

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ 0764

Date of Decision: 5 July 2018

Complaint

The customer complains that the company has failed to communicate the precise location of a leak that the company determined necessitated the replacement of the service pipe. He suggests this replacement was not necessary. He also complains that he has been given three inconsistent responses justifying an increase for the cost of such works to £600.00. He seeks an explanation and a refund of some or all of the cost of the works.

Defence

The company says that it could not identify the precise location of the leak, which was nonetheless causing a loss of 1,000 litres of water per day. In answering the customer's question about the price of the work, it had given a level of service that would reasonably be expected of it.

Findings

There is no jurisdiction under the WATRS scheme to decide whether the pipe required replacement because this complaint must be decided by Ofwat and, by virtue of rule 3.5 of the Water Redress Scheme rules. There is also no evidence that the company could reasonably have located the precise point of the leak. The company did, however, provide ambiguous information about the reason for a price increase and this was not explained for some 12 working days. In this sense only, the company failed to provide its services to the standard that would reasonably be expected of it and the customer, while not entitled to a refund, should receive a payment equivalent to compensation under the Guaranteed Service Scheme.

Outcome

The company needs to take the following further action: namely, to pay compensation to the customer of £30.00.

- **The customer must reply by 2 August 2018 to accept or reject this decision.** If the customer accepts this decision, the company will have to do what I have directed. If the customer rejects this decision, or does not respond, the company will not have to do what I have directed.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0764

Date of Decision: 5 July 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer lives at 10 Rose Gardens.
- He complains that the supply pipe serving numbers 1 to 38 Rose Gardens was reported by the company to have a leak and that a new pipe was required.
- The customer asked where the leak was located but the company was not more specific about this. The customer does not believe that it affected his home.
- The customer detailed that residents across the road had paid £400.00, just over one year earlier, in a similar situation.
- In email communications, he was given three different explanations:
 - The difference was due to inflation;
 - The difference was due to the costs of the contractor;
 - The difference was for both reasons.
- The company then responded to the Consumer Council for Water (CCWater) explaining that the work was part of a proactive renewal programme identifying leakage on private supplies. The customer states that it is concerning that the company has given conflicting replies to him and to CCWater and has not correctly identified the location of the leak. He seeks the provision of a service, namely, a reliable explanation. In the documents attached to the application, he also stated that he would also like a refund of monies spent.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

The company's response is that:

- The company has reviewed its handling of the customer's case. It has concluded that its customer service aspect was appropriate and explained that the company was unable to identify the exact location of the water leak confirmed to be on the private supply pipe that jointly serves property numbers 1 to 38.
- While there may have been some confusion concerning the repair costs, the discounted fixed cost for this work did increase to £600.00 on 1 August 2017. This remains at a heavily subsidised rate and the company believes that no refund is applicable.

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.

How was this decision reached?

Background facts

1. The information submitted by the company and by CCWater shows that a blockage had been found between 1 and 38 Rose Gardens on 5 April 2017. A Waste Water Notice was served in accordance with section 64(2)(a) and (4) and section 75(2)(b) of the Water Industry Act 1991. The customer was notified on the 19 September 2017 that the company intended to carry out a survey for renewal of the supply pipe and that it would require access to the customer's house and garden, to identify the existing entry point for the supply and to note any potential obstacles

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

or hazards. The appointment was arranged for 4 October 2017. On 12 December 2017, the company notified the customer that the company intended to commence the supply renewal on 15 January 2018 and the works were anticipated to last 10 working days. The customer was warned that he may be affected by an intermittent water supply and other disruptions. On 12 January 2018, the customer asked for detail about when the access was required to his house because his wife was undergoing hospital treatment. He asked why he was charged £600.00 when the residents across the road paid £400.00 in the year before. He asked whether it was because there were more private houses on that side of the road. This communication was assessed as to whether or not it was a complaint and it was treated as a request for service. On 19 January 2018, the company sent a letter to the customer about his concerns regarding internal access (and in respect of a matter he had raised about his carpet). The company also said:

'the cost associated with this work has been heavily subsidised and the only increase was due to inflation and is not dependent on the number of private houses'.

2. On 22 January 2018, the customer responded saying that if the cost was due to inflation then, as inflation was running at 3%, the work should only have gone up by £48.00 and not £200.00. On 23 January 2018, the company wrote:

'I am unable to offer any further reduction as charges are subsidised fixed rate of £600 including VAT per property from a standard renewal. It may be possible to offer interest-free repayments over 24 months which can be extended in special circumstances.

These renewal works must be carried out as a matter of priority, although [] Water do not have to undertake the works. As this is a private pipework, you or another contractor of your choice can carry out the renewal or you may be covered under your own insurance and we are prepared to offer free advice.'

3. The customer's further response was communicated via CCWater on 25 January 2018. On 2 February 2018 CCWater indicated to the company that it needed to provide a fuller explanation and breakdown of the increased charge "because inflation would not seem to be a realistic explanation for the difference". On 6 February 2018, the company replied to the customer indicating that it had responded to his previous emails and giving further explanation. It said that it had identified a leak within the common water supply pipe feeding numbers 1 to 38 Rose Gardens. As this pipework is a private supply, it explained that all properties connected are liable for the repair and associated costs. The company indicated that the cost specified was

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

heavily subsidised, as it contended that works of this nature usually cost £1,300.00 per property.

The company explained:

The price increase from £450 to £600 is due to contractor cost increases. Our price for this type of work had not increased in 10 years and we could not continue to bear the additional costs. This work is being undertaken as part of a proactive renewal programme where shared supplies are known to be in poor condition. [] Water are in a position to undertake this work having introduced a block renewal scheme in the [] area, to provide each property with an independent supply.

On 13 February 2018, the customer complained that he still had not been told where the leak was located in the common pipe. He said that he was getting different answers every time because, first, the company said the increase was due to inflation and then it said it was a fixed-price and last, that it was a contractor's price increase. The customer asked which one it was.

4. The company made a reply as part of its complaints process following a detailed review. The reply was dated 20 February 2018. It stated:

... I can see how you would have interpreted [the company's emails] in the way you have done and I believe a little more detail would help your understanding... When the majority of houses in your area were built they were council owned and it was commonplace to install shared water supply pipes. We carry out regular leakage checks where shared supplies are known to be in poor condition, usually due to age, and identified a leak from the underground private supply pipe which jointly serves 1 to 38 Rose Gardens. I am unable to confirm the exact location where the show supply pipe came to the end of its serviceable lifespan as our leak detection does not always give an exact location. I can confirm that the leak was running at a rate in excess of 1,000 litres of water per day and without action being taken quickly this excess water loss could easily damage property. Ultimately the pipe may have fractured leaving many houses without a water supply. The practical solution was to abandon the shared water supply pipe and install new supplies to each property. This had to be co-ordinated with all the properties involved to allow the work to be completed. We realise how difficult this can be for the owners involved and in such circumstances we are prepared to coordinate and carry out the work on behalf of the owners at a subsidised rate. The subsidy for the work is approximately 55% of the cost we would incur to undertake a full supply renewal. In 2007 a fixed subsidised cost of £450 per property for a full renewal including the internal connection was agreed with extended payment options available to spread this cost. If the neighbouring properties you were referring to were notified of a leak on their private supply pipe prior to 1 August 2017 they would have been charged a fixed

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

cost of £450. In the time that the project has been running our overall costs have increased significantly and to allow us to continue offering a subsidised renewal service in your area we had no choice but to increase this discounted fixed costs from £450-£600...

Findings

5. Section 64(2) of the Water Industry Act 1991 enables a water company to require the provision of separate service pipes if (1) the supply of water to two or more houses is provided by the same service pipe, and (2) the pipe becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses. The company in this case identified that 1,000 litres of water were leaking per day and therefore stated that section 64 of the Act applied. This section further provides that it is primarily the responsibility of a customer served with a Notice under the Act to carry out the works, although the company can carry out the works and charge the customer if the customer does not comply with the Notice. In this case, the company offered the customer the opportunity to permit the company to carry out the works. The company says that the cost to the customer has been subsidized. I find that there is no evidence to the contrary.
6. The customer has challenged the company to pinpoint the leak. It is clear from his comments and submissions directly to the company and via CCWater that he doubts whether there is a leak of this magnitude and that is the reason for raising this challenge. I find that there would be no reason for the customer to raise a complaint that the precise point could not be identified, unless his underlying aim was to challenge the company's decision to replace the pipe.
7. The company argues, as indicated above, that it is unable to find the precise location of the leak. I note that there is no evidence available to me that shows that the company could, within the bounds of reasonable effort, have found this leak, which concerns a pipe running under private homes and gardens. In any event, I note that section 64 also states that:

Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to [Ofwat] for determination under section 30A above by either party to the dispute.

As the Act sets up a detailed scheme of rules relating to the provision of the water supply, and as "any dispute" must be taken to Ofwat, I find that it is not open to me to determine whether there is a need for the replacement of the pipework. I also rely on the decision in *Marcic v Thames Water* [2004] 2 A.C. 42, which reached a similar conclusion, albeit in a case concerning

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

different facts. I note also that consideration of this issue is precluded by WATRS Redress Scheme Rule 3.5.

8. I therefore have no jurisdiction to consider whether the company has acted inappropriately in respect of its decision to require replacement of the pipework. In consequence, for the purposes of this complaint (and only for that purpose) I have no choice but to treat the company's decision as valid. It follows that I find that the company was not under an obligation to justify its decision to the customer and therefore was not required to identify the source of the leak. Moreover, as indicated above, I find that there is no evidence that it could reasonably have done so. Overall, I find in respect of the customer's complaint that the company has not told him the precise location of the leak that the company has acted as would reasonably be expected of it.

9. In respect of the customer's complaint that he has been given three different explanations for the increase in price, I find that the communication with the customer of 19 January 2018 was ambiguous. The company, in stating that the difference in price from that paid by others approximately one year earlier was not due to the number of houses in private ownership, referred to "inflation". What I find the company meant was that the costs had increased. It was foreseeable, however, that the word "inflation" would be interpreted to refer to a change in the value of money. It is not surprising that the customer took this to mean the increase in costs as measured by one of the recognised indices, such as the consumer price index or retail price index and so he arrived at a probable inflation increase of 3%. Further clarification was needed. I agree further that the subsequent letter referred to a fixed price charge for the work to be done, but this did not explain the confusion over the use of the word "inflation". In the letter dated 6 February 2018, however, I find that the company made its position reasonably clear. It referred to the link between the increase in prices and the increase in costs. It was therefore reasonably clear at that point, I find, that all three concepts are linked: there was a fixed fee; this had increased because costs had increased; this meant that the expenditure on the works to be made by the company was greater, not that the value of money had altered. I find that the letter of 6 February 2018 adequately responded to the customer, although further information was provided on 20 February 2018. The letter of 6 February 2018 made clear that the cost to the customer of the works would be £600.00 and that it was a rate applicable to all customers. I find that the company did not fall short of reasonably expected standards in charging this amount.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

Redress

10. I find, on the other hand, that it is reasonable for the customer to have been entitled to an unambiguous answer to his correspondence of 19 January 2018 and the company's response fell short of the standard that would reasonably be expected of it. As indicated above, this continued to be the case until the company's letter of 6 February 2018. In consequence, the customer has been put to inconvenience. I find that it is fair and reasonable that he should receive financial redress. His claim for a refund of monies does not succeed because, as explained above, a review of the company's decision to replace the price is outside the scope of this adjudication. The request for information made on 19 January 2018 related to the price that the customer would have to pay for work to be done, and I find that this was an account query. As such, it should have been answered, in accordance with the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 within 10 working days. The company in fact took 12 working days between 19 January 2018 to provide an adequate explanation and I find, therefore that it is fair and reasonable to award redress equating a guaranteed service scheme payment of £20.00. As no such payment was made at the time, I find that it is fair and reasonable also that he should receive compensation equating to a further £10.00 reflecting late payment. It follows that I find that the company shall make a compensatory payment to the customer in the sum of £30.00.

Outcome

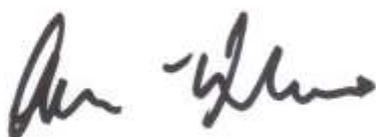
The company needs to take the following further action, namely to pay compensation to the customer of £30.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 2 August 2018 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- 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.



Claire Andrews, Barrister, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.