

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1860

Date of Decision: 25 March 2020

Complaint

The customer's complaint concerns an invoice dated 7 January 2020 for the amount of £1,727.20, which the company issued after it carried out works following the service of an enforcement notice. The customer disputes the company's account of the works that were carried out and submits that they do not relate to her property. She asks for an order that the invoice be retracted, for an order that the company to excavate her Green to ascertain the works that have been carried out, and for an apology from the company.

Defence

The company considers that the invoice was properly issued, as the works were necessary following the service of a Wastage of Water notice under s.75 of the Water Industry Act 1991. As the owners of the properties on which the notice was served did not repair the leak, the company considers that it was entitled to employ a contractor to carry out the works and then to recoup the costs from the properties who were connected to the shared supply, including the customer.

Findings

I find that following the service of the enforcement notice by the company, the company employed a contractor to repair a leak that was on the T-joint that connected the mains supply to the properties of the customer and three of her neighbours. Following this repair, due to the deteriorated state of the downstream piping, the contractor also had to carry out further repairs and install relay pipes. However, I find that all of these works were part and parcel of the works carried out under the initial enforcement notice. Given that the original leak was on a section of pipe (the T-joint) that supplied the customer and her neighbours, I find that the company was entitled to invoice the customer for her quarter-share of the works. I am therefore unable to grant the customer the relief that she seeks.

Outcome

.The company does not need to take any further action.

The customer must reply by 22nd April 2020 to accept or reject this decision.

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Party Details

Customer: [](customer)

Company: [] (company).

Case Outline

The customer's complaint is as follows:

- The customer's complaint relates to an invoice dated 7 January 2020 for the amount of £1,727.20 that she received from the company following works that the company alleges were necessary after service of an enforcement notice. The invoice refers to "Enforced repairs on water supply; Multiple excavations, partial relay of supply in MDPE; New rising mains for properties; backfill and reinstate; Admin Fee".
- The customer considers that the invoice is incorrect and that the works were not in fact carried out to pipes on her property.
- She states that no relay supply pipe was installed on her property because it was not necessary to do so, given that the leak that was detected was at no. 5 Green Road (the customer lives at no. 3 Green Road).
- The customer initially made a complaint on 10 September 2019 regarding an enforcement notice that was served on 20 June 2019 on her and her neighbours. She states that the notice was in fact served on nos. 1, 3, 5 and 7 Green Road, although this was incorrect because no. 1 was not on a shared supply. The shared supply in fact related to nos. 3, 5, 7 and 9 Green Road.
- The customer explains that prior to receiving the notice, she had asked a plumber that she instructed herself to carry out works to detect and fix a leak in the shared alleyway between nos. 3 and 5 Green Road, on 17 June 2019. At that time, the contractor recommended replacing all of the iron pipes on the shared supply, but the relevant neighbours were unable to reach agreement for these works to be carried out.

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- Then, following the service of the enforcement notice by the company, the company notified the customer and her neighbours on 23 July 2019 that a contractor appointed by them, [] Water Services, would carry out repair works. The contractor carried out works, first to detect leaks, and then to repair several leaks at various points on the properties of the neighbours.
- The customer notes that on 21 August 2019, the contractor installed a new plastic T-joint in her garden. The customer complains about the quality of the works carried out, stating that her neighbours were left with muddy holes in their garden, and her own paving works were not properly reinstated and her garden was filthy.
- The customer also states that the new T-joint subsequently leaked and that the contractor had to return and dig up her garden again for it to be fixed. On this occasion, the contractor also installed a relay pipe for nos. 5, 7 and 9 Green Road.
- The customer therefore argues that the relay did not relate to her water supply and that the work are not her responsibility because she did not have a leak. Although her garden was dug up, she argues that this was to facilitate the repair of a leak at no. 5.
- She points out that the company's leaflet about shared supply makes clear that she is "*solely responsible for the maintenance of the section of pipe that supplies only [her] property and jointly responsible with [her] neighbours for the maintenance of the section of pipe that supplies [her and her] neighbours*". She should therefore not be responsible for works that related to nos. 5, 7 and 9 Green Road, for sections of pipe for which she does not share the supply. She also argues that she should not be responsible for the contractor having to return to redo something that they had done badly in the first place.
- She asks for the invoice to be retracted (although she is willing to pay for 10-20 minutes of the contractor's time, which is all the work that she considers the contractor carried out on her property, plus an admin fee and VAT).
- She further asks for an order that company dig up her garden to examine the works that have been done, in order to establish whether or not they fit the description of the works that is set out in the invoice. She considers that in fact no plastic pipes have been installed - in fact, all of the pipes are the original ironwork pipes that have been there for some time. She considers that the excavation will therefore establish that the works described in the invoice have not been carried out.
- In addition, she asks for an apology from the contractor who submitted the invoice, on the grounds that the invoice is allegedly false and has caused her considerable distress, anxiety, depression and loss of sleep.

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The company's response is that:

- The company contests the customer's claim.
- The company states that it has an obligation to reduce the waste of water that is caused by leakage, including by leaks on private property, as set out in its current business plan for 205-20.
- On 18 June 2019, the company's technician visited the customer's property and discovered a high-volume leak on a supply pipe. In accordance with its obligations, the company therefore on 20 June 2019 issued a Wastage of Water notice under s.75 of the Water Industry Act 1991 on each of four owners of the shared supply (including the customer), requiring them to identify and repair the leak by 9 July 2020. The notice informed the recipients that if the leak was not repaired by that date, the company could instruct its own contractor to carry out the works and recover the costs of this, together with an administrative charge, from the recipients.
- The leak was not fixed, and on 23 July 2019 the company served a further notice on the customer and her neighbours, informing them that it would instruct a contractor, [] Water Services, to carry out the repairs and that it would recover the cost.
- The contractor made several visits to the site, and discovered that the main source of the leak was a T-joint which joined the pipe from the company's main to the section of supply pipe running parallel with all the properties. The company states that, in accordance with the policy set out in its leakage booklet, this meant that the repairs would be the responsibility of all four properties on the shared supply. This is because the T-joint was a section of pipe that was used to supply all four properties.
- Following this repair, two new leaks appeared, at numbers 3 and 5, and the contractor was then required to return in order to repair these. Given the age and condition of the existing pipework, it was then decided that the best course of action would be to relay the whole section of supply pipe, which runs along the four back gardens.
- The company has provided photographs showing the works that were carried out. The company notes that it was not granted permission to run the relay point up to the point of entry for number 3, although it did lay pipes up to a certain point under the customer's paving (as marked in its photographs). It also did not replace the section of supply pipe that runs down an alleyway between number 3 and 5, because this section was not in such a bad condition that it was in imminent danger of leaking.
- The company has provided a detailed invoice from [] Water Services setting out the works that were done (although it does not contain a breakdown for each item of work). The total cost

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was £5,424 + VAT, which amounts to £1,356 + VAT for each of the four properties on the shared supply.

- The company states that it and its contractor would be happy to comply with the customer's request to excavate her property in order to demonstrate that the works invoiced have been carried out. However, it denies that it should be required to retract the invoice or to give an apology, as it considers that the invoice was properly issued and remains payable.

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. Please note that 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 customer's complaint originates from an enforcement notice that was served by the company on 20 June 2019, pursuant to s. 75(2)(b) of the Water Industry Act 1991, on her and certain of her neighbours. The notice required the recipients to fix a leak on their shared supply, in order to prevent wastage of water.
2. When an enforcement notice is served, the recipients are required to take the steps described in the notice by a date that is set out in the notice. Contrary to the customer's suggestion in her

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submissions, it is not the company itself that is required to carry out the works by this date. Because the notice relates to pipes which are the private property of the person(s) on whom the notice is served, it is the recipients of the notice that are required to carry out the works. It is only if they do not do so by the date set out in the notice, that the company serving the notice has the power, under s. 75(9) of the Water Industry Act 1991, to carry out those steps itself, and to recover any expenses that it has reasonably incurred from the person(s) on whom the notice was served.

3. I note that in this case, the notice was served on numbers. 1, 3, 5 and 7 Green Road, although it subsequently turned out that the supply was shared between nos. 3, 5, 7 and 9 Green Road. However, as a result of this error, the company has only invoiced numbers. 3, 5 and 7 for the works and has accepted to bear a quarter of the cost itself. I consider that this was the proper approach to take, as the company would not have been able to invoice no. 1 (who were not on the shared supply), nor no. 9 (who were not served with the notice). The customer has not been disadvantaged by this error as there are, in reality, four properties on the shared supply and she has only been invoiced for one quarter of the cost of the works.
4. As set out above, the customer and her neighbours did not carry out the repairs that were required by the enforcement notice by the due date. The company was therefore entitled to instruct its own contractor to carry out the repairs, which it did following the service of a further notification on the customer and her neighbours on 23 July 2019.
5. The company was further entitled to recover the cost of the works that it carried out in order to ensure that the terms of the notice were complied with. As set out in the company's booklet on shared supply, it was required to apportion the cost of the works between the properties that were benefiting from a shared supply at the point where the leak occurred.
6. It is clear from the photographs submitted by both the company and the customer that the first repair that was carried out was on a T-joint, and indeed, the customer accepts that this was the case. The nature of a T-joint is that it divides the water supply between several properties. In this case, one side of the T-joint fed the water supply to the customer's property, while the other side connected the supply to other properties on the shared supply. It is therefore clear that this T-joint benefitted the customer's property as well as numbers. 5, 7 and 9 Green Road.
7. Given that the first leak, which was substantial, was found on this T-joint, I consider that the company was entitled to serve a notice on the customer, as well as on the other properties on the shared supply. When the leak was not repaired, the company was entitled to take steps to repair the leak itself, and to recover the cost of these steps. In my view, the steps that were

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justified were not just the initial repair to the T-joint, but also the subsequent repairs and replacement of pipes that became necessary as a result. As explained by the company, the deteriorated state of the piping downstream from the T-joint meant that the initial repair gave rise to further leaks which the company's contractor had to return and fix. I consider that these return visits were part and parcel of the repair that the company was entitled to carry out following the service of its notice.

8. The customer disagrees with the company's statement about the extent of the repairs that were carried out. She submits that the company is wrong to say that the pipes on her property were upgraded to the point of entry to her property. In support of this, she refers to a photograph of the T-joint that was repaired initially, which shows that there was a section of her original ironwork pipe that was still connected to the plastic T-joint.
9. However, I note that the date on the screenshot of the photograph supplied by the customer is 21 August 2019. This photograph therefore shows the state of the pipes after the company's contractor had carried out the first repairs, involving only the T-joint. It emerges from the documents provided by the Consumer Council for Water (CCW) that the company's contractor subsequently returned to carry out further repairs during the month of September 2019, with the repairs only being finally completed on 27 September 2019. These subsequent repairs included, amongst other things, the installation of a relay pipe to bypass the old sections of piping that, due to their age, were damaged by the initial repair.
10. I do not have photographs that show the final state of the piping once these further repairs had been carried out, but it seems that the customer has not taken account of these further repairs in her submissions, and is therefore mistaken about the extent of the repairs that were carried out.
11. In any event, I do not consider that the exact location or extent of the further repairs is relevant. The company's contractor provided a global invoice for the works that were carried out pursuant to the company's enforcement notice, including the initial repair of the T-joint and the further works that were necessary as a result of this initial repair. Because the T-joint was, as explained above, necessary for the shared supply to four properties including the customer's property, the customer is responsible to pay for a quarter share of all of the repairs that were carried out, regardless of the extent to which the subsequent repairs concerned the customer's property.
12. I am therefore unable to grant the customer the relief that she seeks:
 - I find that the invoice issued by the company was properly issued and therefore I do not order the company to retract it.

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- I do not consider that it is necessary for the company to dig up the works in order to ascertain what has and has not been done, because as set out above, I consider that the customer is in any event responsible to pay her share of the works. However, I note that the company has indicated that it would be willing to comply with the customer's request to excavate her garden in order to demonstrate the works that have been carried out. The parties are free to agree the conditions under which this should take place if they wish to do so.
- Finally, I do not consider that the company has been responsible for any service failures, so I do not consider that it needs to issue the apology 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 22nd April 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.

Natasha Peter (Barrister, FCI Arb)

Adjudicator

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