

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0821

Date of Decision: 18 July 2018

#### Complaint

The customer indicates that he is displeased with the company discharging surface water into a private watercourse located on his neighbour's land. The customer states that this has negative knock-on effects to his land (as the watercourse subsequently runs through his own land). The customer believes that the company is acting illegally. The customer is seeking: an apology; an admission that "the 1991 Land Drainage Act" is not relevant to this case; for the company to reroute the water discharge so that it does not affect his land; and, compensation in the sum of £9549.37.

#### Defence

The company states that it has a legal right to discharge surface water into watercourses and this has been confirmed in the case of *Manchester Ship Canal Co Ltd and another v United Utilities Water PLC [2014] UKSC 40*. This established that sewerage undertakers have the right to discharge surface water into private watercourses from existing outfalls that were already in use on 1 December 1991, when the Water Industry Act 1991 (the Act) came into force. The company states that the particular outfall in question (located on the customer's neighbour's land) has been in use since 1971. Accordingly, it is entitled to continue its use for surface water discharge. The company highlights that it is responsible for maintaining public sewers. However, the fact that it has a right to discharge surface water into a watercourse does not mean that the watercourse becomes a public sewer. The company states that watercourses are the responsibility of riparian owners (the landowners who possess the land through which the watercourse passes) in accordance with the Land Drainage Act 1991. In light of all the above, the company submits that it is not obliged to provide the customer with the redress being claimed and has made no offer of settlement.

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### Findings

It has not been established that the company failed to provide its services to the standard to be reasonably expected by the average person. The company has demonstrated that it is legally entitled to discharge surface water to the private watercourse. Furthermore, the company has shown that it is not responsible for the maintenance of watercourses.

### Outcome

The company does not need to take any further action.

The customer must reply by 15 August 2018 to accept or reject this decision.

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- The company states that the particular outfall in question (located on the customer's neighbour's land) has been in use since approximately 1971. Accordingly, it is entitled to continue its use for surface water discharge.
- The company highlights that it is responsible for maintaining public sewers. However, the fact that it has a right to discharge surface water into a watercourse does not mean that a watercourse becomes a public sewer.
- The company submits that S72(1) of the Land Drainage Act 1991 defines a watercourse as including "*all rivers and streams and ditches, drains, cuts, culverts, dikes, sluices, sewers (other than public sewers within the meaning of the Water Industry Act 1991) and passages, through which water flows.*" The company states that the provision makes it very clear that a sewer is different from a watercourse.
- The company states that in accordance with the Land Drainage Act 1991, watercourses are the responsibility of the riparian owners.
- In light of all the above, the company submits that it is not obliged to provide the customer with the redress being claimed.

### 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.

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.

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## How was this decision reached?

1. It appears that the root of this dispute lies with the customer's dissatisfaction with the company discharging surface water into a private watercourse (located on his neighbour's land). The customer states that this has negative knock-on effects to his own land (as detailed above) and he believes that the company is acting illegally. The customer indicates that, as a result of this issue, he has built fencing to protect his land and he would like the company to pay for this and for the future costs of protecting his land. The customer indicates that under the Water Industry Act 1991, the company is responsible for maintaining public sewers; therefore, it should be responsible for maintaining the watercourse. The customer is therefore seeking: an apology; an admission that "the 1991 Land Drainage Act" is not relevant to this case; for the company to reroute the water discharge so that it does not affect his land; and, compensation in the sum of £9549.37.
2. I remind the parties that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I acknowledge the customer's assertions that the company does not understand the Water Industry Act 1991 and that the Land Drainage Act 1991 should not apply. I have taken note of the customer's submissions in this regard. However, bearing in mind all the evidence provided, I am unable to objectively conclude that the customer's assertions have been sufficiently/correctly demonstrated under the circumstances (further information below).
4. Following careful review of all the evidence provided to me at the time of adjudication, I find that the company has demonstrated it is legally entitled to discharge surface water into private watercourses (even without the consent of the landowner), as established in *Manchester Ship Canal Co Ltd and another v United Utilities Water PLC [2014] UKSC 40*. Specifically, I note that the judgement in this case held that sewerage undertakers have the right to discharge surface water into private watercourses from existing outfalls that were already in use on 1 December 1991 when the Water Industry Act 1991 (the Act) came into force. In the absence of any assertion or evidence to the contrary, on a balance of probabilities, I am inclined to accept the company's submission that the outfall in question has been in use since approximately 1971. I find that the company is therefore entitled to continue its use for surface water discharge.

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Accordingly, I do not find that the company's action of discharging surface water into the private watercourse amounts to a failure to provide its services to the standard that would be reasonably expected by the average person.

5. Furthermore, in response to the customer's assertion that it should be responsible for maintaining the watercourse, I note the company has highlighted that there is a distinction between a watercourse and a public sewer (as detailed in section 72(1) of the Land Drainage Act 1991). The company states that, whilst it is responsible to maintain public sewers, watercourses are the responsibility of the riparian owner. I note that several sections under *Part 2: Provisions for facilitating or securing or the drainage of land* of the Land Drainage Act 1991 highlight the responsibilities/obligations of the riparian owner of a watercourse (I draw particular attention to section 25 of the Land Drainage Act 1991). In light of the above, I find that the company is not responsible for the maintenance of the watercourse in question and I am not satisfied that the company is liable to pay for the fencing that the customer has built nor for the future costs of protecting his land.
6. In the interests of completeness, I have also reviewed the communications between the parties in relation to this issue. I am satisfied that the company provided detailed responses and explanations to the customer and maintained its position that it is legally entitled to discharge surface water into the watercourse and that it is not liable for the maintenance of that watercourse or the cost of the measures taken to protect the customer's land. Accordingly, I do not find that the company's actions in this regard amount to a failure to provide its services to the standard to be reasonably expected by the average person.
7. Based on a full review of all the evidence available to me, I am not satisfied that the company's actions amount to a failure to provide its services to the standard to be reasonably expected by the average person. Consequently, in the absence of any substantiated failures on the part of the company, I am unable to uphold the customer's claims for redress.

#### **Outcome**

The company does not need to take any further action.

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## **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 August 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.



**E. Higashi** LLB (Hons), PGDip (LPC), MCI Arb.

**Adjudicator**

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