

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X457

Date of Decision: 07/08/2021

Party Details

Customer:

Company:

Complaint

The customer complains about his liability for a bill that he has received following work undertaken under section 75(9) of the Water Industry Act 1991 on a shared pipe at a point where his home was downstream of the leak. He asks whether there was a genuine and necessary need for repair to the pipework serving his property, whether the company should have undertaken further consultation and whether the customer should be liable for the whole of the expenses incurred. The customer asks for the company to reduce the cost of the repair either by splitting between all properties involved or for the company to cover the cost as a one-off free repair and he asks for compensation.

Response

The company says that it has complied with its policy having detected a leak and notified the customer in accordance with its usual process. The company's policy is that the customer(s) downstream of a leak are liable for the costs of repairing a leak from a shared pipe and the customer is not eligible for a leak repair because the repair was too complicated. The allowance is only given for simple repairs.

Findings

I find that the company has supplied its services to the standard that would reasonably be expected by an average customer. I find that the leak existed, the company gave appropriate notice under section 75 of the Act of the need to stop the leak and it acted in accordance with its own policies to undertake the work because the customer, despite employing a private plumber, did not find or stop the leak. The company was not required to stop work to discuss options once the location of the leak had been found when exercising powers under section 75(9) of the Act. The company also applied its criteria for a leak allowance and found that the

customer was not eligible. It follows that the customer does not succeed in obtaining the remedies he requests.



The company does not need to take further action.

The customer must reply by 07/09/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

• The customer should not have had to pay the full cost of a leak repair carried out under section 75 of the Water Industry Act 1991. The presence of a leak was a complete surprise to the customer. • The customer was told over the phone that the company believed that a confirmed leak existed at any one of six properties including his own (no. 26) due to the amount of water that was being logged during 'nighttime hours'. The customer comments that his adult children are up at all hours and shower during the night. He believes that other residents work nights and may even wash clothes at night. The customer followed the company's instructions on the basis of what he had at his disposal and without knowledge or experience in this area. He paid a plumber to do the necessary checks to try and detect 'the leak' within his property boundaries but the qualified plumber found nothing and produced a report to that effect. • The customer then telephoned the company to say that no leak could be detected and asked if any other property had made any progress with regards the leak. Due to data protection, the company could not share any information and therefore the customer had to assume that one of the other residents was acting on the leak as the customer felt that he had done all he could. • The customer then received correspondence on 28 January 2020 stating the company's intention to carry out work, and only then did the customer read that the company had not been notified of a repair having taken place at one of the other houses. • Commencing on 7 February 2020, it was noticed that work personnel were parked on the road. The customer was not told why they were there. Then the customer noticed work being done outside next door's kitchen. The customer was not approached or asked any questions until the day his partner had a knock on the door and an engineer needed to come into his back garden to check for a water leak. The customer says that he did not give authorisation. The customer's partner explains that she realised at this point that this could be the contractor mentioned in the letter dated 28 January 2020. The customer came home to find that workmen had lifted the paving stones outside his kitchen and seemed to be 'doing something' at least six feet deep in a hole where the pipes were located. No information was given at the time and no options supplied. The customer says that as it was his property, he expected some kind of proposal once the leak was located. The customer was told that work had been done and the workmen would be back the next day to relay the slabs. No evidence of broken or damaged pipework was shown and there was no evidence of work carried out. • In February 2020, the customer received a

bill dated 26 February 2020 for £2,320.42. This was the whole bill for a shared water pipe. The customer complains that he should have been kept informed, shown the damage and evidence and then given a full report so that he could act accordingly, possibly looking at options and claiming on his household insurance. • The customer says that the company's claim sounds completely fabricated because he did not see evidence of the leak. He asks how domestic customers were supposed to find the leak as it took a long time and was underground. He complains that he received a "Payment Overdue" notice on 27 July 2020. He says that he has been bullied and not fairly treated. • The customer asks for the company to reduce the cost of the repair either by splitting between all properties involved or for the company to cover the cost as a one-off free repair and he asks for compensation.

The company's response is that:

• During investigations in October 2019 the company identified that there was a leak on the shared supply pipe to a number of properties in REDACTED. This included the customer's property at REDACTED. The company made calls to all the water services account holders on 26 November 2019. At the customer's address a voicemail message was left. When no contact was made, a letter was sent to all the properties advising of the leak and the requirement that it must be repaired. The customer did not reply to this and a further voicemail was left. • The company called the consumers of the water again on 7 January 2020 for an update on the repair of the leak. When there was no reply for number 26 another voicemail message was left. • A Statutory Notice was sent to all the properties including number 26 that same day. • The customer's wife called the company on 11 January 2020 and the company discussed how leaks are detected and what action could be taken. Advice was given to contact the home insurance company and that the company would review this again on 17 January 2020. • The company made further calls on 28 January 2020 to the properties with regard to the repair of the leak. A voicemail message was left for number 26. • A Notice of intention to carry out work under section 75(9) of the Water Industry was sent to all the properties on 28 January 2020 including number 26. • When the leak had not been repaired and in accordance with section 75 of the Water Industry Act 1991 the company's contractor attended on Friday 7 and Monday 10 February 2021 to complete an enforced repair. The pipe was cut and capped at a number of locations which confirmed that the leak was located under the property at REDACTED. In order to resolve the leak a new section of pipe work had to be laid with a new point of entry installed into the property. • The customer's wife called the company again on 10 March 2020 regarding the bill she had received. The company explained the reason she had received the bill, advised her to speak to her insurance company and also advised that a payment plan could be set up for the cost. • On 25 March 2020, the company received a call from the customer requesting a report confirming the cause of the leak for their insurance company. The company advised they were unable to confirm the cause as their contractors are employed to prevent the

wastage of water which does not include investigations into the cause of the leak. • On 30 July 2020, the company received an email complaint from the customer. The same complaint was forwarded to the company again on 18 August 2020 when no response had been received. • The customer called the company on 26 March 2021 when he requested to speak to the team manager. As the manager was not available, the customer advised he would send an email with the details of his complaint. The company received an email on 26 March 2021 which was a forwarded copy of the complaint sent in July and August 2020. • A reply was sent by email on 7 April 2021. • On 30 April 2021, the company received an email from the Consumer Council for Water (CCWater) on behalf of the customer. As the company had already received a stage 1 complaint from the customer, the complaint was reviewed at Stage 2 of the company's complaints procedure, and a detailed reply was sent on 17 May 2021. • The company received an email from the customer on 19 May 2021 advising that he was waiting for confirmation and feedback from CCWater. A further email was sent on 7 June 2021 advising that the customer had referred their complaint to WATRS. • The company refers to its Code of Practice which is available on the company's website. It says that the leak was located after the connection with the neighbouring property. 26 Geraldine Road was thus the only property downstream from the leak which relied on the leaking section of the supply pipe. If the company had disconnected the pipe at the point it was leaking it would only have been number 26 that lost its water supply. The full cost of the repair was therefore recharged to the customer as the consumers of the water supply at the property. The customer is unhappy with this. • The company has since identified that not all the emails it has received from the customer were correctly recorded as complaints and a reply was not always sent to the customer as it should have been. Guaranteed Service Standards (GSS) payments have therefore been made where applicable. A further £40.00 was offered as a gesture of goodwill regarding a request for a complaint to be raised during a telephone conversation.

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.

Neither party has commented on the Preliminary Decision and the Final Decision therefore corresponds with the Preliminary Decision.

How was this decision reached?

1. This case concerns three challenges that have been made by the customer. The first is as to whether there has been a genuine and necessary repair to the pipework serving his property, the second is as to whether the company should have undertaken further consultation and the third is as to whether the customer should be liable for the whole of the reasonable expenses incurred.
2. For the avoidance of doubt, I have considered whether consideration of the issues raised here are precluded on the basis that these are “regulatory enforcement” issues. Having regard to the Act as a whole, however, I find that the issues raised by the customer can be considered. The Act itself sets out in Chapter II of Part 2 of the Act the issues that are designated as enforcement (such as the issuing of an enforcement notice). I do not find that the regulatory decision-making and actions by the company under section 75 are enforcement of this nature and I find that WATRS offers a mechanism for considering the reasonableness of expenditure.
3. I note, however, that section 75 bases the powers that may be exercised on the reasonable belief of the company. I find that in considering the way in which the company has proceeded, it is not (unless the company has been so unreasonable that no reasonable water undertaker could have come to that conclusion) open to an adjudicator to substitute his/her decision as to whether the company should have used section 75 powers. I am satisfied that the decision to serve a notice under section 75 of the Act fell within a reasonable range of decisions.
4. I accept that the company – along with all other water undertakers – has an overarching responsibility not to cause or permit the waste of water. Although the customer doubts, on the basis that his private plumber was unable to detect a leak, whether there was in fact a leak, the company states that its monitoring systems detected a spike in water usage between 2 and 4 am which was indicative of a leak. This was consistent with a leak that had been suspected in December 2018 at a rate of 4 litres per minute but which was then believed to have been repaired. In October /November 2019, the company’s records indicate that the company concluded that the leak had not been repaired. Although the customer says that his adult children and no doubt others on a shared pipe might have been up at night or

working unsocial hours, I find that it is improbable that actions on this scale (which a water company would be familiar with) would have triggered the company's leak monitoring system. I find that this was sufficient to give the company reason to believe that there may have been a leak affecting the customer's shared pipe and to investigate further.

5. This I find is consistent with section 75 of the Act which states: at subsection (1):

....where a water undertaker which provides a supply of water to any premises has reason for believing—

....

(d) 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,

the undertaker may exercise the power conferred by subsection (2) below in relation to those premises.

6. Moreover, I am satisfied that, despite the report of the customer's plumber that there was no leak, a leak was found by the company. The company has explained that its contractor was on site for 2 days and had to cut and cap the pipe at a number of points to locate the leak, which was then found. The leak was underground, and 5 metres of new pipe had to be installed with a new point of entry constructed into the customer's property. Although the customer complains that the company did not, at the point that the leak was found, stop work and discuss options and therefore he doubts the fact of the leak, I find that it is highly unlikely that the company would have arranged for this work to be undertaken by its contractors, including making a new point of entry into the customer's home, if in reality the company had found no leak.

7. In respect of consultation with the customer, the company has submitted evidence that it is its policy to provide two letters, one of notification and then a letter to take action to affected customers before serving a notice under section 75(9) of the Act if the work has not been done. The documents submitted to me show that in the relevant period, letters were sent on 26 November 2019, 7 January 2020 and 28 January 2020. The company's records also show that the company rang the customer's number and left voicemail messages on 26 November 2019, 7 January 2020 and 28 January 2020. I am satisfied, therefore, that the company has complied with its stated policy as to communication of its intentions, which is what an average customer would reasonably expect when a leak has been detected but has not been repaired.

8. The letter of 26 November 2019 identified that there had been a leak on the shared pipework. The letter said that as it was not known where the leak was, it

would be necessary for the affected homes to work together to try to find the leak. Although the customer has provided a report about his individual home from a plumber, he explains not having worked together with his neighbours on the basis that he did not know them well.

9. The letter of 7 January 2020 was headed:

“Statutory notice: Section 75 of the Water Industry Act
Urgent action required within the next 7 days”

The letter also stated:

“This letter is formal notice under section 75(2)(b) of the Water Industry Act 1991 (“the Act”) that we need the leak to be fixed within the next seven days and for someone to contact us with the details.

If these steps aren’t taken within the time specified, we have the power under section

75(9) of the Act to carry out the work ourselves. If this action becomes necessary we

also have the power to recover any expenses reasonably incurred by us in taking these steps from those responsible.”

I find that the letter therefore gave notice that this was a serious and formal matter.

10. Subsection (2) (b) gives the company 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 any damage, contamination, waste, misuse or undue consumption ceases or, as the case may be, does not occur. Subsection (6) of the Act says:

“(6) A notice served for the purposes of subsection (2)(b) above shall—

(a) specify the period, not being less than the period of seven days beginning with the day after the service of the notice, within which the steps specified in the notice are to be taken; and

(b) set out the powers of the undertaker under subsections (7) to (9) below”

I am satisfied therefore that the company complied with the requirements of the Act in relation to the letter of 7 January 2020 and also made clear that the company might take action to carry out works for which the customer would be responsible. Nothing in the letter indicated that the company would have further discussions with the customer about options should a leak have been found and the company had made clear that it was exercising a power conferred by law.

11. The company has a note that on 11 January 2020, the customer’s wife contacted the company and the company explained to her that she should contact

her insurer and should obtain information about the leak. She was told that if she was not able to get anyone to attend before 17 January 2020 when the company would review the situation, she should let the company know. I find that it is probable therefore that this conversation took place and I am satisfied that the customer and his wife were informed about the process that the company was undertaking and the need to take action to stop the leak. .

12. The letter of 28 January 2021 was headed “Notice of Intention to carry out work under section 75(9) [of the Act]”. The notice explained that it was being served because work to stop the repair had not been carried out. The letter stated:

As this is a shared water supply, those who are downstream of where the leak is found will be responsible for the expenses incurred.

The Notice also explained that work would begin any time after 7 February 2020 and certain information was given about safety. Again, I find that the customer was on notice that as the company was exercising statutory powers, the work would be carried out and there was no further option for discussion after the leak was located.

13. I find, therefore, that the company has acted in accordance with its statutory powers and has explained the situation to the customer. I find that the customer has not shown that the company failed to act in accordance with the standards that would reasonably be expected in relation to its communications with the customer prior to and including the carrying out of the work.

14. The customer complains that he has been asked to pay the entirety of the bill. The company has itemized the costs of the work which, I find, do not include items that would not reasonably be expected. The costs are consistent with costs for a difficult two day job involving leak location and repair. Subsection (9) of the Act confers power to charge the customer for any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served.

15. I have considered whether, in respect of a shared pipe, it is reasonable to require the customer to be liable for all the costs of the leak repair, especially as that leak would have been detectable, not in his home but would have required collaboration with upstream neighbours. The company has, however, submitted a copy of its Code of Practice, which advises that if there is a leak on a shared pipe, it will be the homes downstream that are responsible for its repair. The charge made against the customer is therefore consistent with the company’s published Code of Practice. This was also made clear to the customer in the letter of 28 January 2020. It is for the company and not for adjudicators under this scheme to determine the way in which charges will be imposed and there is no evidence that

the company's decision as to this is inconsistent with reasonable expectations.

16. I have also considered whether the company should give the customer the benefit of a leak allowance, for which at one point (after the work had been done) it appears that the customer was incorrectly told by the company that he might be eligible. The company has, however, explained that it only offers a leak repair allowance where the works to be undertaken are relatively straightforward. It does not do so where it judges the job to be too complicated, and, having regard to the work done in this case, it is not prepared to offer the allowance. I find that the grant of a leak allowance is a discretionary decision that it is for the company to take. The company has explained that it has criteria for the exercise of this discretion and has applied them in the customer's case and found that he is not eligible for this allowance. As the company has acted on a reasoned basis, I do not find that the customer has shown that the company failed to offer its services other than to the expected standard.

17. Overall, therefore, I reach the conclusion that the customer is liable for the costs of the repair and the company has acted in accordance with expected standards in asking for payment of that amount. The company has also offered the customer the opportunity to enter into a payment plan.

18. For completeness, I add that the company has investigated the manner in which it dealt with the customer's complaint for which it has made certain credits to the customer under its Guaranteed Service Scheme. I note, however, that all of these concerns relate to complaints handling after the event and they have not caused or contributed to the actions taken by the company under section 75 of the Act. I therefore find that these matters have been addressed by the company in accordance with the company's published policies and that no further action is required in this respect.

19. It follows from the above that I find that the company is entitled to continue to ask the customer to make payment of the disputed bill for the repair works. I find that the company does not need to take any further action.

Outcome

1. The company does not need to take 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.

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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Claire Andrews
Adjudicator