

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1092

Date of Decision: 22 November 2018

Complaint

When they purchased their property in 2017, the customers did not appreciate that they would be acquiring responsibility for 500 metres of water supply pipe ("the Pipe"). The Pipe is 'ever-leaking'. The company has said that it will no longer repair the Pipe as it had done for all the previous owners of the property. It will not adopt the Pipe either. The customers want the Pipe replaced to prevent further leaks and costs. They cannot afford to pay privately for the replacement – it would cost £40,000.00.

Defence

The company is under no obligation to adopt, repair or replace the Pipe, which the customers own. The company's responsibility (for pipework supplying drinking water to properties) runs from the water main to the boundary of the street in which the water main is laid. During the conveyancing process, it would have been for the customers and/or their legal advisers to identify that the Pipe spanned the remaining distance between the property and the company's assets. If this was not done then it was through no fault of the company.

No offer of settlement has been made.

Findings

The company's explanation – as to where its pipework responsibilities end and where those of the property owner begin – is correct. The customers own the Pipe. The company had no material part to play in the customers' lack of awareness about the Pipe (and as to who would be responsible for the Pipe's maintenance). There has been no discriminatory conduct on the part of the company in this case. There is no reasonable basis on which the company could or should be compelled to adopt the Pipe or to pay for its replacement.

Outcome

The company does not need to take any further action.

The customers must reply by 20 December 2018 to accept or reject this decision.

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future leaks.

- They did not buy the Pipe. As to the resolution that they are seeking, the customers say that they “... *just want [the Pipe] replaced to prevent further leaks / costs ...*”

The company’s response is that:

- It is under no obligation to adopt or repair the Pipe in question. Its responsibility (for pipework supplying drinking water to properties) runs from the water main to the boundary of the street in which the water main is laid. The length of pipe from that point forward is not the company’s responsibility. It will commonly be the responsibility of the owner of the property that it serves, which is the situation in this case.
- It is understood that the customers moved into their property on 3 November 2017. The first contact that the company had from the customers was by a number of emails (received on 13, 15, 16, 19, and 20 November 2017) regarding an issue with their supply pipes. A meeting was arranged and took place on 20 November 2017.
- At this meeting, it was identified that there were two stop taps serving the property:
 - one located close to the main road near to where the company's responsibility for the pipework ended, and
 - another located closer to the property.
- The latter stop tap was confirmed to be leaking and the customers agreed to repair this. It was also agreed that if there was still a leak between the two stop taps then a repair would be arranged by the company as a gesture of goodwill ("GOGW").
- A follow-up call took place on 23 November 2017 and the customers advised that the leak on their stop tap had been repaired. The company confirmed that an engineer would be sent out to look for any further leaks, which would be repaired by the company as a GOGW.
- A further email was received from the customers on 4 January 2018. In response to that email, the company rang the customers on 5 January 2018 to confirm:
 - that a meter would be installed on the property's supply pipe; but
 - that this would only be used to monitor possible leaks at the property and that the customers would continue to be billed according to their unmeasured charges.
- A repair was undertaken by the company on the Pipe, as a GOGW, on 26 February 2018.
- On 30 April 2018, the customers were advised:
 - that the company would not be adopting the Pipe; and
 - that they should seek information from their solicitor as to why they were not advised about the length of the Pipe prior to purchasing the property.

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- On 9 July 2018, it was reaffirmed to the customers that any previous repairs to the Pipe had been carried out as a GOGW but that going forward, it was unlikely that any further leak repairs would be undertaken.
- On 23 July 2018, the company reiterated to the customers that the Pipe issue was a private supply pipe and that therefore, the customers were responsible for its maintenance.
- Whilst the company will occasionally intervene and undertake repairs upon private supply pipes for customers, this is not the norm. It is expected that the customer will undertake the repair himself or herself.
- In these scenarios, the company has statutory powers to serve a notice upon the pipe owner requiring them to fix any leak. If the owner does not comply with the notice then the company is entitled to:
 - repair the leak itself; and
 - recover the cost of doing so directly from the pipe owner.
- However, this must be balanced with an assessment as to the likelihood of recovering such costs. If work is undertaken and the owner of the supply pipe cannot pay then the costs incurred by the company would have to be borne by all of the company's customers. That would be a disproportionate outcome.
- It is not accepted that the [] region was experiencing a drought when leaks were occurring on the customers' property. Whilst water levels in the [] were lower than in previous years, there was no concern about the [] region running out of water.
- The assertion made by the customers in their application that they "did not buy [the Pipe]" is incorrect. Whoever owns the property is also the owner of the supply pipe serving the property and thus - when they purchased their property - the customers also purchased the Pipe.
- Prior to their purchase of the property, a 'CON29DW' drainage and water search ("the Search") was obtained on the customers' behalf. Private pipework would not be included in the Search results because the company is not responsible for such pipework. However, the Search did show the pipework belonging to the company and revealed that such pipework terminated 500 metres away from the property. It would have been for the customers and/or their legal advisers to interpret the Search and to identify that the service pipe (i.e. the Pipe) must have spanned the remaining distance between the property and the company's assets. If this was not done then it was through no fault of the company.
- The company denies that it is discriminating against the customers in any respect at all. It believes that it has always provided good customer service in this case and has tried to address any issues raised by the customers where it can. For example, it has undertaken

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repairs on the Pipe for the customers as GOGWs.

- Although sympathetic to the customers' issue, the company cannot replace the Pipe in this instance. The Pipe is private and belongs to the customers, as they are the owners of the property.
- The customers' suggestion that adopting the Pipe would "save water on future leaks" is noted. However, it would be disproportionate for the company to take such action. Adoption would then be the reaction expected by every customer who has a leaking private supply pipe. Given the cost involved in such an exercise, it would likely lead to a large increase in water charges needing to be passed on to the company's customer-base as a whole.
- Whilst the company is unable to adopt or replace the Pipe, it is willing to assess any future issues with the Pipe as and when they might arise. If it is considered to be in the best interests of the [] region's water network then the company may conduct further repairs to the Pipe as a GOGW. However, this is not a binding commitment that the company will always repair the Pipe. Rather, any issues will be looked at on a case-by-case basis only.

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. In terms of key documents, I have reviewed:

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- a. the materials attached to the customers' WATRS Application; and
 - b. the 'HP/1' to 'HP/6' documents annexed to the company's defence.
2. I have also had the benefit of reading:
- a. the customer's comments filed in reply to the company's defence. These are contained in an email dated 5 November 2018 ("Comments"); and
 - b. the company's response to the Comments, dated 7 November 2018.
3. The focus of this dispute is on whether the company ought to be taking steps to adopt or replace the Pipe (which I note the customers describe as "ever-leaking").
4. It is easy to understand the concerns that the customers have raised. When they were buying their property in late 2017, they did not realise that they would be saddled with the financial responsibility for maintaining the Pipe privately. I have little hesitation in accepting that, as they submit, the customers did not appreciate that fact before completing their purchase.
5. I note the following from the customers' Comments:

"... We are totally aware now that we are jointly responsible with the farmer [] for the maintenance and repair of the 500 meter pipe connected us from the main road to our stop cock outside our property on a public highway. However we are very upset that this responsibility was not highlighted by our solicitor and that the CON29 form had not been updated by [] with a coloured orange line that [] clearly show on its map criteria which would have made it more noticeable to the incompetent solicitor who carried out the conveyancing on behalf of us ..."

6. In its defence, the company gives a clear explanation of where its pipework responsibilities end and where those of the property owner begin. I accept this explanation as practical and correct. The customers are the owners of the Pipe, I find, and they have responsibility for maintaining it.
7. I am not persuaded that the company had any material part to play in the customers' lack of awareness about the Pipe (and as to who would be responsible for the Pipe's maintenance). The company's points about the Search and the duties of the customers' conveyancing solicitor seem well-made to me.
8. On this aspect, I have also taken account of the update that the customers mention in their Comments, which I view as significant:

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“... we are in the process of dealing with the Legal Ombudsman to obtain compensation from the solicitor who at a very stressful time for us of moving house did not pick up the water pipe on his paperwork we are also looking into taking the previous owners to a small claims court for misrepresentation of the property act by not informing us on the Law Society form that we owned this pipe and telling all concerned our stop cock was outside our small boundary gate which it is ...”

9. As I follow them, the customers' main arguments as to why the company should be obliged to adopt or replace the Pipe are that:
- a. the company appears to have been willing to attend to repairs of the Pipe for the property's previous owners. Since the customers moved in, however, there has been a change of policy. The company is now refusing to assist and the customers regard this as an unfair and seemingly discriminatory decision; and
 - b. the customers cannot afford to pay privately to have the Pipe replaced. It is surely in everyone's interests (they say) for the company simply to adopt the Pipe because this would ensure that future leaks are prevented.
10. It does seem probable that the company was prepared to carry out repairs to the Pipe for the property's previous owners. (I cannot see that the company specifically disputes this in its defence). I have considered whether any sudden 'change in approach' in this respect could be grounds to require the company to provide the customers with the resolution that they are seeking. The conclusion that I have come to, however, is that those grounds would be insufficient. This is because:
- a. evidently, prior to their purchase of the property, the customers had no idea that the company had been attending to the Pipe for the previous owners. I do not consider that the customers can say, therefore, that they drew any assurance (or formed any expectation) that the company's assistance to the previous owners would be continuing; and
 - b. it is most likely, anyway, it seems to me, that the company's assistance to the previous owners was provided on a GOGW basis only. At the end of its defence, I note that – so far as its potential assistance to the customers is concerned - the company indicates that *“... if it is considered to be in the best interests of the [] region's water network then [it] may conduct further repairs to the Pipe as a GOGW ...”* On this footing, therefore, as

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between the customers and the previous owners of the property, it appears that the company will be acting in a consistent way.

11. As to the customers' point about the adopting the Pipe so as to "save water on future leaks", I accept the response and argument that the company puts forward at paragraph 24 of its defence.
12. For the reasons set out above, I am not persuaded:
 - a. that there has been any discriminatory conduct on the part of the company in this case;
or
 - b. that there is any reasonable basis on which the company could or should be compelled to adopt the Pipe or to pay for its replacement.
13. I am satisfied that the company has provided its services to the customer in this matter to the standard that one would reasonably expect.

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 20 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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Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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