

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XXXX

Date of Decision: 21/09/2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer's representative complains that there was a continuing failure to explain to the customer the options available to her following a leak on a shared private supply pipe. He says that she was the subject of pressure to choose the company's "sales" option of laying a new pipe. Although in due course, the leak was found and repaired and no pipe was laid, the representative asks for an apology and £3453.01 compensation

Response

The company says that it is reviewing its correspondence with customers as a consequence of the complaint and has offered £250.00 in compensation. The company says that clear and fair answers were given to Mrs **XX**, who said she was a solicitor acting on behalf of the customer. It also said that its technician has confirmed that the options were explained to the customer. The company says that it is not liable to pay further compensation.

Findings

I find that the company's correspondence does not make reference to any option other than provision, at a cost, by the company of a replacement supply pipe. Even if the technician had given other options to the customer, these were not put in writing and may not have been remembered by a vulnerable customer. I find that the company did not supply its services to the requisite standard at a point before the involvement of Mrs **XX**. I find, however, that shortly afterwards, proper explanations were given. The customer is entitled to compensation. No claim has been made for the cost of solicitors advice (which I might have been minded to consider) and £250.00 is at the top of the range. It is, however, within the range and I find it fair and reasonable to direct that the

company shall credit the customer with the sum it has offered. The company has already made an apology and has agreed to review its correspondence, so no further remedy is awarded.

Outcome

The company needs to take the following further action: credit the customer with £250.00.

The customer must reply by 19/10/2021 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- The representative complains that the customer, his mother, has not been well treated by the company. She is in her 80s and lives alone at **XX The Address XX**.
- The representative explains that his mother has lived at her address for about 50 years and the water supply pipe is almost 100 years old. He now understands that this property is one of 6 whose water is on a shared supply, and all have responsibility for the supply once the pipe leaves the road. Having no experience of this the customer and representative were totally reliant on their answers being clear and straightforward.
- A leak occurred somewhere on the supply pipe. The company assisted the neighbours trying to locate the leak.
- There came a point where the company determined that it was not able to find the leak and suggested that the neighbours arranged to have a new supply installed in a new supply pipe that would be laid down the customer's driveway. The representative says that what was not clear was that this was simply a very loose suggestion, even though its cost was exact to the penny. The representative says that "in short the difference between the legal power to repair a leak and the commercial opportunity to sell a new pipe was being deliberately blurred in a very calculated way."
- The representative says that the company singled out his mother as a soft target, confusing them with misleading answers to questions and offering the chance to save money if she was to hand over thousands of pounds before any work was started.
- The company has not made it clear what information has been made available to those on the shared supply. This made the customer feel very worried and vulnerable. She felt pressured that she had to agree to this option because all her neighbours would know she was stopping them from having a leak-free water supply. It was very difficult to try to help her whilst being unable to visit and see the problem.
- The company thought it would be reasonable for an 80-year-old widow to visit everyone on the shared supply, and project manage the new supply. However instead of giving clear and direct answers and the company did the opposite. At every point thorough out this process the company could have corrected this misunderstanding but chose not to.
- Early on, the company stated that it had checked its actions and found everything was correct. Sometime later it became clear that was not true as the maths were wrong, which would suggest at best nothing more than a half-hearted glance was given to the case, and the company returned to sales pitch as fast as possible.
- An example of the difficulties was that the company suggested the problem was due to one property being extended over the existing pipe and a new pipe

down the drive was the only option. At one point the company told the customer she would need their permission to extend her house over the drive, should the pipe be there, but had no interest in the fate of the existing pipe below the extension, as this was a private pipe. Clearly both answers are not correct. • The company went on to state they only think the pipe goes under the extension, as they have no plans of the area, as it a private pipe. But is very happy to state a mole can be used to burrow down the driveway. Certainly, the contractor who visited suggested various service pipes are likely to be under the drive. • The representative is not happy with the way this was handled and feels that the company was trying to bully his mother into doing work that did not need to be done as there were no issues with her supply. He also does not believe that the company had made it clear to the customer that if she was happy to remain on the shared supply then she could stay on this even if everyone else decided they wanted to have their own supplies. This would have made her solely responsible for the current set up, but it was also an option. • The leak has since been located and repaired and the issue has been fixed and so there is no requirement for the work to go ahead. The representative says that the company has not taken the situation seriously but used this as a sales opportunity to push its own agenda rather than giving all of the facts and letting the customers make the decisions for themselves. • The representative has asked for an apology. He has refused an offer of £250.00 and says that the figure of £3453.01 would be an appropriate figure for compensation. This is the same figure that the company wished the customer to pay.

The company's response is that:

- An email of 15 April 2021 demonstrates that the company has taken the representative's concerns seriously. It has committed to reviewing the communication it sends in these circumstances and to discuss with other water companies and CCW how to approach payment if customers accept a quotation to renew the shared private supply pipe.
- The company explains that it had identified a leak on the shared private supply which was losing 0.2 litres per second and in line with Section 75 (2) (b) of the Water Industry Act 1991 it took action to prevent the wasting of water from private pipework. This leak has now been resolved by a neighbour who identified the leak on his part of the shared private supply pipework.
- The company denies that it made acceptance of the installation of a new supply pipe the only option that it put forward to the affected neighbours. It explained at an early stage to Mrs **XX**, who was acting on behalf of the customer, that while the leak needed to be resolved there were a number of options available such as going through her insurance, a private renewal, a private repair or the solution offered by the company.
- As the current pipework set up is private the company does not hold a plan of the existing pipework because it is not part of its own network. As the control feeding the block of properties is outside number 60 it is likely that it runs up the side of number 60 and runs along the back of properties.
- Extensions that have been added to the properties mean the existing route could not be used.
- The company, in putting forward its own option, looked to

identify the solution that would involve the least pipework installation and its proposal was based on this. For this reason, the company ruled out using the existing route. The quotation was based on the amount of work required at each property and not on the level of inconvenience. The quotation would vary from property to property. The technician on site has confirmed that he would not and did not discuss the costs at other properties. It is possible that when he said the company was looking at the cheapest option, this was interpreted as looking for the cheapest option to the customer's advantage. • Individual supplies would be the least costly option. The company also explained in its email of 15 April 2021 that a proposal to run a new supply from the existing control would have involved installing new pipework across all the front gardens and then looping back into the properties at 50 and 52. This would have increased the amount of pipework and the cost.

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.

Although both the customer and company have commented on my Preliminary Decision, neither party has asked for a change to be made. The Final Decision is therefore the same as the Preliminary Decision.

How was this decision reached?

1. I bear in mind that the background to this case has arisen in relation to a section of pipework that had begun to leak. There is no evidence that the company was wrong in its assessment that the pipe in question was a private shared ownership supply pipe and I find this to have been the case. There is also no evidence that the company had constructed the pipe. As it was neither constructed by, nor owned by the company I find that the company would not reasonably be expected to have

a plan of its location. The company would also not, I find, be responsible for looking for or finding a pipe, even if, as the customer suggests, the company did try to assist. In particular, there was no obligation on the company to use a mole for the purpose of locating the pipe or any associated risks. I find that the company did not fail to provide its services to the customer to an unexpectedly low standard merely because it did not find the repair.

2. Instead, I am satisfied that the pipe in question was for the private owners to take responsibility. While I accept that the customer was vulnerable by reason of her age and potentially her absence of experience of an issue of this type, she was nonetheless under an obligation as the owner of a shared pipe, to respond positively to the company's request (made under legal powers) to ensure that a waste of water from that shared pipe was brought to an end. This did not, I find, involve any element of "project management" but I note that the customer would reasonably be expected to cooperate and liaise with her neighbours on the resolution of the leak from the pipe, whether the customer had previously known about this or not.

3. The history of the matter, as shown by the documentation submitted is that on 27 January 2021, the customer was sent a letter explaining that a leak had been identified in or under property affected by the pipe. The company made clear that it required the leak to be brought to an end. The letter stated that a survey would be carried out on 10 February 2021, provided a test kit for internal leaks and explained:

"Maintenance of shared supply pipes is the responsibility of the owner, if you are a private or council tenant, please contact us and we will follow up the process directly with them.

...

XX & XX Water are in a position to undertake this work and we will provide you with a written quotation once the survey has been carried out. We are able to offer interest free payment plans over up to 24 months and no payment will be requested until the works are completed. Council properties and privately let properties will be invoiced directly to the landlord."

This letter does not appear to have stated that there are other options available than accepting the proposal made by the company. I find that the context within which the company's ability to undertake the work was intended to be reassuring. I do not accept that the lack of reference to other options was an attempt to drive home a commercial advantage against a soft target, as suggested by the representative. I find that it is more probable than not that it was a standard form letter that was unhappily expressed rather than a calculated attempt by the company to make money out of vulnerable consumers. Nonetheless, I find that the

representative is correct that this letter may also have given the impression that it would be necessary for the company to carry out the work in question. This I find was misleading and I accept that the lack of apparent options caused the customer, as a vulnerable customer, to have felt anxious about the cost and the inconvenience of the proposal affecting her property. I accept also that a vulnerable customer might not have enquired about other alternatives.

4. On 10 February 2021, a document was prepared by the technician attending the survey, a Lowman Request Form, the terms of which indicate that the company was expected to carry out work at the customer's property. It is not clear, however, that this document would have been seen by the customer, and it may be that its purpose was to request internally the issuing of a proposal to the customer.

5. The proposal is also dated 10 February 2021 but the company says that this was provided to the customer on 11 February 2021. Although the document is expressed only as a proposal, it does not make clear that there are other options and its tenor indicates that this is a matter to which the customer had already agreed or that she was expected to agree to it. The document states about payment:

"I agree for **XX & XX** Water to undertake the supply pipe renewal and to pay £3453.01 (12/24 months interest free or in full). This cost would be reduced to £3152.74 if payment is received in full before the works commence."

6. I note that there is a confusing tension between stating that payment of a larger amount interest free over 12 to 24 months and a reduction of £300.27 if payment was made in advance. I find that for a person of limited means, the desirability of saving the amount of the discount would have affected a consumer's decision-making and there is nothing in that document that indicates that other options were available. I take into account that the company says that the technician would have advised the customer of other options, but, based on the documentation I have seen, I do not find that this, if stated or understood, was recorded for the customer in any way. In the case of a vulnerable consumer, therefore, I find that there was a significant risk that he/she would not trust their memory sufficiently to be aware of this and would feel unduly pressured to accept the company's proposal.

7. I find that an average customer would reasonably expect a company to take care to ensure that vulnerable customers understand precisely the situation that they are in, and I find, based on the history above, that the explanations made to the customer were initially not clear or fair. I find that these were potentially or actually misleading. It follows, therefore, that up to this point, I find that the company had not supplied its services to the customer to the standard that would reasonably be expected.

8. On 15 February 2021, one Mrs **XX**, a solicitor, contacted the company on behalf of the customer. She stated that the customer was “very upset and concerned over the £3k plus bill and the fact that most of the pipework is going through her property and concerned about the driveway”. The company records that the solicitor was advised that the technician would have chosen the best possible route for the new common supply and explained the moling process and reinstatement guarantee. The company’s note of this conversation states also:

“Explained the common supply process and timescales and that if she would like to see a technician on site anytime I would happily arrange it. Advised that I can email and I&e form so that she can allow u to look at if we can help with the costs at all and I will also email all the information with regards to the renewal. Explained that if any neighbours pinpoint the leak and repair we would double check and if fully resolved we would inform all the properties and the renewal would not take place, advised that her options would be insurance, private renewal, private repair or **XX** and advised may be best to see if the neighbours are pinpointed. Mrs **XX** asked how she would go about getting private contractors to locate the leak and advised water safe and agreed to add this to the email, did explain not **XX** responsibility or related but may help with their search. Mrs **XXX** advised that I was very knowledgeable, and I agreed to send the email now and copy Mrs **XXX** in.”

9. An email was sent on that afternoon attaching guidance notes, information leaflet and terms and conditions with regard to the renewal. An income and expenditure form was also provided. The email continued:

"With regards to pinpointing the leak, we recommend either using home insurance to complete investigations, arranging for private contractors to complete investigations or discussing with neighbours if anything is being completed. Due to the pipework being private **XX** cannot take any responsibility for the leak, or any investigations and costs incurred when trying to pin point. If you require some guidance with local contractors we would advise that you research companies using www.watersafe.org.uk however please note this is not affiliated with **XX** and we cannot recommend any contractors.

If there is anything else I can do please let me know."

10. On 18 February 2021, the solicitor advised that the customer had no problem with her water supply and withheld permission for a new pipe to be laid across her property. Reasons were requested as to why the previous route was regarded as unsuitable and a route through her property had become the preferred option. Other questions about the functionality of this decision were also asked. The company replied that day:

"I would like to advise that the route we have suggested is the option that we believe most effective however as the pipework is private all customers are entitled to engage with their insurance or private contractors to see if there is an alternative and preferable route, if this is the option that would be preferred, please keep me informed and I will advise of any information throughout the process. I would like to also readvise that our works can be paid in interest free instalments of 12/24/36 months and if this cost is still too much the I&E form attached is also an option so that the finances can be presented to my supervisor for review."

11. The company then provided answers to the specific questions, explaining that there was a leak for which the customer was jointly and severally responsible and that the company's technicians will also look for the most efficient and cost-effective route for the new supply to be run. The email stated:

"In this case as extension and modifications have been made to properties since the water supply was installed it has not been possible to run the supply pipe in the same manor [sic] it is currently installed. The new route was decided on as this provides the cheapest route for the new supply to be installed as it involves the least amount of pipework for all the properties. To run a new supply from the existing control we would have had to install new pipework across all the front gardens and then loop back into the properties 50 & 52 which would have increased the meterage and the cost for the customers. This route reduces the amount of meterage needing to be installed and therefore keeps the cost down for the customers."

12. To the question "If the new supply pipe is put through Mrs **XX** property what is her position if she needs to extend her house?", the company said:

"Should Mrs **XX** wish to extend her property then as with the existing pipework we would ask this is either bridged over or the pipework is moved by the customers builder. If this is something that Mrs **XX** is thinking of doing please let us know so we can discuss the proposed extension and if this means any modifications are needed before we commence works."

13. To the question "Mrs **XX** has no problem with her water supply so cannot see why she is expected to bear the brunt of the inconvenience" the company answered:

"As advised above the customer is on a shared supply which has is leaking as this is a shared supply the responsibility sits jointly with all the properties connected to the supply. I am happy to arrange another visit for yourself and Mrs **XXX** to discuss the works and requirements and options in further detail at the property if this would be beneficial, I have also reattached all of our guidance and information

which may explain any further questions."

14. Thereafter, the customer engaged with the Consumer Council for Water (CCWater) to handle her complaint. On 22 March 2021, the company stated:

"I have received confirmation today that one of the property owners has undertaken a repair and that following this we will not be proceeding with the pipe renewal. We will be contacting the residents with advice on checking for internal leaks and will continue to monitor the situation. I hope this removes some of the worry from Mrs **XXX**."

15. Having regard to these matters, I find that, although the company initially failed to make the situation sufficiently clear to the customer (as explained above), it did give full and appropriate explanations and provide all relevant documentation once the customer's solicitor became involved. I do not accept the representative's suggestion that the company could simply have allowed the customer to remain on the pipe while connecting other customers, because this would not have resolved the problem that there was a leak on the shared pipe at, then, an unknown location. I find that in the email of 18 March 2021, the issues raised by the representative had been addressed (save for the maths error, which arose subsequently) and I do not, therefore, accept the representative's proposition that there was a continuing failure to give "clear and direct answers". I find that proper explanations in relation to the matters that the customer now raises were given to the customer's solicitor, who acted as the customer's agent.

16. On 15 June 2021, the company agreed to increase its offer of compensation to £250.00.

17. The customer asks for compensation of more than three thousand pounds to reflect the company's failure. I do not find that compensation in this amount is fair and reasonable and it does not reflect any loss that the customer has in fact suffered. The customer has not put forward a bill or any documentation evidencing a payment made to Mrs **XX** in respect of the legal representation she received in consequence of the company's failure (as I have found above) to give clear and fair advice. I therefore do not find that she has suffered this loss, although I make clear in my Preliminary Decision that, had such evidence been put forward, I would have considered whether this payment might have been reimbursed.

18. In the absence of evidence of actual loss, I find that the customer has proved that they are entitled to compensation for inconvenience and distress. I take into account that the customer was vulnerable, but I have also found that her uncertainty about the situation (as opposed to worry about costs that she might legitimately have had to pay to resolve the leak) went on only for a short period. I

find that the compensation offered by the company is £250.00 and I find that this is at the top of a range of compensation that might reasonably be awarded in this case. As the sum is, however, I find, within that range, I find that it is fair and reasonable to direct the company to make the payment that the company has offered, which can be treated as a credit to the customer's account.

19. I do not find that it is necessary in all the circumstances to direct that the company shall apologise to the customer because this has already occurred and the company has also taken action to consider its correspondence with its consumers.

20. It follows that I direct that the company shall credit the customer's account with £250.00.

Outcome

1. The company needs to take the following further action: credit the customer's account with £250.00.

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.

Claire Andrews
Adjudicator