

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X594

Date of Decision: 12 December 2021

Complaint

The customer says that she has been billed incorrectly for work by the company, and has experienced poor customer service.

Response

The company says that the customer has been billed correctly, in accordance with Article 75 of the Water Industry Act 1991. It denies that the customer has experienced poor customer service.

No offer of settlement has been made.

Findings

The company provided its services to the customer to the standard to be reasonably expected by the average person.

Outcome

The company does not need to take any further action.

The customer must reply by 13 January 2021 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT-X594

Date of Decision: 12 December 2021

Party Details

Customer: The Customer

Company: The Company

Case Outline

The customer's complaint is that:

- The company carried out work on private pipework shared by herself and her neighbour.
- She has been charged, but her neighbour has not.
- The company has not identified the actual location of the leak, so has not confirmed that it was on a shared part of the pipework.
- She requests that the company remove the charge for the work undertaken and pay unspecified compensation for the poor customer service she has experienced.

The company's response is that:

- The company established that there was a leak in the area of the Property.
- A technician was sent to investigate and confirmed that the leak was on private pipework.
- Notification of the need for repair was provided in accordance with Section 75 of the Water Industry Act 1991.
- No work was undertaken, and so in accordance with Section 75, the company performed the necessary repair.
- As permitted by Section 75, the cost of the repair was then imposed on the properties benefiting from the pipework, including the Property.
- The company could not confirm the exact location of the leak, but it is confident that the charges are correct.

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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 core of the customer's complaint involves work undertaken by the company under Section 75 of the Water Industry Act 1991. Under Section 75, where water is being "wasted" the company may serve notice on a customer requiring the customer "to take such steps as may be specified in the notice as necessary" to stop the wastage. If the customer does not take the steps specified in the notice, the company is empowered to "take those steps itself".
2. The company has sufficiently established that it was justified in concluding that there was a leak on the shared supply pipe leading to the Property, on the basis of manual investigations by a technician after detection of a spike in usage. It has also established that it properly served Article 75 notices upon the customer, but no private work was commissioned to address the leak.
3. The obstacle faced by the customer is that the leak did not occur on the Property, but rather on a neighbouring property. As a result, the customer will have had no legal right to arrange for work to be performed without the consent of the owner of that property.

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4. Nonetheless, while this clearly puts the customer in a difficult position, the language of the Water Industry Act 1991 is clear regarding liability under Section 75 in the context of shared supplies. Under Section 75(2) of the Act, a notice to perform work may be served “on the consumer”, and under Section 75(9) where the work specified in the notice is not performed privately by the date specified in the notice, the company may undertake the work itself and then recover “any expenses reasonably incurred” from “the person on whom the notice was served”.
5. As there is no dispute that the notices were served on the customer, the only question is whether the customer constituted a “consumer” under Section 75(2). If not, then the notices were not properly served on her.
6. Section 150B of the Act clarifies that a “consumer” with respect to charges/bills issued by a water company is “a person who is for the time being the person on whom liability to pay charges to the undertaker in respect of that supply of water would fall”. While Section 150B does not directly reference Section 75, no other definition of “consumer” is provided in the Act, and so this definition is appropriately seen as also applying to the use of the term “consumer” in Section 75.
7. It is, however, undisputed that the customer was liable to pay charges to the company for water that passed through the shared supply pipe and was then used at the Property. She was, therefore, a “consumer” under Section 75(2) with respect to that portion of the pipe in which the leak occurred.
8. I must, therefore, find that the customer was properly served the notices under Section 75 of the Act and is liable under Section 75(9) for the company’s reasonably incurred expenses when addressing the leak on the shared supply pipe, as shared with other parties that qualify as “consumers” for the same notices.
9. The customer has emphasised that the company did not identify the precise location of the leak, and so cannot say with certainty that the leak was on the shared section of the pipe, rather than on a section of the pipe leading only to her neighbour’s property. In the latter case, the customer would not be responsible for the repair as she would not be a relevant “consumer”.
10. However, while I accept that this is true, the failure of the company to identify the precise location of the leak must be evaluated in the context in which the company was operating. That

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is, this was not work undertaken by the company in accordance with its own obligations, but was instead undertaken pursuant to Article 75, due to a failure by the parties responsible for the pipework to undertake the work themselves. Because of this, the company's primary obligation was to repair the leak, not to identify its precise location.

11. This is reflected in the fact that Section 9 of Article 75 allows the company to recover its expenses "from the person on whom the notice was served", rather than from "the consumer". That is, as long as the company's action of serving the Article 75 notice was reasonable, then any individual receiving the notice remains liable for the expenses the company incurred. Such an approach removes from the company the liability to incur costs beyond those necessary to undertake the repair it is being forced to take by the inaction of private parties. A repair performed under Section 75 is not a service that the company provides to its customers, but an action taken to preserve water when the parties responsible for private pipework have not done so.
12. If the company is able to determine the precise source of the leak while undertaking the repair, then it is obligated to correct its notification of the customer under Article 75, as it can no longer reasonably believe that the customer is a "consumer" with respect to the repair. However, if this information is not discovered by the company while performing the repair to the standard to be reasonably expected by the average person, then under Article 10 of Section 75 the company retains the right to bill any customer that was served the Section 75 notice.
13. In the present case, the evidence makes clear that the company was limited in the work that it could undertake by the presence of an extension on the customer's neighbour's property. As a result, I do not find that there is evidence justifying a conclusion that the company identified or reasonably should have identified the source of the leak as being on a pipe benefiting only the customer's neighbour.
14. In response to an evidence request the company has confirmed that the customer is being asked to pay £2,727.55, and documentation produced by the company to CCWater confirms that this represents half the total bill for the work undertaken, based on costs being split between "Number 70 and 72". The company has, therefore, provided evidence satisfactorily establishing that the customer has only been billed for half the total cost of the work, reflecting her shared responsibility for the pipework with one other property.

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15. The customer has objected that she believes that her neighbour has not been billed for the work, while she has, but no evidence has been produced supporting this belief. In addition, no evidence has been produced that any failure by the company to bill the customer's neighbour has resulted in the customer herself being billed more than was appropriate under article 75.
16. Therefore, I find that the company has correctly billed the customer for the Article 75 repair.
17. The customer has also objected to the quality of customer service she received from the company. However, I find that the evidence shows the company acting promptly and responsibly, and communicating with the customer appropriately.
18. Therefore, I find that the available evidence does not support a conclusion that the customer experienced poor customer service.
19. For the reasons given above, the customer's claim does not succeed.


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 13 January 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.

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Tony Cole

Tony Cole, FCI Arb

Adjudicator

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