

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X643

Date of Final Decision: 22 November 2021

Party Details

Customer: The Customer

Company: The Company

Complaint

The customer states that the company has sought to recover the full costs of investigating and repairing a leak on a shared water supply from her, which is unfair in her view. She considers that the costs should be shared among the 14 properties that share the water supply. Further, the company's contractors damaged her property during the course of the repair works. The customer's claim is for the company to: reduce the bill for the repair works, so that she does not bear the costs of digging/investigation works carried out at neighbouring properties; and repair the damage to her property.

Response

The company disputes that it is liable to settle the customer's claim. It identified a leak on the shared private pipework that supplies water to the customer's property, and it issued a notice under Section 75 of the Water Industry Act 1991 ("the Act") to the customer and to the other properties fed from the pipework, requesting that they repair the leak. However, its further investigations revealed that the customer's property was the only property downstream of the leak, and it was therefore the customer's sole responsibility to repair the leak. The customer did not carry out the repair to the supply pipe, and it carried out an enforced repair. On completing the repair, it issued the customer with an invoice for the costs of the repair. It needed to dig around neighbouring properties in order to locate the leak. It has correctly charged the customer for the costs of digging at other locations, because the digging was carried out as part of its investigations. It is not liable for the alleged damage to the customer's property, because it did not damage the property.

Findings

I find that the evidence does not prove that the company's service in respect of this matter fell short of the standard to be reasonably expected of the average

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person, and consequently the claim does not succeed. The company acted in accordance with its statutory duty under Section 75 of the Act, which imposes a duty on it to stop the wastage of water. It had a duty in this case to repair the leak to the customer's supply pipe, because the customer did not repair the leak. It was entitled to charge the customer for the cost of investigative works carried out at neighbouring properties, because it has shown that (on the facts of this case) it was necessary for it to investigate neighbouring properties in order to locate the leak. The company exercised its power under Section 75 in a proper manner. The evidence does not show that the company damaged the customer's property, or that it is liable for the state of reinstatement works at the property.

Outcome

The company does not need to take any further action.

The customer must reply by 20 December 2021 to accept or reject this decision.

ADJUDICATOR'S FINAL DECISION

Adjudication Reference: **WAT-X643**

Date of Final Decision: **22 November 2021**

Case Outline

The customer's complaint is that:

- The company has sought to recover the full costs of investigating and repairing a leak on a shared water supply from her, which is unfair in her view. The costs should be shared with the neighbouring properties that share the water supply.
- The company's contractors damaged her property during the course of the repair works. The company damaged a foul drain at the property when it dug an inspection hole. The property insurer repaired the damage to the foul drain and the insurer stated that the damage to the drain was caused by heavy blunt force.
- There was also damage to barbecue equipment, "cement poured all over the door and wall", and poor reinstatement works by the company.
- The customer's claim is for the company to:

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- reduce the bill for the repair, so that she does not bear the costs of the digging/investigation works the company carried out at neighbouring properties; and
- repair the damage to her property.

The company's response is that:

- Its technicians who were working in the customer's area alerted it that there was high water consumption in the area. On investigation, its contractors discovered that there was a leak on the private supply pipe that fed 14 properties in the customer's area, including the customer's property.
- Under Section 75, it has a duty to prevent the wastage of water. If it identifies a leak on private pipework, it can issue a notice on the owners of the properties supplied by the pipe and request that they carry out the repair. If the repair is not carried out, it can carry out an enforced repair and recover the costs of the repair from the property owners.
- It identified that there was a leak on the shared private pipework that supplies the customer's property, and it issued a notice under Section 75 to the customer and to the other properties fed from the pipework requesting that they repair the leak.
- Its further investigations revealed that the customer's property was the only property downstream of the leak, and it was therefore the customer's sole responsibility to repair the leak.
- It issued a Section 75 notice to the customer and gave him every opportunity to repair the leak. It had to carry out an enforced repair because the customer did not repair the leak. On completing the repair, it issued the customer with an invoice to recover the costs of the repair.
- It considers that the customer is liable for the full costs of the repair, because his property was the only property downstream of the leak.
- It is not liable to repair the alleged damage to the customer's property, because it did not damage the property. Whilst it was working on the leak, it located a damaged foul drain which the customer needed to repair before it could continue with its repair works on the leak. The customer's barbecue equipment was placed in a locked area and it did not damage the equipment.

The customer's reply is that:

- She had to ask the company a number of times before it provided her with a copy of the invoice.
- The property insurers have advised her that each household on the shared supply is responsible for their own property.

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- It is not her fault that the company could not detect the leak without digging up most of the gardens at the other properties on the shared supply.
- If the company sent her multiple letters regarding the repairs as it has stated, she did not receive any of the letters.
- The gate leading to the barbecue equipment was not locked as the company has stated.
- The report issued by the property insurer states that the foul drain was damaged by the excavation and digging of a further hole and by blunt force, which could only have been caused by the company's workmen. The insurer also advised that there was a major leak before the property.
- The barbecue equipment has not been repaired and restoration works the company carried out are still in a poor state.

How is a WATRS decision reached?

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

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. 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 complaint concerns 2 main questions, namely whether the customer is liable for the full costs of the repair to the leak (including the cost of investigative works carried out at

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neighbouring properties), and whether the company is liable to repair the alleged damage to the customer's property. I consider these issues in turn.

Cost of repair works

2. I find that in charging the customer the full cost of repairs, the company has not failed to provide its services to the standards that could reasonably be expected. I set out my reasons for reaching this finding below.

3. I consider the legislation as a starting point. I am satisfied that the company is a water undertaker for the purposes of the Act and it is required to carry out its functions in respect of the supply of water in accordance with the requirements of the Act. Under Section 75, if the company has reason to believe that the supply of water to any premises is being wasted¹, the company has the power to serve a notice on the customer requiring the customer to take such steps as are necessary to secure that the waste does not occur². The company is required to specify the period within which the steps set out in the notice are to be carried out³. Where the steps identified in the notice are not carried out, the company can carry out the steps itself and "recover any expenses reasonably incurred by the undertaker in taking those steps from the person on whom the notice was served"⁴. The company's power to recover its expenses is limited by Section 75(10) of the Act which states that:

"Where any steps are taken by virtue of this section and it is shown that, in the circumstances of the case, those steps were not necessary as mentioned in subsection (2) the water undertaker in question-

- (a) shall not be entitled to recover any expenses incurred by it in taking those steps; and
- (b) shall be liable to pay to any other person who took any of those steps an amount equal to any expenses reasonably incurred by that person in taking any of those steps."

4. The company has provided relevant correspondence and reports in support of its position that the water supply to the customer's property was wasting due to a leak from privately owned pipework supplying only the customer's property. Whilst the customer's property is served by a shared water supply, the company found that the leak was isolated to an area of pipework the

¹ Section 75(1)(d), Water Industry Act 1991

² Section 75(2)(b), Water Industry Act 1991

³ Section 75(6), Water Industry Act 1991

⁴ Section 75(9), Water Industry Act 1991

customer owned and which supplied water to the customer's property only. The customer has stated that the property insurer advised her that there was a major leak in an area before her property. However, the drainage report dated 24 May 2019 commissioned by the property insurer ("the Insurer's report"), does not mention a major leak in an area before her property or contain any statement that disputes the company's finding regarding the location of the leak. There is no other evidence in the available documentation which disputes the company's findings regarding the location of the leak and the customer's responsibility for the pipework in question.

5. Further, the evidence (including the correspondence between the parties on this matter) shows that the customer did not repair the leak within the timeframe stipulated by the company. I am satisfied that, having served a Section 75 notice dated 14 February 2019 on the customer requesting that she repairs the leak within seven days and the leak was not repaired within this timeframe, the company proceeded to repair the leak in accordance with its statutory duty to do so in order to stop the wastage of water.
6. Section 75(9) is clear in its wording. It states that the company can carry out the repair works and recover its reasonably incurred costs from the person on whom it served the notice (the customer in this case), provided that the repairs are necessary to fulfil its obligation under Section 75(2)(b) to stop the wastage of water.
7. I note that the customer does not dispute the entire bill that the company has served on her in respect of the repair works. Her claim is for the company to reduce the bill by discounting the costs of works carried out at neighbouring properties, including the cost of digging works it carried out at neighbouring properties whilst trying to identify the location of the leak. In order for the customer's claim for a reduction of the bill to succeed, the evidence will need to show that the investigation works the company carried out at neighbouring properties were not necessary.
8. The company has explained that it needed to dig around the area where the water wastage was identified in order to locate the leak. It has stated that the costs of digging at other locations have been correctly charged because the digging was carried out as part of its investigations. Section 75 does not specify the steps that need to be carried out in order to stop water wastage, in particular Section 75 does not say that the cost of investigation works carried out in order to stop the wastage of water cannot be recovered. Section 75 also does not say that it is not necessary to dig beyond a certain area to identify a leak.

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9. The company has explained that it needed to dig around the area including neighbouring properties to identify the leak as part of its investigations prior to carrying out the repair. I have not been provided with evidence to prove that the investigation works the company carried out at neighbouring properties were not necessary to the repair works. The customer has stated that it is unfair for the company to recover the costs of investigations carried out at properties other than hers. The customer relies on a statement from her property insurer who reportedly informed her that it was unjust for the company to recover the full costs of repairs to a shared water supply from her.
10. I find that this statement from the customer's property insurer does not assist the customer's claim for a reduction in the bill. The particular issue in this case, which I mention at paragraph 4 above and reiterate here, is that whilst the customer's property is served by a shared water supply, the leak was isolated to an area of pipework that the customer was solely responsible for and which supplied water to the customer's property only. I have not been provided with sufficient evidence that proves that the leak was located elsewhere or that the location of the leak could have been identified by other means than digging at neighbouring properties. I have not been provided with sufficient evidence, for example an independent report from a person suitably qualified in water wastage, to prove that the investigation works the company carried out at neighbouring properties were unnecessary.
11. I appreciate the customer's dissatisfaction with the bill the company has issued her with. However, the company's obligations to carry out the repair works and recover the cost of repairs are set out in the legislation. In the absence of evidence to dispute the company's submission as to the necessity of the investigation works at neighbouring properties, I find that the company is entitled to recover the full costs of the repair including the cost of the investigation works at neighbouring properties, because it has shown that (on the facts of this case) it was necessary for it to investigate neighbouring properties in order to locate the leak.
12. I have also considered whether the company exercised its powers under Section 75 in a proper manner. In particular, I note that the customer has stated that she did not receive the letters the company sent to her requesting that she carry out the repairs, and that she needed to ask the company for the invoice a number of times before it was provided to her.

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13. The correspondence between the parties shows that the company first wrote to the customer on 24 January 2019 requesting that she and her neighbours investigate the location of the leak and repair the leak. The company issued a Section 75 notice on the customer on 14 February 2019. The customer's relative (who was the party named on the Section 75 notice) contacted the company on 20 February 2019. The company's notes record that the customer's relative confirmed that he had received the statutory notice and this was the first correspondence from the company he had received. The relative confirmed that he would discuss the matters with the neighbours. The account notes record that the company sent letters to the customer, and there were telephone calls between the parties before and after the company repaired the leak. I find on the evidence that the company has issued the customer with a Section 75 notice which her relative residing at the property confirmed had been received, and it maintained a reasonable level of engagement with the customer before, during and after the works.
14. In relation to the customer's request for the invoice from the company, I note that on 15 July 2019, the customer asked the company to provide her with a breakdown of the charges that make up the total cost of the repair. On 18 July 2019, the company provide the customer with details of the works it carried out and time spent. That day, the customer asked the company to provide her with a breakdown of costs. On 19 July 2019, the company explained to the customer that due to the way the costs are calculated, it has no other way of providing the customer with the breakdown of the costs other than by specifying the time it spent on the job per day as it had done. In view of this correspondence between the parties, I do not consider that the company's service to the customer in respect of the invoice fell below the standard to be reasonably expected.
15. In these circumstances where the company has acted in accordance with the legislation and exercised its functions in a proper manner, I find that the company met the standard to be reasonably expected by the average person.

Damage to property

16. I can consider the customer's complaint about property damage because the complaint has been the subject of the company's internal complaints procedure and it is not a complaint that is excluded under Rules 3.4 or 3.5 of the Water Redress Scheme Rules 2020 (Rule 3.3, Water Redress Scheme Rules 2020).

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17. The customer has stated that her property insurer reported that the foul drain at the property was damaged by heavy blunt force, and she believes that the company's agents damaged the drain while excavating in the area. It appears that the customer became aware of the damage to the drain because the company informed her that its agents located a damaged foul drain during their works, which she needed to be resolved before the repair could continue and the customer contacted the property insurer.
18. I find that the Insurer's report does not provide sufficient proof that the company damaged the foul drain. The report states that the property insurer commissioned it to undertake drainage investigations after the customer reported damage to the soil vent pipe. The recommendations made in the report indicate that the report was prepared for the purpose of advising the property insurer as to whether or not the damage to the drain was caused by a circumstance covered by the insurance policy. The report does not contain evidence on liability for the damage. For example, the report does not say who caused the damage, when the damage occurred, or provide details on the nature of the force applied to the drain such as what equipment may have been used in the damage.
19. The customer has also complained that there was damage to barbecue equipment, cement poured over her property, and poor reinstatement works. The company states that the barbecue equipment was located in a locked area, while the customer disputes that the equipment was in a locked area. The parties have stated their respective positions regarding the equipment, but I have not been provided with sufficient evidence proving that the company damaged the barbecue equipment. Therefore, I find that this aspect of the complaint does not succeed.
20. It appears that the customer's complaint about poor reinstatement works is concerned with the condition the company left the area of the property it worked in after it had completed the repair. The customer has provided photographic evidence in support of her position. The photographs the customer has provided appear to show some splattering over the door leading to the rear of the property. There are no photographs of the door prior to the company's works, it is not clear from the photographs that the substance splattered over the door is cement as alleged, and it is not clear that the alleged splattering was caused by the company alone as opposed to third parties who also carried out works in the area in question.
21. I find that the customer's complaint that the company's reinstatement works were poor is not supported by the evidence and the complaint does not succeed.

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Outcome

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 by 20 December 2021 to accept or reject this 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.



Ile Ezeogu LLB (Hons), Solicitor

Adjudicator

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