

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0857

Date of Decision: 27 November 2018

#### Complaint

The customer's property experiences low water pressure and a loss of water supply. The issue relates to the water pipe laid under River Way. The customer submits that this pipe is the responsibility of the company, as confirmed by legal action taken in the 1980's. The company has also acted as though it is responsible for the pipe by repairing this.

The customer requests the company recognise that the pipe is a company asset, and that it resolve the water supply issues.

#### Defence

The company investigated the low water pressure issue and found that it is providing water at a pressure well in excess of the minimum requirements. The company has recommended that the customer and his neighbours have single serving supply pipes installed at their own cost. Leaks have started to appear on the private pipe; the company has repaired these due to the ongoing dispute, but the pipe remains a private water supply pipe. The customer and his neighbours are responsible for this pipe.

#### Findings

The ownership of the water pipe between Jim Lane and the property, The Barn, was the fundamental issue in the dispute. A customer is responsible for the water pipe from the outside stop tap to his property. The stop tap located outside The Barn, at the far end of River Way, had expressly been fitted for testing water pressure, and was not indicative of the boundary of ownership. The stop tap in the junction of Jim Lane and River Way is the edge of the company's ownership. Were the pipe a water main, properties below the stop tap would have a way to turn off their water supply without affecting later properties. The company's repair of the pipe did not amount to it asserting ownership of the supply pipe. It is not responsible for the shared supply pipe and did not fail to supply its services to the standard to be reasonably expected.

#### Outcome

The company does not need to take any further action.

The customer must reply by 28 December 2018 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 27 November 2018

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer is in dispute with the company about ownership of the water supply pipework between Jim Lane and the boundary of her property, running below the adopted highway, River Way. The customer's water supply has been cut off repeatedly and without notice for periods of up to 7 or 8 hours. The company's engineer has advised that the pipe is too narrow for modern requirements, resulting in low water pressure. The customer has had the pipes within her property boundary changed and now requires the company to replace the pipes from the stop tap at the boundary to the stop tap at the junction of River Way and Jim Lane to be changed. The company has refused this, claiming the pipe is a shared private supply. The customer submits that the [ ] Waterworks Company wrote to her on 7 November 1986 advising that their responsibility ends at the stop tap in Jim Lane and, at that time, River Way was still known as Jim Lane and any failure to update references to Jim Lane to River Way result in a fundamental factual error. The customer submits that the company's records are incomplete, and that the company has not demonstrated why the customer's property is a 'special case' for the pipe to be a private supply pipe. The sewers connecting to The Barn, recognised as mains sewers, are not shown on the company's records. The company has treated the pipes in River Way as its responsibility for the past 40 years. It also replaced the pipe leading to a neighbouring property on River Way in July 2005. The company has repaired leaks on the pipe under River Way. A court hearing in November 1986 established that the key to the issue of ownership is the stop tap at the boundary of The Barn; [ ] Waterworks Company

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acknowledged that the stop tap was theirs but did not update its records at that time. The customer's water pressure is never 1 bar and is frequently lower than this.

- The customer requests that the company recognise that the existing water connection is a company asset, and that the company replace the pipe or otherwise take action to alleviate the consistent low pressure and frequent loss of supply.

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

- The company submits that it has carried out work and checked the pressure at the end of its water mains network, confirming that the pressure being supplied is well in excess of Ofwat's minimum requirements. The company has recommended that the customers consider having new single serving supply pipes installed, at the customer's own cost. The company has sent the customers information about this. Leaks have now started to appear on the private pipe. The company has repaired these leaks due to the ongoing dispute about responsibility, the amount of water being wasted due to the leak, and the effect on the customers' water supply. The leaks have been repaired by the company, however the pipe remains a private water supply pipe and is the responsibility of the property owners that the pipe supplied. The company denies that the pipe is a company asset and believes it to be a shared private water supply pipe. The pipe is not shown on the water mains records, a record of the assets owned by the water undertaker. The company is responsible for the water mains, shown on the water mains record, the communication pipe and the company stop tap, marking the end of the pipework that is the company's responsibility. Any pipework after the company stop tap is a private supply pipe. The water mains record shows the water main running along Jim Lane. The company stop tap is located close to the junction of The Barn Lane and Jim Lane, isolating the water supply to three properties served by the private supply pipe. There is no pipework shown in River Way and this is considered to be a private supply pipe. If this were a main, you would expect there to be further company stop taps and communication pipes along the pipe at the points where the supplies branch off to each property; there are not. The only other stop tap is one installed by the [ ] Waterworks Company in order that pressure readings could be taken. The letter confirms that this stop tap was installed in order that pressure readings could be taken and confirms that the supply pipe from the stop tap in Jim Lane is not the company's responsibility but that of the property owners. The letter refers to both the stop tap in River Way and the stop tap in Jim Lane separately. The company has been unable to find any information relating to the replacement of a pipe to a neighbouring property. However, the company notes that, if a customer has a lead water pipe, the company will offer a free connection to the water main. The

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pipe from Meadow View to the stop tap in Jim Lane is not shown on the water mains record indicating that it is a private pipe. The ownership of the land in which the pipe is laid has no bearing on who is responsible for it.

### 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.

### How was this decision reached?

1. The customer's property is The Barn on River Way. This is a cul-de-sac accessed from Jim Lane. There is a stop tap located on the water pipe at the junction of River Way and Jim Lane, and a second stop tap at the boundary of The Barn towards the far end of River Way, away from Jim Lane.
2. The customer is experiencing an issue of low water pressure and a frequent loss of water supply. I am satisfied that the cause of the issue of low pressure is the suitability of the pipe that spurs off at the junction of Jim Lane and River Way. The customer submits that the pipe up to the stop tap outside The Barn is the responsibility of the company and that it falls to the company to resolve the low water pressure issue, either by replacing this pipe or by other methods. The company submits that the pipe from the stop tap at the junction of Jim Lane and

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River Way is a shared, private supply pipe and that it has discharged its obligations by providing more-than-adequate water pressure to the stop tap.

3. It is therefore necessary to determine the ownership of the water pipe in River Way. For the avoidance of doubt, this determination must be made on the balance of probabilities. The parties should be aware that I am not an expert in the water industry; my role is a legal one. The decision must also be made on the evidence provided and, as adjudicator, I have no investigative powers.
4. The customer has referred to the sewer pipe in River Way, stating that the sewers have always been recognised as mains sewers. Whilst this may be the case, it is not a relevant factor for determining ownership of the water pipe. The ownership of sewer pipes is separate from water pipes, and I am mindful that private shared sewer pipes were transferred to the company by legislation; no similar legislation was enacted in respect of the water pipes. The current ownership of the sewer may therefore be different from the water pipe as a result of legislation.
5. I note that a shared supply pipe serving more than one property may be laid under the highway, land owned by any of the property owners served, or land owned by someone else. This is quite common across the UK in respect of supply pipes. Ownership of the land a pipe runs through is therefore not a factor determinative of ownership that the pipe was laid under the road of River Way.
6. I have been provided with a number of letters and other documents that assist in determining the historical ownership of the water pipe. The first, from [ ] District Council, is dated 24 October 1979. This letter refers to enquiries “about any public responsibility for the foul drain serving your property” and states that “there is probably a presumption that, as the pipe is in the carriageway, which is adopted together with its surface water drainage, the foul sewer should in equity also be considered public”.
7. I note that this letter refers to the foul drain, however it pre-dates the transfer of sewer assets to the company. The letter is inconclusive as to actual legal ownership of the sewer, stating only that there is a presumption that a sewer in the carriageway will be considered public.

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8. I have also been provided with documents relating to the claim in [ ] County Court. These documents are the particulars of claim entered by the [ ] Waterworks Company (WWC), claiming water charges from the customer, and the customer's defence submission that disputes liability on the basis that the water supply has been frequently cut off.
9. There is also a letter dated 5 November 1986 written by the customer to WWC advising that the Registrar recommended that the key to the dispute is the ownership of the stop tap at the River Way of the supply pipe serving three properties, Red Wood, Green Cottage and The Barn. The letter confirms that the stop tap was marked with the letters WWC.
10. The reply from WWC is dated 7 November 1986. This letter refers to a meeting at [ ] County Court on 4 November 1986 and states that WWC had "now been able to ascertain the position with regard to the position of the stop tap and where the Company's responsibility ends". The letter confirms that the "Company's responsibility ends at the stop tap in Jim Lane, the stop tap just outside the boundary of your property was fitted when the water pressure was tested by the Company. Therefore the supply pipe from the stop tap in Jim Lane is not the responsibility of the Company and the "road" which the supply pipe is under is classed as a private drive".
11. The claim brought in [ ] County Court was adjourned with liberty to restore. It does not appear that the case was ever determined in a court of law.
12. The customer states that River Way was part of Jim Lane until it was renamed in the 1990s, after this letter. I accept this on the balance of probabilities based on the address on the WWC letter. The 1979 letter also confirms that the carriageway had been adopted and, on the balance of probabilities, I find that the 'carriageway' can only refer to the road now known as River Way.
13. I am mindful that the WWC letter states that the road is "classed as a private drive"; it is unclear whether WWC has its own method of categorising roads or if it mirrors the adoption of roadways by the local Council.
14. I am, however, satisfied that the letter provides a clear explanation for the presence of a stop tap outside The Barn, i.e. at the far end of River Way. This was fitted by WWC with the intention to test the water pressure. It is therefore clear that the supply pipe was in place prior to the stop tap being fitted; it was not laid at the same time as would have occurred if a water main had been laid to this point with a private supply pipe spurring off from this stop tap.

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15. The ownership of a water pipe is determined by reference to the outside stop tap. The company is responsible for the water main and the communication pipes that spur off from the water main. The company is then responsible for the outside stop tap, this being the boundary of its assets. The customer will then be responsible for the remaining pipework serving his property, either alone or shared with neighbours.
16. In this case, there are two stop taps: one in the junction of Jim Lane and River Way and one outside The Barn. I accept that a water main supplying a number of properties will have a communication pipe and boundary stop tap for each property or properties served by that water main. I am satisfied that the disputed supply pipe serves three properties: The Barn, Green Cottage, and Red Wood.
17. There is only one stop tap on this supply pipe, being on the boundary to The Barn. In order to stop the supply of water to Red Wood and Green Cottage, the residents would have to use the single stop tap located at the junction of River Way and Jim Lane. This is indicative that the disputed pipe is a shared private supply pipe as, were the pipe a water main, Red Wood would have some way of turning off their water without affecting any other property that was also fitted with a company stop tap.
18. I am satisfied that the stop tap outside The Barn was fitted with the specific purpose of measuring water pressure, and not as an indicator that the company had laid the pipe along River Way, or that it was asserting ownership of this pipework. I find that the The Barn stop tap was merely a tool fitted in order for WWC to conduct pressure tests and, whilst the reason this was necessary is no longer available, I find that the evidence strongly indicates that the pipe from the junction with Jim Lane, at all times, remained a shared supply pipe to the three properties.
19. In view of this, I am satisfied that the company is responsible for the maintenance of the water pipe work up to and including the stop tap and boundary box at the junction of Jim Lane and River Way only. The customer and her neighbours are responsible for the pipework from this point to their properties.
20. I acknowledge that the company has completed repairs on this private supply pipe, at its own cost. I am satisfied that this was a business decision, based on the loss of water, that ownership

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of the pipe was in dispute, and that the leak was negatively affecting the supply to the properties. I find that, at no point, did the company, through its actions, accept responsibility for the pipe.

21. In view of this, as the company is meeting its obligations in respect of the water pressure supplied to the stop tap in the junction of Jim Lane and River Way, I find that it cannot be obliged to take responsibility for the customer's private supply pipe or to alter this to resolve the low-pressure issue. I am also satisfied that the company has not failed to provide its services to the standard to be reasonably expected. The claim is therefore unable to 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 28 December 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.

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**Alison Dablin**, LLM, MSc, MCI Arb

**Adjudicator**

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