

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X530

Date of Decision: 10/08/2021

#### Party Details

Customer:

Company:

#### Complaint

The customer has experienced multiple leaks over many years in a water pipe leading up to his property. The company has, in the past, repaired these leaks.

In 2019/2020 the company replaced the water mains in the highway in the vicinity of the customer's property. Following a further leak in 2020, the company advised the customer that the leak was on a private pipe and was the customer's responsibility. The customer disputes that the pipe is private and maintains that it is the company's responsibility to maintain.

The customer wants the company to accept that the water pipe leading to the boundaries of his and two other properties is the company's responsibility. The customer also wants the company to replace this pipe, which is an older lead pipe, with materials to current standards.

The customer seeks an apology from the company for the time spent in contesting the matter.

#### Response

The company has carried out several repairs to leaks on a private shared supply pipe serving a number of properties. These repairs have been carried out free of charge as a gesture of goodwill.

In late 2020, the company advised the property owners that it was no longer prepared to carry out repairs on what it believed was a private pipe. The company also wrote to the customer on 27 January 2021 confirming that the pipe was private.

The company is of the opinion that a boundary box at the entrance to the road leading to the various properties marks the end of its

responsibilities.

### Findings

The company has carried out repairs to the pipe referred to for a number of years. It is no longer prepared to do so.

No evidence is available that shows conclusively, or on the balance of probabilities, that the pipe leading to the properties is a private shared pipe. It is concluded that the pipe is the property of the company and that the company is responsible for maintaining it.

Please note, this Preliminary Decision is subject to comments from both parties and the Findings may subsequently change. This will be recorded in a Final Decision. Please refer to the 'What happens next?' section for more information.

### Outcome

The company needs to take the following further action:

Accept responsibility for the pipe from the company main to the control valves situated at the boundaries of each of the properties referred to in this case.

The customer must reply by 08/09/2021 to accept or reject this decision.

# ADJUDICATOR'S FINAL DECISION SUMMARY

**Adjudication Reference:** WAT-X530

**Date of Decision:** 10/08/2021

## Case Outline

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

- Leaks have occurred in the water main that runs in the highway next to the customer's property. The company has repaired numerous leaks during the 28-year period that the customer has lived at the property.
- A further leak occurred in September 2020. The company attended but advised the customer that the pipework was private and therefore not the company's responsibility. The company still repaired the leak.
- The customer wrote to the company in January 2021 seeking clarification concerning the responsibility for the section of pipe that leaked. The company replied stating that its responsibility ended at a boundary box situated at the entrance to the highway running to the customer's property.
- Three adjacent properties are served from the same pipe. The deeds for these properties make no mention of any responsibility for the pipe in the highway. Nothing was highlighted during legal searches. Each of the three properties has a company isolation valve at its boundary.
- The local authority has no record of the pipe being private. The company has provided no evidence that the water main in the highway is a private pipe.
- The customer requests that the company accepts responsibility for the water main in the highway up to the boundaries of the three properties it serves.
- The customer requests that the company replaces the entire existing lead pipe with pipework to current standards.
- The customer seeks an apology for the time and effort spent in contesting the company's position. He also seeks an apology for the company's failure to respond quickly to a leak in February 2021 when a number of road accidents occurred following a leak.

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

- A number of leaks have occurred on a shared private water supply pipe serving properties in the road referred to. Where leaks have occurred, the company has repaired those leaks free of charge as a gesture of goodwill.
- In September 2020, following another leak, the company advised the property owners that it could no longer offer repairs free of charge. In line with its powers under section 75 of the Water Industry Act 1991 (the "Act"), the company wrote to the owners of the properties notifying them of the requirement to repair the leak. The property owners disputed liability and the company agreed to carry out one further repair free of charge.
- The company wrote to the property owners on 27 January 2021 confirming the position regarding the responsibility for the pipe and any leakage.
- The company says that it is

of the opinion that the boundary box at the entrance to the road serving the properties marks the end of its responsibility. Consequently, the shared pipe beyond that boundary box is considered to be a private pipe and the responsibility of the owners of the properties served. The company has commented on the preliminary decision issued on 3 August 2021. The company's comments have been addressed in paragraphs 25 onwards.

### 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. This dispute relates to the responsibility for a section of a pipe supplying water to the customer's property (the "pipe in dispute"). The customer believes that the pipe in dispute is the responsibility of the company. The company is of the opinion that the pipe is a private pipe and therefore not its responsibility.
2. The customer has set out his position in his letter to the Consumer Council for Water (CCW) dated 26 February 2021. This is repeated in the customer's letter to WATRS dated 4 July 2021. The customer says that responsibility for the pipe in dispute is not documented on any of the property title deeds. He also notes that searches carried out in relation to property purchases in 1992 and 2012 showed no responsibility for pipework. The customer says that the road in which the pipe is laid is a public road and the responsibility of the local authority. He says that each property has a company stop tap at its boundary. He also says that the company valve at the entrance to the road is a recent addition.
3. The customer points out in his letter that the company has undertaken repairs to

the pipe in dispute for at least the past 30 years. He regards this as acceptance by the company that it is responsible for the pipe.

4. The customer believes that, taking all matters into consideration, the pipe in dispute is the property of the company.

5. In its response, the company has provided a copy of a plan showing the location of its current pipework in the vicinity of the customer's property. This plan shows a branch from a main that terminates at the entrance to the road serving the three properties. No pipework is shown beyond that point. The company says that the records of water mains show the locations of the company's pipework and assets only. No private pipework is shown.

6. The company acknowledges that it has carried out multiple repairs on the disputed pipework. It says that it carried out repairs as a gesture of goodwill under its burst on private property (BOPP) scheme. It says that it had never accepted responsibility for maintenance of pipes in the road serving the customer's property.

7. Whether or not the repairs were carried out by the company as a gesture of goodwill, it would be reasonable to expect customers to be advised if leaks had been their responsibility. I could see no evidence that the company had, prior to 2020, notified the property owners that the pipework was private.

8. The company says that it is of the opinion that its responsibility ends at the boundary box shown on the plans at the entrance to the road serving the properties.

9. The customer has provided a copy of a sales document for his property. He notes that this refers to mains water having been in place for many years. I can see that the document notes that mains water is available at the property. However, this only confirms there is a mains water supply. It makes no reference to the point where the company's pipework ends and the customer's pipework begins.

10. The customer also notes that searches carried out in 1992 and 2012 as part of the purchase process showed no indication that there was any responsibility for pipework beyond the property boundary. In its email dated 29 April 2021, CCW notes that private pipework would not normally be identified in searches.

11. The customer notes that the road leading to his property is not a private road and is maintained by the local authority. That itself does not help in relation to determining responsibility for the pipe in dispute. The table published by Ofwat and incorporated within the case papers shows that a shared supply pipe may run in a highway or land owned by someone else. In relation to this table, Ofwat says on its web site, "... there may be special cases in some areas, and you should contact

your water company, and consult the deeds to your property to find out more.” The customer says that there is nothing in the deeds of his property regarding this.

12. The customer says that the boundary box fitted at the entrance to the road leading to his property is a new installation. He says that this was installed at the time a new main and branch was installed during 2019/2020. He has provided a photograph from Google Earth of the road junction taken in 2019. He says it shows no boundary box.

13. The company says that the new boundary box replaced an existing box and was fitted in the same location. The company has provided a different photograph, also from Google Earth, taken in 2009, which it says shows a boundary box existed at that time.

14. I have examined both photographs provided. The photograph provided by the company has been circled in one area. I have taken the circled area to be the location of the boundary box the company says was already in existence. Whilst I can see there is a darkened area in the circle, it is not possible to determine what this is. Looking at the photograph provided by the customer, I could see no corresponding darkened area. I have examined Google Earth photographs from 2009, 2010 and 2019. The customer and company refer to photographs from these dates. I am unable to locate any area on these photographs that corresponds to the area highlighted by the company and noted as being a boundary box. I am therefore not satisfied that the photograph provided by the company is evidence that a boundary box was in place prior to the work carried out in 2019/2020.

15. The company has provided a map showing the location of a 280mm main with a 90mm branch to the boundary box referred to above. The date shown on the main is 16 December 2019. I have taken this map to relate to the position after the work carried out in 2019/2020.

16. On 22 July 2021, the company was requested by the adjudicator to provide further information. Information requested was a copy of a plan of the company pipework and all control valves in the vicinity prior to the work being carried out. In its response sent 22 July 2021, the company provided a map showing the new main and the old main. No branch is shown from the old main to the junction and no boundary box or stop valve is shown linked to that main. The company has explained that its plans did not show boundary boxes. It refers to the image from Google Earth within the defence pack as evidence of the existence of a boundary box.

17. The customer has submitted comments on the map the company was requested to provide. The customer notes that the map provided is the current

map, with the addition of a line showing the route of the old main. The customer submitted with his comments a map dated 27 January 2003 entitled "WaterMains Record". The map title block shows this was a map issued by the company. This map shows the old main in the same position as the latest map provided by the company. There is no branch or boundary box visible on the 2003 map. However, as noted by the customer, the map includes a legend. Included in that legend is a symbol for a boundary box. As a legend is provided that includes a boundary box symbol, I conclude that it would be reasonable to expect boundary boxes to be shown. None are indicated where the company says a boundary box existed.

18. The maps provided show the position of company assets after 2019. They also show the original main prior to 2019 but show no branch to the road leading to the customer's property. A branch must have existed to serve the customer's property prior to 2019. Had this appeared on the map, it may have shown where the company's responsibility ended. As no branch is shown, it is not possible to determine whether the company's pipework ended at the road junction or continued to the property boundary.

19. It is normally the case in an adjudication that the claimant, in this case the customer, must prove his entitlement to the matters claimed. In a case where the company is, or should be, in possession of information that would prove or disprove the claim, it is reasonable to expect the company to provide that information. The customer would not be expected to have his own records of the company's pipework and he must be able to rely on the company's records. In this case, the company should demonstrate, through its own records, the limit of its pipework. The company should be able to show conclusively where its pipework ends and customer's pipework begins. The company states in its response it is, "of the opinion that the external stop tap and boundary box located in [road name] marks the end of [the company's] responsibility." I do not consider this to be a conclusive statement.

20. The only evidence supporting the company's position is the photograph from Google Earth that it says shows the boundary box. I have previously explained that I am not satisfied the photograph submitted by the company is evidence a boundary valve was fitted prior to 2019. There is no doubt that a valve was fitted during the installation of the new main. However, the company has provided no other evidence to support its position that a boundary valve was already fitted in the road leading to the customer's property. I conclude that the company has not shown that any boundary valve was fitted at the junction of the road leading to the customer's property. I find that the company has not demonstrated that its pipework terminated at the position stated by the company.

21. I therefore find that the pipe in dispute is not private pipework and consequently

is the company's responsibility.

22. The customer has requested that the company replaces the existing lead pipework with material to current standards. The customer has noted that the pipework is old and that, as there have been multiple leaks in the past, it is possible the pipe will continue to leak.

23. Under the Act, the company has an obligation to maintain its infrastructure. Enforcement of obligations imposed on water companies by the Act is a matter for Ofwat and, under WATRS Rule 3.5, is not within the scope of a WATRS adjudication. I am therefore unable to give any direction on this matter.

24. The customer has also asked for an apology from the company. Whilst I have found that the pipework in dispute is not private as the company had believed it to be, the company has provided explanations to the customer. It has also carried out repairs to the pipe. I therefore make no direction in regard to this matter.

25. The company has made comments on my preliminary decision. I have addressed its comments below.

26. The WATRS Rules allow the customer and company to make comments on a preliminary decision. There are limits to the comments that can be made at that stage. Rule 5.5.3. says that a customer cannot introduce new complaints but can submit additional evidence relating to points already raised. It also says that a company can only highlight factual inaccuracies and/or errors in law and/or instances where the adjudicator has acted outside the powers granted under the Rules. The company cannot introduce new or additional evidence.

27. The company has restated points made in its original response. It has submitted evidence not previously provided either in its initial response or in reply to the adjudicator's request for additional information. It has also referred to a previous adjudication decision which it says was similar in circumstances but had a different outcome.

28. The company makes further references to an image dated 2009 from Google Earth and to Ofwat's website concerning pipe ownership.

29. Ofwat's statements on responsibility for pipework are not in question. The issue, as explained in the decision, is the location of a boundary valve that would define the end of the company's responsibility. The only supporting evidence from the company concerning a valve location was an image from Google Earth. That image was not clear and no other images referred to show any indication of a valve. The company was asked by the adjudicator to provide a further plan showing the location of all company pipework and control valves prior to the



installation of its new mains. The plan it provided showed no valves. The company had the opportunity at that stage to provide further information to support its position but did not do so.

30. My preliminary decision was based on the evidence available as provided by the customer and the company. I concluded that the company had not shown that any boundary valve was fitted at the junction of the road leading to the customer's property as there was no evidence supporting this. The company has now provided additional sketches, screenshots of job notes and a copy of a proforma the company says the customer signed. This evidence was not submitted with the company's original response. It was not incorporated in any other papers relating to the case.

31. The company has not stated that it considers there to be factual inaccuracies, errors in law or matters outside the adjudicator's jurisdiction in the preliminary decision. These are the only matters a company can raise as comments to a preliminary decision. I conclude that this additional information is new evidence the company now wishes to have considered. The WATRS Rules do not permit the company to submit new evidence after the preliminary decision is issued. It is therefore not admissible.

32. The company has referred to a previous adjudication decision made on 21 July 2021. It says that the circumstances of that case are very similar but the outcome was different. The company requests that consistency is applied when reviewing this case.

33. Adjudicators are not bound by previous adjudication decisions. WATRS Rule 1.9 says, "Adjudicators will take a consistent approach in reaching their decisions but every dispute will be decided on its own facts and a decision made by an adjudicator on one dispute will not establish a precedent for future cases." Each decision is reached by examining the evidence presented in that case. In my preliminary decision, I concluded on balance that the evidence presented did not support the company's position.

34. Taking the comments made by the company into consideration, I make no changes to my decision.

## Outcome

1. The company needs to take the following further action:  
Accept responsibility for the pipe from the company main to the control valves situated at the boundaries of each of the properties referred to.

## 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.

- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date in which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

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**Ian Raine**  
**Adjudicator**