

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1798

Date of Decision: 6 February 2020

#### Complaint

The customer advised that a leak in the street outside her property was first reported to the company in May 2019 and has not yet been mended. She disputes the company's response that the pipe is private and asserts it mended the pipe on the occasions there was a leak in the past. Even if it is private, the company should honour its stated commitment to conserve water and mend the pipe to avoid an ongoing leak. If the company is unable to, she asks that it provide legal proof that the pipe is private.

#### Defence

The company asserts that it has no obligation to repair the pipe as it is private and therefore responsibility for repairing the pipe falls to the owners of the properties connected to the pipe. It has repaired the pipe in the past but these were goodwill gestures and it is unfair on the other customers to continue funding the repair of the pipe on an indefinite basis. An alternative is for the remaining three properties connected to the mains water via this pipe to move supply; it is in the process of discussing this with property owners, however, one property is in the process of being sold but it intends to discuss this option with the third owner, on completion of the sales process. The company made no settlement offer.

#### Findings

The evidence supplied by the company, namely mapping evidence showing no trace of the pipe and a lack of statutory notices held in relation to the pipe, supports its contention that neither it nor its predecessors installed the pipe or adopted it. Due to this and as the pipe's location is under a private un-adopted road, on balance I accept that the pipe is private. Whilst the company has stated it is committed to water conservation, it remains for the company to consider this commitment in conjunction with other stated considerations, namely the cost and fairness (on other customers) of continuing to fund free repairs of the pipe when it is not its responsibility to do so. It has confirmed it is in the process of discussing with property owners still connected to its water via the pipe, long-term solutions regarding moving their supply and it capping the pipe and I find this action to be reasonable. There were instances of the company failing to provide its services to a reasonably expected standard however they do not justify the remedies sought.

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**Outcome**

The company does not need to take any further action other than that which it has confirmed it is taking in regards to finding a long-term solution with property owners connected to the mains via the pipe in question.

**The customer must reply by 6 March 2020 to accept or reject this decision.**

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1798

Date of Decision: 6 February 2020

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- A leak in The Avenues was first reported to the company in May 2019 and has not yet been mended.
- Various employees of the company have attended to inspect the leak. She has even received a £35.00 cheque in recompense for a missed appointment by senior management to review the situation. However, there was no follow up appointment after this and no written explanation as to what will happen about the leak.
- As a result of Consumer Council for Water's (CCW) involvement, she has found out that there have been four previous repairs to the pipe (she only remembers one) by the company, however, it has said these repairs were carried out as were 'goodwill' gestures since the pipe does not appear on the company's digitised maps and the company advised the responsibility for repair lies with the residents.
- She and her husband have been told by other residents that a Section 75 notice has been issued by hand to some occupants of The Avenues demanding that the leak is repaired within 28 days. However, the person delivering this notification had no clear understanding to whom this notification should be delivered, resorting to neighbour hearsay and, in fact, delivering the notification to at least one wrong address.
- The 28 days has long gone and the leak remains. With winter approaching and the potential for frosts, she imagines that "a serious situation could result": frozen pipes could lead to a loss of water to the three houses who use the supply; accidents are likely to occur due to slipping on

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possible ice; there must be some possibility of water inundation into adjoining properties if the pipe bursts.

- After five months of leakage the ground must be saturated. The Avenues is used regularly by the public. She has had members of the public knocking on the door asking for information about the leak.
- She has recently moved her water supply to Acre's Drive; this was arranged prior to the leak due to poor water pressure. She was surprised that the cost of the new connection was over £4,000.00.
- She and her husband have always found it strange that none of the houses have mention of this private pipe on their property deeds. She has recently found correspondence with solicitors regarding their property which confirm they have the right of way over The Avenues but states that 'actual ownership' of the land 'is not shown on the deeds and is probably no longer ascertainable'.
- At the moment the company has said it does not own the pipe because it is not on a digitised map so therefore it belongs to someone else. The customer asserts the company "must have historical records before digitisation" and asserts if the company cannot prove who laid the pipe and when and who made the connection to the water mains then the company cannot insist in law it has nothing to do with them.
- The customer requests that the company mends the leak in The Avenues and take responsibility for the pipe. Alternatively, if the company continues to insist the pipe is no its responsibility, it should provide legal proof that the pipe is the responsibility of the owners of the properties in The Avenues.

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

- It is the customer's water provider and it merged with RST Water (RST) in April 2016.
- The leak in a water pipe, as referred to by the customer, relates to a leak in a large water pipe that is located within The Avenues, and which connects to its main, located within the public highway adjacent to The Avenues. The Avenues being a private street in which the customer's property is located.
- It believes that this pipe does not belong to it and has never belonged to it or any of its predecessors, and accordingly it has no obligation to adopt the pipe, nor any obligation to undertake repairs to the pipe, as sought. In any event, this is not an action WATRS can instruct it to undertake given that the cost of doing so and maintaining the pipe thereafter would exceed £10,000.00.

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- It owns the 4-inch main pipe laid in [ ]. Connected to this main is the pipe in question which it believes leads to The Avenues. This is a private cul-de-sac which, according to the land registry search, can only be accessed by crossing the land owned by the occupiers of Bower Cottage. The Land registry map indicates Bower Cottage owns a small section of the road leading to The Avenues, with the remainder of the road being unregistered, suggesting it has not been adopted by the Highways agency. It understands it runs the length of The Avenues and supplies three properties which connect to it via private supply pipes.
- The pipe is 1-inch wide and made of galvanised iron. The size and material of the pipe suggests it was laid between 1930 and 1950 and as such was laid prior to it (or RST) becoming the statutory undertaker for the customer's area.
- Prior to privatisation in 1989, it was the local water board and other local authorities who were responsible for the water supply. Said authorities had similar obligations regarding the need to serve statutory notices prior to laying water mains and as such kept similar records of notices and the locations of their assets. All plans and maps of assets were passed to it and it updated its systems according to the said plans. It has a record of the 4-inch main from which the pipe receives a supply (laid circa 1900) and accepts it is an asset.
- Accordingly, because: no record of the water main in question exists on its plans; it is not a main owned/installed by its predecessors (and this it was not something that could be transferred to it upon privatisation); and it has not adopted the main since privatisation, it follows that the pipe remains a private asset owned by an unknown third party.
- However, it is heavily invested in water consumption and therefore it has attended on a number of occasions previously to undertake repairs on the pipe as goodwill gestures on: 1 November 1995; 10 January 2003; 1 September 2010 and; 27 May 2013. However, given the pipe is private it is unable to provide free repairs on an indefinite basis as it would be unfair on customers who have experienced similar issues and not been afforded similar assistance.
- Notwithstanding this stance, it still attended to inspect the leak on four occasions in 2019 and has attempted to provide advice to homeowners living in The Avenues, however, the matter has been complicated because the owner of the pipe could not be identified; as it could be any of the property owners within The Avenues or a third party who retained the unregistered land in which the pipe is laid. As such it has not been easy to simply notify the owner that the pipe needs to be repaired.
- However, it is able to serve a Section 75 notice (as per the Water Industry Act 1991) on the properties that still receive a supply from the pipe notifying them of the leak and providing a

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certain period of time to arrange to undertake repairs to the pipe, lest it undertakes the repairs on their behalf and recover the costs of doing so from them.

- Due to the age and condition of the pipe any repairs to the pipe are likely to be a short-term solution and an alternative would be for the owners of the properties who are connected to the pipe to connect to its main located in Acre's Drive, the cost however would be at the home owners' expense. It would however then permanently disconnect the pipe from its water main (at its own expense) so as to remove risk of any further leaks occurring. It is in the process of discussing this option with property owners (it has spoken to two of the three owners). The property Green Cottage is currently in the process of being sold and so this will be addressed after the sale process has completed.
- Regarding the leak reported on 14 May 2019, its technician visited on 14 May 2019 and found that there was a damp area in The Avenues but that there was not enough water to complete a full leak test. A further visit occurred on 28 May 2019 and the customer was advised of the nature of the pipe on 30 May 2019 (namely that it did not belong to it) who in turn advised they were in the process of removing their supply from the pipe and connecting to its other main in the area.
- Further investigations were undertaken and following a review by its management, it confirmed to the customer on 18 June 2019 that the pipe was private and thus the onus was upon the pipe owner to repair the leak. It conducted a further review as the customer was dissatisfied but it came to the same conclusion and the customer was advised of this on 24 June 2019 but was offered a personal visit to discuss this if they wished. This offer was not accepted.
- It accepts that the leak detection visit scheduled to take place on 16 July 2019 did not happen and it subsequently made a GSS payment of £35.00 to the customer for this failed visit.
- The customer raised a formal complaint on 4 October 2019 and it replied on 18 October 2019 reiterating that it was not responsible for the pipe and any previous repairs undertaken were purely goodwill gestures. The customer was dissatisfied with its response and it provided further responses dated 1 November 2019, 18 November 2019 and 13 December 2019 reaffirming its stance.

## Reply

- The customer asserts all that is known is that The Avenues is un-adopted and no one seems to know who laid the pipe or who owns it; she has lived at the property for 25 years without knowing it was the responsibility of the house owners to repair the pipe. They were never informed of this by the company until recently where 'goodwill' has disappeared "presumably

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because it costs too much". The customer requests that WATRS could, at least, direct the company to mend the leak while the matter is unresolved with the owners of the houses especially given that there are complications arising from the sale of Green Cottage. This would mean the company that is "heavily invested in water conservation" could honour its role in society otherwise the pipe will leak continuously for the foreseeable future. The company should have been more proactive and raised the issue with the owners when it repaired leak in the past. The customer asserts that the lane is very hard to maintain when there is a continual leak. The customer also asserts she has suggested to the company to offer a good rate for moving water supply for the remaining owners to speed up the process but it said it would not waive any charges if other customers wished to move their supply.

- The customer asserts she has no record of voicemails explaining that the leak was a private matter and explains her husband waited at home for the visit on 16 July 2019 that did not happen as no one had let them know it had been cancelled.
- The company's assertion that the pipe is 'private' is not reflected in any of the deeds of ownership of the properties connected to the pipe.

### 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.

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### How was this decision reached?

1. The company supplies water to the customer's property:[ ]. The dispute relates to a leak on the pipe in The Avenues that was reported to the company in May 2019 but is yet to have been repaired. The customer disputes the company's response that it has no responsibility for the pipe or its repair and highlights it has previously repaired leaks on the pipe. Further, the customer asserts that the company has never before informed her or other property owners that the pipe is private. She requests that the company repair/take responsibility for the pipe or alternatively provide legal proof that responsibility for the pipe lies with the owners of the properties in The Avenues.
2. I remind the parties that, for the purposes of this adjudication, I am only able to consider if there is sufficient evidence to establish, on a balance of probabilities, any failure by the company to provide its services to a reasonably expected standard when dealing with the customer's case and, if so, decide if the remedies sought have been justified. I cannot require the submission of legal proof or evidence, if indeed this is being requested. Similarly, I cannot consider the customer's suggestion (made in her Reply) that the company provide a discount to the relevant property owners in The Avenues for the cost of moving their supply in order to resolve the issue more quickly; I find that this remedy falls outside the scope of WATRS in accordance with Rule 1.1 as it involves a third party, not part of these proceedings.
3. The customer recently paid to move her water supply via the pipe in question (connected to the main in Abbot Drive) to instead receive her supply via a different pipe connected to the company's water main located in Acre's Drive, [ ]. However, I acknowledge that the customer has concerns regarding both the wasted water from the ongoing leak and potential damage caused to the lane and surrounding area as result of this.
4. Legally, the company is responsible for water mains and the pipe from the mains up to the property boundary or the boundary of the street (communications pipe) and the property owner is responsible for the pipework between the boundary of the street and the property; these are usually smaller pipes known as the supply pipe. The company asserts it has found

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no history of the pipe in question in The Avenues, either of statutory notices regarding the installation of the pipe (served either by it or its predecessors) in its archives or of the pipe plotted on its maps. The company has not supplied any evidence to demonstrate it has no statutory notices in its archives relating to the pipe (which I accept it would have if either it or its predecessors had laid the pipe). However, it has supplied a screen shot showing its mapping in the vicinity of The Avenues (submitted at Exhibit HP/5 of the Evidence document) which I accept shows the (distribution and trunk) mains pipes on Acre's Drive and Abbot Road but does not include any trace of the pipe. As such, I consider this evidence to be supportive of the company's claim that the pipe was not laid by it or its predecessors and also that it was not adopted.

5. I acknowledge the company's submission that it is likely that the pipe was laid either as a private supply pipe for one property in The Avenues, which has subsequently connected to other properties, or it was laid intentionally as main to allow all properties within The Avenues to receive a supply. The company contends if the purpose/classification of the pipe is a supply pipe, its responsibility ends at the boundary of Abbot Road and if the pipe is a main (which given the size of the pipe it believes to be the case) laid specifically for properties within The Avenues, then this would only be its responsibility if the pipe was laid by it or its predecessors, who intended to own and maintain the pipe thereafter; or it was laid by an independent third party and was subsequently adopted by it or its predecessors. I am satisfied the company's above submissions are correct and in accordance with its legal obligations. Additionally, the company has submitted the Land Registry map (at Exhibit HP/5 of the Evidence document), to show that The Avenues is a private road, un-adopted by the Highways agency and I note that the customer has confirmed this in her Reply although she highlights that the owner is unknown.
6. Therefore, I consider that whilst the evidence supplied is not conclusive proof that the pipe in question is private, due to the road being private and no trace of the pipe on the company's plans or mapping and as the company has confirmed it has no record of statutory notices regarding the pipe in its archives, on balance I am satisfied that the evidence supports the company's stated position that the pipe was not laid by it or its predecessors and also that it was not adopted. I acknowledge the customer's assertion that responsibility for the pipe is not stated in the deeds to the properties in The Drive, however, I do not consider that this alone establishes that the company owns the pipe. Therefore, on balance, I accept that the

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company is not responsible for the pipe, regardless of whether its purpose/classification is as a supply or mains serving the properties in The Avenues.

7. I acknowledge that that the company has confirmed it has repaired the pipe on four previous occasions dating back to 1995 but asserts it did so as gestures of goodwill. I find that different water companies have slightly different policies regarding repairing private pipes but the majority will carry out a free of charge repair on at least one occasion before serving a Section 75 notice (under the Water Industry Act 1991) on the owner to inform of a leak and the legal obligation on them to fix it. As such, I am satisfied that the company's free repairs of the pipe in the past, would not, on its own, demonstrate it owns the pipe as I consider the company was acting in accordance with its policy.
8. The customer highlights the company's failure to notify her at any point since she has lived at the property over the last 25 years that she (and other property owners) are responsible for the pipe, including on occasions when it repaired the pipe. I find no evidence to suggest the company notified the customer or other property owners in The Avenues regarding the pipe being private prior to the last leak reported in May 2019. Whilst I cannot find any requirement for the company to do so, I accept it would have been good practice for the company to inform the customer and other property owners in The Avenues when repairing the pipe in the past, that it could not continue to repair the pipe indefinitely due to it being private. Therefore, I accept its failure to do so is evidence of the company failing to provide its services to a reasonably expected standard.
9. The parties have referred a scheduled visit to the customer's property having been missed by the company on 16 July 2019. I accept the customer's husband had waited in for the visit as the customer had not been informed of the cancellation. This is also evidence of the company failing to provide its services to a reasonably expected standard. However, the company has shown it has paid the customer a GSS payment of £35.00 and I am satisfied this is reasonable recompense in the circumstances.
10. The company has confirmed it is "heavily invested in water conservation" and I acknowledge that the customer is dissatisfied, regardless of whether the pipe is private or not, that it is unwilling to repair the pipe in order to adhere to its above statement. I consider it is for the company to balance its above stated commitment with the other factors it has mentioned

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including the cost of repairing the pipe, when deciding to further repair the pipe and therefore this point does not affect my above finding that any free of charge repair is discretionary on the part of the company. I acknowledge that the company has confirmed that it is in the process of discussing with the owners of the three properties still connected to the pipe, about moving their water supply (to connect to the mains in Acre's Drive via a different pipe (at the home owner's expense) and then permanently it disconnecting the pipe from its water main (at its own expense) as it contends due to the age and condition of the pipe, repairing the pipe will only be a short-term solution. The company has stated that it has been unable to contact the owners of the third property as the property is in the process of being sold but it has indicated it will contact them on the sale being completed. I find this proposed course of action is reasonable in the circumstances.

11. In summary, whilst I have not been provided with conclusive proof that the leaky pipe in question is private, I consider that the mapping evidence that has been provided by the company supports its case that the pipe is not its responsibility as I accept that a lack of documentation or mapping in relation to the pipe means neither it nor its predecessors laid the pipe (or adopted it). Additionally, in the circumstances, I consider the fact that it runs under a private un-adopted road, is supportive of the pipe likely being private. Therefore, on a balance of the evidence supplied to me, I accept that the company is not responsible for the repair and maintenance of the pipe and, as the owner of the pipe is unknown, this responsibility would fall to the property owners that are connected to the water mains via the pipe. The company did serve a Section 75. Notice on at least two of the property owners regarding repairing the leak but I note the company appears not to have followed up on this. The company has not explained for reason for this. However, as mentioned above, a free of charge repair of the pipe whilst the company is currently in discussions with the remaining property owners that are still receiving their mains water via this pipe, would be discretionary on the company therefore I am unable to make a direction to this effect. Further, whilst I found there have been service shortfalls by the company when dealing with the customer's case, I find that they do not justify the remedies sought.

#### **Outcome**

The company does not need to take any further action other than that which it has confirmed it is taking in regards to finding a long term solution with property owners connected to the mains via the pipe in question.

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### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 6 March 2020 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.

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**A. Jennings-Mitchell** (Ba (Hons), DipLaw, PgDip (Legal Practice), MCIArb)

**Adjudicator**

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