

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1220

Date of Decision: 18 March 2019

Complaint

The customer complains that the company enabled the provision of an incorrect SureMoves report in that it failed to identify that the water supply to the property was almost non-existent; that it failed to respond appropriately to requests to provide information about a direct connection because insufficient detail of its proposals were given to enable her to appoint a private contractor; and the company has refused to repair a leak in her back garden.

Defence

The company says that the information in the SureMoves report was consistent with its records and that an adequate supply of water can be measured at the boundary of the public asset and the joint private supply serving the customer's property. The SureMoves report did not address the condition of private assets. It states that sufficient information has been provided to the customer and it has offered the customer compensation of £300.00 for errors in its service provision. The leak was on the private supply and the company is not liable for this.

Findings

I find that, save for the compensatory gestures already made by the company, the claim does not succeed. The SureMoves report does not extend to information about private pipework and the supply at the stop tap at the start of the private pipe was satisfactory. The company gave adequate information about its proposals for installing a direct connection and, as, I find, the leak was at a stop tap on the private pipework, the company is not responsible for this.

Outcome

The company needs to take the following further action: (1) if the company has not already paid the customer compensation of £300.00, to pay such compensation and (2) to honour its commitment to provide an interest free instalment plan if the customer chooses to accept the quotation for work costing £4,772.04.

The customer must reply by 15 April 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer complains that when she and her sister bought a new home for their parents, she requested a report on the water at the new address from SureMoves, the company's agent, which carried out a search. Nothing was reported.
- She subsequently discovered that there was very low water pressure. She also discovered that there was a high lead content in the water and that she would have to make a lead renewal pipework application, which she did.
- She complains that:
 - The information given was incorrect and the details given had been from a 2013 search rather than a 2018 search;
 - There was no response for five weeks to the lead renewal pipe application.
- Despite the involvement of CCWater, the company's Developer Services section has not explained adequately what proposals are being made for the new connection and has not responded appropriately regarding a leak in her garden from a company asset, namely the outside stop valve
- The customer seeks:
 - A more detailed explanation from Developer Services offering further options at a lower cost;
 - The company to repair the outside stop valve, which she believes is causing subsidence in her garden;
 - An apology that involves the company taking responsibility for incorrect information in the SureMoves report and acknowledging their failings; and
 - Compensation of £787.75.

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The company's response is that:

- The information given in the SureMoves report was as to the water pressure at the property's own boundary. The property was not shown on the Low Pressure Risk register at the time of the report and therefore the information given to the customer was consistent with the information available. If the water pressure was poor due to pipework within the customer's boundary, this would not have been shown in the report.
- The company says that on 2 September 2018, the water pressure was 150 litres per minute. This exceeded a satisfactory supply for eight properties, which would have been 80 litres per minute.
- In response to the stage 1 complaint made by the customer on 2 November 2018, the company explained the above information and also sent an email dealing with the new connection. To compensate the customer for the delays, the company offered:
 - A free survey;
 - £300.00 compensation for the delay; and
 - An interest free payment plan for the cost of the new supply.
- Following the involvement of the Consumer Council for Water (CCWater), the company invited the customer to contact them directly to deal with the leak, reiterated its offer of £300.00 in respect of the delays and explained that the information and estimate that had previously been given to the customer was adequate.

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.

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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. Although there are a number of disputes between the parties, not all of these are relevant to the central questions in this case and not all of these need, I find, to be resolved in order to address the issues in this case. I find these issues to be set out in the application form and they are:
 - Has the company given information other than that which would reasonably be expected in the SureMoves search report?
 - Has the company failed to provide the service that would reasonably be expected in relation to the installation of a new supply pipe?
 - Has the company failed to provide an adequate standard of service in relation to the leaking stop tap?
2. The documents submitted by both parties explain that on 17 July 2018, the customer received as part of a proposed house purchase, a legal pack including a Water and Drainage search report provided by SureMoves, an organisation that describes itself on the report as part of the company. The company's defence describes SureMoves as a sister company held by a common owner. The report included the following statements that are relied on by the company:

'Water Undertakers are not responsible for private supply pipes connecting the property to the public water main and do not hold details of these. These may pass through land outside of the control of the seller or may be shared with adjacent properties. The buyer may wish to investigate whether separate rights or easements are needed for their inspection repair or renewal' (page 5);

'It should be noted that low water pressure can occur from private water mains, private supply pipes (the pipework from the external stop cock to the property) or internal plumbing which are not the responsibility of the Water Undertaker. This report excludes low water pressure from private water mains, supply pipes and internal plumbing and the Water Undertaker makes no comment on this matter' (page 10)

The customer purchased the house (14 Green Street) by auction in reliance on the report, which indicated that there were no known problems with the water supply or drainage.

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3. The customer submits that the company used information that was made available by a survey undertaken in 2013, whereas, she says:

- Private work had been undertaken in May 2018, two months before the search report was completed, that would have alerted the company to the fact that the water pressure in the locality of 14 Green Street was unacceptably low; and
- The company's site agent (JW) said that he was aware of a historical problem with the block of houses within which 14 Green Street is located.

The customer submits that as it was subsequently discovered that there were such problems, the house was sold at a higher price than should properly have been the case. The company, on the other hand, states that it has no records of low pressure having been reported at this address prior to 28 August 2018. Although the customer has stated that she believes that low flow and pressure at this address was reported in May 2018, the company's own records show the house to have been unoccupied since 17 October 2017 with no contact relating to water pressure in that period. Moreover, there is no evidence that the customer was told by any representative of the company that there had been a report of low pressure at the property in May 2018. The company agrees that it has visited other properties connected to the supply pipe that feeds 14 Green Street and that its technician has investigated some of these cases. The company states that it was aware that the solution to the low pressure required the owners of these properties to install a new separate supply pipe at their own cost. As the company has never received any reports of low pressure from the property in question, however, the company suggests that it would have been inaccurate to record the property as experiencing low pressure.

4. Following purchase, the documents then show that the following occurred. On 28 August 2018, the customer's mother complained to the company of lack of water. Although there are disputes about precisely what happened on 2 September 2018, it is common ground that the company attended and, using a metal detector, located a stop tap at the start of the private supply to the side of 16 Green Street. The company says that the flow to the property was found to be 1 litre per minute, but the flow checked at the stop tap shows that the pressure was 150 litres per minute. The customer challenges this assessment, but has not put forward any alternative measures. The company believed that the supply pipe originally fed eight properties but now only feeds four. The company then sent the customer an email concerning application for a new connection.

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5. The company, having assessed the level of lead in the water, then sent the customer a letter explaining that there was an unacceptable lead level in the water and that the pipework needed to be replaced. The customer then informed the company that she would prefer to await the lead renewal. The company says that it called the customer on 10 September 2018 and left a voicemail explaining that a lead renewal would not be possible if the property has a shared supply pipe. The customer then called on 11 September 2018 to discuss this further. In this conversation, the company says that it explained its lead renewal policy, including that the company will replace its communication pipe and external stop tap if the customer replaces their own existing lead supply pipe but this does not cover new connections to the company's mains. The company said that its belief was that, in order to qualify for this scheme the whole of the shared supply pipe would need replacing through the gardens of 16- 29 Green Street. If that occurred, the company says, it would then replace its existing communication pipe and external stop tap at the side of 16 Green Street but the customer and the four other owners would need to make their own arrangements with the other property owners to replace the shared supply pipe. The customer, on the other hand, said that she is now the only person using the private supply pipe and the other owners are separately connected.
6. The customer made an application for lead pipework renewal on 14 September 2018 and the company's site agent (JW) attended on 2 October 2018. It was at this point that the customer says that she learned that the locality was known to have a supply problem. The company says that following this survey, it was not thought realistic to carry out replacement work to the pipes under the other gardens as these properties now had separate connections and would have no interest in collaborating in this work. Also, the company says, the customer had not discussed this with the other owners.
7. On 3 October 2018, the customer says that she received a call from []'s Utilities stating that it would be cutting off the water to carry out pressure tests. The customer communicated that she had no water pressure. [] Utilities attended later that day but found that it was unable to take any remedial steps. The company says that it has no record of this visit and that the photographs of the team attending were not present for the purpose of carrying out work at the customer's property. The company says that the pipe needs replacement and not repair.
8. The customer says that despite having understood that she would receive a response to her application for a new water supply within 28 days, and despite having explained to the site agent

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that there was a need for urgency because the house was intended to assist [] (aged 91) to care for his wife and despite the fact that water was needed for building works to be carried out, no reply was received. The company says that it sent a response within the time period that it had promised. The papers indicate that an estimated cost for the work, which involved connection at the rear of the property as the customer had requested, a plan of the proposed route, photographs for illustration and a leaflet 'Your Guide to Mains and Service Pipe Installation Procedures' was sent on 7 November 2018. In addition to this, the company says that it also posted a copy of the estimate with a breakdown of the costs to the Customer. The quotation for the works was £4,772.02.

9. On 27 November 2018, the company made a further offer to stagger payments on an interest-free basis so that £2,390.04 would be paid upfront and thereafter there would be six monthly payments of £397.00. An offer of compensation of £300.00 for poor customer service was also made. The company maintains its offer of compensation of £300.00.
10. On 4 December 2018, the customer complained, through CCWater, that in addition to having given incorrect information in the Water and Drainage search report, the company had also failed adequately to explain the quotation with which she had been provided. She additionally asked for information that would be sufficient to engage a private contractor to carry out this work. She asked for the information to be given in writing.
11. In response, on 13 December 2018, the company emailed the customer with an explanation of where the pipework would run and the size of pipes and that road closures would also be needed. The customer then asked for connection at the front of the property. A survey was undertaken free of charge on 31 December 2018 and on 9 January 2019 a further estimate was given in the sum of £2,332.46.
12. The company also agreed that it inspected the stop tap in the customer's garden about which she complains, and discovered that as the private supply pipe began at number 46, it has no responsibility for the leak, notwithstanding that the stop tap has a RST Water cover.
13. Taking the three issues identified in paragraph 1, therefore, I find in the light of the matters identified above, that the customer has not shown that the company has failed to supply its services to the standard that would reasonably be expected of it.

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The SureMoves report

14. Although the company describes itself as a sister company to that producing the report, as the document itself states that SureMoves is “part of [RST] Water”, I find that it is fair and reasonable to consider the accuracy of the report as part of this adjudication. It is common ground that the SureMoves report did not identify any problems with the water supply to 14 Green Street, whereas the water supply as received in the house itself is inadequate.
15. It is notable that the SureMoves report itself was not obtained by the customer and I note also that the report refers to legislation (Contracts (Rights of Third Parties) Act 1999) that is excluded, with the consequence that third parties (such as the customer) would not have a right of action based on that document. That said, however, I find that if the search report had itself been compiled in a manner that fell short of the standards reasonably to be expected of it, the customer may have qualified for redress under the WATRS scheme. I am satisfied, however, that the company has supplied its services to the standard that would reasonably be expected. The nature of a search report is to reveal to an inquirer the information that the company has recorded in relation to the property in question. The report makes clear that it does not deal with private pipework. That would reasonably be expected because the company does not own such pipework and has no rights over it.
16. I find that there is no evidence that the supply to the boundary of the private pipework was other than adequate. The company has submitted evidence of its own stated policy as to the difference between public assets and private pipework and I find that this is consistent with a conclusion that the public assets extend only to the pipework to the edge of number 16 Paddock Road. After that point, the documents submitted by the company show that the pipework extends under private gardens and was likely, at the point of its installation, to have supplied the houses whose gardens were affected. I find that it is consistent with the company’s declared policy and with the guidance given by OFWAT that the pipework after the stop tap at number 46 is a shared private pipe.
17. Even if, as the customer states, number 14 Green Street is now the only house served by this pipe, it does not follow that the pipe would cease to be privately owned. The connection of other houses would not, I find, have changed the status of the pipe.
18. The company has also submitted evidence that the supply at this point measured 150 litres per minute and I find that this exceeds the OFWAT requirements, particularly if four houses or one

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was connected via that stop tap. I therefore find that it is likely that the drop in the quantity and speed of supply is likely to occur in the private pipework. As the SureMoves report explained that it did not address the condition of private pipework, I find that the company did not supply incorrect information to the customer because she had been given the necessary explanation to be able to identify that if there was a problem with the private pipework, it would be necessary for her to take remedial measures.

19. Although the customer states that a SE60 private work relating to the property was undertaken in May 2018 and states that company representatives referred to the existence of this, she has not submitted a copy of this document and the company has no record of it. Furthermore, the existence of such activity would be questionable as the company's records show, I find, that the property was then unoccupied. Moreover, whether or not the site agent (or as the company refers to him, the technician) indicated that there was a known problem relating to that block of houses, it does not follow that his statement related to the condition of the company's assets.
20. It follows from the above that I find that the customer has not succeeded in relation to this aspect of her claim.

Replacement pipework

21. The customer complains that the company has given substandard service in relation to the information given about the proposed new pipework. While I accept that the company has responded somewhat slowly and has offered compensation of £300.00 in consequence of its actions relating to the lead replacement application and an interest free payment period, I find that in all the circumstances of this case, which involves a vulnerable consumer, this is appropriate. I am satisfied that the customer has not proved that the company has provided poor customer service in other ways. The company has provided two surveys free of charge to accommodate the customer's stated preferences for the route of the water and I find that in the email to the customer dated 13 December 2018, detailed information about the company's intentions was given. I find that if the customer requires detailed information about what a private contractor might intend, it would be a matter for the private contractor to communicate to the company so that the company can decide whether or not to give permission for joinder of this work to its assets. I find that this is what would reasonably be expected of a water company and it follows that I find that the customer does not succeed in relation to this aspect of her claim.

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Leak

22. Although the customer claims that the company is responsible for the leak in her garden which she says is from an external stop tap, I find that the location of the stop tap, both from the photographs and from the plans submitted mean that it is more likely than not that the stop tap is located on a private supply. Notwithstanding that a company cover has at some point and in some unknown circumstances been fitted to that stop tap, I find that this is insufficient to make the company responsible for this leak. It follows that I find that the customer has not succeeded in relation to this aspect of her claim.
23. Overall, therefore, I find that the customer has not shown that she is entitled to redress other than payment of £300.00 and provision of an interest free payment period if the customer chooses to accept the offer of installation at a cost of £2,390.04 upfront and six subsequent monthly payments of £397.00.

Outcome

The company needs to take the following further action: (1) if the company has not already paid the customer compensation of £300.00, to pay such compensation and (2) to honour its commitment to provide an interest free instalment plan if the customer chooses to accept the quotation for work costing £4,772.04.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 15 April 2019 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.

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- 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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Claire Andrews, Barrister, FCI Arb

Adjudicator

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