

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0641

Date of Decision: 23 February 2018

Complaint

The customer states that the company has failed to properly investigate the customer's low/zero water pressure, arguing that it related to a "private" pipe.

Defence

The company confirms that the pipe underlying the dispute in this case is a private supply pipe, and thus the responsibility of the claimant, not of the company. It has previously offered the customer a goodwill payment of £1,500.00 "in settlement of all the costs that you have incurred and also to reflect any perceived poor service".

Findings

I find that the pipe underlying the dispute in this case is a private supply pipe, and thus the responsibility of the claimant, not of the company.

Outcome

The company does not need to take any further action.

The customer must reply by 23 March 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 23 February 2018

Party Details

Customer: ██████████

Company: ██████████

Case Outline

The customer's complaint is that:

- The company has failed to properly investigate the customer's low/zero water pressure, arguing that it related to a "private" pipe.
- The company maintains that its responsibility ends at the termination of the water mains in Ashes Lane near the property Stone Edge and that a supply pipe then enters private land belonging to Cross Keys and travels across several private properties before arriving at the customer's properties approximately 400 metres in a North Easterly direction. As a result, the company contends, the entire length is a private pipe and hence the customer's responsibility.
- The customer argues that the pipe from Stone Edge is laid in the lane proceeding towards Green Barn until it reaches Green Barn, approximately 270 metres away. It then crosses approximately 135 metres of Green Barn's land before reaching the customer's properties. As a result, the first two thirds of the pipe is the company's responsibility, and only 135 metres is a private pipe and the customer's responsibility.
- He has supplied the company with a copy of Spring House's deeds showing that the first two thirds of the pipe is in the lane, but the company nonetheless insists that the pipe enters private land at Cross Keys.
- He asked the company to prove that the pipe entered private land at Cross Keys by excavating, but it declined to do so "because of cost".

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- On 20 June 2017 the customer excavated the pipe around the stop tap/meter near Stone Edge and confirmed that the pipe does indeed travel down the lane towards Green Barn, as he has stated and as is consistent with the information in Spring House's deeds.
- The customer has objected to the truth of certain statements made by the company and to the honesty of certain company employees.
- The customer has made additional objections relating to water quality and regulatory enforcement. However, these have been ruled inadmissible under the Water Redress Scheme Rules.
- He claims compensation for £5,000.00 for invoices he has issued relating to his monitoring of the water supply.
- He claims further compensation of £15,000.00.

The company's response is that:

- It notes that as the customer is a household customer, the maximum compensation he is permitted to claim under the Water Redress Scheme Rules is £10,000.00.
- It notes that the Water Industry Act 1991 prohibits the company disconnecting properties from the water mains absent extraordinary circumstances, none of which are present in this case.
- It acknowledges that under the Water Supply and Sewerage Services (Customer Service Standards) (Amendment) Regulations 2017, it has an obligation to maintain a minimum pressure in a communication pipe of 0.7 bar.
- Pressure tests taken at the boundary of Ashes Lane are always a minimum of 4 bar, and so the company believes it is meeting its obligations in this respect.
- It believes that the customer's low water pressure results from the fact that his private supply pipe was originally used only to supply water to Spring House, but now also supplies water to Red House and Spring House Annex.
- It notes that the length of the customer's supply pipe could also play a role in loss of flow and pressure.
- Any leakage or "illegal connections" to a private supply pipe are private matters and to be resolved between the parties concerned. The company cannot become involved.
- The customer is mistaken in its assertion that the company believes his private supply pipe connects with pipes for which the company is responsible on Ashes Lane, near Stone Edge.
- As the customer's supply pipe is a private pipe, the company has no knowledge of its location.
- The customer is mistaken in his assertion that he shares a communication pipe with seven other properties.

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- The company's piping ends on Ashes Lane, and the properties in question serviced from this point onwards, including Green Barn, benefit from their own water connection and private supply pipe.
- It has refused to investigate further not because of cost, but because this is a private issue, and the customer has provided no evidence to suggest it is not a private issue.
- It has invested considerable time, money and resources in connection with this matter, and all the customer's concerns have been investigated.
- Even if the customer's excavations are found to support a conclusion that the customer's supply pipe connects near Green Barn, it nonetheless connects at this point to a private supply pipe on private land.
- It notes that at one point the customer installed a lock on the company's stop tap and meter chamber housing, and states that he did not seek permission for this action, which is in direct contravention of the Water Industry Act 1991.
- In addition to the fact that the customer's supply pipe is located on private land, the company has not excavated Ashes Lane because doing so would require a full road closure and the securing of permission from or serving of notices on relevant landowners. This would require spending a disproportionate amount of money on a single customer.
- It does not have to pay the customer's supplied invoices from his survey of water usage, as they reflect actions taken by the customer of his own volition to satisfy his own suspicions, relating to an asset not owned by the company.
- It objects to the customer's treatment of and statements about its employees.
- It believes that it has gone above and beyond what is reasonable in its attempts to address the customer's concerns.
- The customer does not clarify the ground on which he is claiming compensation of £15,000.00.
- It has nonetheless offered the customer a goodwill gesture of £1,500.00, and this offer remains available as full and final settlement of all the customer's complaints about the company.

The customer's comments on the company's response are that:

- The company claimed to have read documentation he provided when reaching its decisions, even though he knows that it did not because the documentation in question was accessed through his website, and the records from his website clarify that certain documents were not accessed by the company until after the decision in question had been delivered.
- Documentation supplied by the company regarding where its piping terminates is deliberately inaccurate.

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- His claim for compensation of £15,000.00 reflects that there are three complainants who have spent a great deal of time on this issue, as well as having to endure what they consider to be unsafe drinking water for nearly three years.
- As there are three people involved in the complaint, he is not limited to £10,000.00.
- He has never asked for any properties to be disconnected from the mains.
- The water supplies to his three properties have never been reconfigured, and the low water pressure resulted from illegal connections.
- The primary problem with water loss has been resolved since 2015, when the customer commenced his survey.
- Even if the cause of the low water pressure was an illegal connection on his private pipe, the amount of water being lost makes it a matter of public interest, and so it should have been addressed by the company.
- He asked the company to reinstall the meter at Stone Edge, which was done in January 2015, and he commenced his survey at this point.
- He reaffirms that the company has previously asserted that his private pipe connected near Stone Edge.
- The maps supplied by the company are inaccurate and misleading.
- The company's inaction has caused a massive waste of time and loss of water.
- The company has acknowledged that there is a communication pipe in the private road.
- The company was consulted about the padlock being applied to the stop tap and meter chamber housing, and was supplied with a key that it has not returned.
- The stop tap is no longer locked.
- He did not undertake the survey of his own volition, but because he was threatened with legal action by the company.
- He reiterates his feelings about the company's employee about whom he has previously complained.

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.

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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.

How was this decision reached?

1. Some claims brought by the customer have been ruled inadmissible under the Water Redress Scheme Rules during a preliminary decision in this case.
2. Rule 3.5 of the Water Redress Scheme Rules expressly excludes from the scope of the Scheme, *inter alia*, “regulatory enforcement cases” and “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.” No Notification/Option letter has been provided.
3. As a result, the claims brought by the customer relating to “ [the Company] ’s failure to ensure the water supply is safe to drink” and to “The so called regulations issues with the rainwater harvesting system and other appliances at █████ ” will not be addressed here. However, this decision is not intended to prevent the customer bringing those claims in another forum, even if this decision is accepted by the customer.
4. The customer’s remaining claims ultimately center on the question of whether the pipe leading from Stone Edge to Green Barn is a communication pipe, as argued by the customer, or a supply pipe, as argued by the company. If it is a communication pipe, then the company is obligated to ensure it operates effectively, including investigating and addressing improper connections that affect the water pressure at the customer’s properties. If it is a supply pipe, then these obligations are shared by all property owners served by the pipe.

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5. An important question for resolving this issue is whether or not the road leading to Green Barn constitutes a “highway”. This is because only a pipe passing under a highway can be classified as a communication pipe. In this respect, a communication pipe differs from a water mains, which certainly may also pass under a highway, but may also pass under private land that is not traversed by a road.
6. Whether or not a road constitutes a highway is not determined by whether it is on private or public land. It is a function of the land’s accessibility to the general public. In short, a highway is a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not because they have been given permission by the landowner.
7. While the evidence presented in this case regarding whether the road to Green Barn constitutes a highway is certainly not completely determinative, on the balance of that evidence I find that the road to Green Barn is indeed a highway. No evidence has been presented that indicates that it has in any way been blocked to public use.
8. Nonetheless, a finding that the road to Green Barn is a highway does not resolve the question at issue in this dispute, as although a communication pipe must pass under a highway, a private supply pipe may do so as well. Indeed, this is unsurprising given that a highway may be a private road.
9. I find that the central evidence on the question of whether the pipe running down the highway to Green Barn is a communication pipe or a supply pipe is the deed produced by the customer. This deed clearly grants to the customer “the right to lay and maintain and renew a water pipeline in the enclosures numbered part 802, 807, 808, 701 and 805”.
10. However, the map that accompanies the deed makes clear that enclosure 802 is the road to Green Barn.
11. This is important not because it shows that the road is private property, but because it would make little sense for the deed to grant “the right to lay and maintain and renew a water pipeline” running under the road to Green Barn if that pipeline was indeed a communication pipe owned by the company and for which the company has responsibility.

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12. The clear consequence of the language in the deed, then, is that the pipe running under the road to Green Barn is indeed a private supply pipe, as the company has argued.
13. Of course, the map that accompanies the deed shows the easement relating to the pipe ending partway along the road to Green Barn, rather than continuing all the way to Stone Edge. This might suggest that the private supply pipe commences at the point the easement commences, and that the pipe from the water mains at Stone Edge to the commencement of the easement is a communication pipe.
14. However, documentation produced by the company clarifies that the customer's easement terminates where it does on the road to Green Barn because this is the point from which the road is owned by a different private party, ██████████, than the private party that granted the easement to the customer. That is, the easement ends not because it represents the point at which the pipe changes character, passing from being a company-controlled communication pipe to being a private supply pipe, but because the private party granting the easement had no power to grant an easement over the remaining length of the pipe to Stone Edge.
15. Of course, this does not conclusively establish that the pipe does not change from being a communication pipe to being a private supply pipe at this point. However, no evidence has been presented to indicate that the pipe fundamentally changes its nature at this point, either by branching or by altering in any other way. All that happens at this point is that the pipe passes from property owned by one private third party to property owned by another private third party.
16. Therefore, on the basis of the evidence available in this case, I find that the pipe becomes a supply pipe as soon as it enters private land, namely from the point at which it connects with the water mains at Stone Edge.
17. The consequence of this finding is that, as argued by the company, issues relating to the pipe, including leakage and improper use by third parties, are a private matter to be dealt with by the customer and other parties supplied by the pipe, and not by the company.
18. Consequently, as the pipe underlying this dispute constituted a private supply pipe, the company did not fail to properly investigate the customer's low/zero water pressure, as this was not a matter over which the company had responsibility.

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19. The customer has also argued that even if the water was being lost on a private supply pipe, it nonetheless was such a significant amount of water that its loss constituted a matter of public concern, and thus should have been investigated by the company.
20. However, this argument ignores that the company did address the public interest in a substantial loss of water. It issued to the customer a notice that it would take legal action if he did not resolve the loss of water from his private supply pipe. This notice had its intended effect, and the customer acknowledges that he has largely solved the problem that he was experiencing.
21. Consequently, the company took appropriate action to ensure that the customer fulfilled his own legal obligations regarding the loss of water from his private supply pipe.
22. The customer also accuses employees of the company of acting dishonestly.
23. While I find that company employees have at times been mistaken in comments they have made to the customer, no evidence has been presented from which it would be reasonable to conclude that these employees were acting dishonestly, rather than simply being mistaken. I accept that the customer is bringing these claims in a good faith belief that they are true, however ultimately the burden is on the customer to provide evidence substantiating his claims, and I find that he has not done so.
24. In view of the above, the customer's claim does not succeed.

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 23 March 2018 to accept or reject this decision.

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- 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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Tony Cole

Tony Cole FCI Arb

Adjudicator

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