

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1259

Date of Decision: 26 February 2019

Complaint

The customer has a dispute with the company regarding the location of the stopcock on the main water supply pipe to his property. The customer disputes the standpoint of the company that the stopcock location is in compliance with the Water Industry Act 1991. Additionally, the customer claims that his complaint to the company was not dealt with in compliance with its own stated procedures. The customer claims for the company to reposition the stopcock in a more convenient location, issue an apology, and pay the amount of £400.00 in compensation for the distress caused.

Defence

The company accepts that the stopcock is its responsibility but states that the pipework beyond the stopcock supplying the customer's property and two neighbouring properties is the responsibility of the three property owners. The company declines to change its standpoint and take responsibility for the pipework beyond the stopcock. The company further denies that it has breached its own complaint handling procedures and thus declines to pay any compensation to the customer. The company has not made any offer of settlement to the customer.

Findings

The company has no legal obligation to take over responsibility for the supply pipe after it leaves the stopcock, nor to relocate the stopcock onto the customer's side of the river. Additionally, I find that the company did not breach its own complaints procedure. Consequently, I shall not direct that the company assume responsibility for the supply pipe nor relocate the stopcock. Additionally, I do not direct the company to pay compensation or to issue an apology.

Outcome

The company does not need to take further action.

The customer must reply by 26 March 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1259

Date of Decision: 26 February 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- He has experienced an ongoing dispute with the company regarding the location of the stopcock on the water supply pipe to his property. He claims that the stopcock is in an unreasonable position in relation to his property boundary, being located on the far side of a river in an overgrown field owned by a third party.
- The customer states that should a problem with his water supply occur and the flow need to be stopped he would have to walk for more than six minutes, climb a barbed-wire covered gate and negotiate an overgrown field owned by a third party to locate the stopcock. Additionally, the customer is concerned that the water supply pipe, after leaving the stopcock, crosses underneath the river bed and is thus at enhanced risk of breakage and an increased degree of difficulty in terms of repair and maintenance.
- The customer further states he detailed his concerns to the company in his letter dated 21 August 2018 after verbal discussions with a company engineer on 06 and 13 August 2018. He claims the engineer informed him that the current location of the stopcock and water supply pipe is in compliance with the terms of the Water Act (1998), notwithstanding that the stopcock is situated on land owned by a third party. The customer disputes this and in his letter, requests the company take over responsibility for the supply pipe beyond the stopcock and install a stopcock on his side of the river.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The customer records that his property is one of three on the opposite side of the river from the stopcock and all are served by the same supply pipe and that his neighbours share his concern over lack of reasonable access to the existing stopcock. The customer claims that all three property owners are aware of their shared responsibility for the maintenance and repair of the supply pipe on their side of the stopcock but similarly all three are concerned about the negative aspects of the current location of the stopcock and are desirous that the company take over responsibility for the supply pipe where it passes under the river and install an additional stopcock closer to and more accessible from their properties.
- The customer additionally alleges that the company has not adhered to its own stated complaint procedures in dealing with his complaint. The company replied to the customer's letter of 21 August 2018 with its communication dated 05 September 2018, and the customer subsequently advised that he was not happy with the response and expected the company to undertake a review of his claim. The customer states that the company did not conduct a fresh investigation but merely sent him another letter from the same person at the company's Customer Relations team.
- On 21 September 2018, the customer escalated his complaint to CCWater who investigated the issues with the company on his behalf. Despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint.
- Consequently, the customer, on 10 January 2018, has referred the matter to the WATRS Scheme whereby he seeks to have the company take over responsibility for the supply pipe underneath the river and to install a stopcock more convenient to the three properties, to receive an apology, and to be paid the sum of £400.00 as compensation for distress caused.

The company's response is that:

- The company states that legally it is responsible for the water supply in respect of the water main and the pipe from the main to a stopcock at the border of customers' property, with the company responsible for maintaining the stopcock in good order. The customer is responsible for the supply pipe from where it exits the stopcock up to his property (known as a service pipe), and in this particular case the service pipe is the joint responsibility of the three property owners. The company asserts that this situation is fully in compliance with the Water Industry Act 1991.
- The company notes that the service pipe was brought to the stopcock by the developer of the properties, and as such the customer's complaint on the location of the service pipe and stopcock should be submitted to the developer and not to the company. The company has no

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

record or knowledge of the arrangements made between the developer and the owner of the field where the stopcock is located, and it surmises that the service pipe was installed prior to the company taking over as the statutory undertaker for the area.

- Regarding the customer's concern over the service pipe running under the river, the company is satisfied that there is no enhanced risk of leakage compared with pipes not laid under rivers. Similarly, the company is aware that the area around the location of the stopcock may become overgrown with vegetation and has thus installed a marker post to identify the location of the valve. Furthermore, the company asserts that although the stopcock is on third party private land it has the statutory power to enter the land to access the stopcock and as it is its property and responsibility the customer has no need of access to it.
- Regarding the customer's claim that his complaint was not dealt with in accordance with the company complaint procedures, the company refutes the customer's position. The company notes that the customer's letter of 21 August 2018 was categorised as a stage 1 complaint and responded to by the company letter of 05 September 2018. The next communication from the customer was a telephone call on 11 September 2018 and thus did not constitute a stage 2 complaint, even though the company responded to it with a further written response on 13 September 2018. When on 30 November 2018 the company received a letter from CCWater on behalf of the customer it categorised this as a stage 2 complaint and duly responded in writing on 12 December 2018
- Consequently, the company believes that it has not breached its own complaint procedures, and thus declines to issue an apology to the customer or to pay compensation for any purported distress. Additionally, the company asserts it is not required to take responsibility for the service pipe or to install an additional stopcock and thus declines to do so.

The customer's comments on the company's response are that:

- The customer responded to the company's Defence paper on 08 February 2019 and confirmed that he had no further comments to make on the dispute.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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 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 dispute relates to the customer's belief that the current location of the stopcock on the supply pipe to his property is unreasonable by dint of it being a six-minute walk from his home necessitating climbing a barbed wire covered gate and struggling through overgrown vegetation in a field owned by a third party. The company believes the stopcock location is not in conflict with the appropriate regulations set down in the Water Industry Act 1991 and asserts it has no responsibility to relocate it.
2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. From the evidence submitted to me I am satisfied that the stopcock is located in a field owned by a third party and that a river separates the customer's property from the field. I am further satisfied that the field is overgrown with vegetation which may make walking difficult and the buried stopcock more difficult to locate.
4. The company, in its Defence document has relied on both reference to the Water Industry Act 1991 and to the regulations of the water industry regulator Ofwat. I have taken account of both these sources and I am satisfied that the company is responsible for the mains water supply and for the supply pipe from the mains to, and including, the first controlling stopcock. The supply pipe leaving the stopcock towards the customer's property is the responsibility of the customer and not the company.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

5. Having established that the responsibility for the supply pipe after the stopcock rests with the customer it is necessary to attempt to understand why the stopcock is located in its current position. The company asserts that the pipe connecting the customer and his two neighbours to the stopcock was not laid by it but by the developer of the three properties and that as such it has no record or knowledge of either the agreement between the developer and the owner of the field or of any of the technical aspects of the pipe. The customer has not submitted any evidence to show that the company position is not correct, and thus on a balance of probability I find that the company has no responsibility for the supply pipe after the stopcock and has no legal obligation to take such responsibility.
6. The customer also raises concerns regarding the safety of the supply pipe where it passes under the bed of the adjacent river. The customer has not provided any evidence to indicate that he is technically qualified to effectively query the safety of the pipe and the company has confirmed that it and its engineers are satisfied that no additional safety concerns are applicable when compared to pipes that do not run under river beds. The company notes that pipes frequently pass under rivers, roads, rail tracks, embankments etc. As responsibility for the maintenance of this section of the supply rests with the customer and his neighbours I am again satisfied that the company has no legal obligation to assume responsibility for it notwithstanding that it is, on the balance of probabilities, better suited to the maintenance than is the customer. I shall not direct that the company assumes responsibility for the supply pipe after it leaves the stopcock.
7. The customer in his application to WATRS has also requested that the company relocate the stopcock from its current position on the far side of the river to a position on his side in a more convenient location. Again, I am satisfied that the company has no legal responsibility to do this. The company asserts that the current location of the stopcock is known to it and its engineers and as such they are content to leave it undisturbed, and it further supplies me with evidence to show that it has taken account of the overgrown vegetation in the field and has erected a marker post to show the exact location. Additionally, the company has a statutory right to enter upon the field belonging to the third party to access its pipes and stopcock and the company states it is satisfied that access in a case of emergency would not be compromised. As a result, I am satisfied that the customer has not supplied me with sufficient evidence to support his request and thus I shall not direct that the company relocate the stopcock.
8. The second element of the customer's claim relates to his assertion that the company has not complied with its own complaints procedure when dealing with his complaints. The customer wrote to the company on 21 August 2018 and received a written response on 05 September

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

2018, this exchange being classified as a Stage 1 complaint. The customer contacted the company again by telephone on 11 September 2018 to advise his dissatisfaction with the written response, but this did not satisfy the criteria to be classified as a Stage 2 complaint as it was verbal not written. Notwithstanding, the company replied in writing to the customer with its letter dated 13 September 2018. I find this to be in compliance with the company's complaints procedure.

9. The customer further claims that following his telephone conversation with the company on 11 September 2018 the company should have conducted a fresh investigation of his complaint but did not do so. The company states that it did investigate his claim further and did revert to the engineer who did the original investigation on the basis he was the most suitably qualified expert to re-visit the issues of the complaint. The customer has not provided me with any evidence to support the position that a fresh investigation was not undertaken and consequently I find, again, the company to be in compliance with its own complaints procedure.
10. On 30 November 2018, the company received correspondence in writing from CCWater acting on behalf of the customer, and this was classified as a Stage 2 complaint. On 12 December 2018, the company replied in writing and confirmed that it had undertaken yet another review and retained its position on the issues. Overall, I thus find that the company has not breached its own complaint procedure when dealing with the customer's complaints, and I find that on the balance of probabilities the company has not failed to provide its services to the customer to the standard to be reasonably expected by the average person.
11. The customer has requested a total of £400.00 in compensation, comprising £300.00 to cover his time, anxiety and stress in dealing with the issues, and a further £100.00 as a goodwill gesture from the company. The customer asserts that the problem has been hugely stressful and worrisome because his water supply is incredibly vulnerable up to the point that it enters his property. However, I note that the customer has resided at the property for some seven years and would have been aware during that period of the situation regarding his water supply. As I have found that the company is not legally obliged to assume responsibility for the supply pipe passing under the river and to relocate the stopcock, nor has it breached its own complaint procedures, then it follows that compensation is not applicable.
12. The customer has also requested an apology from the company acknowledging that it didn't follow its own complaints process. As I have found that the company did not breach its own procedures then it again follows that an apology is not appropriate.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

Outcome

The company does not need to take further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 26 March 2019 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.



Peter R Sansom
MSc(Law); FCIArb; FAArb; Member London Court of International Arbitration;
Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.