

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1015

Date of Decision: 9 October 2018

Complaint

The customer states that the company provided poor customer service that has resulted in the waste of a large amount of her time and effort and, because the company has not provided a resolution in an appropriate timescale, has resulted in flooding and damage to her garden from September 2015 to date. She seeks a direction that the company shall fix the problem, shall give an explanation of its internal process and provide compensation of £7,000.00.

Defence

The company says that there has been a leak on a shared private pipe for which the customer and not the company was responsible. As the customer decided to connect directly to the mains supply, the plumbers who installed the new supply should have capped off the shared pipe and there would have been no leak. The company agrees, nonetheless, that there have been service failures. It has offered the customer compensation of £2,000.00 and says that this is sufficient redress.

Findings

The company, which had a shared pipe replacement policy, failed to supply its services to the standard that would reasonably be expected of it in that it: did not promptly serve section 75 notices or enforce these; and, on four occasions, did not complete a direct mains connection for the customer and other property owners, with the consequence that the customer's garden was flooded with water for three years. This has caused damage, distress and inconvenience.

Outcome

The company needs to take the following further action:

- to use its best endeavours to secure an end to the leak affecting the customer's garden as soon as reasonably possible, whether by use of its statutory powers or otherwise; and
- to pay compensation of £2,600.00.

The customer must reply by 9 November 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

Adjudication Reference: WAT/ /1015

Date of Decision: 9 October 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She has had a leak in her back garden on the supply pipe to a row of six cottages.
- The company was informed of this by a neighbour in September 2015 and the company has added a new supply for four of the cottages and has recently informed the customer that there may be a factory connected to the pipe. The company has told the customer that it has not looked into this.
- The customer has wasted hours emailing and calling the company and has gone through a lengthy complaints process without achieving a solution. The company has not investigated the problem but it did tell her that the leak had been fixed and offered her compensation. It is only because the customer found a private plumber to look at the problem that she knows that the problem has not been fixed.
- The company has not given the customer any explanation of what has gone wrong despite multiple requests. Her back garden is flooded and rotten. The customer wishes the company:
 - to fix the leak immediately;
 - to give a full explanation of the company's internal business processes, identifying and explaining what has repeatedly gone wrong in this case and let her know what has changed as a result of this learning so that no one has to go through a similar experience and more water will not be wasted; and

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- To pay compensation. Although the customer initially said that she did not believe that she needs to seek compensation because the company has already offered £2,000.00 compensation and, she thought, would be willing to increase this figure, she now seeks £7,000.00 by way of compensation. The customer says that compensation should cover the cost of a new wall, a shed and fences and her time and distress. She also points out that a full year has gone by since the original offer and she has suffered financially by not being able to increase the rent charged on the property or to reduce her mortgage.

The company's response is that:

- In 2016, the company identified a leak on the private water pipe that supplies the customer's property along with those of five of her neighbours. Notice was issued under section 75 of the Water Industry Act 1991 advising all six customers of the leak and of their obligation to repair it.
- Rather than arranging a repair, the customer decided to install a new separate water supply to the property so that she was no longer connected to the joint supply.
- The work to connect the new pipe to the water main required traffic management and was not something that could be carried out quickly.
- Two of her neighbours also decided to install new water pipes in the same way, with the consequence that the connection was delayed so that all three properties could be completed at the same time. Unfortunately, at first, only one of the properties was connected. The connection to the remaining properties was completed at a later date.
- A fourth neighbour then decided to install a new supply, which was completed and connected in January 2018.
- During this time the section 75 notice was suspended as the customers were taking steps to resolve the situation. Two properties, however, were not connected. Two new customers have moved in to these properties so that the section 75 process has had to be started again. Initial letters were sent to the new customers and one of these has decided to install a new supply pipe. This customer is waiting connection of the new pipe. This is scheduled for December 2018.
- The remaining customer has so far failed to respond to the company's letters advising of the leak. Once the fifth property has been connected to the water main, this final customer will be solely responsible for the repair of the leak. If it chooses to ignore the company's letters,

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enforcement action will be taken and the company will repair the leak and recharge the costs to that customer.

- The company says that the plumber or plumbers who have installed the new supply pipes for each of the customers should have capped the old supply pipe when each new pipe was connected to the water main. If this had been done, depending on the position of the leak, this action would have resolved it.
- The company is aware that there have been a number of failings throughout its dealings with the customer and it has offered the customer a payment of £2,000.00 as a gesture of goodwill.

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?

1. There is a considerable history to this dispute, the principal events of which I summarise below, together with my findings.
2. The company says that in September 2015, it began to liaise with a property owner in the customer's road who had reported a leak in his garden. The company says that it carried out numerous investigations over the following months and it was identified that the leak was on the

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private water supply that jointly supplies several properties in the road, including the customer's home, and that ran underneath their gardens. The property owner is said by the company to have told the company that he had liaised with his neighbours and the company states that he confirmed to the company that the property owners would arrange the repair.

3. The company says that the customer then took the decision to install a new separate water supply pipe to her property. The customer challenges the suggestion that it was her decision to make a separate connection rather than repair the pipe. She said that she was advised by three professionals that the supply pipe was lead, which was potentially dangerous and should be replaced. These professionals suggested that she should apply under the company's lead pipe and shared pipe replacement scheme so as to obtain a new supply. The customer complains that the company did not give this information to her and that she had to find out from a private plumber. I find that she is correct about this: notification of her right to seek a direct supply and reference to the company's leaflet concerning shared supplies was contained in the letter sent to the customer (and to her neighbours) dated 10 May 2016. Prior to that letter, the customer had already made an application to the company for free connection to the water main on 13 April 2016. The customer's application was approved on 20 April 2016 and a visit was arranged on 29 April 2016 to advise her on what work she needed to carry out. During the visit the customer raised a concern that not all of the properties on the joint supply had been made aware of the leak.
4. The company then sent a letter to all six property owners on 10 May 2016 to advise of the leak and of the requirement on the owners to repair it. The customer said that it had taken eight months before this letter was sent and she complains that this was an unreasonable delay. Save that the company states that it had been offered an assurance by the property owner who contacted the company in September 2015 that he would liaise to arrange a repair and that it initially would not have known the location of the pipe or the houses that it served, the company has not put forward an explanation in its defence documentation as to the reason for this delay or why its investigation took so long or what the investigation was intended to achieve.
5. I find that, bearing in mind the company's responsibilities to prevent a waste of water and also that the customers using shared pipes might be eligible for direct connection to the company's services, this delay is difficult to reconcile. I find that an average customer would reasonably have expected that the water company would promptly have notified all residents without relying on a property owner as an intermediary, to let them know of their statutory responsibilities under

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section 75 of the Water Industry Act 1991 and of the possibility of direct connection to the mains, so as to assist them in their decision-making. Although I accept that the company may not initially have been fully aware of the precise layout of all shared private supplies, the properties in question are in a row of houses of which the customer's house is towards the centre and one owner had given information that others were affected. It is likely to have been apparent that all the houses would have been affected by the shared arrangement in which there was a known reported leak. I therefore find that the delay between September 2015 and May 2016 in notifying the customer of the leak and their repairing obligation fell short of the standard of service that an average customer would have expected.

6. On 8 June 2016, the company inspected the new direct water supply pipe that the customer had installed and the inspection passed. The job to connect the new installation to the water main (which required work under the highway) was planned for 31 July 2016. On 15 June 2016, the company sent a second letter to all the properties on the joint supply to check their progress with the repair. The customer called the company on 2 July 2016 to confirm that she was awaiting connection. During the call she said that she was aware that one of her neighbours was also installing a new supply. The company advised that they would make a note of this but that she would nevertheless continue to receive letters while she was still connected to the old leaking supply.
7. The company says that it was not able to carry out the work on 31 July 2016 as there was no available resource to carry out a same-day reinstatement, which was a requirement set by the highway authority. The company says that it contacted the customer on 31 July 2016 to apologise and the work was rescheduled for 18 September 2016. The customer says that she was told that the company had not been able to arrange for same-day reinstatement because it had not organised for the presence of a tarmacker. Having regard to the company's submissions, I note that the company does not appear to deny that this reason was the cause of the delay and the correspondence is insufficiently clear to enable me to conclude that there was a different reason for the problem. I find that this was a service failing and did not meet the standard of service that would reasonably be expected of a water company.
8. In September 2016, the company contacted all the customers on the joint supply to check what was happening. According to the company, two of the property owners (including the customer) had advised that they had installed new supplies awaiting connection and two others confirmed that they were considering this. At this stage, the section 75 notice was put on hold to allow the

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work to be completed. The customer criticises this decision because, of the six property owners who had been contacted about the leaking supply, only two had committed to taking action and two more had only indicated an intention to consider actions. It appears that the company had had no contact from the other two customers who were connected to the leaking supply, notwithstanding that the pipe served their property. This had the consequence that the waste of water, in respect of which the notice had been served, was continuing without full responsibility having been accepted by those liable. I find that the customer is correct that the company, in putting the section 75 notice on hold, had caused a disparity between its customers, with an adverse consequence for the customer's garden in which there was a known leak. I find that at this point the company did not supply its services to the customer to the standard that would reasonably be expected of it.

9. On 18 September 2016 the company attended the site and carried out some preparation work but did not complete the new connection for the customer. The company says that the remaining work could not be scheduled as a third party was also working in the area and the highway authority would not allow the company to carry out work at the same time. The customer says that this occurred because the company had failed promptly to apply for the temporary road closure, so that when the application was made, this was too late. The customer also refers to failure to arrange for residents to park elsewhere. The company has made no response in its defence but in correspondence with the Consumer Council for Water (CCWater) has confirmed that parked cars were a problem. On 30 May 2017, the company said that there had not been a problem with lack of highway authority permission – which is inconsistent with the company's statement in its defence. In the light of the company's submissions in its defence, I find that the customer is likely to have been correct that the company did not obtain permission on time from the highway authority. I find that this was a further failing by the company to meet the service standards that were reasonably to be expected of it.
10. The connection was rescheduled for 1 February 2017 when the company was also planning to connect to other properties that had installed new supply pipes. On 23 January 2017, the company identified that one of the properties that had installed a new supply was not ready for connection. As the company wanted to complete the connections at the same time, it cancelled the connection date of 1 February 2017. The customer wrote to the company on 20 February 2017 to express her unhappiness and to claim compensation of £4,790.00. Among other items of claim, the customer applied for loss of rental income on her property and the restoration of her garden. For the latter she claimed £1,000.00 to cover wall, fence, patio, plats and shed. As

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the customer had written from a different address and had not identified the property, the company was not able to follow her complaint and it sent a letter to her on 7 March 2017 asking for further information. The customer called the company to provide the information and the company agreed to liaise with its scheduling team.

11. The customer complains that, by this time, the company should have been taking enforcement action in respect of the other customers and it had had ample opportunity to connect her service directly to the company's mains supply. The Consumer Council for Water (CCWater) then wrote to the company on 2 May 2017 making these points. The company replied and there was an exchange of correspondence throughout May and June 2017.
12. I find that, by this time, the company had known about the leak for 20 months and the customer had applied for connection to the mains 13 months earlier but the mains connection still had not been completed. While the desirability of minimising disruption to the highway to make the connections is an understandable objective, I find that an average customer would expect that the company would have been able to complete a new connection within a reasonable timescale. The timescale set out above, I find, significantly exceeded a reasonable timescale. It therefore follows that I find that the company fell short of the standards that would reasonably be expected of it.
13. On 19 June 2017, the company attended the site as planned and carried out a connection. Although three properties were due to be connected, only one connection was carried out. The customer records that her neighbour told her that the operatives had stated that they had been given no instructions to connect three properties. The completed connection was for the customer's neighbour and not for the customer. On 21 June 2017, the customer emailed the company indicating that she had been sitting at her desk at work, crying. The company promised to investigate and to escalate internally an enquiry as to how it had come about that her property had not been connected. The customer was not given a written explanation for what had taken place, although the company told CCWater that the customer had been told that the operatives were "called away" before all the connections could be made. I find, nonetheless, that the failure to connect the customer to the mains supply when promised is a matter for which the company accepts responsibility and, particularly when it was the third occasion when the connection had not occurred, would have been a source of considerable distress. I find that the company again fell short of the standards reasonably to be expected of it.

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14. There then followed an arrangement to inspect the site of the leak, although this took some time because the papers indicate that the company, having been asked to do so by the customer, did not communicate with the customer's tenant to arrange access. The company says that its field team informed it that the leak on private pipework had been repaired as part of the installation and connection process and this was passed on to the customer but the customer "was not aware of this having been completed". It is clear, however, that the information given to the customer was incorrect. The company visited the site on 12 July 2017 and confirmed that the leak was still running. An email was sent to the customer on the same date and the customer also emailed the company on 12 July 2017 following her meeting with the engineer. The customer then sent a further request on 25 July 2017 to enquire as to the next step.
15. Meanwhile, on 5 July 2017, the company sent an email to the customer to confirm that the connection for her new supply pipe had been rescheduled for 17 July 2017. On 17 July 2017 the new water supply pipes laid by the customer and two of her neighbours were connected to the water main. Although the company argues that it was then for the customer to have capped off the previous supply pipe and, if she had done so, the problem would have been resolved, the company has not set out the legal basis for this argument. I remind myself that the pipe in question provided the water supply to the affected houses and that the houses that are known not to have connected to the mains supply included those at both ends of the row of affected houses. Although no evidence has been put forward by either party as to this aspect of the dispute, I am mindful that it is probable that the property owners would have had mutual covenants contained in their conveyancing documentation in relation to the pipe. I find that there is no evidence that it would have been lawful for the customer simply to have disconnected the water supply affecting any house that had not connected directly to the mains. It follows from this, that, although the customer was freshly connected with a new supply, I am not able to find that she could have capped off the pipe and disconnected the water supply without affecting another house or other houses that were entitled to receive water. I am therefore not persuaded that the customer could have resolved the leak by capping the pipe, even if this had been possible from a practical point of view (as to which, see below).
16. The company replied to the customer's request for information made on 25 July 2017 and, in an exchange of emails, let her know at this time that another of the customers left on the leaking supply had decided to install a new separate supply. At that point, the company appears to have been in error as to the number of properties connected: although it had previously been accepted that there were six properties, the company appears to have thought that with the

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most recent connection, there would no longer be any customers left to be served by the old pipe and that the pipe could be disconnected. This was incorrect because the future connection of this customer meant that only four of the six properties would have a direct supply. I consider that this error is likely to have informed the company's failure to continue to pursue the section 75 notices to ensure that either the remaining property owners repaired the pipe or installed a direct supply. I find that the company did not meet the standard that would reasonably be expected of it in this regard.

17. The customer was informed that the last connection would be made on 14 November 2017. On that date, the company arrived on site to complete the new connection for the most recent property owner customer that had recently installed a new supply. Again, the work could not be completed as there was a road closure nearby, which made it dangerous. The customer was informed. The work was rescheduled for 23 January 2018 and was then carried out on that date. The company, believing the issue to have been resolved, also sent the customer a further email on 6 February 2018 offering compensation of £2000.00 for poor service that she had received.
18. The customer then asked for confirmation that the pipe was redundant and that all her neighbours had connected to the pipe. On 23 March 2018 the customer emailed the company after her plumber had attended her property to advise that the pipe was still connected to other customers' properties because none of those carrying out the work had considered that it was necessary to disconnect the old supply pipe. Moreover, the properties at each end of the row served by the pipe were still receiving their water supply via that pipe.
19. The company then suggested that the pipe be capped at each side of each garden. The customer investigated and was informed by her plumber that this was not possible, because the cap would need to be applied under the floor of each property in the row. The customer then informed the company.
20. On 8 May 2018, the company wrote to the customer to explain that the occupiers of the two remaining properties had changed since the original section 75 notice had been issued so the process had to start again in respect of the connection to those addresses. The company says that the current situation is that one of the remaining properties connected to the old supply has installed a new water supply pipe and is waiting to be connected to the water main. Once this has been completed one property will remain on the supply and if the owner of this property

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takes no steps to carry out the repair the company will undertake the work and recharge the costs to the customer in accordance with its powers under the Water Industry Act 1991.

21. I find, in the light of my findings above, that the company has not supplied its services to the standard that would be expected by an average customer, and that the customer has shown that she is entitled to redress. The consequence, I find, of the instances noted above when the company fell below the expected standard is that, from a time shortly after September 2015 until the date of the defence on 25 September 2018, the water leak is likely to have continued into the customer's garden. The leak has also continued since the offer of compensation of £2,000.00 in February 2018.
22. The customer has sought the following redress, namely for the company to (1) fix the leak immediately; (2) give a full explanation of the company's internal business processes, identifying and explaining what has repeatedly gone wrong in this case and let her know what has changed as a result of this learning so that no one has to go through a similar experience and water will not be wasted; and (3) pay compensation of £7,000.00.
23. As for the redress sought at (1), I find that I cannot direct immediate fixing of the leak. The company has no right of entry to repair the leak unless the consent of the property owner under whose land the leak lies is obtained or the process under section 75 of the Water Industry Act 1991 has been undertaken. It is not known where along the pipe the leak might be located and therefore I cannot know that consent or cooperation would be afforded. It is not appropriate for me to make a direction that the company cannot lawfully comply with or that imposes an obligation of cooperation on third parties. It is, however, fair and reasonable, that the history of this matter should be marked by a direction. Having regard to the delay that has occurred in this case, I find that it is fair and reasonable to direct that the company shall use its best endeavours to secure an end to the leak affecting the customer's garden as soon as reasonably possible, whether by use of its statutory powers or otherwise. As for the claim at (2), I make no direction. I find that, even if the customer is critical of the company's internal processes, these are a matter for the company to decide upon and do not fall within the scope of the WATRS scheme.
24. In relation to the redress sought at (3) the company says that it considers that the sum of £2000.00 is the offer of compensation in acknowledgement that the service that the customer has received has not been to an acceptable standard. The customer says, however, that until the leak is fixed, the full extent of the damage will not be known and she will have to get a

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quotation for the damage caused. She said that the claim for £7000.00 is based on “speaking to a repair man of the labour and materials needed to rebuild the rotten wall, rotten shed and to replace the gate and fence panels as well as the pebbles that cover the garden”. It also includes a claim for distress and inconvenience and financial losses in relation to lack of opportunity to increase her rental income or pay off her mortgage.

25. Having regard to the claim made by the customer and the three year history, I find that, even though the pipe in question was under private ground, the company had caused the customer to rely on promises of a course of action that were not in the end carried out. I have found above that there were service failures and I find that the customer has suffered loss in consequence. I find that the sum of £2,000.00 was a fair and reasonable offer of compensation at the time that it was made by the company. I do not have, however, a precise break-down of how this offer was calculated, but I find that it is unlikely to have included any sum for loss of rental income or mortgage repayments, for which no supporting evidence was submitted. I also do not make any award of compensation in relation to these aspects of the customer’s claim: adjudication is an evidence-based process and the customer has submitted no evidence in support of these losses.
26. I find, however, that the offer of compensation is likely to have included the compensation of £1,000.00 claimed by the customer in 2017 in respect of damage to her garden. I take into account in reaching that conclusion that the customer has not provided any supporting evidence of what damage has been caused to her garden for the cost of rectifying this. I bear in mind, nonetheless, that a waterlogged garden is likely to have led to damage to fences, a shed and hard-standing areas that will require work to mend and clean. The company is likely to have taken this into account in making its offer and I find that the sum of £1,000.00 is an estimate that it fair and reasonable.
27. I find it likely that the balance of the company’s offer was for distress and inconvenience, including the loss of the customer’s time and energy in having to deal with the company and its agents in relation to the leak. This, therefore, was a sum of £1,000.00 as at February 2018, and the inconvenience has continued. I find that a sum of £75.00 per month fairly reflects this additional loss, which for a period from February to September 2018 is £600.00, giving a total award for distress and inconvenience of £1,600.00.
28. It follows that I find that the customer is entitled to total compensation of £2,600.00.

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Outcome

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

- to use its best endeavours to secure an end to the leak affecting the customer's garden as soon as reasonably possible, whether by use of its statutory powers or otherwise; and
- to pay compensation of £2,600.00.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 November 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.



Claire Andrews, Barrister, FCI Arb

Adjudicator

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