

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1484

Date of Decision: 02 July 2019

Complaint

The customer has a dispute with the company regarding the locating, repairing, and payment of works in respect of a leaking pipe. The customer claims that the company made a commitment to repair the leak but did not follow through on its obligation, causing her to pay herself for the works. The customer further claims the company issued a Section 75 Notice under the Water Industry Act 1991, which it refuses to rescind. The customer consequently requires the company to rescind the Notice and reimburse the cost of the repair works in the sum of £900.13.

Defence

The company asserts that it made a commitment only to repair free of charge any leaking pipe outside the customer's dwelling. The leak was subsequently found to be inside the property and thus the company has no responsibility. Regarding the Section 75 Notice, the company states once the leak was fixed the Notice is no longer applicable and does not need to be formally withdrawn. The company has not made any offer of settlement to the customer, believes it has acted in a fair and reasonable manner, paid £50.00 as a goodwill gesture, and declines to reimburse the repair costs.

Findings

The company did not commit to fix any leaking pipe within the customer's dwelling. In terms of the company's *Supply Pipe Repair Policy* it has no obligation to fix leaks inside a building, and thus I find it is not responsible for payment of the costs incurred in fixing the leak located inside the customer's house. Similarly, I find that in terms of the Water Industry Act 1991, the Section 75 Notice does not require formal rescinding upon completion of the required actions. Consequently, I find that the company has not failed to provide its services to the standard to be reasonably expected by the average person.

Outcome

The company needs to take no further action.

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 must reply by 30 July 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1484

Date of Decision: 02 July 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer claims she has experienced an ongoing dispute with the company regarding the repair of a leak in the water supply pipe to her home. The customer states that she identified two locations of pooling water and after an inspection by the company she was given conflicting and inaccurate information. The customer asserts that she has incurred unnecessary expense as a result but the company declines to reimburse her. Notwithstanding her ongoing communications with the company and the involvement of CCWater, the dispute has not been settled.
- The customer states she contacted the company on 27 September 2017 to advise that she had a possible leak at her property, and that during a subsequent inspection by the company on 29 September 2017 it identified a possible leak in the supply pipe to the property. The customer asserts that the company representative advised her that it would replace the defective pipe without cost.
- The customer asserts that the company made additional inspections during October 2017 and on 30 October 2017 it informed her that the leak was not on her supply pipe but was caused by a problem with her sewerage pipework. The customer notes that a company hired by her

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.

insurers confirmed, on 01 December 2017, that it also believed the problem was related to the sewerage system and not the water supply pipe.

- The customer further asserts that several months later, on 20 September 2018, she was advised by the company to have a thermal imaging leak detection company identify the exact location of the leak. However, the customer says that the company was unable to identify the location, because the supply pipe served four separate houses, but billed her £474.00.
- The customer claims that during October 2018 the company contacted her and advised that it would be necessary to do exploratory excavations adjacent to her house and that it would charge her for the costs of the works. However, the customer remained unclear as to whether the ongoing leak was a water supply or sewerage system problem.
- The customer advises that on 30 October 2018 she was served by the company with a *Notice Pursuant Section 75 Water Industry Act 1991* instructing her to repair a leaking water supply pipe. The customer asserts that her privately retained plumber repaired the leaking pipe on 13 October 2018 but the company has not subsequently withdrawn the Section 75 notice.
- Despite further exchanges of correspondence between the parties, the dispute could not be satisfactorily settled and thus the customer, disappointed with the position of the company, referred the dispute to CCWater on 08 October 2018. The customer further states that after contacting CCWater, the organisation recommended that the company reimburse her costs and repair her leaking supply pipe. The customer asserts that the company ignored the recommendations of CCWater.
- However, despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint. Subsequently, the customer, on 27 May 2019, has referred the matter to the WATRS Scheme whereby she seeks to have the company rescind the Section 75 notice and pay compensation in the total amount of £900.13.

The company's response is that:

- The company, in its Defence document, confirms the customer first raised the issue of the suspected leak at her property when she contacted it on 27 September 2017. The company also confirms that upon a site inspection on 29 September 2017 it believed it had located a leak inside the customer's property. The company asserts that under its supply pipe policy it is not responsible for the repair of leaks located within a customer's house, but it offered to undertake a free inspection and possibly a repair if feasible.

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 company confirms that during a subsequent visit to the customer's property on 30 October 2017 it was informed that the water ingress problem appeared to coincide with a neighbour's use of the sewerage system, and consequently the company advised the customer to contact the sewerage undertaker. The company further asserts that the customer advised it on 06 November 2017 that the sewerage utility company had not identified a link between the sewerage network and the leakage.
- The company confirms that it offered to install a new supply pipe point of entry into the customer's residence to bypass the leak but that she would be responsible for all costs from the point the pipe entered the property. The company asserts that the customer declined the offer, stating on 08 December 2017, that she preferred to use her own private plumber.
- The company claims that it had no further contact from the customer for many months until on 03 September 2018 she contacted it to insist that both her insurers and the sewerage utility company believed the leak in her kitchen was the responsibility of the company. The company advises that upon a site inspection on 05 September 2018 it confirmed to the customer that the leak was under her kitchen floor and thus was not its responsibility. Subsequently, on 13 October 2018 the customer confirmed that the leak had been repaired.
- Regarding the customer's claim that it ignored the recommendations of CCWater, the company asserts that CCWater was not in possession of the full facts when it issued its recommendations. The company repeats its supply pipe policy does not cover leaks inside properties and the offer of a free investigation and repair only applied to any leaks found outside of the property.
- In respect of the Section 75 Notice, the company states that the Notice it served on the customer on 30 October 2018 was at the customer's request. The customer had stated she believed the leakage was possibly located under the house of a neighbour and that a Section 75 Notice was the best way to have him instigate an inspection and potential repair. The company asserts that following the repair of the leak the Notice was no longer applicable but that it does not need to be formally rescinded.
- The company believes that overall it has acted reasonably in its dealings with the customer. It notes that there has been confusion and conflicting information supplied to it during the course of the dispute. The company understood that there were two separate problems existing at the same time, (i) a leakage inside the customer's kitchen; and (ii) intermittent flooding in her garden caused by her neighbour's drainage/sewerage pipework. The company regrets that the conflicting information caused it to direct the customer towards her sewerage utility 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.

and has compensated her to the sum of £50.00, but it maintains that the customer was always responsible to fix the leak within her own home.

- Consequently, the company further affirms that it is not responsible to repair leaks within the customer's property and that, believing it to be a sewerage problem, it contacted directly the sewerage utility company on 14 December 2018 on behalf of the customer. The company declines to pay the compensation claimed by the customer.

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

- The customer responded to the company's Defence paper on 21 June 2019 and reiterates certain of the points raised in her original application. She refutes the company statement that the Section 75 Notice was issued at her own request; she asserts that she was informed by the company that the leak may be at her neighbour's property and the water seeping downhill towards her property. The customer further insists that the company understood from the outset that the leak was underneath her kitchen, and it made the offer of a free investigation and repair on this understanding.
- On 26 June 2019, the company responded to the customer's comments on its Defence paper. The company insists it issued the Section 75 Notice at the customer's request so as to have the neighbour undertake an investigation into the possibility that the leak was originating on his property. Also, the company insists that at no time did it inform the customer that it would undertake any repairs within her property, as this is a service the company cannot provide with its own resources. The company reiterates that it believes it acted reasonably in advising the customer to secure a private plumber and to revert to the sewerage utility company.

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.

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.

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 dissatisfaction with the manner in which the company dealt with her concern that she had a suspected leak at her property. The customer has claimed that she was given inaccurate advice by the company that resulted in her incurring unnecessary expense which she now requests the company reimburse. The company has declined the request.
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 dispute between the parties began on 27 September 2017 when the customer contacted the company to advise it that she had a suspected leak due to seeing water on the floor of her kitchen. The company in its Defence document states that it understands the customer advised it of a potential water leak on her patio area, which I understand is external to the property.
4. I am satisfied that the company sent a team on 29 September 2017 to attempt to identify the location of the leak. The company states that it identified a possible leak under slabs adjacent to the rear door of the property, and again I am satisfied that this location was external to the property. The company states that it offered to undertake, free of charge, an investigation to locate and potentially repair any leak found. I am satisfied, from the documents submitted to me, that this offer was made upon the understanding that the possible leak was outside the customer's dwelling.
5. The customer asserts that the company sent her a letter dated 12 October 2017 in which it stated it would investigate a leak in her supply pipe and repair if appropriate, all "free of charge". Unfortunately, I am not supplied with a copy of this letter. Notwithstanding, I remain satisfied

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.

that this commitment was given by the company upon the understanding that the possible leak was outside the customer's property. The company document "[] *Water Supply Pipe Repair Policy*" clearly states that the maintenance of the supply pipe from the property boundary to where it accesses the dwelling is the responsibility of the owner. Nevertheless, the company offers to repair leaks in the supply pipe between these two points free of charge, but does not undertake any repair work to the pipe once it enters a customer's dwelling.

6. The company confirms that it undertook excavations and found no leak, but that after testing it identified the leak as being located inside the dwelling. From the evidence laid before me, I am satisfied that at various times during 2017 the company visited the customer's property and identified that the leak was located somewhere inside the customer's dwelling. The customer herself has confirmed that on 13 November 2018 her own privately hired plumber fixed the leak located inside the dwelling. Consequently, I am satisfied that the company acted reasonably based on its understanding that the leak was internal and I am further satisfied that it did not fail in its duty of care to manage the customer's account with a reasonable level of skill and care.
7. The customer claims that the company advised her that the water ingress problem may be associated with her drainage/sewerage system and that she should contact her sewerage utility company. The customer, in her letter to the company dated 03 October 2018, states she did contact the appropriate sewerage utility company in early November 2017, who, after investigation, confirmed there was no leak on the sewerage system. The company, in its Defence, has accepted that the suggestion to contact the sewerage utility company was incorrect and has paid the customer a goodwill gesture of £50.00. Again, I am satisfied that the company acted in a reasonable manner based on its understanding of the information available at the time, and I am further satisfied that the recommendation to consult the sewerage utility company did not remove the customer's obligation to repair at her cost the leak that was inside her dwelling.
8. The customer advised the company during a telephone discussion on 08 December 2017 that she would retain her own plumber to repair the leak causing the water in her kitchen. Subsequently, the company, having no further contact from the customer, closed her complaint ± fourteen days later. The parties agree that no further contact was initiated until the customer contacted the company on 03 September 2018 to advise that she again had water in her kitchen. She further advised that both the sewerage utility company and her insurers had informed her that the leak was a problem to be dealt with by the company. The company made a site inspection on 05 September 2018 and again identified the leak as being located inside the dwelling and advised the customer to retain a private plumber to fix the problem. The customer

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.

confirms that she had the repair successfully undertaken on 13 November 2018. Again, I am satisfied that the company acted reasonably and was under no obligation to repair a leak inside a dwelling and I am further satisfied that it did not fail in its duty of care to manage the customer's account with a reasonable level of skill and care.

9. The customer has claimed that the company failed to act on a request from CCWater dated 29 October 2018 to reimburse her for the costs of locating and repairing the leak as the company had failed to locate and repair the leak as per its original commitment back in October 2017. I have found earlier in this decision that the company made the commitment based on the understanding that the leak was outside the dwelling. I am satisfied that the company did not commit to undertake work within the dwelling. The company has stated at several points in its Defence that confusion has been evident throughout the duration of the dispute, and I find that this is not an unreasonable observation. I find that CCWater may also have succumbed to some of the conflicting and confusing evidence and facts surrounding the dispute. Thus, I find that the position of the company to decline to reimburse the customer's costs to be reasonable.
10. In her WATRS claim application the customer requests that the company rescind the Section 75 Notice that it issued to the customer on 30 October 2018. The company has stated that once the leak had been repaired the Section 75 Notice was no longer applicable and thus does not need to be formally withdrawn. My reference to the applicable section of the Water Industry Act 1991 confirms that the understanding of the company is correct, and thus I shall not direct that it formally rescinds the Notice.
11. In her claim to WATRS the customer requests two remedies, (i) the company to rescind the Section 75 notice; and (ii) pay compensation in the sum of £900.13.
12. Regarding remedy (i) I have dealt with that at paragraph 10 above.
13. In respect of remedy (ii), I have found earlier in this decision that, notwithstanding the inaccurate advice from the company in 2017 to the customer that she contact the sewerage utility company, the company has taken a reasonable position in this dispute. It advised the customer from the outset that it did not, as a matter of policy, undertake repairs to leaking pipes inside a dwelling. Additionally, it also advised that the policy placed responsibility for the maintenance of the supply pipe on the customer, but that it would, in the interests of water saving, undertake any necessary repairs free of charge. I am satisfied that on this basis the company assisted the customer to a reasonable level in offering free repairs if the leak to the supply pipe was located outside the dwelling. I find that the costs incurred by the customer in locating and repairing the

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.

pipe inside her dwelling are for her account, and thus I shall not direct that the company reimburse them.

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 30 July 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;
Member CEDR Panel of Arbitrators;
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.