

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0570

Date of Decision: 8 September 2017

Complaint

The company carried out an enforced repair of a supply pipe without conclusively establishing that there was a leak and that the repair was necessary. The customer's own private contractors had found no evidence of leakage. The company then invoiced the customer for his share of the costs of the repair ("the Costs") but has refused to provide a detailed breakdown of the Costs. The invoiced amount is excessive in any event. If the repair works were carried out unnecessarily, the customer requires an apology and contends that the company should waive its invoice in full (or at the very least, it should reduce the amount of the invoice to a much more reasonable level).

Defence

Separate inspections had confirmed the existence of the leak. The company completed an enforced repair pursuant to section 75 of the Water Industry Act 1991 ("Section 75") and recharged the Costs to the customer. The company is under no obligation to provide a breakdown of the Costs. The invoice is properly payable and the company's position is that no apology is due.

Findings

The leak existed and the repair, therefore, was necessary. In completing the enforced repair itself (and in invoicing the customer for the Costs), the company acted appropriately and within its Section 75 powers. The Costs were reasonably incurred and there is no basis for directing the company to reduce the value of its invoice to the customer or to provide a more detailed breakdown.

Outcome

The company does not need to take any further action.

- This adjudication is final and cannot be appealed or amended.
- The customer must reply by 6 October 2017 to accept or reject this decision.

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Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- The company wrote informing him that he had a leak on his supply pipe and that he would need to attend to its repair.
- In response to this, he and his neighbours called in their own private contractors to investigate the supposed water leak (or the potential for any such leaks). The private contractors reported that there was no leakage requiring any repair.
- In February and March 2017, the company proceeded to carry out an enforced repair of the supply pipe ("the Enforced Repair"). The company completed the Enforced Repair without evidencing that the works in question were necessary or warranted.
- The company then issued an invoice for the costs of the Enforced Repair, totalling a "staggering" £3,187 ("the Costs"). The share of the Costs that he is being pressed to pay amounts to £796.75. However, "completely unreasonably", the company has refused to provide a breakdown of the Costs as invoiced. By withholding the requested breakdown, the company is acting contrary to the principles of fairness and full transparency.
- He requests that the company be directed to justify that the Enforced Repair works were necessary. If it transpires that the works were not, in fact, necessary then – in those circumstances - he requests that the company be required to:
 - apologise; and
 - waive in full its invoice for the Costs; or

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- if there is no full waiver, at least reduce its invoice to a reasonable sum significantly less than £3,187.

The company's response is that:

- Routine leakage detection work on 2 October 2015 established that there was a leak on the joint supply pipe to the properties 92, 94, 96 and 98 [REDACTED] Road. (The customer's property is situated at number 92). A boundary box was installed to confirm that the leak was on the private section of the pipe.
- Correspondence was sent to the customer advising him of the leak and advising also that it was his responsibility, jointly with his neighbours, to repair it. Several enforcement warning letters were issued too (together: "the Correspondence").
- As to the existence of the leak and the necessity for the works in the first instance, further inspections were carried out on 12 January 2016, 17 November 2016, 10 February 2017 and 24 February 2017 ("the Inspections"). All of the Inspections confirmed the original diagnosis, i.e. that there was indeed a leak on the private supply pipe. Three different technicians and an independent contractor carried out the Inspections.
- Section 75 of the Water Industry Act ("Section 75") gives all water companies the power to prevent damage and to take steps to prevent contamination, water waste and misuse.
- Despite the Correspondence, no confirmation was received from the customer (or from any of the neighbours, for that matter) that the leak had been repaired. In view of this and pursuant to Section 75, therefore:
 - the company was under a legal duty to proceed with the Enforced Repair; and
 - the Costs of this were recharged to the customer and his neighbours.
- As to the amount of the Costs, the condition of the pipework and the layout of the properties meant that the works were not straightforward. The complete replacement of 20 metres of pipework was required. It then proved necessary to carry out a further repair, which also involved installing a new point of entry at one of the properties.
- This was an enforcement action under Section 75 and therefore, the Enforced Repair cannot be regarded as a service that the company was providing. Against that backdrop, there is no obligation to supply the customer with the breakdown of the Costs that he is seeking. Nevertheless, the company has now been able to clarify that the Costs figure totalling £3,187.00 is comprised of:
 - Labour costs - £3144.45; and
 - Material costs - £42.55.

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- Labour costs, inclusive of equipment for each of the days that the contractors were on site, were as follows:
 - 24 February 2017 - £1858.69
 - 01 March 2017 - £801.70
 - 08 March 2017 - £484.06
- Given the implications of Section 75, the company does not consider that it should be required in this case:
 - to justify (further) or substantiate:
 - the original existence of the leak; or
 - the necessity for the works; or
 - in all the circumstances, the appropriateness of its completing the Enforced Repair; or
 - to apologise to the customer; or
 - to waive or reduce its invoice to the customer in respect of the Costs.

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. I should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of probability.
2. In reaching this decision, I have had the benefit of reading the customer's comments on the company's defence. These are set out in the customer's letter dated 27 August 2017 ("the Comments").

Section 75 of the Water Industry Act 1991 ("Section 75")

3. The starting point in this case, it seems to me, must be Section 75. By virtue of Section 75 and as it submits, I am satisfied that the company is/was:
 - a. under a legal duty to ensure that water is not wasted through leakage; and
 - b. empowered to make the Enforced Repair (in circumstances where the customer, having been served with the requisite notice, has not taken steps to undertake the repair himself).
4. I note the Correspondence attached to the company's defence, at pages 4 to 11. Having reviewed those letters – and on the evidence generally – I am satisfied and find:
 - a. that the customer was served with the requisite notice under Section 75 ("the Notice"); and
 - b. as far as the company was aware, that the customer had not taken the steps specified in the Notice; and
 - c. that therefore, on a procedural level, at least - the company was acting properly and within its powers when it moved to complete the Enforced Repair itself.
5. However, as I see it and for present purposes, the key provision of Section 75 is subsection 10 ("subsection 10"). Subsection 10 reads:

*"... Where any steps are taken by virtue of this section **and it is shown that, in the circumstances of the case, those steps were not necessary** [my emphasis] as mentioned in subsection (2) or, as the case may be, (4) above, the water undertaker in question ... shall not be entitled to recover any expenses incurred by it in taking those steps ..."*

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6. The first strand of the customer's complaint is that the Enforced Repair was not necessary (or more precisely, he submits that the company carried out the Enforced Repair without conclusively establishing or showing that it was necessary.)

The existence of the leak and the consequent 'necessity' for the Enforced Repair

7. There is a longstanding dispute between the parties over whether any leak existed in the first instance (and whether, therefore, the Enforced Repair was 'necessary'). I have noted the customer's various letters on this. The customer explains that private contractors, whom he and his neighbours had engaged, all reached the same conclusion, i.e. that there were no water leaks. For its part, the company accepts that the customer did inform it – repeatedly – that his private contractors had checked for leaks and that none could be found. I have taken account of the company's response on this:

"... Whilst [the customer's] contractor may have been unable to find a leak within the boundary of number [REDACTED] Road, this does not mean that there was no leak present elsewhere on the joint supply pipe. This was explained to [the customer] during a phone call on 7 January 2016 ..."

8. After weighing up the evidence on this issue, I find that – originally – there was a leak on the private joint supply pipe. I reach this conclusion largely on the basis of the company's submission about three different technicians and an independent contractor all attending separately to make the Inspections. For the customer's case to prevail, there would have to be a serious possibility that each of these respective visits produced a false or unreliable result about the presence of the leak. I am not persuaded, however, that there is or was such a possibility in this scenario.
9. In light of the above and for the purposes of subsection 10, I find that the Enforced Repair was a "**necessary**" step taken by the company. It follows that this part of the customer's complaint – i.e. concerning the company's justification for the Enforced Repair - cannot succeed.

The **breakdown** of the Costs

10. I accept the customer's point in the Comments about the breakdown of the Costs only being provided "*at the last minute*". Also from the Comments, I can see that the customer maintains that the breakdown "*is still very incomplete*" and he points out, for example, that no detail is given "*of the charges arrived at for each of the three days*" when the workers were on site.

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11. I have considered whether, in all the circumstances, the customer is entitled to the further and more extensive breakdown that he seeks. I am not persuaded, however, that he has made out his claimed entitlement in this regard. It seems to me that:

- a. the Costs were incurred pursuant to a very specific statutory power, namely, Section 75; and
- b. as such, this is not a situation where the company could be said to have been providing a service. (I accept the company's submission on this aspect); and
- c. I cannot see that there is any requirement or expectation reflected in the statute that the company must provide a breakdown of any expenses it is seeking to recover under the Section 75 procedure; and
- d. in any event, the limited breakdown that *has* been made available to the customer (albeit provided late in the day) is adequate.

The **amount** of the Costs (and whether they were reasonably incurred)

12. I note that the customer describes the amount of the Costs as "*staggering*". On this question, I have had regard to subsection 9(b) of Section 75 ("subsection 9(b)"), which empowers the company:

*"... to recover any expenses **reasonably incurred** [my emphasis] by the undertaker in taking those steps from the person on whom the notice was served ..."*

13. In view of the wording in subsection 9(b), I have given consideration to whether the Costs at issue in this case can be said to have been "*reasonably incurred*". In making this assessment, I have taken account of two submissions made in the company's defence, specifically:

- a. that the Enforced Repair was "*not straightforward*" and needed to be completed over a period of three days; and
- b. that there was an 'enforcement' context to the Costs being incurred, i.e. the company was under a legal duty to carry out the works.

14. As I see it, the enforcement context referred to by the company is important here. The earlier following of the Notice procedure under Section 75 meant that the customer had been given a fair opportunity to repair the leak at his own expense. Had he taken that step himself, using his own contractors, he may well have been able to complete the work at a more competitive price. In this instance, the customer did not take up that opportunity or comply with the Notice. I do not

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consider this meant that the company was then free to incur whatever excessive charges it liked in carrying out the Enforced Repair. However, it does seem to me that – by not complying with the Notice – the customer left himself with less room to criticise the Costs that the company was then obliged to outlay under the Section 75 enforcement process. With these considerations in mind:

- a. I have reviewed the limited breakdown of the Costs provided by the company. I do not find the Costs to be “*staggering*”, as the customer contends but they seem to be on the high side. Nonetheless, I am satisfied that they were still “*reasonably incurred*” within the meaning of subsection 9(b); and
- b. I am not persuaded by the customer’s argument that the company’s invoice for the Costs should be reduced down from £3,187.00.

Summary of conclusions

15. For all the reasons given above, I find and conclude that:
 - a. the Enforced Repair was necessary (and the existence of the leak has been adequately justified by the company); and
 - b. in completing the Enforced Repair, the company acted properly and within its Section 75 powers; and
 - c. there is no basis or procedure for requiring the company to produce a more detailed breakdown of the Costs; and
 - d. the Costs were reasonably incurred; and
 - e. accordingly, there is no basis and/or it would not be appropriate to require the company in this instance:
 - i. to reduce its invoice to the customer for his share of the Costs; or
 - ii. to apologise to the customer.
16. It follows that the customer’s complaint is unable to succeed.

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 6 October 2017 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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Nik Carle LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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