

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X316

Date of Decision: 26/04/2021

Party Details

Customer: The Customer

Company: X Company

Complaint

The customer says that he believes the pipe under X Location is the responsibility of the company. He also objects to the quality of customer service he has received. He requests that ownership of the pipe be determined, and that the company adopt the pipe if it is not currently responsible for it.

Response

The company says that the pipe under X Location is a private supply pipe. It declines to adopt the pipe.

Findings

The pipe under X Location is a private supply pipe. The company provided 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 24/05/2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-4316

Date of Decision: 26/04/2021

Case Outline

The customer's complaint is that:

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- He believes the pipe under X Location is the responsibility of the company, not the residents.
- The company has previously undertaken work on the pipe.
- When he reported a leak in September 2020 the company again agreed to undertake work on the pipe, but only as a gesture of goodwill.
- The company denies that it is responsible for the pipe.
- The customer requests that ownership of the pipe be determined, and that the company adopt the pipe if it is not currently responsible for it.

The customer's comments on the company's response are that:

- Everyone with whom he has spoken other than the company believes that the company is responsible for the pipe.
- In the absence of proof of ownership, responsibility for the pipe should be allocated to the company, which has more resources to deal with issues that may arise than do the residents.

The company's response is that:

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- The company's maps show the pipe as private.
- The company did not install the pipe and has no records of its exact location.
- The company acknowledges that the customer was incorrectly told that no work had previously been done on the pipe and that no work could be done on the pipe because it was private. It acknowledges that it will perform work on private pipes in certain circumstances and that it has performed work on this pipe in the past.
- The company's earliest record of performing work on the pipe dates from 1999 and refers to the pipe as "private".
- No evidence has been provided that indicates the pipe is owned by the company.
- The company is unwilling to adopt the pipe due to the uncertain liabilities involved.
- Although it acknowledges that on one occasion incorrect information was provided to the customer, it has otherwise responded promptly to the customer and has performed work on the pipe as a gesture of goodwill.

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. The customer's claim ultimately centers on the question of whether the pipe running under X Location is a communication pipe, as argued by the customer, or a supply pipe, as argued by the company. If it is a communication pipe, then the company is obligated to ensure it operates effectively, including undertaking repairs. If it is a supply pipe, then these obligations are shared by all property owners served by the pipe.
2. An important question for resolving this issue is whether or not X Location constitutes a "highway". This is because only a pipe passing under a highway can be classified as a communication pipe. In this respect, a communication pipe differs from a water mains, which certainly may also pass under a highway, but may also pass under private land that is not traversed by a road.
3. Whether or not a road constitutes a highway is not determined by whether it is on private or public land. It is a function of the land's accessibility to the general public. In short, a highway is a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not because they have been given permission by the landowner.
4. In the present case, neither party disputes that X Location constitutes a highway, due to its adoption by the local council.
5. Nonetheless, a finding that X Location is a highway does not resolve the question at issue in this dispute, as although a communication pipe must pass under a highway, a private supply pipe may do so as well. Indeed, this is unsurprising given that a highway may be a private road.
6. I find that the central evidence on the question of whether the pipe running under X Location is a communication pipe or a supply pipe is the lack of evidence, referred to by both parties, of the adoption of the pipe by the company.

7. That is, the evidence makes clear that X Location and the properties bordering it were built as a private development, with X Location subsequently being adopted by the council. It is, therefore, more likely than not that the pipe lying under X Location was also initially private, installed by the developer.

8. However, while X Location was adopted by the council, adoption of a road does not itself have any effect on the ownership of a pipe running under the road. Instead, a separate act of adoption by a water company is required for such a pipe to cease being a private supply pipe and become a company-owned communication pipe.

9. There is, though, no evidence that any such adoption was made, either by the company or by one of its predecessors.

10. I find, therefore, on the balance of the available evidence, that the pipe under X Location remains a private supply pipe.

11. The customer has requested that if it is determined that the company does not currently have responsibility for the pipe, that it should be ordered to adopt the pipe.

12. While I acknowledge the customer's argument that ultimately the company has greater resources than the residents of X Location, I find that a central consideration regarding whether such an order should be given is that the government has previously considered whether water companies should be required to adopt private supply pipes, as was done in October 2011 for private sewers. However, despite having required the adoption of private sewers, after consideration of submissions from a range of interested parties the government has thus far declined to order the adoption of private supply pipes. Because of this, absent some unique circumstance that I do not find exists in the present case, I find that it would be inappropriate for a WATRS adjudicator to overturn this policy decision made by the government and order adoption of a private supply pipe.

13. I do not, therefore, order the company to adopt the pipe under X Location.

14. The customer also requests review of the customer service that he has received. However, while the company has acknowledged that on one occasion the customer was given incorrect information, I find that overall the customer service received by the customer met the standard to be reasonably expected by the average person.

15. For the reasons given above, the customer's claim does not succeed.

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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Tony Cole
Adjudicator