

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1261

Date of Decision: 22 February 2019

Complaint

The customer had a leak to his supply pipe. The company did not complete the repair properly. It took more than a year to have the full pipe replaced and the company has left this with numerous joints in it. The company trespassed on his property to fill holes. Its actions have caused diminution of the value of his property. The company has also damaged a surface water gulley.

Defence

The customer had a leak to his private supply pipe that was repaired under its free leak repair scheme. The customer wanted the full supply pipe replaced when this was not necessary. He has made demands of the company that would be made of a private contractor, however he opted to utilise the free leak repair scheme instead. It submits that parts of the customer's claim fall outside the scope of the Scheme.

The company made a final offer of £500.00 to settle the customer's claim.

Findings

The customer agreed to the company completing the leak repair free of charge and the terms and conditions of this policy are binding. The company was not obliged to replace the entire supply pipe, only to repair the leak. The company had done so in line with the terms and conditions. The evidence did not show a leak to the remaining supply pipe; the leak remained after this was replaced and was on the customer's boiler. There had been customer service failures that warranted compensation, however the company took the customer's complaint seriously throughout.

Outcome

The company needs to take the following further action:

Pay the customer the sum of £400.00 in compensation.

The customer must reply by 22 March 2019 to accept or reject this decision.

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- The customer claims compensation as follows:
 - £100.00 for misrepresentation based on the customer receiving contact that he believed was from the company when it was actually from [] Ltd, the company's contractor.
 - £300.00 each for the diminution in value of his property based on the holes patched with concrete to his property and for additional joints to the supply pipe where there should only be one.
 - £100.00 for the company failing to make good after work was completed, as a surface water gully was broken, and cement was sprayed onto a wooden side gate
 - £250.00 for "aggravated" trespass in relation to the 26 August 2017 visit
 - £70.00 for postage and stationery costs; and,
 - £1,050.00 in compensation for the time spent on the matter by the customer, based on 100 hours at £10.55 an hour

The company's response is that:

- The company states that a leak was found to the customer's private supply pipe. This is the customer's responsibility to repair and maintain. The customer agreed to the company repairing the leak under its free repair service. Under the terms of this, the company will make every effort to replace the water supply pipe, but if this is impractical, it will carry out a repair. The company has a duty to all customers to use its finances wisely and for the relevant purpose. The customer's requests made in relation to his preferred method of repair would have been more appropriately made to a private contractor who he would have been paying to complete the repair. The company cured the leak on its first visit. The customer has not substantiated his claim with evidence. The customer chose to continue corresponding with the company when its terms and conditions of the repair are clear and the customer consented to these. The customer was determined to have a new supply pipe to his back door and, whilst the company should have refused this, it laid this pipe, even though the customer confirmed that he knew there was an internal leak on his boiler. The company submits that the Water Redress Scheme is not the correct organisation to deal with some elements of the claim as they would be better dealt with by other forums. In any event, the claims are unsubstantiated and there is no evidence of proven losses. The company has offered to deal with the gully for the customer, however he declined this offer. The customer has engaged with it in relation to matters unrelated to the leak repair, concerning unsubstantiated claims that the company's assets had caused contamination to his soil and subsidence to his property. The company has gone to great lengths and expense to investigate its assets and has provided evidence that none of its assets were at fault. The

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company accepted that there was confusion in relation to information provided to the customer about the meter being faulty and there have also been possible miscommunications whilst the leak situation was being dealt with. The company has offered a total of £500.00 to apologise for this and apologised verbally and in writing. The company has sent the customer £360.00 in Guaranteed Standards Scheme payments and a £50.00 payment for being late to an appointment when there is no evidence of this. The company accepts that it failed to be clear to the customer about his expectations of it and what the customer supply leak detection and repair service entailed. When the customer began submitting demands before the works began, it should have advised that it would not meet these and explained the reasons why, and that the customer could proceed with the repairs himself using his own contractor.

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. The customer was advised in November 2016 that there was a leak to his private supply pipe. The customer's complaint against the company stems from this leak, the company's repair under its free repair scheme, and the customer service received.

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2. The customer has requested compensation under various heads of claim. The company has submitted that a number of these fall outside the scope of the Water Redress Scheme. I shall therefore first review the scope of the Scheme in respect of the customer's individual claims.
3. The scope of the Water Redress Scheme is set out at Section 3 of the Scheme Rules. Section 3.3 provides a list of areas about which the Scheme is able to settle disputes. The list includes water supply services, wastewater/sewerage services, and other issues which have been the subject of an internal company complaint procedure and which are not excluded elsewhere in the Rules.
4. Section 3.4 provides 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 for the resolution for the dispute".
5. Section 3.5 specifically provides that the Scheme "cannot be used to adjudicate disputes which fall into one or more of the following categories", including "disputes concerning allegations of fraudulent or criminal activity" and "disputes relating to the fairness of contract terms and/or commercial practices".
6. The company has challenged the following heads of claim as being out of scope. I have included my determination of scope below each heading for clarity.

Aggravated Trespass (£250.00)

Aggravated trespass is a criminal offence under the Criminal Justice and Public Order Act 1994. This part of the customer's claim therefore cannot be dealt with under the Water Redress Scheme. I am only able to deal with the company and/or its representatives entering the customer's property from the perspective of customer service.

Diminution due to holes in various locations (£300.00)

This claim relates to the manner in which the company has conducted the repair work to the supply services and whether it carried out this work in accordance with the contract for the free repair. I am not able to determine the fairness of the terms of the contract or the company's practices in relation to the free repair service; however, I am able to determine whether the company has acted in accordance with its

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published policies. I therefore find that this claim falls within the scope of the Water Redress Scheme, albeit that calculation of diminution of value in a property may be a complex and specialised area.

Diminution due to joints in the supply pipe (£300.00)

This claim is within scope for the reasons given in relation to diminution due to holes.

Misrepresentation (£100.00)

The passenger's claim for misrepresentation is based on the company's contractor, [] Ltd, sending communications that the customer believed were from the company. I find that this claim falls within scope insofar as it relates to customer service.

Negligence

Negligence is not included within the areas provided for by Rule 3.3 and is also a complex area of law that I find would be better referred to a court for determination. Notwithstanding this, I am able to determine whether the company carried out the leak repair in accordance with its policy documents.

Breaches of contract

As above, I am able to review whether the company has complied with its published documentation in relation to the free repair. However, I am not able to make any determination as to whether the terms of the repair or the company's policies are fair to the customer.

7. The customer was advised in November 2016 that there was a leak on his private supply pipe, located after his water meter. I am satisfied that, where a leak occurs to a customer's private pipework, it is for the customer to repair this. The company has statutory powers to compel a customer to repair a leak if he does not do so within a reasonable time. The company also has a policy to offer customers one free leak repair in respects of leaks to the private supply pipe, where the leak is located between the boundary of the customer's property and the point of entry into the building.
8. The company has provided its leaflet entitled "You've got a leak" that sets out the types of water pipe and who is responsible for each section of pipework. It also explains the timescales for a

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repair, that the company will offer to provide a repair free of charge, and the reasons for the company making this offer.

9. I note that, where a leak has been found on a customer's private supply pipe, they have one week to decide if they will take the company's offer of a free repair or if they will arrange for the leak to be fixed themselves. Where a customer opts to repair the leak privately, this must be completed within six weeks.
10. The leaflet also provides the terms and conditions of the offer of a free repair. I note that Clause 1 of the terms and conditions states that "the offer is to replace or repair the supply pipe between the outside stop valve and the point of entry to the building at the discretion of [] Water". Clause 3 states expressly that the company "may employ sub-contractors to carry out the whole or part of the work". Clause 5 relates to excavations, stating that on concrete, "on completion of the work, the trench will be backfilled with material from the excavation only and surfaced with black Tarmac or concrete. It should be noted that on a Tarmac or concrete drive, the area of new black Tarmac or concrete over the excavated area may create a patch effect. We'll not re-surface (or accept liability for the costs of resurfacing) the entire drive".
11. I also note that the leaflet sets out the legal consequences of a customer failing to have the leak fixed within six weeks, where that customer has not asked the company to conduct the repair. The company will use its statutory powers to replace or repair the supply pipe and will reserve the right to recover the cost of this work from the customer.
12. I find from the evidence that the company advised the customer of the leak on 11 November 2016. A letter was sent to the 'occupier' in December 2016, received by the customer on 30 December 2016. The company then sent a letter to the customer on 19 January 2017 advising that the company could repair this free of charge and providing a copy of the terms and conditions to the customer. A further letter was sent to the customer on 7 February 2017 to which the customer responded on 10 February 2017. In this letter, the customer advises that he received a call on 2 February 2017, but that he was unable to confirm that the caller was from the company.
13. Further correspondence indicates that the customer was unwilling to grant the company permission to repair the pipe without being allowed to take photographs of the excavations, in

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case he needed to make a claim against the local authorities in respect of the roots from trees in the footpath.

14. I find that the customer had the choice between having the leak repaired by the company in accordance with their terms and conditions or arranging for the repair himself. I find that, on 7 March 2017, the customer agreed for the company to complete the repair. I am satisfied that the terms and conditions of the free leak repair became binding on the customer at that point.
15. I am satisfied that, as part of the free leak repair, the company is the party with discretion as to how the repair is conducted, and over what part of the supply pipe. The company must complete the leak repair in accordance with the terms and conditions. However, the customer does not have the same input and control over the work that he would have had by hiring a contractor himself. The company must, under the free leak repair agreement, resolve the leak to the supply pipe, subject to the exclusions (including where a pipe exceeds 25 metres in length). However, it is not obliged to replace the entire supply pipe where this is not necessary to cure the leak.
16. In its defence, the company states that it should have been clear to the customer as to what its leak detection and repair service entailed and, when the customer submitted demands prior to works commencing, explained that if the customer was not happy to proceed under the terms and conditions, the service would be withdrawn and he could complete the repairs at his own cost. I acknowledge and accept this assessment of the situation. The customer's complaint about the company not replacing the entire supply pipe, and complaints regarding the way in which the work was completed, including adding joints to the new pipe, could likely have been avoided by the company being clearer as to the limits of its free leak repair service initially.
17. However, the customer did agree to the company's free leak repair service and the parties are therefore bound by the terms of this. I find that the company's failure to be clearer in its initial responses to the customer amounts to a customer service failure only, albeit one that led to the customer spending considerable time complaining to the company.
18. In respect of the leak repair, as above, I find that the company was obliged to repair the leak to the customer's supply pipe. In reviewing the evidence, I find that the company's contractor attended on 28 April 2017 to complete the leak repair.

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19. The company excavated a hole around the water meter and a hole near the customer's front door, joining the new pipework with the old at that point. The customer refused to have a stop tap fitted at this point and complained to the company.
20. The company states that this work was sufficient to stop the leak on the customer's supply pipe. I find that it is necessary to review the evidence to determine whether this was the case, with the company having fulfilled its obligations under the leak repair service, or if the leak remained, meaning the company would have to complete further works to resolve the leak.
21. In reviewing the evidence, I note the email dated 2 May 2017 in which a Contract Delivery Manager confirmed that the company had replaced over 8m of pipe, despite having originally thought only 3m of replacement would be required. The email states that this work "cured the leak with no further work required".
22. A further email dated 30 May 2017 states that "the team relaid 8.4m and exchanged the leaking OSV [outside stop valve]".
23. An email dated 27 July 2017 advises that the company attended on 6 July 2017 and "proved to the customer that there isn't a leak on this supply".
24. An email dated 26 September 2017 states that "the data from the meter itself ... appears to be normal, it flatlines to 0 when there is no flow and has the demand peaks that I would expect. The meter doesn't show any signs of leakage or high usage, there is usage throughout the day but within what we would normally expect, there are a lot of peaks, but at night it typically goes to 0".
25. On 11 September 2017, a representative visited the customer's property to test the supply. The company found that the meter "was registering consumption on this visit, albeit it was turning only very slowly". The company turned off the stop valve fitted at the end of the new supply and the meter stopped turning, indicating that there was a leak at some point after the new valve, but that this could be located at any point up to and including anywhere inside the customer's home.
26. The customer has disputed this in his comments, providing bill comparison letters from the company showing that he "was using water sufficient for 5 people until the rear section of supply pipe was replaced in June 2018".

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27. In reviewing these letters, I find that they include a breakdown of the customer's average daily use in litres for each month between May 2017 and May 2018, excluding November 2017. I have not been provided with any evidence of the customer's daily use prior to April 2017, when the company attended to repair the leak, nor after June 2018 when the company attended to replace the remainder of the supply pipe.
28. The average daily use also varies significantly, between a high of 1136 litres in February 2018 to a low of 331 in September 2017. I note that typical water use for one person is around 159 litres per day. The low level of 331 litres is between the normal use for two and three people, whilst the high of 1136 litres is more than twice as much as a family of five (545 litres).
29. Whilst I acknowledge that this usage is extremely high, I am not persuaded that it demonstrates that there was an ongoing leak on the remainder of the supply pipe. The company's emails are consistent that, at night, usage dropped to zero. I consider that a leak accounting for more than 50% of normal daily water usage for one person would have been evident on the meter at all times. I also find that the fluctuation in usage level suggests additional water use rather than a leak as, had a leak been responsible for the large increase to 1,146 litres in February 2018, this increased level of usage would have remained in later months; however, the customer's average use dropped steadily, returning to 476 litres in May 2018.
30. I also note that, on 5 July 2018, the customer confirmed that the meter was still spinning slightly despite the remaining pipe having been replaced, but that he was aware that the leak was possibly on his boiler.
31. I am mindful that, when the company did identify that the water meter continued to turn on 11 September 2017, the meter turned "only very slowly". I find this description to be consistent with the situation on 3 and 5 July 2018 where the meter continued to spin slightly.
32. In view of this, I find, on the balance of probabilities, that the company's work to replace 8.4m of the customer's supply pipe did properly cure the leak to his private supply pipe. Whilst the meter did continue to turn slightly, I find that this was related to the leak to the customer's boiler. I therefore find that the company complied with the terms and conditions of the leak repair when it replaced the pipe between the meter and the front of the customer's property and refused to replace the remainder of the pipe on the basis that this was not necessary.

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33. In respect of the quality of the work, I find that the customer's complaint is based largely on a personal preference for a single supply pipe, rather than one that has been joined in a number of places. However, as above, the free leak repair is conducted at the company's discretion; had the customer wished to have control over the manner in which the replacement pipe was laid, he had the option to hire a contractor to complete the work privately.
34. I find no failure of the company to comply with the contract for the leak repair in that it used joins on the pipework, or that it has patched the concrete areas that it excavated. I also find no failure of the company to provide the services to the standard of a reasonable water supplier in how it completed the leak repair.
35. I accept that there have been some customer service shortfalls in how the company handled the customer's leak and complaint. As above, I find that the company failed to make the terms and conditions of the free leak repair clear to the customer and that this failure led to parts of the customer's complaint. I also accept that the company did not make it clear to the customer that it would be utilising a subcontractor, [] Ltd, to complete the work, causing some confusion for the customer as to who he was and should be contacting.
36. I also find that the company provided poor customer service when it returned to fill the excavation holes, completing this in the customer's absence, when it had been made aware of an ongoing complaint and that the customer had asked for the holes to not be filled until the complaint had been resolved. I accept that the company may have had the legal authority to enter the customer's property to complete the work, however I find that it should have given due notice to the customer if it was intending to complete this work against the customer's wishes.
37. The customer has also complained that the company has damaged a surface water gully. I find from the evidence that the company did offer to repair this, however the customer declined this. I also note that I have not been provided with any evidence of the damage, nor any quote or invoice for its repair.
38. Turning to the remedies requested by the customer, I shall deal with these in turn:

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£100.00 for misrepresentation

39. As above, I have found that the company did fall below the standard expected as it did not make it clear that it was using a sub-contractor to complete the leak repair. However, I am not persuaded that any specific compensation payment is warranted in relation to this. Nevertheless, I shall include it in considering any award for the customer's time spent complaining to the company.

£300.00 for diminution due to holes dug in the footway; £300.00 for diminution due to additional joints being added to the supply pipe

40. As above, when the customer agreed to the company completing the leak repair, this was to be done at the company's discretion and with the holes being back filled with concrete, likely creating a patch effect. The company has complied with the terms and conditions of the leak repair and has completed the repair with reasonable care and skill. I find that the customer is therefore not entitled to recover any compensation for the manner in which the work was carried out or any diminution of value to his property.

£100.00 for a failure to replace the surround to the surface water gulley and clean the side gate

41. The customer has not provided evidence of any damage to the surface water gulley. The company did offer to repair this, however the customer declined. The customer has not provided any evidence to demonstrate the potential cost that he would incur having this repaired. I am therefore not able to make any award to the customer for the gulley or side gate.

£200.00 for "Aggravated" Trespass

42. As above, aggravated falls outside the scope of the Water Redress Scheme. The decision has found that the company fell below the standard expected of a reasonable water supplier when it entered the customer's property to fill the holes without notice, despite the customer having advised that he did not wish for this to happen. I shall include this in my consideration of the customer's claim for time spent complaining to the company.

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£70.00 for postage and stationery costs

43. I have not been provided with evidence to quantify this claim. However, I shall take this into consideration when determining compensation for the customer's time spent claiming to the company.

£1,050.00 for time spent on the complaint to the company

44. I find that this claim is one for non-financial losses under the Water Redress Scheme. I am satisfied that the customer has spent considerable time complaining to the company. For the avoidance of doubt, I am not able to consider any part of the customer's complaint that relates to water quality; I am limited to reviewing the customer service provided in relation to the leak repair and associated issues. I also find that this claim amounts to one for inconvenience, being the time spent complaining to the company, and distress, being the frustration experienced in relation to issues such as the customer not being advised that the company was utilising a subcontractor.

45. I refer the parties to the WATRS Guide to Compensation for Inconvenience and Distress. This is the guidance for how much compensation will be appropriate in relation to the inconvenience experienced by a customer in respect of a complaint. The compensation is set by reference on four tiers, based on the severity of the complaint and various mitigating and aggravating factors.

46. In reviewing the customer's complaint, I am mindful that the company did complete the leak repair in accordance with the terms and conditions. The customer's request for the remainder of the pipe to be replaced was not based on any failure by the company to repair the leak, nor to conduct the works in accordance with the terms and conditions of the leak repair.

47. I am satisfied that the company did largely meet the standard expected of a reasonable water supplier in how it handled the customer's complaint. It has sent numerous representatives to the customer's property to discuss his issues, eventually agreeing to replace the remainder of the supply pipe despite this being outside of the company's responsibilities and unnecessary to rectify the leak.

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48. I am satisfied that the company has taken the customer's complaint seriously throughout. However, as above, a significant part of the complaint could have been avoided by the company being clearer initially about the limits and remit of the leak repair scheme.
49. Similarly, I am satisfied that there has been some confusion in how the company has handled the complaint, including advising the customer that his water meter was faulty for flashing "F10", when this actually was a reference to the firmware version installed on the meter.
50. I find that the company did complete the leak repair promptly once permission was granted by the customer. I am not persuaded that it has unduly delayed in how it has handled the leak repair or the subsequent work, the later work not being necessary under the leak repair policy.
51. I am not able to consider the impact of any matters found to be outside the scope of the Water Redress Scheme when assessing compensation for inconvenience and distress.
52. In considering the above, I find that the company's customer service failings amount to a Tier 2 complaint, warranting compensation between £100.00 and £500.00. I find that there have been a number of more severe incidents, such as backfilling and concreting the holes against the customer's express instruction, pushing the complaint towards the top-end of Tier 2.
53. For the avoidance of doubt, I acknowledge that the company has previously made offers of compensation to the customer. For the reasons given above, the decision is not able to review all matters for which the company's offer may cover. Further, by continuing with the dispute, the customer can be said to have rejected the company's offer in favour of adjudication. The offer is not binding upon me and compensation is quantified afresh under the reasons given in the decision.
54. I consider that the sum of £400.00 in compensation adequately reflects the company's customer service failures and the severity of these, whilst also taking into account the company's actions to rectify the complaint and that the company had not breached the free leak repair agreement. I direct the company to pay this sum to the customer accordingly.

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Outcome

The company needs to take the following further action(s): Pay the customer the sum of £400.00 in compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 March 2019 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.



Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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