

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1429

Date of Decision: 12 September 2019

Complaint

The customer asserts that the company illegally installed a faulty connection within his property boundary causing a leak to this property. The company then argued that due to its location, it was his responsibility to repair the leak. The customer asserts that he received poor customer service including missed appointments and failed telephone call backs. The customer requests that the company moves its connection and pay him compensation of £10,000.00 for financial losses he incurred as a result of the company's "sheer incompetence and lack of customer care", including lost rental income whilst the property was unoccupied due to the leak.

Defence

The company submits that it is only responsible for the pipework from the water main to the boundary of the property and that after investigating the leak reported, it advised it was coming from the customer's private pipework, that it is not responsible for. It accepts however that it installed the connection within the customer's boundary. It denies it is liable to make a compensation payment towards the loss of rent incurred by the customer or for distress. The company did not make any offer of settlement.

Findings

The company's admitted installation of its connection piece within the customer's boundary (without his consent) is evidence of it failing to provide its services to a reasonably expected standard however there is insufficient evidence to prove the leak originated from the connection piece or the company's assets. However, numerous customer service failures by the company have been demonstrated when dealing with the customer, some of which caused delays to the resolution of the issue. The company is required to pay the customer £1,250.00 in compensation for the stress and inconvenience caused and also to make reasonable endeavours to move the position of its connection to outside of the customer's boundary and provide an apology.

Outcome

The company is required to pay the customer £1,250.00 in compensation, make reasonable endeavours to move the position of its connection (currently located within the customer's boundary) to outside of the customer's boundary and provide a written apology.

The customer must reply by 10 October 2019 to accept or reject this decision.

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his opinion would have ensured the connection was properly installed and ensure a 'water-tight' connection. His engineer took a spare white sleeve insert from his van and inserted it to the connection; this stopped the leak. Therefore, the only possible conclusion he arrived at is that a faulty connection installed by the company in the wrong location was the cause of the leak.

- The company has refused to confirm that it (or its contractors) installed the faulty connection.
- He believes that the RST connection between his pipes was either installed when the stop tap was installed or when RST came to repair a leak in July 2018. It was at this point that RST damaged so much length of his pipe that it had to excavate under his wall to install the connection within his boundary; this was done without his permission. The attached photographs show the RST connection has been installed directly underneath the foundation of his wall; at least 7 cm within his boundary. He would have expected that the RST connection to have been installed inside the pavement boundary just outside of his property boundary line which would have prevented a lot of unnecessary confusion. The customer asserts that the company "illegally" installed the connection inside his legal boundary which allowed the company to argue as to the position of the leak.
- The fact that RST had installed the connection between his pipes inside his boundary is the root cause of the problem and the leak. He had to spend a lot of time and effort to try to resolve this problem; the private pipework that the company had indicated was faulty was "needlessly" replaced when in fact the problem lie with its connection installed incorrectly and in the wrong location. If the leak was due to his faulty pipework then this entire matter would never have reached this point. He has suffered financial loss as well as distress and inconvenience as a result of the dispute.
- The standard of customer service provided by the company has been poor. Its inspectors advised him that the leak was on its side (on its meter/valve/top tap), however, subsequently advised that leak was his responsibility. Its inspector who attended on 20 September 2018 failed to realise the water was turned off. He experienced "a constant battle of phone calls" where he had to repeat the same information to the company as it did not keep proper records and he had to chase it for updates. The company also failed to attend on 20 March 2019 for a coordinated dig/inspection, as agreed, to identify the source of the leak.
- The customer claims £10,000.00 in compensation for the following:
 - £8,100.00 loss of rental income (9 months from September 2019 to April 2019 at £900.00 per month -tenant moved in on 1 June 2019);
 - £100.00 insurance excess;
 - £750.00 council tax;

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- £459.00 utility bills;
- £900.00 for days taken off work on six occasions (£150.00 daily rate);
- £500.00 in compensation for inconvenience and;
- £2000.00 in compensation for distress.

Total: £12,809.00 (capped at £10,000.00)

- The customer requests that the company move its connection into the pavement or accept liability for any further leaks at that junction position even if the connection is within his boundary and provide an apology.

The company's response is that:

- It confirms that, as a statutory water undertaker pursuant to the Water Industry Act 1991, it owns and is responsible for the public water main generally situated in the highway and the short length of pipe leading from the water main to the boundary of the property, which usually coincides with the location of the property's main stopcock. From that point onwards, the water supply pipework is private and is the sole responsibility of the property owner to maintain and repair.
- Its records indicate that a water leak at the customer's property; number 7 Green Road, was first noted on 9 July 2018 by a member of the public who reported the leak. On 11 July 2018, it undertook a repair to a small leak found on the stop tap. Following a call received from the occupier of number 9 (Green Road) it was thought numbers 7 and 9 may be on the joint supply but as number 7 was not occupied at the time, the position could not be clarified. A repair of the suspected leak was undertaken on or around 19 July 2018. The owner of number 9 advised there was a leak at number 7 and provided contact details for the customer.
- Its records note a report of a further leak at number 7 on 15 August 2018 from the customer and it arranged to meet him on site on 20 August 2018. The existence of a leak was confirmed and it arranged to attend the Property on 24 August 2018 to excavate the footpath to find the leak. It attended on 24 August 2018 but the customer did not. It found the leak to be on the private pipework of number 7.
- Meanwhile its records show that on 20 August 2018 it spoke to the occupier of number 9 who stated that an engineer had come out to investigate the leak at number 7 and installed a new water meter (only serving number 9). On 21 August 2018, its contractor notified it that a new supply had been fitted and a new water meter installed.
- The customer contacted it on 10 September 2018 and arranged to attend the property on the following day to undertake further excavations. The leak was again confirmed to be on the

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private pipework. Its inspector attended on 20 September 2018 and found no leak but failed to notice that the supply was turned off. It re-attended on 26 September 2018 and found that the leak on the private pipework was ongoing.

- On 9 October 2018, it received a letter of complaint from the customer which was responded to on 10 October 2018. On 23 January 2019, the customer made a further complaint advising his building insurers had attended and could not identify where the leak was coming from but was stated to be no more than 300mm of the centre line of the boundary wall and no more than 500mm from the water meter position. Further, the incoming pipes were replaced on 11 January 2019 but when the engineer turned the valve on at the meter location in the pavement, the water began to leak again. It agreed that an engineer would attend and its contractors attended on 15 January 2019 and undertook excavations which showed that the water was coming back under the wall at the front of the property and photographs of the location of the leak were sent to customer.
- The customer states that he called on 21 January 2019 and asked if it had repaired the leak as he had not heard from it. The company asserts its records show that its District Manager and Supply Pipe Co-ordinator spoke to the customer following the visit on 15 January 2019 to advise the best method to repair the leak would be for a private plumber to dig on his side of the wall and for its contractors [] to attend at the same time to dig the other side of the wall.
- It wrote to the customer on 7 February 2019 and reiterated that the leak was on a private asset. It was of the view that the continuation of leak after customer replaced his pipes was due to work by the insurance company's engineers not having been undertaken correctly and that the problem was not related to its assets.
- The customer arranged for his insurance to attend at the same as it to establish whose responsibility it was but this was cancelled by its Supply Pipe Co-ordinator, as it has already been explained to the customer that it was his responsibility.
- It acknowledges the customer's claim that the cause of the leak was due to a missing white sleeve insert which prevented a water tight connection, that was repaired on 20 March 2019 when his engineer applied the said sleeve to the connection. However, it contends there is no evidence that this was the cause of the leak or that this was as a result of work it had undertaken, particularly as the leak started prior to the work undertaken by it in August 2018. It is of the view that if the sleeve was missing then it is more likely to be as a result of the work undertaken by the customer's insurance company.
- It denies that it is liable to make a compensation payment towards the loss of rent incurred by the customer or for distress or to move the connection piece.

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Reply

- The customer asks if the connection is owned by the company and states if yes, then surely it is the company who installed it underneath his boundary wall and therefore dug into/under his boundary line without permission. He asserts that the company has not provided a response to these questions despite raising this in his letter to the company. He reiterates aspects of the claim including that it may have been on 11 July 2018 when the company installed its faulty connection inside his boundary and that this was the cause of the leak; the full replacement of the private pipes shows he did the maximum he could do.
- He has no record of being asked to attend on 24 August 2018 and furthermore there was no call or correspondence from the company confirming that the leak was on the private side. On 11 September 2018 the inspector advised it was in the pavement.
- If the faulty connector had not been installed inside his boundary then the company would be responsible for replacing it.
- He disputes that Auger did not undertake the work to replace his private pipework correctly; they are a professional company who specialise in repairing leaks and was arranged through his building insurance company.

Company's Comments (dated 3 September 2019)

- Upon receipt of the customer's comments, it has undertaken further investigations that confirm that the connection piece which connects its pipe to the supply pipe within the property boundary is owned by it. The exact time of the installation and the reason for installation within the property boundary is not documented within its records. The company reiterates that it carried out a repair on 11 July 2019 to a small leak on the stop tap, located in the pavement on the outside of the boundary wall. It attended on 24 August 2018 and again on 11 September 2018; on both occasions it identified a leak on the private pipework and notified the customer.

Customer's Comments (dated 8 September 2019)

- The customer acknowledges the company's admission that the faulty connection piece is its property. He asserts that in his opinion this means the company is liable for installing the faulty product and the distress and financial loss he seeks.

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- He reiterates aspects of the claim including that the company's inspectors advised in the first instance that the leak was on the meter/valve position it had installed but later changed its position.
- He contests the suggestion that Auger are to blame for the leak; the leak was present months before he had to contact his insurance company.
- He highlights discrepancies between events (as stated in his complaint letters) and the information supplied by the company on 5 September 2019.
- He reiterates the remedy sought for the company to move the connection point to outside of his boundary.

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. The dispute primarily concerns a leak from the customer property at 7 Green Road that he rents out to tenants (the Property) and the exact location of the leak. I accept the location of the leak is usually indicative of whether it is the water company's or the customer's responsibility to fix the leak (the company confirms that it is responsible for the length of pipe from the water main to the boundary of a property). Additionally, the customer claims that the company has "illegally" installed a connection piece within his boundary, without his

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permission and provided poor customer service throughout his dealings with it. At this juncture, I must remind the parties that I cannot consider the customer's allegation that the company acted illegally when it installed its assets within the Property boundary, as I find this raises a complicated issue of law and therefore falls outside of the scope of WATRS, in accordance with Rules 3.4.1 and 3.4.3. However, I confirm that I am able to consider if the company provided its service to the standard to be reasonably expected in the customer's case, including in relation to the disputed issues. However, I remind the parties that the evidential burden is on the customer to show, on a balance of probabilities that the company failed to reach this standard when providing its services.

2. The customer has supplied evidence in support of his claim including communication exchanges between him and the company, communications from Auger, photographic evidence and bills. In response to my further direction dated 3 September 2019, the company supplied (on 5 September 2019) records from its systems (as referred to in the Defence). I also acknowledge receipt of the Consumer Council of Water (CCW) document bundle.
3. The customer's claim, in effect, is that the source of the leak (now fixed) was a connection piece that connects the company's pipe to his supply pipe and whilst the location of the connection piece is located directly underneath the foundation of his wall; at least 7 cm within his boundary, as the company owns the connection piece and thereby installed it, it was its responsibility to fix. The customer suggests that the company (or its contractors) installed the said connection piece either during a repair or when it installed a stop tap/water meter in July/August 2018. He asserts that it was at this point that the company damaged so much length of his pipe that it had to excavate under his wall to install the connection within his boundary; this was done without his permission. Further, he complains that the location of the connection piece has allowed the company to argue as to the position of the leak and resulted in him "needlessly" replacing his supply pipes and him being unable to rent out the Property until the matter was resolved (from September 2019 until after the leak was fixed in March 2019).
4. In its comments dated 3 September 2019, the company confirmed that it owns the connection piece that connects the company's pipe to the customer's supply pipe. Further, I find that the company does not dispute the location of it, as stated by the customer;

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underneath the Property within his boundary. However, the company submits the exact time of the installation and the reason for installation, is not documented in its records. The company has not offered any explanation for why this work is missing from its records. On receipt of its records on 5 September 2019 (in response to my further direction), I find they confirm that the company attended the Property on a number of occasions between 11 July 2018 and 26 September 2018 and again on 15 January 2019 to undertake excavations, repairs and install a water meter (external to the Property on or around 21 August 2018). The records also show it attended on 11 April 2019 when it found the leak had been fixed. I note that the records produced appear incomplete as some repairs it has referenced in its Defence, are not documented (for example the repair on 19 July 2018 as referenced at paragraph 6 of its Defence). As such, it is unclear from its records when the company (or its contractors) installed the aforementioned connection although it is clear it had many opportunities to do so.

5. Regardless, in light of the company's admission and evidence submitted by the customer (diagrams and photographs), it appears that the said connection point was installed by the company and that the location of the connection, is within the customer's boundary. Further, I find the customer's assertion that he would have expected the company to install its connection inside the pavement boundary, just outside of the Property boundary line, to be a reasonable one. Therefore, I am satisfied that the customer has demonstrated that the company (or its contractor's) installed its connection in an incorrect location within the customer's boundary. As such, I find that this error constitutes evidence of the company failing to provide its services to a reasonably expected standard.
6. As to the leak from within or around the Property, the customer submits this was fixed by Auger on 20 March 2019 by applying a cover to the company's connection piece to make it water tight. The company does not dispute when the leak was fixed however it disputes that the leak originated from its connection/connection piece or that it was faulty. The customer submits that Auger discovered that the leak was located at the connection, on 20 March 2019 whilst the company contends that it has not been provided with any evidence from the customer to establish that a missing cover on the connection, was the cause of the leak. I find that the customer's complaint letters to the company dated 9 October 2018, 23 January 2019 and 28 March 2019, clearly set out events up to when the leak was fixed on 20 March 2019 and includes details of Auger's work to replace his private pipes (on 20 January 2019)

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and its further investigation carried out on 11 February 2019 that the customer states was necessary as the leak was still present after the private pipework had been replaced. However, I consider this evidence alone does not establish that the location of the leak was found on the connection installed by the company. I acknowledge that the customer has produced photographic evidence including a photograph dated 15 January 2019 (supplied to him from the company) showing “water near the retaining wall” but again, I do find this evidence shows the leak to be coming from the connection installed by the company, under his boundary wall (as oppose to beyond this point). On balance, I find that there is a lack of substantive evidence, such as a third party independent report or confirmation from Auger (or its engineer), to prove the source of the leak.

7. I am also mindful that the existence of a leak is documented in the company’s records supplied (from its operation systems CSMS and Ellipse and ‘Clancy Dowra Work Orders and ‘Distribution Leak Report’), from 9 July 2018 when a leak was first reported by a member of the public. This indicates that the leak commenced prior to any work/repairs undertaken by the company from 11 July 2019 onwards. I accept this may be indicative of there having been more than one leak; an initial leak as reported by the member of the public that was fixed by the company in July 2018 and then a second leak caused by company not installing its connection properly either when installing the water meter or when undertaking a repair, (as claimed). However, as per my finding above, there is a lack of substantive evidence to prove whether the leaks which continued to be reported were the same unrepaired leak or separate leaks. I acknowledge that, similarly, there is no evidence to support the company’s suggestion that the continuation of the leak was due to work incorrectly undertaken by Auger. However, as mentioned above, the evidential burden is on the customer to show that the company failed to provide its services to a reasonably expected standard and therefore, due to insufficient evidence to prove the leak originated from defective work carried out by the company or from its assets, I find that it has not been proven that the company is liable for the leak. As a consequence, I am unable to uphold this aspect of the claim.
8. The customer has raised a complaint regarding the standard of customer service provided by the company during the course of its dealings with him. Based on the evidence supplied, on balance, I accept that the company failed to keep the customer reasonably informed regarding its investigations into the leak after he contacted it on 15 August 2018 to report a leak. I accept the customer’s submission that the company delayed in informing him of its finding that it was not responsible as the leak resided on the customer’s side (of the

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boundary). I can see that the company attended on 15th, 20th and 24th of August 2018 (when it says it found the leak to be on the private side) and on 11th, 13th, 26th September 2018, when it says it again found the leak to be on the private side yet I find that the company only informed the customer of its conclusion on 27 September 2018. Prior to this, on balance, I accept the customer's assertion that the company's inspectors had indicated to him that it was responsible for the leak (the customer reiterates this claim in his letter to the company dated 9 October 2018 and I find no mention of the fact that the leak was the customer's responsibility in the company's records, until 26 September 2018). Within the company's response to the customer of 10 October 2018, it admits its communications had been poor and that it did not inform him that the leak was private as soon as it could have.

9. I also accept that the company failed to keep the customer reasonably informed regarding its investigations into the leak after he contacted it again on 15 January 2019 to advise that the replacement of his private pipework had not resolved the issue. Although the company confirmed its inspector would attend on 15 January 2019 to investigate, I accept the company failed to confirm the results of its investigation until on or around 7 February 2019 when it wrote to the customer following the customer's calls and complaint letter dated 23 January 2019, chasing the issue (I acknowledge that within its letter dated 7 February 2019, the company states its Distribution Manager spoke to the customer to discuss the matter but this was only the day before, on 6 February 2019). On balance, I also accept the customer's submission that promised return phone calls were not provided; he reiterates this claim in his complaint to the company dated 28 March 2019. Further, I accept the claim that the company failed to document all of the customer's phone calls resulting in him having to repeat information; the customer has highlighted that the company's call of 7 February 2019 (referenced by the company) is not included in the records submitted by the company, which I accept.

10. I also find:

- a. The company failed to advise the customer to meet it on site on 24 August 2018; I find that there is no evidence to support its suggestion that it informed the customer.
- b. The company admits "one instance of a wasted visit by an inspector" when its inspector visited the Property on 26 September 2018 and incorrectly concluded there was no leak as the inspector failed to check if the water had been switched off (it had).

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- c. The company failed to attend the appointment at the Property on 20 March 2019 for a coordinated dig/inspection, as it had suggested and agreed with the customer/Auger to identify the source of the leak; I note this was when Auger located the leak, as such, I consider the company's attendance would have been beneficial, at this stage, in resolving the dispute. I am mindful that there is a lack of evidence to show the company advised the customer of the cancellation after agreeing to attend the appointment.
11. Therefore, I accept that there were multiple instances of customer service shortfalls by the company during the dispute timeframe, some of which I accept caused delay to the investigations of the leak and ultimately to the fix of the leak. This is evidence of the company failing to provide its services to a reasonably expected standard.
12. In summary, the evidence establishes that the company installed the connection piece (which connects its pipe to the supply pipe) within the Property boundary in error, however, there is insufficient substantive evidence to prove the leak originated from the connection piece, the company's assets or its work undertaken. In light of my above findings that the company installed its connection piece within the customer's boundary (without the customer's consent or knowledge) and provided unsatisfactory customer service, I find that it is liable to pay the customer a measure of compensation for the stress and inconvenience caused. However, I am not satisfied that the amount claimed (of £10,000.00) has been justified; the majority of the claim amount relates to financial losses incurred by the customer due to the leak at the Property (including lost rental income and bills that a tenant in occupation of the Property would have paid). However, due to the serious nature of the company's admitted error and the numerous customer service failures, some of which caused delays to the resolution of the issue, I find that the company shall pay the customer £1,250.00 in compensation (which falls into Tier 3 of the WATRS Guide to compensation). I am satisfied this amount is reasonable and reflects the considerable stress and inconvenience caused by the company's proven errors and takes into account Guaranteed Standards Scheme payments/gestures already applied by the company (total £220.00).
13. The customer requests that the company move its connection into the pavement or accept liability for any further leaks at that junction position even if the connection is within his boundary. The company stated in its Defence that it is not liable to move the connection and

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that it will not accept liability for future leakage on the customer's private pipework. Whilst I consider that the latter remedy sought does not flow from my above findings, in view of the company subsequently admitting that it installed its connection within the customer's boundary (in error) and because it has not explained why it cannot provide this remedy, I find it reasonable to direct that the company make reasonable endeavours to move the position of its connection to outside of the customer's boundary.

14. The customer requests an apology from the company. In light of the company's proven service and customer service failings, I find it reasonable to direct that it provide the customer with a written apology.

Outcome

The company is required to pay the customer £1,250.00 in compensation, make reasonable endeavours to move the position of its connection (currently located within the customer's boundary) to outside of the customer's boundary and provide a written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 October 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.



A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice), MCI Arb
Adjudicator

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