

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0770

Date of Decision: 7 September 2018

Complaint

The customer states that the plants and trees in her garden appeared to be dying due to overwatering. She explains that during the period of 2015 to 2016, the company investigated various reports of private water pipe leaks at neighbouring properties. The customer states that she has suffered as a result of the company's slowness in proactively searching for (and identifying) leaks in her neighbours' properties and failing to force them to fix their leaking private pipes faster. The customer claims that the company is under a statutory duty under section 75 of the Water Industry Act 1991 ("the Act") to prevent water from being wasted. The customer indicates that she has suffered various problems as a result of this matter. These include slug infestations, plant death, landscaping costs, stress and inconvenience. Accordingly, the customer's claim is for the company to pay her compensation in the amount of £8900.00 to fix her garden and for the stress and inconvenience she has experienced.

Defence

The company does not accept any liability for the customer's claims. It explains that the damage to the customer's garden is not due to any leak from its assets but from the private pipes of neighbouring properties. The company does not dispute that between 2015 and 2016 it attended the customer's neighbouring properties to investigate leak reports on private water pipes. The company explains that it carried out immediate repairs whenever any leaks were located. In November 2016, the company states that it visited a neighbouring property to check a suspected leak. A non-visible leak was identified and the company therefore issued the appropriate notice to the owner (requiring that they repair the leak) in line with section 75 of the Water Industry Act 1991. The company states that it is unable to exercise this statutory power until a leak is identified. This particular leak was not identified until November 2016. In any event, the company explains that section 75 of the Act provides it with the power to prevent water damage/wastage but it is not under an active duty to do so (this has been incorrectly interpreted by the customer). The company does not accept that it has failed to provide its services to the standard to be reasonably expected by the average person.

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Findings

Based on the submissions provided, I am not satisfied that the company failed to provide its services to the standard to be reasonably expected by the average person. Given the circumstances, I find that the company's actions were fair, proportionate and in line with the requirements of the Act. Therefore, the customer's claims for redress do not succeed.

Outcome

The company does not need to take any further action.

The customer must reply by 5 October 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0770

Date of Decision: 7 September 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She noticed the plants and trees in her garden appeared to be dying due to overwatering.
- She states that in 2015 the company investigated a possible leak at her neighbour's property. The customer asserts that, at this time, the company engineers told her that they suspected a leak at another neighbour's property but they decided to do nothing. The customer states that the company has always disputed that such a comment was ever made by any of its engineers.
- The customer states that, in March 2016, the company identified a leak at a different neighbour's stop tap.
- The customer states that in November 2016 the company identified another leak at her neighbour's property but she does not know what was done.
- The customer states that she has suffered as a result of the company's slowness in proactively searching for and identifying private pipe leaks and failing to force her neighbours to fix their leaking pipes faster. The customer indicates that the company is under a statutory duty to prevent water from being wasted under section 75 of the Water Industry Act 1991.
- The customer highlights that she has suffered various problems as a result of this matter. These include slug infestations, plant death, landscaping costs, stress and inconvenience.
- Therefore, the customer's claim is for the company to pay her compensation in the amount of £8900.00 to fix her garden and for the stress and inconvenience she has experienced.

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The company's response is that:

- The company does not accept any liability for the customer's claims. It explains that the damage to the customer's garden is not due to any leak from its assets but from the private pipes of her neighbouring properties.
- The company explains that its pipework is located at the front of the customer's property. However, the water ingress experienced by the customer is at the rear of her property.
- In July 2015, it attended the customer's neighbour's property following a report of water gathering around their stop-tap due to a small leak. This leak was immediately repaired.
- There is no information or evidence to suggest that, at this time in 2015, the company had located or even suspected any other leak from any of the customer's neighbouring properties. Nonetheless, the company confirms that its leakage team carried out an extensive investigation of the area and did not find any leaks. The company states that this is proven in the copy of the email (as provided in its evidence) sent to the customer.
- The company explains that the various leak tests included the use of listening devices and fitting logging devices to monitor water flow.
- In February 2016, the company states that it identified another stop-tap leak at a different neighbouring property and repaired it immediately.
- The company states that it was first made aware of any water ingress at the customer's property in July 2016 when she contacted the company. At this time, the customer had actually contacted the company to report a leak from a crack in the road at a junction near her property. The customer first mentioned the water ingress at her property at this time. The company states that this is proven in the telephone notes provided as evidence.
- Following various discussions between the parties, it was initially thought that the problem at the customer's property might be due to poor drainage. Nonetheless, the company agreed to investigate the matter further.
- This led to November 2016, when a non-visible leak was identified on a neighbouring property's private pipes and the company therefore issued the appropriate notice to the owner (requiring that they repair the leak) in line with section 75 of the Water Industry Act 1991 ("the Act"). The leak was then promptly repaired by the owner.
- The company states that it is unable to exercise its statutory powers until a leak is identified. This particular leak was not identified until November 2016. In any event, the company explains that section 75 of the Act provides it with the power to prevent water damage/wastage but it is not under an active duty to do so (this has been incorrectly interpreted by the customer).
- In any event, as the leak was promptly repaired by the owner, no further steps were necessary.

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- The company states that it is only responsible for detecting and repairing leaks on its own network. It has no legal obligation to detect and fix leaks on private water pipes (although it does have powers to prevent water damage/wastage when such an issue is identified).
- The company maintains its position that there is no leak from its network. It confirms that it is not responsible for any damage caused to the customer's property as a result of leaks from neighbouring private pipes. This is a private matter to be resolved between the relevant home owners.
- Consequently, the company does not accept that it is liable to provide the customer with the redress 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.

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.

The WATRS Scheme Rules provide detailed information on the process of adjudication, including the timing of the various stages. It is important for the smooth running of the scheme and fairness to all that time limits are respected and submissions made in good time to allow them to be properly considered as a part of the process. Furthermore, I must also draw attention to the fact that in accordance with the scheme rules, new complaints and evidence cannot be submitted at the comments stage. Accordingly, I must disregard any new complaints and/or evidence submitted at the comments stage and will proceed accordingly.

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How was this decision reached?

1. The customer claims that she should be entitled to compensation from the company in the amount of £8900.00 as a result of the damage to her garden caused by excess water. The customer does not dispute that the excess water came from her neighbours' leaking private water pipes but she asserts that the company should be responsible for this issue because it was slow to identify these leaks and did not force the property owners to repair them sooner.
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. The basis of the customer's claim is that, under section 75 of the Act, the company is under a statutory duty to actively prevent the wastage of water. Therefore, the customer asserts that the company was under a statutory duty to proactively search for leaks in her neighbours' private water pipes and to force them to repair them sooner than it did.
4. I note that section 75 of the Water Industry Act 1991 states:

Power to prevent damage and to take steps to prevent contamination, waste etc.

(1) Without prejudice to any power conferred on water undertakers by regulations under section 74 above, where a water undertaker which provides a supply of water to any premises has reason for believing—

(a) that damage to persons or property is being or is likely to be caused by any damage to, or defect in, any water fitting used in connection with the supply of water to those premises which is not a service pipe belonging to the undertaker;

(b) that water in a water main or other pipe of the undertaker is being or is likely to be contaminated by the return of any substance from those premises to that main or pipe;

(c) that water which is in any pipe connected with any such main or other pipe or which has been supplied by the undertaker to those premises is being or is likely to be contaminated before it is used; or

(d) that water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed,

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the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

5. In light of the above, I do not find that section 75 of the Act places the company under a statutory duty to actively search for leaks on all private water pipes within its service area in order to prevent any water wastage (as asserted by the customer). However, I do find that section 75 of the Act provides the company with a power to prevent water damage/wastage which it may exercise under the conditions as detailed above.
6. Bearing in mind all of the company's actions as detailed by the respective parties, I do not find that they amount to a breach of section 75 of the Act or a failure to provide its services to the standard to be reasonably expected by the average person. Specifically, based on the submissions provided, I am satisfied that the company punctually attended the customer's neighbouring properties as and when leaks on their private pipes were reported and promptly repaired them or issued the appropriate notice requiring the owners to repair them (which the owners then promptly did).
7. In the interests of completeness, I now turn to the customer's claim that the company's engineers once told her that they suspected another leak at a neighbouring property but decided to do nothing. I note both parties have stated that the company has always stringently denied this. Under the circumstances, I do not find that the evidence shows that any member of the company's staff had ever advised the customer that they suspected a leak at a neighbouring property but had decided to do nothing. I do not dispute that a conversation between the customer and a company engineer may have taken place and I appreciate that it is difficult for the customer to prove any verbal comments that may have been made in a scenario like this. However, bearing in mind the consistency of the company's position on this matter and weighing up all the evidence available to me, on balance, I have no other option but to conclude that the evidence does not support the customer's claim.
8. Accordingly, under the circumstances, I am not satisfied that the customer is entitled to a compensation payment from the company in the amount of £8900.00 as a result of the damage to her garden caused by her neighbours' leaking private water pipes. I find that the company is not required (under statute or otherwise) to proactively monitor and/or maintain all the private water piping systems within its services area.

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9. Following careful review of all the submissions provided, I am not satisfied that the evidence shows any failures on the part of the company to provide its services to the standard to be reasonably expected by the average person. Consequently, in the absence of any failures on the part of the company, I am unable to uphold the customer's claim for redress.

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 5 October 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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