

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0845

Date of Decision: 29 August 2018

#### Complaint

The customer complains that the company has required her to contribute to a compulsory repair to a private, jointly shared pipe. She states this occurred despite her submitting an engineer's report to the company supporting her argument that her property was not downstream of the repair because this was after a tee connection that divided the supply. She says that the company has provided poor customer service, including that it failed for three months to refer her to the Big Difference scheme for those in financial hardship. She seeks reimbursement of her contribution of £117.63 and compensation in an unspecified amount.

#### Defence

The company says that the customer was downstream of the repair because the repair was located before the tee connection. It denies providing poor customer service.

#### Findings

The company was entitled to, and did, accept the evidence of its own contractors as to the location of the repair and it checked with them before responding to the customer. On balance, the explanation for rejecting the engineer's report was sufficient. However, the company provided customer service that did not meet the standard reasonably to be expected, in that it did not explain to the customer that she might be eligible for the Big Difference scheme until its final letter in May 2018.

#### Outcome

The company needs to take the following further action, namely to:

- Pay compensation of £60.00.

- **The customer must reply by 26 September 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.**

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## ADJUDICATOR'S DECISION

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Date of Decision: 29 August 2018

### Party Details

Customer: [ ]

Company: [ ].

### Case Outline

#### **The customer's complaint is that:**

- The customer complains that the company wrongly required her to make a contribution to a repair on a supply pipe that she shares with her neighbours. She says that her insurer had carried out an assessment and found that the liability for the repair costs lay with numbers 3 and 5 Rose Place, whereas she lives at number 9.
- She states that the two neighbours affected by the leak were unwilling to pay their share of the repair costs because they were in dispute over a different matter and this is why the company required the repair to be carried out compulsorily.
- She says that she was then required to pay £117.00 towards the costs, which she could not afford, and the householder at number 5 has not been willing to pass on her claim to the insurer of that property.
- The customer also complains of poor customer service. She says that because she has not been able to afford the payment, she has suffered sleepless nights and sometimes it has affected her memory. Only in the last email she received from the company was she made aware of the possibility of making a claim for hardship funding.
- The customer seeks:
  - reimbursement of the sum of £117.00 she paid to the company; and
  - compensation in an unspecified amount for the poor customer service and consequent stress that it has caused to her.

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### **The company's response is that:**

- In 2017 the company was made aware that there was a leak on the joint private water supply pipe that supplies the customer's household (9 Rose Place), along with those of three of her neighbours.
- As the pipe was for a joint supply, the occupiers affected were those downstream of the leak. It therefore issued letters to the customer and her neighbours advising of the leak and their statutory duty to repair it.
- Under Section 75 of the Water Industry Act 1991, the company has a legal duty to ensure that water is not wasted through leakage.
- The company sent several letters to the occupiers but, as no repair was completed, the company issued an enforcement notice. This notice advised the occupiers that if the leak was not repaired, the company would arrange for this to be carried out and would recharge the costs back to them.
- Despite the enforcement notice, the leak was still not repaired.
- The company therefore had to carry out an enforced repair and the occupiers affected became responsible for the costs. This included the customer.
- There was no failure in its provision of customer service.

### **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. It is common ground between the parties that in 2017 a leak was known to be present at 5 Rose Place. The company says that this was reported in September 2017 and correspondence had also been sent about a leak in August 2017. It is also common ground that a leak in the vicinity of the customer's property was compulsorily repaired in November 2017. The company says that this followed the issue of an enforcement notice that had not been complied with as well as subsequent warning correspondence, which the customer has not challenged.
2. The documents submitted to me by the parties indicate that the company issued a letter to customer and her neighbours on 30 November 2018 to advise that the work had been carried out and an invoice was enclosed. The company received a complaint from the customer by email on 7 December 2017 to which the company responded. A payment of £117.63 was received from the customer on 28 December 2017.
3. On 31 January 2018 and 12 February 2018, the company received further communications from the customer. Both communications included a detailed handwritten letter from the customer dated 29 January 2018. A reply was sent to the customer on 13 February 2018. On 27 April 2018, the company received an email from the Consumer Council for Water (CCW) advising that the customer had contacted them and asking that the company review her concerns. A reply was on 11 May 2018 and a copy forwarded to CCW.
4. The customer's concerns, as illustrated in the documents submitted are that:
  - She was not liable for the payment because the location of the leak was downstream of her property;
  - The company did not respond appropriately to her complaint that the requirement to contribute was causing hardship.

### Location of the leak

5. The customer says that the supply pipe passes under 5 and 7 Rose Place drive, up the passage between the two houses and reaches a tee connection which branches left and right. She contends that the leak occurred after the tee, almost in the outside toilet of 5 Rose Place. That leak was present long before it was reported to the company because it had already been

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reported to the insurer of the property at 5 Rose Place. An assessor had attended, who found that the leak was the responsibility of numbers 3 and 5. This was also found by her own insurance assessor. As the customer is served by the other branch of the pipe after the tee, she says that she is not downstream of the leak and she informed the company of this in her emails and a letter. On 7 December 2017, she supplied a copy of the insurance assessor's report, described as an engineer's report, to the company. On 29 January 2018, among other matters, she asked the company to review the report supplied.

6. The company agrees that the shared private supply pipe which connects 3, 5 7 and 9 Rose Place to the water main runs from a stop tap in the public footpath, under the drive and passage in between numbers 5 and 7. It explains that the tee is at the rear of the properties. The company says, however, that the contractors who completed the repair have confirmed that the leak repaired was located in the passage between 5 and 7 and was before the tee connection. It argues that, as the water flows through this section of pipe before reaching the other properties on the shared supply, all the properties are downstream and therefore liable for a portion of the enforced repair costs.
7. The opposing positions, therefore, are that either (1) the leak repaired was before the tee and therefore all the four properties are affected or (2) that the leak was after the tee and the company has made a mistake by regarding all four properties on the shared supply. The evidence submitted is as follows.
  - The company in its document of defence, supports its contention with a plan that shows the location of the leak to have been before the tee. This plan appears only to have been prepared to illustrate its argument. It is referred to in its response to the customer dated 11 May 2018 in the following terms:

*As we don't hold records of private pipework, and didn't excavate elsewhere on the pipe, this plan is intended only as an illustration of where the leak was located and may not be technically accurate.*

I find therefore that this plan is not conclusive evidence of the location of the leak, but merely a summary of other source evidence.
  - The company's correspondence to the customer dated 7 December 2017 states that:

*"Contractors working for [the company]t under terms of an enforced repair reported that they repaired a leak before the tee connection",*

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No evidence is given of any underlying documentation or report from the repair team that confirms this. The company did not comment on the copy of the engineer's report that she submitted to the company on 7 December 2017. The company did, however, make reference to the reason why it believed that the leak was before the tee, namely, information provided by the contractors.

- The company's correspondence of 13 February 2018 (also found in CCWaters documents dated 25 July 2018 – which I assume to be a consequence of automatic updating to the letter format) stated that the author had had the report "*checked by [the] leakage team*", which had advised that the leak was found on the shared supply and therefore all properties downstream on the shared supply would be equally responsible for the costs to carry out the repair. The company does not, however, in this letter, state whether the leak was before the tee or afterwards and thus, read alone, does not conclusively resolve the differing positions of the parties.
- Neither in its own submissions nor in its correspondence with CCWater is there any job-sheet, plan, statement or other source documentation which could explain why the company felt able to dismiss the engineer's report.
- It is notable also that the company said in subsequent discussions with CCWater that it intended to send a repair team to investigate a further leak at number 5 or 3, but, save that the investigation was postponed due to more pressing priorities, there is no information as to whether such a further leak was found. If it was not found, this lends support to the customer's contention that the leak that had already been repaired was located at number 5 but it is also possible either that there was more than one leak in the vicinity or that no leak was subsequently found.

8. The customer, on the other hand, has also not submitted to me the engineer's report that was sent to the company. I take into account both that it is for the customer to prove her case, but also, and more importantly, that those best placed to provide information as to the precise location of the repair that they carried out, were the contractors undertaking the work. The documentation indicates that, having received the customer's communications, the company made enquiries of those contractors and, reading the correspondence of 7 December 2017 and 13 February 2018 together, the contractors said that, notwithstanding the engineer's report sent by the customer, the leak that was repaired was before the tee and served all four households on both sides of the tee. I find that it was reasonable for the company to rely upon information given to it by their contractors. It would be reasonable for the company to assume that the repair

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team knew where the work was carried out. It is also probable that the company would have correctly relayed the effect of that advice to the customer.

9. I bear in mind that the test applied in the WATRS scheme is whether the company has supplied its services to the standard that would reasonably be expected of it. Applying that test and taking into account the matters referred to above, I find, that on the evidence the charge was valid, which leads me to the further conclusion that in raising a charge against the customer for contribution to the works, the company did not fall below the standard that an average person would reasonably expect of it.

#### Customer service

10. Two matters relevant to customer service provision arise from the papers, first that the company has not adequately explained to the customer why the views of her insurer's engineer were rejected and secondly, that she was not told about the possibility of making a hardship claim before 11 May 2018.
11. As to the first of these, the customer's correspondence indicates that she sent the company an engineer's report on 7 December 2017. Although, by inference, the company rejected the content of that report, it did not at first explain why it had done so and it is notable that the engineer's report does not appear in the defence bundle. In the response dated 13 February 2018, however, the company stated that the report had been checked "by our leakage team" who asserted something other than that contended for by the customer. I have considered carefully whether a company, before which a customer has troubled to put evidence in support of her position, would reasonably be expected to explain to the customer in greater detail why that evidence was insufficient to contradict the position of the company. However, particularly as I am not able to comment on the content of the engineer's report, I find that the gist of the company's response was that the report could not be correct because it differed from what actually happened. On balance, therefore, I find that the customer has not shown that the company fell short in this regard of the standard that would reasonably be expected of it.
12. As for the second criticism of the company's customer service, I note that the customer raised in her handwritten letter of 29 January 2018 that she needed the payment of £117.63 to be refunded because she had only been able to obtain a part-time job, was struggling financially and she was finding difficulty in paying her bills to the company. She had not raised this previously. She also referred to the significant level of stress that this issue was causing her.

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13. In the company's response of 13 February 2018, however, it did not address the customer's expression of concern that she was experiencing financial hardship. In contrast, in the response dated 11 May 2018, the company stated:

*I can see that you paid the invoice of £117.63 for the repair on 28 December 2017. If you are experiencing difficulty paying your water bill we may be able to help through the Big Difference Scheme. The scheme is open to all [ ] customers who may be struggling, whatever the circumstances. If you qualify you could be eligible to get a reduction on your water bill. Depending on your circumstances, this could range anywhere between 10 - 90%. You'll remain on the scheme for 12 months, after which time you'll need to reapply. This scheme is being administered for us by the [ ] Trust Fund - you can also apply online at [www.bigdiff.co.uk](http://www.bigdiff.co.uk). If you're experiencing any financial hardship the [ ] Trust Fund may be able to help. The trust fund was set up in 1997 to help people out of poverty and debt. The trust will provide financial help to customers of [ ] who are unable to pay their water charges. Generous donations are given by [ ] to fund the charity...*

I am mindful that nothing in this reply indicated that there had been a change of circumstance since February 2018 and so I find that there is no reason why this information could not have been provided to the customer in the company's communication of 13 February 2018. I am conscious that when a customer raises an issue of financial hardship in connection with a demand for payment by a water and sewerage undertaker, it would reasonably be expected that the company would inform the customer of a trust fund that might be able to assist, whether or not that information might also be found in other places, such as on bills or on the company's website. I am satisfied that by the customer raising the issue of financial hardship, this clearly communicated to the company that she may not have realised that the company had a scheme that could help her. I find that in failing to supply the information regarding the trust fund in February 2018, and for a further three months, the company has failed to supply its services to the standard that an average customer would reasonably expect.

#### Redress

14. As the customer has proved that the company did not supply its customer services to the standard that would reasonably be expected of it, I find that she is entitled to redress. The customer's claim for reimbursement of the sum of £117.63 that she paid to the company cannot, I find, succeed for the reasons explained above. As for the claim for compensation for poor customer service and consequent stress that it has caused to her, I find that the customer is entitled to succeed. In respect of the company's failure for three months to explain to the

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customer that she might be eligible for assistance by the [ ] Trust Fund, I note that it is unclear whether she is eligible for a discount on her bills and unclear also whether she has suffered any direct financial loss as a consequence of the delay. I find, however, that she has suffered non-financial loss in the form of distress and inconvenience and I find that a fair and reasonable sum by way of compensation in this regard is £20.00 for each month that this continued. I therefore assess compensation in the sum of £60.00.

#### **Outcome**

The company needs to take the following further actions, namely to:

- Pay compensation to the customer of £60.00.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 29 September 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.
- 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.

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A handwritten signature in black ink, appearing to read 'Claire Andrews', is positioned in the upper left quadrant of the page.

Claire Andrews, Barrister, FCI Arb

**Adjudicator**

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