

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1051

Date of Decision: 28 December 2018

Complaint

The customer states that a leak that was the responsibility of the company damaged his driveway. He requests that the company return the drive to its pre-leak condition

Defence

The company states that the leak was the customer's responsibility, and the delay in repairing the leak resulted from a choice made by the customer. No offer of settlement has been made.

Findings

The pipe on which the leak occurred was a private supply pipe and thus the responsibility of the customer. The company did not mislead the customer as to his responsibility for repairing the leak. As a result, the company supplied its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company does not need to take any further action.

The customer must reply by 28 January 2018 to accept or reject this decision.

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- The same day, a company technician attended the customer's property and confirmed that a Customer Side Leak (CSL) had occurred. A CSL pack was left with the customer, and the customer agreed to the terms and conditions of the company's CSL policy.
- A free repair was booked for 9 May 2018.
- A repair was undertaken on 9 May 2018, including adding a second Outside Stop Valve (OSV) on the boundary of the customer's property, leaving the customer's private OSV in place.
- The pipe on which the leak occurred is a private supply pipe. As a result, responsibility for repairing the leak lies with the customer, even though the leak occurred before the water meter and the customer's private OSV.
- The customer has misunderstood references by its technicians to the fact that he will not be charged for the water lost, as it did not pass the meter, as meaning that the leak was not the customer's responsibility to repair.

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?

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1. Both parties acknowledge that a leak has occurred, and agree on the location of the leak on the pipework leading to the customer's house. The core of the parties' dispute, then, concerns who has responsibility for the pipework at the location of the leak.
2. This question was complicated by a statement made by CCWater in an email to the customer on 12 October 2018 that "It is CCWater's understanding that [] Water's preferred site of a meter is at the outside stop valve, which is normally at the property boundary in the public highway. For properties built before 1990 in [] covered by the old [] Water Board Region, there is different legislation covering the point at which responsibility for pipework changes. In these boroughs it is the outside stop valve, for all other areas it is the property boundary."
3. The company was asked to confirm the legal basis of its position that the customer's responsibility for the leaking pipe commences at the boundary of his property rather than at the OSV. The company has responded that it is unable to do so within the time limits provided by the WATRS Scheme, as this would require substantial legal research.
4. While it is surprising that the company is unsure of the legal foundation of its Defence, the Rules of the WATRS Scheme only grant an adjudicator the power to request additional evidence from the parties "Subject to compliance with the overall timescales set out within the Scheme Rules" (Rule 6.2). As a result, I do not have the power to extend the deadline for delivery of a final decision in this case, even if doing so is necessary to clarify a point of law central to the parties' dispute.
5. The consequence of this situation is that I must make a decision based on the evidence currently available regarding the law applicable to this dispute, and that evidence supports a finding that the company is correct in its statement that the customer's responsibility for the leaking pipe commences at the boundary of his property rather than at the OSV. While there is an informal comment by an individual at CCWater contradicting this position, that informal comment cannot be given more weight than the formal statement on the website of Ofwat, the Water Services Regulation Authority, which supports the company's position.
6. It must, however, be emphasised that under Rule 5.5.5 of the WATRS Scheme Rules, the present decision only becomes binding on the customer if he chooses to accept it. The customer, therefore, retains the right to reject this decision and seek independent legal advice on the above question of law, should he choose to do so.

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7. As a result of the above, I have been presented with no reason to vary the standard understanding of the law applicable to responsibility for water pipes, which states that a supply pipe on a customer's property is the responsibility of the customer. The presence on that supply pipe of an OSV does not change this situation.
8. I find, therefore, that it was the customer, rather than the company, that was legally obligated to repair the supply pipe, and any damage to the customer's driveway that arose from the delay in repairing the supply pipe is the customer's responsibility to repair.
9. The customer also argues that he was told by the company's technicians that the company was responsible for the pipe, and I accept the honesty of the customer's comments in this respect.
10. However, the technician's contemporaneous record of the 9 April 2018 visit to the customer's property states that he provided the customer with a Customer Side Leak (CSL) pack and states that a CSL appointment had been booked. Both these actions are inconsistent with the customer's statement that the technician expressed the view that the leak was the company's responsibility to repair.
11. I find that the best explanation for this discrepancy comes from the fact that the customer highlights that the technician affirmed that the customer would not be responsible for the water leakage from the pipe, in terms of it being billed to him. I find that the customer then misinterpreted this statement as meaning that the repair of the leak was in turn the company's responsibility, although on the evidence available to me I find that an express statement to this effect was not made by the company's technician.
12. The customer was also provided with a CSL pack, the first paragraph of which states "There is a leak on the supply pipe which carries water from our water main to your home. This pipe is your responsibility". This should have served to clarify to the customer that the company viewed the leak as his responsibility.
13. As a result, I find on the basis of the evidence available to me that the company's representatives did not inform the customer that the leak was the company's responsibility, and did not culpably act in a way that led him to believe this was the case.

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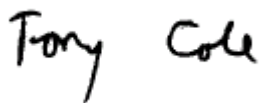
14. The consequence of the above is that repairs on the pipe are the legal responsibility of the customer, and the cause of the delay in repairing the leak was a misunderstanding by the customer of his responsibility, for which the company is not culpable.
15. Consequently, there is no basis on which to find that the company is obligated to undertake the repair requested by the customer.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 28 January 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.



Tony Cole FCI Arb
Adjudicator

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