

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1398

Date of Decision: 31 May 2019

Complaint

The customer has a dispute with the company regarding damages to his property suffered because of leakages from a private water supply pipe owned by a neighbour and crossing his land. The customer claims that the company did not comply with its own Code of Practice in respect of domestic water leakage, and should have promptly rerouted the pipe away from his land. Further, the customer claims to have suffered stress and inconvenience due to the length of time he has had to deal with the company to solve the dispute, and thus claims compensation for both repair of the damage and the stress suffered.

Defence

The company asserts that it is not responsible for the water supply pipe as it is not the owner of the pipe. It denies breaching its own Code of Practice and states that it has carried out its statutory obligations regarding prevention of water wastage. The company asserts that it informed the customer at the outset of his complaint that it was not responsible for the pipe or any damages resulting from any leaks on it. The company has not made any offer of settlement to the customer and believes it has acted in a fair and reasonable manner.

Findings

The company is not responsible for the private water supply pipe that crossed the customer's land. Consequently, it is not liable to compensate any damages resulting from leaks in the pipe. I find that company has not breached its own Code of Practice on Leakage for Domestic Customers nor has failed to carry out its statutory undertaking to prevent water wastage. I find the company acted reasonably in assisting the pipe owner to reroute it and in resurfacing the access to the customer's property free of charge. Consequently, I find that the company has not failed to provide its services to the extent to be reasonably expected by the average person.

Outcome

The company needs to take no further action.

The customer must reply by 28 June 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1398

Date of Decision: 31 May 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer claims he has experienced an ongoing dispute with the company regarding a private water pipe that runs across his land to supply a neighbouring property. The customer believes that the company should have taken responsibility to re-route the supply pipe so that it did not cross his land and to repair several leakages that had occurred in the pipe. The customer believes the company failed to comply with its own code of practise on Domestic Leakage and is in breach of its statutory obligation to prevent wastage of water. Despite his ongoing communications with the company and the involvement of CCWater the dispute has not been settled.
- The customer states that the issue of the supply pipe dispute started on or around February 2017 when he first communicated with the company requesting that the pipe be re-routed so that it no longer crossed his property and that the stop-tap for the pipe be relocated off his land.
- The customer asserts that in response he was informed by the company that as the supply pipe was private it was not responsible for its maintenance and that rerouting the pipe was a matter he should take up with the neighbour who owned the pipe as the company had no power to compel the owner to take such action. The customer stated that he did not accept this position and he believed the company was in breach of its statutory responsibilities, and he stated that he would consider interrupting the neighbour's water supply to prevent any leaks damaging his land and property.

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- The customer records that in June 2017 another leak occurred in the neighbour's supply pipe and he contacted the company to explain that he feared water may leak under his property and cause subsidence and he put a repair value for this at £1,000,000.00. The customer further asserted that the leakages constituted a waste of water and that the company had a statutory obligation to prevent such wastage.
- The customer further states that in July 2018, the supply pipe exhibited a further leak in a separate location to the previous leaks. Although the neighbour and her insurers undertook the necessary repairs to the pipe the customer asserts he had to repair damage to his property in the amount of £24,846.21, which he claimed from the company.
- The customer claims that the company declined to reimburse his claim but that it funded the full estimated cost of £70,000.00 for the rerouting of his neighbour's supply pipe in September 2018. The customer was disappointed with the position of the company and consequently referred the dispute to CCWater on 15 March 2019, but despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint.
- Subsequently, the customer, on 25 April 2019, has referred the matter to the WATRS Scheme whereby he seeks to have the company pay compensation in the total amount of £12,500.00 for the reimbursement of costs incurred in making repairs due to pipe leakages and for the associated distress and inconvenience suffered when dealing with the company over the complaint. I record that the amount claimed by the customer is in excess of the £10,000.00 limit per household set down in the WATRS Water Redress Scheme rules at sub-clause 6.4.

The company's response is that:

- The company, in its Defence document dated 20 May 2019, confirms the customer first raised the issue of the neighbour's supply pipe crossing his land when he contacted it on 16 February 2017. The company also confirms that the customer requested it to reroute the pipe so as it did not cross his land and he suggested he may interrupt the neighbour's water supply if the rerouting did not happen.
- The company asserts that it advised the customer that as the supply pipe was private it had no responsibility to maintain it or repair leaks on it. Similarly, it advised that it could not compel the neighbour to reroute it at her expense. The company also notes that the customer's claim for £5,000.00 for water damage to his property was not substantiated and thus it did not comply with the request.

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- The company confirms that the customer requested his complaint be escalated to management at the company, and subsequently on 12 May 2017 the company reconfirmed that it was not responsible for the supply pipe nor for any damages purported to have resulted from water leakage from the damaged pipe. The company states it advised the customer to consult his insurance company over the claimed damages.
- The company further claims that on 04 June 2018 it became aware of another leak in the supply pipe, and that the owner of the pipe had arranged for it to be repaired under her own insurance policy. The company further asserts that it was advised that the customer had refused entry onto his land to the contractors of the insurance company and proposed that the costs of the repair work should be used to reroute the pipe. The insurers declined to accept the proposal and subsequently the customer escalated the dispute to involve the local County Council and his Member of Parliament.
- The company asserts that in an attempt to resolve the ongoing dispute, despite having no obligation to do so, it undertook an on-site survey on 06 July 2018, but again the customer refused to allow excavations on his land and thus the leaking pipe could not be repaired. The company states that the customer repeated his suggestion that he would interrupt the water supply to his neighbour because of the long time being taken to fix the leaks.
- The company claims that it assisted the neighbour to organise to have the original supply pipe rerouted so that it no longer crossed the customer's land and this operation was concluded on 23 August 2018. At a meeting with the customer held on 30 August 2018, the customer was informed of the rerouting but claimed he would seek compensation in the sum of £25,000.00 for damages to his land and property plus an amount for the time he had spent dealing with the problem over a long period.
- The company advises that it declined to pay any compensation as requested but it did agree to resurface the bellmouth approach to his property and this was completed on 04 October 2018. The company states that on 12 November 2018 the customer advised that he would not pay his current water charge bill and would regard it as set-off against the £25,000.00 claimed as compensation. Additionally, the company states that in his letter dated 28 January 2019 the customer confirmed he was withholding payment of his two previous water bills in the sum of £141.29.
- The company refutes the customer's claim that it paid for the rerouting of the supply pipe in the sum of £70,000.00 and confirms that the cost of the works was fully paid by the owner of the pipe.

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- The company believes that overall it has acted reasonably in its dealings with the customer. It notes that it has (i) no legal responsibility to compel the supply pipe owner to either repair and reroute the pipe; (ii) not failed in its statutory responsibility regarding repairs to leaks on private supply pipes; (iii) not failed to correctly apply its own Code of Practice regarding customer leakage; (iv) resurfaced the roadway adjacent to the customer's property free of charge.
- Consequently, the company affirms that it has no obligation to pay the customer compensation for any purported damages to land or property, nor for time spent or distress suffered in dealing with this complaint and in view of this it declines to pay any monies to the customer.

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

- The customer responded to the company's Defence paper on 22 May 2019 and reiterates certain of the points raised in his original application. He refutes the company inference that he was not co-operative with contractors entering onto his land and records that eight separate excavations have taken place. He also reiterates his understanding that the rerouting of the supply pipe was undertaken at no cost to his neighbour who owns the pipe. He submits the fact that he has had to apply to the WATRS Scheme is indicative of the failure by the company to deal adequately with this long-running problem.
- I note that the customer has introduced new evidence in his response, and this is not permitted under rule 5.4.3. of the WATRS Scheme and as such I shall not consider it. Specifically, the customer has introduced comments on the efficiency of the company business model, has claimed it is "negligent and incompetent" and has attempted to sabotage his claim. He further claims that the company made a statutory breach of equalities legislation during a meeting with him, and that he estimates 250 million litres of water has been lost from the neighbour's supply pipe during the ongoing period of the dispute.
- On 24 May 2019, the company responded to the customer's comments on the Defence paper. The company confirms that the full costs of the rerouting works were paid by the neighbour.

How is a WATRS decision reached?

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

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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 unhappiness that the company has declined to pay him compensation for the repair to damages he claims occurred at his property due to the company permitting numerous leaks to a water supply pipe passing across his land.
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. I am grateful to the parties for the large volume of documentation placed before me in support of their respective positions, and for the detailed bundle of papers received from CCWater. From my study of the submitted documentation I am satisfied that much of it is relevant to the dispute in hand, however, a proportion of it is not. I am conscious that there have been numerous disputes between the parties all of which revolve around the water supply pipe to a neighbouring property that crosses the customer's land. However, I am satisfied that all the prior disputes can be distilled down to the actual issue submitted by the customer in his WATRS application, namely the claim for the payment of £10,000.00 in compensation for damages to his property and £2,500.00 compensation for distress and inconvenience. In this decision I shall address only the customer's specific claim.
4. From the evidence submitted to me I am satisfied that the dispute between the parties began on 16 February 2017 when the customer contacted the company to request it take certain actions regarding the water supply pipe that serves his neighbours property by crossing his land. The customer is concerned that any leakages from the pipe would damage his property and potentially

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cause settlement. The company responded by advising the pipe was private and it had no responsibility for its maintenance nor for initiating its rerouting.

5. The customer states that he believes the company has failed to comply with its own Code of Practice on Leakage for Domestic Customers. The Code of Practice allows the company to request the owner of a supply pipe to undertake the necessary repair should a leak in the pipe be identified. If the owner does not effect a repair, then the company may issue a legal notice to have the owner act or may repair the pipe itself and place the costs on the owner.
6. From the evidence submitted to me I am satisfied that I can identify three separate leaks in the supply pipe, two in 2017 and a third in June 2018. The company has not submitted any evidence to show it requested the pipe owner to fix any of the leaks, and the customer has not identified the time duration of any of the leaks nor detailed any damage caused to his land or property. Thus, I am satisfied, on a balance of probability, that the owner of the supply pipe carried out the necessary repairs as and when a leak was identified and thus obviated the necessity for the company to become involved. Therefore, on balance, I find that the company acted reasonably and did not fail in its duty of care to monitor and manage the leakages and did not fail in the application of its own Duty of Care procedures.
7. In his application to the WATRS Scheme the customer refers to a possible statutory breach by the company over its failure to take action on the supply pipe issue, but he provides no details to support his belief. Reference to the Water Industry Act 1991 at Section 75 shows that the company may at its discretion require the owner of a private supply pipe to take appropriate action to repair leaks and mitigate the effects of such leaks. Again, because the leaks were repaired timeously by the owner I am satisfied that the company acted reasonably in not using its powers under the Water Industry Act 1991 and that it did not fail in its duty of care to monitor and manage leaks occurring on the supply pipe.
8. Further reference to the company's Code of Practice on Leakage for Domestic Customers shows that it clearly identifies the ownership and responsibility for maintenance of such water supply pipes. It is thus evident that the company has no responsibility for the supply pipe to the neighbouring property once it crosses the street boundary and the company communication pipe becomes the customer's supply pipe. I am satisfied the supply pipe in question is the responsibility of the owner of the neighbouring property, and as such I am satisfied that the company had no responsibility to either reroute the pipe or to compensate for any damages emanating from the operation of the pipe. I find that any issue resulting from the operation of the pipe where it traverses the customer's land is purely a matter to be settled by the customer and the pipe owner.

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9. From the evidence submitted to me, I am satisfied that by his actions and numerous written communications, the customer believed that rerouting the supply pipe was the optimum solution to his concerns regarding potential damage to his land and property should a major leak occur. I particularly note his reluctance to allow the insurers of the supply pipe to enter upon his land to undertake leakage repairs in June 2018 preferring that they pay to reroute the pipe. I understand that the pipe was rerouted on 23 August 2018 so that it no longer passes across the customer's land, and thus I am satisfied that his original objective has been achieved.
10. I am conscious that the company assisted the pipe owner to satisfactorily reroute the pipe and cap the original supply pipe, and I find that the company acted in a reasonable manner and did not fail in its duty of care to deal with the potential water wastage that would result from a leaking pipe. The customer has asserted that the company paid the full cost of the rerouting works, but provides no evidence to support his position and the company denies this. On a balance of probability, I find that the full cost of the rerouting works was paid by the owner of the pipe.
11. In his claim to WATRS the customer requests two remedies, (i) pay compensation in the sum of £10,000.00 for damages to his property; (ii) pay compensation in the sum of £2,500.00 for distress and inconvenience. As I have noted earlier in this decision, the amount claimed by the customer is in excess of the £10,000.00 limit per household set down in the WATRS Water Redress Scheme rules at sub-clause 6.4. The £2,500.00 for distress and inconvenience is the maximum allowed but forms part of the £10,000.00 limit for a household claim.
12. Regarding remedy (i) I have established earlier in my decision that the company has no responsibilities in respect of the private water supply pipe that ran across the customer's land. Thus, it follows that it has no responsibility for any damages resulting from a leak in the pipe, and any such claim in respect of damages shall be taken up with the owner of the pipe. I also note from the evidence submitted to me that the company resurfaced free of charge the bellmouth access area to the customer's property notwithstanding it had no legal obligation to do so. I am satisfied, on balance, that the company has exceeded its obligations to the customer in respect of the third-party owned pipe and thus, I find that compensation as requested is not appropriate.
13. The second remedy claimed by the customer is for compensation for distress and inconvenience. In examining the submitted documents, I cannot identify any customer service failings by the company. It has engaged in much correspondence with the customer over a period in excess of two years, and it explained at the outset back in February 2017 that it was not responsible for the private water supply pipe running across his land. I am sympathetic to the position of the customer and accept the ongoing dispute may have been distressing for him, however I am satisfied this

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was not the fault of the company. Thus, the claim for compensation for distress and inconvenience does not succeed.

14. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person. Therefore, my decision is that the claim does not succeed.

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 28 June 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

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