

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X208

Date of Decision: 11/03/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

A leak was identified on the customer's private supply pipe that runs under his neighbour's property, but his neighbour refused to allow access to repair it. The customer was working with the company to resolve the leak and when he asked what the cheapest option was, the company said that a section 159 notice could be served on his neighbour to force access for the repair. The customer agreed to this course of action but, after the company had completed the work, he was sent a bill for £8,192.63. The customer then discovered that the company had not issued a section 159 notice or repaired the leak, but it had installed a new supply without his consent or knowledge. The customer wants the company to reduce the invoice; he was told that the repair would be £1,000.00 to £1,500.00 and he is only willing to pay this amount.

Response

In accordance with Section 75 of the Water Industry Act 1991, the customer was issued with a notice to tell him he had a leak on his private water supply pipe and that he had to repair it. The company placed a number of holds on the enforcement action because the leaking pipe was under the customer's neighbour's property and the neighbour would not allow access for the repair, and the customer was trying to organise the required work himself. However, in the end, the customer asked the company to proceed with an enforced repair and a new supply pipe was installed over a route that avoided third party land. The customer disputes the costs because he thought the company had agreed to serve a section 159 notice on his neighbour; however, a section 159 notice was not appropriate in the circumstances. The customer is responsible to pay for the repair; therefore, the company denies responsibility to reduce the disputed invoice.

The company has not made an offer of settlement.

Findings

I accept that the repair was carried out in accordance with Section 75 of the Water Industry Act 1991. I also accept that, on the balance of probabilities, a section 159 notice would not have been appropriate in the circumstances of the case. Therefore, I do not find that the company failed to provide its service to the standard reasonably expected by the average customer by installing a new supply to the customer's property. However, the evidence shows that the company failed to sufficiently communicate with the customer and, while this amounts to a failing on the company's behalf, I do not find that the company's failing caused any financial disadvantage to the customer. In view of the above, the customer's claim does not succeed.

Outcome

The company does not need to take any further action.

The customer must reply by 08/04/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

1. • He is the landlord of the property and on 17 December 2019 he received a letter informing him that there was a leak on his private pipework. He called the number on the letter and was informed that the leak was on the supply pipe that went under the neighbour's property; however, the neighbour refused to grant access for the repair.
 - He had numerous calls with different people in an attempt to resolve the problem, and at some point he suggested that it might be an option to have a new supply. He requested a meeting on site as it seemed to be a complicated job, but he was told that he had to fill out a form for a new connection and pay a £137.88 connection fee before a site visit could be arranged. He filled out the form and paid the fee, and a few days later he met one of the company's representatives at the property. He was given a quote for the work the company would have to do, and he was told what work he would need to organise.
 - He asked some builders to provide quotes; however, the job was complex as a new pipe would have to be laid down his eighty-metre shared and very narrow driveway, which already contained electricity and gas pipes. After the builders had visited, he rang the company again for advice about the best course of action. He spoke to a person called (Redacted) and she explained that the easiest option was to get the pipe repaired on the neighbour's driveway and that she could issue the neighbour with a section 159 notice to force access. (Redacted) said that he would have to pay for the repair but she could not give an estimate of the costs involved as a private contractor would need to do the work, however, there would be no additional cost for the section 159 notice. He agreed that this was the best course of action and gave his authority to apply for and serve the notice.
 - As part of the company's response, the call notes from this call have been provided. However, the short notes do not fully represent the ten-minute conversation and contain errors; he was not told to discuss the matter with his solicitor and he did not say his builder was unable to do the job.
 - A few weeks later he received a call from an engineer who said that he was on site to repair the leak on the neighbour's property, but the neighbour would not give him access. The customer explained that the company were going to issue a section 159 on the neighbour so the engineer should discuss the matter with the company. A week or so later, he received another call from the same engineer saying the same thing so, again, he explained about the section 159 notice. The engineer said that he needed to dig a couple of test holes to prove to the judge who would

consider the application for a section 159 notice that the leak was under his neighbour's property and not his. • A few weeks later, his tenant called to say that the company had repaired the leak. At this stage, he was not aware of what the company had actually done, but when his tenant rang again and said that he had received a bill for £8,192.63 he discovered that a new supply had been installed to his property. This is not what was agreed with (Redacted) and, had he been told this was necessary, he would have arranged his own contractors to do the job. • He immediately called the company and tried to speak to (Redacted) to see what was going on, but he ended up speaking to someone else who said that a manager would call him back. When he received the manager's call, he was told that his conversation with (Redacted) had been deleted so it was impossible to prove exactly what had been said during the call. • Despite the fact that he had been told a section 159 notice would be served on his neighbour, the company said that such action would only be used as a last resort and laying a new supply was the quickest way to stop water being wasted. However, the evidence supplied by the company shows that there was no activity from 6 February 2020 to 4 March 2020 and he believes the company's internal communication broke down so it decided to install a new supply rather than serve a section 159 notice as it had wasted so much time. • He never gave permission for the company to dig his land and install a new supply. He was advised that the repair to the existing pipe would cost around £1,000.00 to £1,500.00; therefore, he wants the company to reduce the invoice in line with this estimate.

The company's response is that:

1. • It has a duty to prevent water leakage and carry out routine leakage detection work throughout its area. As part of this work, in December 2019 a leak was detected on the private water supply pipe serving the customer's property. In accordance with Section 75 of the Water Industry Act 1991, the required notices were issued advising of the leak and the requirement that it was repaired. • The customer confirmed that he was aware of the leak and was speaking to his contractor about having a new supply pipe installed so he did not have to dig on his neighbour's property again. • On 30 December 2019, it called the customer for an update on the progress of the repair. The customer advised that he had been in contact with his builder who would attend the site that week, so it put a hold on any further action and agreed to contact the customer again after the visit by his builder. • On 2 January 2020, the customer called with a question about the installation of a new supply pipe and was advised to speak to the New Connections Team. On 7 January 2020, it tried to call the customer for an update but it was unable to contact him, but it spoke to the customer's tenant who agreed to speak to his landlord. • A further letter was sent advising the customer that an enforced leak repair had been planned for 17 January 2020. On 8 January 2020, the customer spoke to the New Connections Team about having a new supply installed. • On 10

January 2020, it visited the property and confirmed that the leak was still running and losing 4000 litres of water per hour. On 16 January 2020, the customer called to say that he had paid the application fee for a new connection and there was a site visit planned for the following week. • The New Connections Team confirmed that a quotation had been sent to the customer on 23 January 2020. • It had not started the enforced repair as it was noted that the owner of the land through which the supply pipe runs was refusing access due to the number of previous repairs. In order to carry out any work, a notice would have to be issued in accordance with Section 159 of the Water Industry Act 1991. • On 31 January 2020, the customer called and said that a second contractor was attending the site that day to provide another quotation. However, there were some difficulties as the supply pipe to the customer's property runs through his neighbour's land. Due to the number of previous repairs to the water supply pipe and the resulting damage to the neighbour's driveway, the neighbour refused to give permission for any further work on his land. This meant that the customer's contractor was unable to carry out the work. • The customer called later that day to say that his neighbour would not allow him to install a new pipe in his land. Section 159 was explained to the customer and he was advised to speak to his solicitor about this. • On 6 February 2020, the customer called to say that he would have to allow the repair to be done under enforcement as it involved too much work for his own contractor. It advised that it could not provide a quotation for the cost of the work and a further visit would be needed to confirm the location of the leak and discuss access with the owner of the land. • A team attended on 2 March 2020, and confirmed that the leak was located on the neighbour's land and the neighbour was refusing to allow access. While on site, the engineers proposed a new route for a water supply pipe to the property which would avoid the neighbour's land, and a further visit took place on 4 March 2020 to review the proposed work. • It had previously discussed the option of serving notice on the customer's neighbour, in accordance with Section 159 of the Water Industry Act 1991, in order to gain access to repair the leak on the existing supply pipe. However, this is a lengthy process and can take months before work can take place and any costs incurred would have also been passed on to the customer. Due to this time frame and the large amount of water being lost through the leak (estimated at 4000 litres per hour), it believed that the quickest way to complete the work was to install a new supply pipe by the alternative route identified. In addition, it was unlikely the section 159 would have been granted as there was an alternative route to take. • The necessary work to install the new water supply pipe was completed between 2 and 25 March 2020. The work was carried out by a private contractor and the invoice was issued to the customer in the amount the contractor charged, and no additional costs were added. • After the invoice was sent, the customer made contact and said he was unhappy with the cost of the invoice and he was unhappy that a new supply had been laid. The customer thought that a Section 159 notice had been served on his neighbour and

the leak on the existing supply pipe had been repaired. The customer believed this would have been cheaper than the bill he had received. • It received a written complaint from the customer on 15 April 2020 and the complaints procedure was followed. It admits to a service failing during this process and offered the customer £100.00 as a gesture of goodwill. • The customer wants a reduction in his invoice because it did not serve a section 159 notice on his neighbour and it did not repair the leaking pipe. However, it acted in accordance with Section 75 of the Water Industry Act 1991 and completed the most appropriate work to ensure the leak was repaired as quickly as possible to prevent further loss of water. Therefore, the invoice is fair and payable in full.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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?

1. Under Section 75(2)(b) of the Water Industry Act 1991, a water supplier has the 'power to serve notice on the consumer requiring him to take such steps as may be specified in the notice as necessary to secure that the damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur.'
2. Section 75(1) of the Water Industry Act 1991 provides the grounds on which such a notice may be served, including where the water undertaker believes that 'water which has been or is to be so supplied is being or is likely to be wasted or, having regard to the purposes for which it is supplied, misused or unduly consumed'.

3. Section 75(9)(b) of the Water Industry Act 1991 states that the water supplier also has the power 'to recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served'.

4. Having considered the evidence presented by the parties, I accept that the repair was carried out in accordance with Section 75 of the Water Industry Act 1991 as the customer did not complete the repair privately in the time scale stated on the section 75 notice. I also accept that the process involved in serving a section 159 notice on the customer's neighbour would have most likely taken longer and, as the leak was so large, it could have resulted in a much greater waste of water. Also, and most importantly, as there was an alternative course of action available to the company, I accept that the application for a section 159 notice may have been rejected and this could have caused a further delay.

5. Therefore, I do not find that the company failed to provide its service to the standard reasonably expected by the average customer by installing a new supply to the customer's property.

6. However, having considered the evidence, I accept that the company's decision not to apply for a section 159 notice and to install a new supply instead was not sufficiently communicated to the customer and this amounts to a failing on the company's behalf. That said, as the company was entitled to carry out the work and charge the customer for it, and a section 159 notice was most likely not appropriate in the circumstances, I do not find that the company's failing caused any financial disadvantage to the customer as the customer would, most likely, have had to pay for the new connection in any event. The customer states that he suffered a "massive loss totally due to the lack of communication", however, having considered the evidence, I do not accept that this is the case.

7. The customer has made some comments on the preliminary decision, some of which I have addressed by amending my decision above. However, the customer also states that if the company had applied to carry out the repair under section 159 when he first made contact, the order could have been obtained and the repair could have been carried out in a shorter timescale than the new connection took to complete. However, on balance, I find it unlikely that an immediate application for a section 159 order would have quickened the process but, in any event, it would not have been appropriate to apply for a section 159 order immediately as the court would most likely want to see that the customer and the company had considered all alternatives before granting the application.

8. In view of the above, while I appreciate that my decision will disappoint the customer, the customer's claim cannot succeed and I make no direction to the company in this regard.

Outcome

1. 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 within 20 working days to accept or reject this final 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.

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Kate Wilks
Adjudicator