

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X655

Date of Final Decision: 29 November 2021

#### Party Details

**Customer:** The Customer

**Company:** The Company

#### Complaint

The customer complains that the company has not given adequate reasons for its decision, and should not have refused, to extend a water main along a private drive for the benefit of his non-commercial premises. He contrasts his position with that of his neighbour with whom he initially made a joint application but who in due course requisitioned the water main on his own. The customer says that he was initially told that he could be connected to the new main but the company has changed its position. The customer wants the company to provide a valid reason for declining to extend the water main, and/or to agree a suitable arrangement to connect to the water main, including an extension to match that which was offered previously to him and his neighbour.

#### Response

The company says that it has no power to lay an extended water main because a water main must serve more than one property. The company refers to the Water Industry Act 1991 and says that it is willing to connect a private supply pipe laid by the customer to the main by the A21 or to the main under the private drive. If connected to the pipe under the private drive, the owner of the drive must have consented. There is no evidence of consent and therefore the connection cannot be made. Also a mains pipe would lead to water stagnation and risk contamination of the supply. This has been explained to the customer.

#### Findings

I find that the company did not promise to extend the main but to consider how to connect the customer when he was in funds. It has explained that it has reached its decision in respect of extension of the main for two reasons. One is related to the water quality associated with extending the main but the other is that it has no power to lay a main to one property only. The company has quoted for laying a supply pipe, but the customer has not agreed. As the customer has not shown that the company's decision was taken on an unreasonable basis, he is not able to succeed in his claim for the remedies he wants.

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Outcome

The company does not need to take further action.

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## Case Outline

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

- The customer and his neighbour enquired about installing a new water main allowing them to have a source of clean water. A quotation was provided to the value of £25,000.00, the majority of this being attributable to the customer as his home is further away from the source supply. The customer said that he would need a few weeks to collect the funds.
- In the meantime, his neighbour contacted the company and decided to pay for the installation of a new main for his property only. The customer then contacted the company, which advised the customer that once the main had been laid, later he could contact the company and arrange to have his home connected, also at a cost.
- The company has, now, changed its position, however. It has said that it will not complete this work just for one property to be connected.
- The Consumer Council for Water (CCWater) wrote to the company at stage 1 on 24 April 2021 and at stage 2, on 18 June 2021 asking why the company failed to: provide an adequate reason for its decision to decline to extend the water main. and why this differs from the original quote in which both the customer and his neighbour would require similar services.
- The customer wants the company to provide a valid reason for declining to extend the water main, and/or to agree a suitable arrangement to connect to the water main, including an extension to match that which was offered previously to him and his neighbour.

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

- It apologises that it has been unable to resolve the customer's concerns to his satisfaction.
- The essential problem is that whilst originally the customer was party to a water main requisition with his neighbour, which necessarily would require agreement between them concerning the premises to be connected, his withdrawal from that agreement resulted in a situation where a water main was laid. The customer would now require consent and agreement from his

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neighbour for his own private supply pipe to cross and remain in that private land (which did not belong to the customer) so as to connect to that newly laid water main.

- The customer's belief that he would be able to ask that the existing water main to be extended further, to serve his own premises, and that the company should utilise its statutory powers to lay such water main, was misplaced. A pipe as between that existing water main and his premises is, by definition, a private supply pipe and is not capable of being legally recognised as a water main.
- It would appear that the reason why the neighbour was not amenable to allowing the customer to lay his own private supply pipe may have been because the neighbour had paid for the requisition costs entirely for that new water main.
- The company confirms that it initially received contact from the customer in October 2019 as part of a joint application for a water main requisition. These works were to complete two new connections to two individual non-household premises. Following the initial quote being provided to both applicants, the company did not receive any further contact or payment from the customer confirming he would like the company to go ahead with the works.
- As a result of this, the 3rd party advised he would fund the full cost of the works in order for the new main to be laid. A new 63mm pipe was laid which would be sufficient for the requisitioned capacity.
- The third party then arranged for a second connection to be made to the new 63mm main to feed a separate area of his non-household property. Therefore the 3rd party now has two separate connections on the 63mm water main serving different premises.
- Due to the nearer location of the extended water main being within private land, if the customer now wants a connection, it will be for him to gain the necessary permission from the land owners in which his private supply pipe would be laid.
- The company says that it has produced multiple quotes for the customer, as requested. The customer also confirmed he did not want to pay the land agents' fees and that he would gain the necessary permissions to access the private land himself. Therefore, a third quote was produced to reflect this request, without any land agents' fees.
- Regarding the customer's concerns that the company was willing to extend the water main for the 3rd party but not being prepared to do the same for him, this is because at that time the works consisted requisition of a water main, to supply more than one premises. There are no statutory powers of land entry available to the company to extend a water main, when that extension will only serve a single premises. If the company were to attempt to lay that pipe across private land, it would be open to injunction and damages payable to the landowner.

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- Furthermore, in practical terms that diameter of pipe, laid as an extended water main, would not meet potable water criteria because it would stagnate and put the distribution network at risk of contamination.
- In summary, the customer can request a connection be made to the existing 63mm water main which is laid under a private track, that connection being carried out by the company. In order to make that connection, he will incur the land agents' fees in negotiating those works. Land agents are independent professional people, and whether the cost is paid directly by the customer or the company is unlikely to make a significant difference in their fees.
- Additionally, the customer will have to lay his own private supply pipe to the water main and obtain any consents and legal permissions for that private supply pipe to cross third-party land. This is because the company does not have statutory powers to enter third party land for the purposes of laying a private supply pipe. Ultimately, it is a matter for the customer to resolve directly with his neighbour concerning the costs that he needs to pay for the relevant permissions and legal right for a pipe supplying his property to be laid across their land. There is no statutory obligation on the company to assist him further in these circumstances.

### **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.

The customer has made comments on the Preliminary Decision on 9 December 2021 which have been taken into account. The company has made no comments.

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### How was this decision reached?

1. The customer in effect makes two points, first that the company should not treat him differently from his neighbour (with whom the approach was first made to requisition the main) and secondly, that the company should agree to extend the main to his property. He asks for:
  - a. A valid reason for the company's decision not to lay the main to his property; and
  - b. For the company to lay the main.
2. The dispute between the parties lies within a framework of legal requirements, which I find an average customer would reasonably expect the company to observe. Although I have considerable sympathy for the customer's inability to obtain the benefit that his neighbour has negotiated, I do not find that an average customer would find that the company should provide the connection the customer asks for and I also find that the company has explained its position to the customer with reasonable clarity. I do not find that an average customer would expect the company to set out a further or different reason for its position. I set out my reasons for this conclusion below.
3. The evidence submitted by the parties and the Consumer Council for Water (CCWater) shows as follows:
  - On 15 October 2019 a joint application was received for 2 connections to two non-household properties belonging to the customer at (REDACTED) and his neighbour at (RECACTED) (now a third party referred to below as RECACTED).
  - On 14 November 20019, the company's Developer Services Team sent an estimate to both applicants and on 19 November 2019 a part payment was received from REDACTED. As this had previously been a joint application, REDACTED was unable to continue with the requisition.
  - REDACTED then contacted the company to say that he would go ahead without the customer as the customer no longer wanted the connection. REDACTED also said that he would use a further connection for their building, effectively serving two premises in total and confirmed that the REDACTED would pay the full costs of the water main requisition.
  - By two payments made on 19 November 2019 and 5 February 2020 all necessary funds to pay for the requisition were received from REDACTED and the work to lay the 63mm main was undertaken on 27 February 2020. This lies along a private track belonging to another

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landowner (LO) and all meters were installed. The company has said in correspondence that this was installed with the permission of LO and the use of statutory powers was not necessary, but the customer denies this and has said that statutory powers were certainly used. There is insufficient evidence either way for me to be able to resolve this dispute.

- On 20 March 2020, the customer made an application for one non-household 32mm supply. An email was sent from Developer Services to thank him for his application and to advise that an application fee of £78.93 was required before a quotation could be prepared. The company also asked what flow rate would be needed. Payment was made by the customer on 23 March 2020 and information was also given in an email stating the required flow rate. On the same day the company confirmed that the flow rate could be met by the supply.
- On 15 April 2020, the company provided a quote with a plan which showed the meter located, not on the private track, but on the original water main on the A21. The cost was £ 3,615.27. The company said that this was the nearest point where a water main would supply enough water for the required flows.
- On 27 April 2020, the customer asked for a re-quote to the 63mm main in the private track. An estimate was sent out on the same day. This was for £3,966.35 which included a land agent's fee. The customer has explained that he did not want to pay for a land agent because he believes that LO had always refused permission for laying a pipe in the private drive and the customer did not see the benefit of appointing a land agent to find this out.
- The customer repeated this request on 29 May 2020, advising that he would appoint his own land agent to negotiate with LO to grant permission to lay his supply pipe on the private land/track. A new estimate was provided on 1 June 2020 as an A Type connection at a cost of £472.42. This made clear that the customer would have needed to undertake all excavation works and obtain permissions from LO to lay and install his new service up to the equipment and the company would then complete the connection.
- On 15 August 2020- an email was received from the Consumer Council for Water (CCWater) requesting background information on the customer's case. There was initially some uncertainty about the nature of the enquiry and the supply address in question, but on 19 August 2020, an email was sent to CCWater stating that the company had not received a complaint from the customer.

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- In due course, CCWater was informed on 15 September 2020 that the company had provided the customer with the necessary quotes and that he was in the process of seeking permission from LO in order to lay his supply pipe. CCWater responded that day asking why the company would not extend the main further. The company emailed to give its reasons that day. The email also stated that the customer would be able to apply for a new connection to the existing extension which REDACTED had paid for.
- On 23 September 2020, CCWater asked the company to clarify to the customer the information that had been supplied to CCWater. The company contacted the customer who agreed to speak to the company's Developer Services team.
- On 10 March 2021 the customer called to request for the water main to be extended to feed his one non-household property.
- On 11 March 2021 an email was sent in response to the customer's request referring to the quotes with which he had been provided and setting out why the company thought it could not extend the water main. In response, the customer explained that he would not be able to get LO's permission to lay his private supply pipe.
- On 29 April 2021 CCWater asked if there had been further contact with the customer since September 2020. The call was not made (understandably) to the Developer Services team and the company inadvertently gave the wrong answer. Further communications took place between the company and CCWater as to whether a stage 2 complaint could be raised against the Developer Services team.
- On 1 July 2021, the company contacted the customer and explained its position, including that the company had no statutory powers to lay a private pipe and that a water main cannot supply a single premises. The company said that it would check again with Developer Services whether there was anything further that could be done regarding the customer's failure to obtain land entry consent to lay his private supply pipe and advising that it would be back in touch with the customer. On the same day, the company rang again and told the customer that the quotes he had received from Developer Services set out the only options available to him. The customer wanted to escalate this and the company agreed to inform CCWater of its final position. An email was sent that day.
- On 14 July 2021, CCWater asked to clarify if the company's last email to CCWater was the company's final position, and this was confirmed by the company on 21 July 2021.
- A WATRS application was then made.

### Reasons for refusal

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4. The plan submitted by the company shows that the new main leads up a long private road that divides towards REDACTED's property to the northwest west and towards (REDACTED) to the northeast of this point. It is now apparent that the owner of the private road will not give permission for a supply pipe to cross the private road and the customer says that this has been known, at least to him, for some considerable time.
5. When reasons were requested for why the company would not agree to extend the mains pipe following the customer's sole application in March 2020, the company said:

*There is a 63mm main, placed up the private track, which you can connect onto. Please let me be clear we will not be installing a further main up the track to serve your property as there is already an adequate size main there. We will not be laying a further main, as water quality will occur as excess portable water will not be utilised, remaining stagnant within our network and also the water industry does not warrant mains being extend nor laid for 1 to 2 new or existing dwellings. Please refer to the water industry act and also OFWAT website as further information will be provided around requisitioning a water main.*

6. The customer says that no valid reason has been given by the company for not extending the main because the company was prepared to extend the main for single premises when it laid the 63mm pipe in LO's private road for the benefit of REDACTED, which the customer says, is a single premises even if there are two connections. He also challenges the distinction drawn between a main and a supply pipe and says that in relation to REDACTED there has been a single pipe with a secondary spur off it. In his comments in reply to the company's response, he likens the application by REDACTED for a separate connection to REDACTED's outbuildings as akin to his asking for a separate connection to his outside lavatory and calling this a third connection. In his comments in reply to the Preliminary Decision, the customer also asks why he cannot have two connections on his land, but I find that the company has not been asked formally to consider or decide this.
7. The company on the other hand, refers to various provisions of the Water Industry Act 1991 (set out in its response). The combined effect of the sections referred to, I find, is that the company has a power given by the Act to lay a main on private land (which must supply two or more buildings to be classified as a water main) but does not have land entry powers to lay a private supply pipe. The company explains, and I agree, that this is because neither a private supply pipe nor the land belongs to the undertaker and it is a matter for the owner or occupier to

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negotiate the legal right for the supply pipe to cross any land in third-party ownership in order to make a connection to the nearest water main.

8. In answer to this, I note that the customer has not put forward any legal reasons to show that the company's interpretation of the legal rules is incorrect. In relation to his complaint about the distinction drawn between his property and his neighbour's and his suggestion that, as their situation is identical, he has been unfairly treated in comparison, I find as follows:

a. I note that the definition of "water main" in the Water Industry Act 1991 is:

*"water main" means (subject to subsection (2) below) any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker or water supply licensee for the purpose of making a general supply of water available to customers or potential customers of the undertaker or licensee, as distinct from for the purpose of providing a supply to particular customers*

b. I am satisfied that this shows that the company cannot use its powers to install water mains to benefit only the customer's property because the pipe, by definition, would not be a water main.

c. As for whether the company should have used its powers to benefit REDACTED's property, I do not have jurisdiction to decide this issue. I note that at a stage where the customer either did not want to proceed or was not in a position to do so, REDACTED put forward a proposal to the company that he could have two connections on his land, which would enable the company to install a main with associated statutory powers. Although the customer says that it was unreasonable for the company to regard the connection of two separate parts of the same plot of land as two separate supplies, this is not a matter that I can decide. Not only do I have insufficient information about the land use on REDACTED's plot and only basic information about any discussions between REDACTED and the company, REDACTED is not a party to this adjudication and, while I see that REDACTED's position is being referred to by the customer to highlight his own situation, the reasonableness of the company's decision in relation to a non-participant in the adjudication is a matter that is not within the scope of this Scheme. Moreover, I accept that the company would have been bound by questions of privacy and the General Data Protection Regulation not to have discussed REDACTED's position with the customer.

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- d. I bear in mind that in order for a customer's claim to succeed, the evidence must show that the company has fallen short of the service standard that would reasonably be expected of it. As, for the reason stated above, I cannot decide that the decision taken in respect of REDACTED was unduly favourable, it follows that I also cannot decide that the customer, who has not suggested that there are two connections at his property, has been unfavourably treated in comparison.
9. The customer also asks how the company could have come to the conclusion that he did not want the water pipe and says that he did want a connection and the company misled him by saying that he could ask them again when his financial position was improved. He says that this was a failure by the company to provide its services to the expected standard.
10. I note that there is no record of the conversation between the company and the customer in which he was, the customer says, advised that he would be able to have the main extended when he had raised the money. In correspondence with CCWater, the customer has complained that he had a conversation in which he was told that he could return to the company when his financial position had improved. I find that this report indicates both that the customer was not in a position to proceed with the joint supply at the point when it was prepared for REDACTED and that the company did not say, at that juncture, anything about whether a further main would be installed in the private drive, or a supply pipe attached to a main. I am not satisfied that the evidence shows that the company promised to extend the pipe and has now changed its mind, rather than merely shelving the problem of creating a connection to the mains supply until the customer was in a position to discuss the options further.
11. In relation to the company's other ground for refusing connection of a mains pipe, the company has also explained, I find, that it has carried out calculations as to the likely water usage from a main pipe supplying a single property and has determined that this would lead to stagnation of water in a mains pipe, which it regards as a danger to the water supply for local residents generally. A private supply pipe contains less water and there would be no risk of contamination of the mains supply.
12. I find that there is no available evidence to show that this concern expressed by the company and which the documentation shows it also took into account in reaching its decision, was wrong.

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13. It therefore follows from the above that I find that the evidence does not show that the company failed to make its decision on an appropriate basis and nor does the evidence show that the company has failed to give reasons for its decision to the customer.

Installing the requested main

14. It follows from my reasons above that the company has reached a view that it has no power to install a mains pipe in the private drive and also cannot install a connection for a supply pipe unless the customer or a land agent can obtain the consent of the owner of the drive. As the customer says that this will not be forthcoming, the company has also offered an alternative connection to the mains pipe at the A21.

15. I find, for the reasons set out above, the customer has not shown that the decision not to extend the main was made in error: there is no evidence that the company was wrong in law, and there is no evidence that the company has incorrectly categorized the customer's premises as non-household rather than household.

16. As stated above, I find that an average customer would reasonably expect the company to obey legal rules, and therefore I find that the customer has not shown that in refusing to lay an extension to the main, the company has acted otherwise than in accordance with expected standards.

17. It follows from the above that, because I have found that the company has supplied its services to a correct standard, the customer is not able to succeed in its claim for the remedies he wants. The company does not need to take further action.

**Outcome**

The company does not need to take further action.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by [date] 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.

*Claire Andrews*

**Claire Andrews, Barrister, FCI Arb.**

**Adjudicator**

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