

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0740

Date of Decision: 23 April 2018

#### Complaint

The customer states that the pipe running alongside Oak Street is a public water mains. He requests that the company lay a new pipe along Oak Street within the next 15 months, and that until this happens the company maintain and repair the existing pipe.

#### Defence

The company states that the customer has not produced evidence sufficient to justify a conclusion that the pipe running alongside Oak Street is a public water mains. As a result, the pipe must be concluded to be a private supply pipe, and the company has no responsibility to maintain and repair it.

No offer of settlement has been made.

#### Findings

The customer has sufficiently established that the pipe running along Oak Street is a public water mains, and thus the responsibility of the company to maintain and repair.

#### Outcome

The company needs to take the following further action: The company must, as needed, maintain and repair the pipe running alongside Oak Street up to the water meter at Hall Bower.

The customer must reply by 22 May 2018 to accept or reject this decision.

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## ADJUDICATOR'S DECISION

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Date of Decision: 23 April 2018

### Party Details

Customer: [ ]

Company:[ ].

### Case Outline

#### **The customer's complaint is that:**

- In January 1946, [ ] Borough Council received a request for a water supply from a resident in a cottage on Oak Street.
- In July 1946, the War Agricultural Executive Committee wrote to [ ] Borough Council, notifying it of a plan to tap the Council's existing water main to improve the water supply to [ ]' farm.
- The Council declined to contribute to the cost of the scheme, but offered to take over the pipe after it was laid, upon payment of the cost of its maintenance and upon permission being granted to the Council to provide a supply to the cottages in Oak Street.
- Permission could not be secured to lay the pipe under Oak Street, and so it was instead laid in the field of the customer's father, running alongside Oak Street.
- "Many years back", contractors hired by the customer damaged the pipe. The damage was reported to the Council, which mended it at no cost to the customer.
- On another occasion, the pipe froze. The Council encased the pipe with concrete, and covered it with soil.
- In 1996, RST Water damaged the pipe while undertaking other work. This caused damage to the customer's field, and he received compensation for the damage.
- In 2009, he applied to the Company for two connections to the pipe. A representative of the company arrived and announced that there was insufficient water pressure for the connections, and a new pipe was required.

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- A few days later, further workmen from the company arrived, and confirmed that there was sufficient water pressure for the connections.
- However, they also stated that the pipe was a private supply pipe.
- In 2012, he reported to the company that a water pipe leak had occurred in his field.
- The company's workmen attended the site and repaired the pipe within 24 hours.
- He claimed compensation of £85.00 from the company for damage to his crop.
- The company ultimately agreed to pay this compensation, but also stated that the pipe was a private supply pipe, and so the company would no longer repair it.
- The customer requests that the company lay a new pipe along Oak Street within the next 15 months, and that until this happens the company maintain and repair the existing pipe.

**The company's response is that:**

- The pipe was laid by the customer's father, and remains in the customer's private land.
- The agreement by the Council to take over the pipe was subject to certain conditions being met, and the customer has provided no evidence that they were ever met.
- The plans the company received when it became the water undertaker do not show the pipe as within their responsibility.
- Under the doctrine of "omnia praesumuntur rite esse acte", the burden is on the customer to prove that the pipe is publicly owned.
- The company has made repairs to the pipe in the past, but only to ensure its customers are supplied.
- It paid compensation to the customer in 2012 for damage to his crop while it carried out repairs in his field.

**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.

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If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. There is little question that the evidence relating to this dispute is incomplete, and the Claimant has stated that he has been told by the local Council that some documents from relevant periods have been destroyed. However, as this is a civil dispute, it is to be decided on the balance of the evidence, and so incomplete evidence is not fatal to the customer's claim.
2. The documentation provided by the customer makes clear that the pipe running alongside Oak Street was laid at the instigation of the War Agricultural Executive Committee, a governmental body, rather than through the initiative of the Claimant's father, the relevant landowner at the time.
3. However, the documents appear to indicate that the purpose of the pipe was to improve the water supply to the Claimant's father's farm, this being a goal within the remit of the War Agricultural Executive Committee.
4. At this time, the Council declined to contribute to the cost of laying the pipe, but agreed to "take over" the pipe "upon payment of the cost of its maintenance and upon permission being granted to the Council to provide a supply to the cottages in Oak Street".
5. This latter condition was clearly fulfilled, but no evidence is available to whether the necessary payment was made. Indeed, the evidence is even unclear as to who was expected to make this payment to the Council - while the Claimant's father appears to have been the intended direct beneficiary of the pipe, the laying of the pipe was a governmental action ordered by the War Agricultural Executive Committee to fulfill a national interest. Moreover, it is also unclear whether the payment in question was to constitute a single payment, or ongoing payments covering the ongoing cost of the maintenance of the pipe.

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6. It is, however, clear from the uncontradicted testimony of the customer that since the laying of the pipe, the Council has twice acted in a manner that is only understandable as reflecting a view on the part of the Council that the pipe was a public water mains for which it had responsibility.
7. The company appeals to the legal principle "omnia praesumunter rite esse acte", which it argues entails that the customer must prove that the pipe is a public water main.
8. However, it is unclear that "omnia praesumunter rite esse acte" works to the company's benefit in this case.
9. As the company states, "omnia praesumunter rite esse acte" reflects the rule that where, due to the lapse of time, it is unreasonable to expect clear or full evidence on an issue, transactions undertaken at that time will be presumed to have been undertaken in accordance with all the necessary procedures. In short, under this rule, it is presumed that parties performed their actions as they stated they intended to perform them.
10. However, as emphasized by the Court of Appeal in Shannan v Viavi Solutions UK, [2018] EWCA Civ 681, "omnia praesumunter rite esse acte" is "no more than a rebuttable statement founded on common sense, of the inference it will normally be appropriate to draw in a given situation where primary evidence is lacking". That is, it is a rule of evidence, rather than of law, and so can be dislodged by the presentation of conflicting evidence.
11. Moreover, in the current case, "omnia praesumunter rite esse acte" supports the customer's case more than it does the company's.
12. The evidence presented in this case is clear that the pipe was laid as the result of an agreement between two governmental bodies, in which one agreed to "take over" the pipe if two actions were performed. One of these two actions has clearly been performed, and the Council thereby benefited from the laying of the pipe by achieving its goal of supplying water to the cottages on Oak Street.
13. As a result, the only reason the Council would not have taken over the pipe is if the payment required was not made. There is, however, no evidence whether such a payment was made, or that the Council objected that the payment had not been made. This latter point is important

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because the Council proceeded to undertake actions that incurred costs, but only made sense for the Council to perform if the Council believed it was obligated to perform them because it had taken over the pipe.

14. Therefore, as the Council operated in a manner indicating that its agreement with the War Agricultural Executive Committee had been completed in full, "omnia praesumunter rite esse acte" raises a presumption that the necessary payment was indeed made. This presumption is also consistent with the Council's willingness to perform actions indicating its responsibility for the pipe.
15. Once this is accepted, however, it follows that the pipe running along Oak Street, up to the point of the farm meter (this being the extent of the pipe covered by the 1946 agreement between the Council and the War Agricultural Executive Committee), is indeed a public water mains, rather than a private supply pipe.
16. However, as the 1946 agreement, as described in the records of the Council, only covers the pipe up to Hall Bower, the presumption arising from "omnia praesumunter rite esse acte" does not cover the pipe beyond this point. Moreover, no evidence has been provided of the Council undertaking actions indicating responsibility for the pipe beyond this point.
17. As a result, on the balance of the evidence available in this case, I find any portions of the pipe extending beyond the water meter at Hall Bower, constitute private supply pipe.
18. Consequently, the company must maintain and repair the pipe up to the water meter at Hall Bower, as needed. Any pipe beyond this point constitutes a private supply pipe, and is not the responsibility of the company.
19. The customer also requests that the company lay a new pipe along Oak Street within the next 15 months.
20. However, no evidence has been provided that would justify a conclusion that such actions are required within the time period specified by the customer.
21. Consequently, this element of the customer's claim does not succeed.

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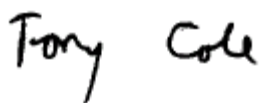
### Outcome

The company needs to take the following further action:

The company must, as needed, maintain and repair the pipe up to the water meter at Hall Bower.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 May 2018 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



**Tony Cole** FCIArb

**Adjudicator**

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