

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1060

Date of Decision: 19 November 2018

Complaint

The customers' complaint concerns the odour and noise emanating from the company's Wastewater Treatment Works situated at [] in [] on [] ('the Works'), and the legality of working practices at the Works. The Works are situated in very close proximity to the customers' property and the odour and noise prevent the customers from peacefully enjoying their property and pose a risk to their health and the health of other local residents. The customers require the company to do more to alleviate the odour and noise from the Works. Further, the customers complain that the company started charging them for surface water drainage in or around 2013/14, but no surface water flows from their property into the public drainage system and, despite raising this issue with the company in 2013 with the assistance of Consumer Council for Water (CCW), it remains unresolved. The customers have not specified the remedy they seek with regard to the surface water drainage charge.

Defence

The company acknowledges that since the Works were constructed in 2002 there have been a number of complaints from local residents regarding odour. However, the company states that it has worked closely with Environmental Health and has introduced various measures to reduce odour. The company states that Environmental Health is satisfied that the company has taken the best practicable means to reduce odour. The company disputes that any of its working practices contravene the law or pose a risk to the health of local residents. The company states that whilst it did not historically charge the customers for surface water drainage, an on-site inspection in 2013 found that surface water from the customers' property flows into the public drainage pipes before it enters the river and, therefore, the surface water charge has been correctly applied to the customers' account from 1 April 2013.

The company has not made an offer of settlement.

Findings

In accordance with the Water Redress Scheme Rules, the customers' complaint regarding odour, noise and working practices at the Works falls outside the scope of this Scheme for several reasons; the complaint concerns the company's commercial practices, the substance of the complaint has previously been referred to a regulatory/statutory agency, the complaint concerns complex issues of law and would be better addressed to a more relevant forum. Therefore, the customers' complaint regarding odour, noise

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and working practices at the Works cannot be adjudicated upon through this Scheme. With regard to the customers' complaint about surface water drainage charges, the customers have not shown that surface water does not drain from their property into the public drains, or that the company has failed to supply its services to the standard that would reasonably be expected of it by charging for surface water drainage from 1 April 2013.

Outcome

The company does not need to take any further action.

The customer must reply by 17 December 2018 to accept or reject this decision.

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- They explain that surface water flows from the kerb outside the front of their property into a beanie block system directly into the river near to their property and, therefore, they should not be charged for surface water drainage by the company.
- They raised a complaint with the company in 2013 but the issue has not been resolved.
- They have not outlined the specific remedy they seek with regard to the surface water drainage charge.

The company's response is that:

- It accepts that there have been a number of complaints from local residents regarding the odour emitted from the Works since it was constructed in 2002, despite the process at the Works being almost entirely enclosed and ventilated by odour suppression apparatus.
- It accepts that the very hot and dry weather experienced during the summer of 2018 exacerbated the odour as the incoming sewage could not be diluted by rainwater.
- It states that, in addition to the initial investment, a further £250,000.00 has been invested in measures to combat the issue of odour, including the employment of an Odour Control Expert, the installation of a hydrogen sulphide monitor, the installation of new odour control systems, enhanced maintenance programmes, changes to the cake bay structure and location, enhanced risk assessment programmes, the attendance of Process Scientists and the introduction of deodorising sprays. The Engineering and Technical Solutions Team has also been commissioned to identify further short-term and long-term preventative measures to reduce noise and odour and any suggested measures will be put into practice in the future.
- It has worked in full co-operation with Environmental Health during this process and states that Environmental Health has confirmed that its working practices are the best practicable means available to combat the issue of odour. It states that despite the considerable involvement of Environmental Health, it has not been necessary for the Environmental Agency to become involved.
- It states that although activities are restricted to essential operations at night, the Works has to operate 24 hours a day as it is part of critical infrastructure that cannot be stopped without causing flooding or pollution.
- It denies that the deodorising sprays used at the Works contain illegal chemicals, or are used to hide illegal chemicals, and state that these sprays are organic, non-toxic and comply with the Control of Substances Hazardous to Health Regulations 2002.
- It disputes that it uses open topped lorries to transport sewerage cake, stating that this is specifically prohibited and, therefore, monitored to ensure compliance.

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- It acknowledges that it offered the customers £50.00 as a goodwill gesture, made in recognition of the inconvenience and time spent in making the complaint, but states that this was not an offer of compensation for the issues raised.
- It accepts that the customers were not historically charged for surface water drainage and the customers had been informed that they were exempt on the basis that no surface water drained from their property into the public drainage system.
- However, an on-site inspection and dye test conducted by its contractor on 27 February 2013 found that surface water did in fact flow from the front of the customers' property into the public drainage system, although it confirmed that there was no connection from the back of the property. Therefore, as some surface water flows from the customers' property into the public drain, in accordance with its policy, it correctly applied the surface water charge to the customers' account from 1 April 2013.
- It denies that the customers' complaint about the surface water drainage charge raised in 2013 has not been fully resolved. It states that its Chief Executive Officer wrote to the customers on 14 August 2014 in response to a letter from the customers dated 2 August 2014, explaining why the surface water drainage charge had been applied to the customers' account from 1 April 2103.
- It states that it is willing to review its position should the customers have any documents within their title deeds that contradict its position.

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.

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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. Having carefully reviewed the evidence regarding the odour, noise and working practices at the Works, I consulted the WATRS Scheme Rules to establish whether the complaint was within scope of this Scheme.

2. Rule 3.4 of the WATRS Scheme Rules states:

“WATRS may reject all or part of an application to the Scheme where it considers that:-

3.4.1 a customer should be referred to a more appropriate forum for the resolution of the dispute; or

3.4.2 the application should have been made against an alternative water and/or sewerage company; or

3.4.3 in exceptional circumstances, the dispute raises a complicated issue of law.”

3. Rule 3.5 of the WATRS Scheme Rules states:

“The Scheme cannot be used to adjudicate disputes which fall into one or more of the following categories:

- disputes concerning the Competition Acts 1998 and 2002 as amended;
- regulatory enforcement cases;
- bulk supply determinations;
- disputes between undertakers, between licensees and between undertakers and licensees;
- water supply licensing disputes;
- whistle blowing;
- any matters over which Ofwat has powers to determine an outcome
- disputes relating to eligibility to transfer to a statutory licensee;
- water quality legal standards;
- enforcement cases under the Environmental Protection Act 1990 and the Environmental Act 1995 as amended;
- disputes that are subject to existing court action or on which a court has ruled unless the court’s decision has been set aside;

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- disputes that are the subject of an existing or previous valid application under the scheme;
 - the handling of CCWater and Ofwat complaints;
 - complaints which are being or have been investigated by a statutory or regulatory agency or agencies including the Drinking Water Inspectorate and/or the Environmental Agency in respect of the breach of a statutory or regulatory requirement unless a WATRS Notification or Option Letter has been issued in respect of the complaint;
 - resale and third party complaints;
 - disputes relating to the fairness of contract terms and/or commercial practices;
 - disputes concerning allegations of fraudulent or criminal activity; and
 - any dispute or disputes that are considered by WATRS to be frivolous and/or vexatious.”
4. I find that the complaint raised by the customers concerning the odour, noise and working practices at the Works falls outside the scope of this scheme for several reasons, which I shall now outline.
 5. Firstly, the complaint made by the customers raises some complex legal issues, specifically the company’s compliance to the laws relating to the operation of a wastewater and sewerage works, legislation relating to environmental health, the tort of nuisance and the Human Rights Act 1998. Therefore, I find that under Rule 3.4.3 the complaint falls outside the scope of this Scheme.
 6. Also, the company’s defence document demonstrates that there has been significant involvement by Environmental Health with regard to complaints about odour. The letter from the Customer Relations Team to the customers dated 24 October 2018, supplied by the customers in response to the defence, also suggests that the Environment Agency has become involved. Environmental Health and the Environment Agency are statutory and regulatory agencies and, therefore, Rule 3.5 prohibits me from adjudicating on this complaint.
 7. Furthermore, the customers’ complaint regards the commercial practices of the company at the Works, specifically the way in which the odour and noise are managed at the Works. Rule 3.5 prevents me from adjudicating on a dispute regarding commercial practices.
 8. Finally, because the customers’ complaint raises complex issues of law, relates to the company’s commercial practices at the Works, and statutory/regulatory agencies have previously been involved, and are currently involved, with the company in addressing the issues

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raised in the complaint, I find that the complaint would be better addressed to a more relevant forum as per Rule 3.4.1.

9. For the reasons I have outlined, and in accordance with the Water Redress Scheme Rules, I find that the customers' complaint regarding odour, noise and working practices at the Works falls outside the scope of this scheme and, therefore, I shall not adjudicate on these matters. I appreciate the frustration the customer will likely feel at this but, unfortunately, I do not have the jurisdiction to consider/direct upon these matters.
10. The customers also complain that in or around 2013/2014 the company started charging them for surface water drainage. The customers explain that the company had not previously charged them for surface water drainage as it accepted that all rainwater that falls on their property runs through private drains and a beanie block system into the River Yar. The customers complain that the issue has been raised with the company but remains unresolved.
11. Having read the evidence presented by the CCW, I accept that the customer raised a complaint with the company regarding the charge for surface water drainage in 2013. The company's defence document and the documentation provided by the CCW demonstrates that, following an initial review in 2000, the customers were told that surface water from their property did not flow into the public drains and, therefore, they were exempt from the surface water drainage charge.
12. However, the letter addressed to the customers from the Chief Executive Officer of the company dated 14 August 2014 demonstrates that an on-site inspection undertaken on 27 February 2013 found that water from the front of the customer's property did flow through public drainage pipes into the river and, as a result, the company levied the surface water drainage charge from 1 April 2013.
13. The customers have not provided me with any substantive evidence to show that surface water from their property does not flow into the public drains in order to rebut the findings of the company's inspection of 27 February 2013. The customers have provided me with two photographs that seem to show a private drainage system on their property, but I am unable to conclude from these photographs that no surface water drains from the customers' property into public drainage pipes.

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14. On the balance of probabilities, I find that the evidence presented in defence demonstrates that surface water from the front of the customers' property flows into public drainage pipes and the company is entitled to charge the customers for surface water drainage. Therefore, I do not find that the company has failed to provide its service to the standard the customers can reasonably expect by charging the customers for surface water drainage from 1 April 2013.
15. Furthermore, having considered the letter dated 14 August 2014 from the Chief Executive Officer of the company to the customers, and having read the letter sent to the customers dated 12 June 2013 from the Director's Review Team, I do not find that the customers' complaint regarding surface water drainage charges remains unresolved. I find that this evidence demonstrates that the company has fully investigated whether the charges have been correctly applied to the customers' account, and the company has clearly explained its decision to charge for surface water drainage to the customers. Therefore, I do not find that the issue of surface water drainage charges remains unresolved or that the company has failed to provide its service to the standard the customers can reasonably expect in this regard.
16. For completeness, however, I note that the company are willing to review its position on the surface water drainage charge should the customers have any documents within their title deeds that contradict its current position.

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 17 December 2018 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.

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KS Wilks

Katharine Wilks

Adjudicator

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