated area of law excluded under s.3.4.3 of the WATRS Rules and in accordance with s.3.4.1 of the Rules such disputes are better resolved in another forum. Therefore, I will not consider this aspect of the customer's claim any further.

Third parties

5. I note the customer's complaints about her landlord and [] Borough Council Environmental Health Department. However, for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims or complaints about third parties cannot be considered.

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Pipework/apparatus that is not the company's responsibility

6. Similarly, this adjudication cannot consider any pipework/apparatus that are not part of the company's assets, and that fall under the responsibility of the customer's landlord or another third party.
7. I accept the company's submission that it is not responsible for the private lateral, the section of pipe that connects the customer's property to the public sewerage system, and any pipework that enters and is in the customer's property.
8. I therefore also accept that the defects on private pipework including in relation to the foul stack pipe that have been identified by the company and/or AB Drainage Ltd are not the responsibility of the company. I find there is also no evidence to show that the storm water gullies are the responsibility of the company and so accept they are not.

Odours and flooding

9. I accept the company's submission that under the Water Industry Act 1991 it has no liability for sewer flooding unless negligence can be proven.
10. I consider that the issue of "negligence" is a complicated issue of law and that the courts would be the more appropriate forum to resolve such an issue, in reference to 3.4.1 and 3.4.3 of the Water Redress Scheme Rules. I will therefore not consider the dispute by reference to this legal principle; however, I am satisfied that I remain able to consider the dispute by deciding whether or not the company failed to provide its services to the standard to be reasonably expected.
11. Both parties submit that the customer has been complaining about intermittent foul odours in and around the property since 2014.
12. The customer has submitted witness statements from family and friends in evidence to support her submissions about the intermittent foul odours.
13. The company submits that it has attended the property on numerous occasions since 2014, but no odour was observed during its visits.

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14. The company also submits that on 4 January 2017, following another report of foul odours by the customer, it attended the property. The company states that, during the visit, manhole 3309 was inspected and debris was discovered collecting within. Works were carried out to clear the build-up and the matter was referred for investigation. On 13 June 2017, over five months later, it contacted the customer to discuss possible options for work to the manhole. I am conscious that the company has not stated why it took five months to investigate the matter and has not provided any evidence to show that five months was a fair and reasonable time within which to undertake its investigations. In the absence of any evidence from the company showing otherwise, I am not satisfied that the company has not shown that it provided its services to the standard to be reasonably expected in this regard.
15. The company offered the customer two options on 13 June 2017. The first was to replace the manhole and install new slippers, or, alternatively, to move the manhole further up the customer's garden. The company states that the customer preferred the second option; that the manhole be moved. However, when the works were carried out on 27 June 2017, it undertook the first option to install slipper as it was less obtrusive. The customer's Comments indicate that this change was not explained to her. I am not satisfied that the company has shown that it provided its services to the standard to be reasonably expected in this regard.
16. On 22 November 2017, five months later, an incidence of flooding occurred due to a blockage in the chamber and further works had to be undertaken to modify the new slipper on 14 December 2017. In the absence of any evidence showing that the company undertook the initial work to the slipper on 27 June 2017 correctly, I am not satisfied that the company has shown that it provided its services to the standard to be reasonably expected.
17. The company states that during the works to modify the slipper on 14 December 2017, it also installed an odour logger. I am mindful that the history of the dispute, as set out by the company itself in its Defence, suggests that it was only on 4 January 2017 that the company inspected its apparatus. I am also particularly mindful that the Defence also suggests that an odour logger was only installed following repairs and a subsequent flood in December 2017. Albeit that no odour was detected in the company's network in the two week period during which it was installed. No evidence has been submitted to show what investigations, if any, the company undertook when the complaints about foul odour were first raised in 2014. No explanation has been given for why the logger was only installed three years after complaints were first raised. I

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remind the parties that adjudication is an evidence-based process. In the absence of any substantive evidence otherwise, I find that the company has not shown that it provided its services to the standard to be reasonably expected by the average person in relation to investigations into foul odours.

18. However, notwithstanding the above, the company has submitted data from the odour logger to support its submissions that no odours were detected in its network in December 2017. The 23 September 2015 report from AB Drainage Ltd submitted by the customer in evidence also supports the company's submission that defects have been found on private pipework. I am mindful that the report states *"Due to crack in foul stack into building we believe foul water leaking into premises for several years and this is the main factor of the smell of sewage. Recommended that the pipe be lined and the kitchen waste tapped in further up."* This defect was also identified by the company following its own investigations prior to June 2017, some eight months later. It is not clear whether action has been taken by the customer or her landlord in relation to this to date.
19. Although I note that the second report from AB Drainage Ltd dated 5 January 2018 stated that the foul water manhole is holding water and that there is a risk that this stagnant water is leaking under the property and causing odour, I am mindful that this issue was not raised by AB Drainage Ltd in its September 2015 report. I am therefore not satisfied on a balance of probability that any problems with the manhole holding water, as noted by AB Drainage Ltd in its second report, is the cause of odours the customer has been complaining about since 2014. I am not satisfied there is any evidence to show that any odours are due to faults with the company's network.
20. As discussed above, the January 2018 report from AB Drainage Ltd states that there is a problem with the manhole. The report states that the manhole has not been installed correctly, and the new slipper has been installed to a very low standard. The company refutes this and states that its own investigations have not identified the need for any further work. Correspondence from the Consumer Council for Water ("CCW") indicates that the company was not aware or did not take note of AB Drainage Ltd's second report until on or after 1 February 2018. Correspondence also shows that the company attempted to visit the property to investigate on 8 February 2018 but the visit had to be aborted and investigations concluded due to abusive and intimidating behavior toward staff. The evidence shows that the company then attended the property on 9 June 2018 and investigations identified no issues. Having carefully

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considered the matter, in light of the treatment of the company's staff, I find the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in relation to its decision to withdraw its assistance in February 2018. In addition, in the absence of any subsequent evidence showing any issues with the manhole following investigations in June 2018, I do not find a fault on the company's part in relation to the manhole.

21. Finally, I find there is no evidence to show that any possible issues with the S105a sewer (known as the belly) are causing any problems at the customer's property. I am mindful that this was not raised by the customer's own specialists in its 2015 report. Although, AB Drainage Ltd does state in its 5 January 2018 that the belly needs to be taken out. I note that the company inspected the s105a sewer on 18 January 2018 and found it to be free flowing. Again, in the absence of any subsequent evidence showing otherwise, I do not find a fault on the company's part.
22. In conclusion, there is no evidence to show that the odours complained of are being caused by the company's assets. However, I have found that the company failed to provide its services to the standard to be reasonably expected in relation to its investigations into the odour; the time taken to investigate the manhole at the beginning of 2017; and the initial works carried out to the manhole on 27 June 2017.

Redress

23. In respect of the customer's request that the company provide a correct map of all pipes, the company has submitted in evidence a map of its own assets only. I accept the company's submission that it is not obliged to survey, locate or record information in relation to customers' private pipework. Therefore, this aspect of the customer's claim is unable to succeed.
24. In respect of the customer's request that the company provide repairs and an odour free environment in and around her home, I find there is no evidence to show that the odours complained of are being caused by the company's assets. This aspect of the customer's claim does not succeed.

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25. In respect of the customer's request for a reduction or waiver of her bill due to having to use water to dilute odours in storm gullies, as discussed above, I am not satisfied there is any evidence to show that the storm water gullies are the responsibility of the company and that the customer should be given a reduction in her bills or that her bills be waived. This aspect of the customer's claim does not succeed.
26. The customer requests compensation of £2,834.00 comprising: £200.00 for the survey undertaken by AB Drainage Ltd; £134.00 for a gas detection meter; and, £2,500.00 for stress and inconvenience. Having carefully considered the matter, in the absence of any evidence to show that the odours are being caused by the company's assets, I am not satisfied that the customer has shown that the company should reimburse her for the costs of the survey undertaken by AB Drainage Ltd or a gas detection meter. However, I have found that the company failed to provide its services to the standard to be reasonably expected in relation to its investigations into the odour; the time taken to investigate the manhole at the beginning of 2017; and the initial works carried out to the manhole on 27 June 2017. Bearing in mind the fact that this matter has been ongoing for a number of months and that the customer experienced poor customer service, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience caused. However, I find that the sum claimed is disproportionate to the failings shown. I consider the sum of £500.00 to be a fair and reasonable level of compensation. No evidence has been submitted to support a higher sum of compensation for the failings shown. I therefore direct that the company pay the customer £500.00 compensation.
27. The customer requests an apology for stress and inconvenience and ill health from sewage odours and flooding. As discussed above, the customer's submissions about the impact on her health cannot be considered. However, I find that that it would be fair and reasonable to direct that an authorised representative of the company provide the customer with a written apology for the failings set out above.

Outcome

The company needs to take the following further action:

I direct that the company pay the customer £500.00 compensation. An authorised representative of the company should also provide the customer with a written apology.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 31 August 2018 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.



Uju Obi LLB (Hons) MCI Arb
Adjudicator

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