

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X098

Date of Final Decision: 15 September 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer complains that his property was severely affected by a leak on neighbouring land. He says that the company has been unhelpful because it served a section 75 Notice on him when he could not obtain access to the leak, which was under his neighbour's new driveway. The work has now been carried out and he alone has been asked to meet a £936.62 bill. He asks for payment of this amount.

#### Response

The company says the pipe in question was a shared private pipe. A Notice under section 75 of the Water Industry Act 1991 was served on all four properties served by the pipe, but, as the leak was found to be downstream of the neighbour's supply, the customer was the sole person served by the pipe and therefore liable under the "downstream rule".

#### Findings

I find that the pipe in question was, upstream, a shared private pipe. As at the point of the leak, his property was the only one served by the pipe, the customer was liable for the cost of the repairs, but the other residents were not affected by the leak. However, the correspondence of the company gave the impression at first that the repairs would be a joint cost for all the properties served by the pipe and then that the cost would be shared by the customer and his neighbour, I find therefore that the customer was subjected to "bill shock". The company also wrongly said that the Council was liable for the cost. These matters fell below the standard of service that would reasonably be expected and the customer should be compensated in the sum of £80.00 as, assuming the bill has not been paid, a credit towards the cost of the works.

#### Outcome

The company needs to credit the customer's account with the sum of £80.00. Unless the customer has paid the company's invoice of 2 September 2021 for £936.62, the payment shall be made into the account opened in respect of that invoice. If the customer has already paid that invoice, the credit shall be made to the customer's usual account.

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# ADJUDICATOR'S FINAL DECISION

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## Case Outline

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

- The customer complains about a leaking communal water pipe. The issue arose on 2 June 2021 when the customer was renovating his porch. He said that his front garden was found to be flooded due to an existing leak that had not originated in his front garden but somewhere in his neighbour's garden, under a newly laid drive that the neighbour would not permit to be dug up.
- The customer complains that the company was not accommodating and did not assist. The company issued a 14-day warning letter to get works completed otherwise the company would undertake the work. The customer says that although the leak was not within his boundary, and he could not get his neighbour to cooperate, the company has taken the position that, as his property is fed by the leaking pipework, he is still responsible for the repair.
- Ultimately, the company repaired the pipework and sent the customer an invoice for £936.62, which the customer regards as unfair and unreasonable.
- The customer wishes to be reimbursed with this cost and he challenges the outcome of the Preliminary Decision.

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

- The customer contacted the company in July 2021 to report that he had noticed a leak on his copper service pipe whilst building a front porch. The company made it clear to the customer that, as the leak was found on his service, this was a private leak for which the company was not responsible. The company attended the customer's property on 3 July 2021 and an engineer confirmed that the leak was near to the customer's branch tap, which is private.

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The engineer who attended noted that the customer confirmed that he would speak to a plumber to get the leak repaired.

- The company received another report from the customer stating that the leak was causing damage, so another visit was arranged and, following this, the company issued all properties on the shared supply pipe with a Section 75 letter.
- In late July 2021, the customer contacted the company again to report that he was unable to locate the leak and he wanted the company to attend and do something immediately. At this stage, the company confirmed that it was unable to attend until the Section 75 notice got to the enforcement stage.
- Following this, the company sent a Statutory Notice that detailed that if no repair was completed within seven days the company would attend and carry out the work under Section 75(9) of the Act. The customer contacted the company and asked about when the enforced repair would take place.
- In August 2021, the company sent out a Notice of Intention to carry out the repair. The repair was carried out at the end of August 2021 by a contractor. The recharge letter was sent on 2 September 2021.
- Following the recharge letter, the customer was advised that the section of the pipe that was repaired only served his property. Therefore, the customer is liable to pay the costs of the repair.

### 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.

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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.

I confirm also that in respect of the Final Decision I have taken into account the comments made by the customer on the online platform in respect of the Preliminary Decision. I have not, however, reached a different conclusion and therefore there are only a few modifications of the Preliminary Decision as set out below.

### How was this decision reached?

1. I am mindful that the rules of the WATRS Scheme state at rule 3.5 that the Scheme cannot be used to adjudicate disputes that concern regulatory enforcement. This means, I find, that I cannot consider a dispute about the applicability of statutory powers or the company's right to claim from the customer the costs associated with the work that was done.
2. I can, however, consider the company's customer service, which includes the willingness of the company to engage with the concerns of the customer (about which he complains), and the company's response to the issues raised. In doing so, I am mindful that adjudication is an evidence-based process, and I cannot find in favour of a party if this is not reinforced by supporting evidence or inferences that can reasonably be drawn from the evidence or circumstances.
3. The customer lives at REDACTED.
4. The company has submitted evidence from its internal records about the supply of water to that property. This shows that:
  - a. On 1 July 2021, the customer called the company to report that he had found a leaking copper pipe near his porch. The company advised him that there was an old branch tap on a private pipe, with one tap outside REDACTED and another at the sides of the flats at REDACTED. The company said that it had checked these on a video call and the customer was advised how to operate them. The company records that a Google image from 2012 also showed an external stop tap clearly outside the entrance to REDACTED, although a paving slab may have been placed over this as it was not visible over the

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- video. The entry in the account notes stated that the customer would try to carry out a live repair as the water was not gushing.
- b. On 2 July 2021, the customer advised that the external stop tap was leaking at medium pace into his driveway. He explained to company that he had switched off the external stop tap as he was worried about damage in the driveway and on the pavement.
  - c. On 3 July 2021, the company visited the customer's property and found that a leak was visible close to the branch tap. The company explained to the customer that this was a private issue rather than one for the company and the customer said that he would get his plumber to repair it. No further action by the company was recorded as necessary at that point.
  - d. On 5 July 2021, the customer called again saying that the leak is from the neighbouring property not his own and he wanted somebody to come to confirm this as it was damaging his wall. The note states "customer is being very awkward, raised as P1, this leak will need a section 75 raising to get the leak repaired privately".
  - e. On 7 July 2021 the customer was sent a letter stating that a leak had been detected on the shared private water supply pipe to numbers REDACTED and company's responsibility ended at the main external stop tap. The pipe was therefore a private pipe even if it were to run under third party land. The customer was referred to a website about this issue. The letter said that this meant that he and his neighbours were responsible for the repair and it would be for them jointly to find and fix the leak. The company said that it was not aware of exactly where the leak was located.
  - f. An appointment for the job was made for 12 July 2021. An account note dated 12 July 2021 timed at 12.26 said that "a section 75" was already raised for properties REDACTED and that water was showing in number 5's front garden but the leak was not there. I find that this indicated the company's understanding that the leak was on neighbouring land.
  - g. On 23 July 2021, the customer said that he was still waiting for the company's call because he could not find the leak. He said he would like the company to come and do something as all the water was entering his front yard because his house was at the end and lower than the other properties. He said "I can't even enter my house through the front door. So please do something immediately." I find that this was some evidence that the company would have been able to realise that the customer was the last house on the shared pipe and therefore, under the downstream rule, might have to bear all the responsibility.

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- h. On the same day, the company responded to the customer to say that it could not attend until its procedures were in the enforcement stage, which was some time away, and that the customer should contact the Council as it was they who should be attending to repair the leak.
- i. On 26 July 2021, the company recorded that no confirmation had been received from the customer or any of his neighbours that the repair work had been completed. The company said that if the work was not taken undertaken within seven days it had the right to carry out the work itself.
- j. On 29 July 2021, the customer called to see when the company would attend and was advised that the earliest would be 15 August 2021 as the company had to give everyone on the supply the opportunity to repair it.
- k. On 8 August 2021, the company wrote again to the customer stating that it now had the power to carry out necessary repairs and to recover any costs. The notice stated: "as this is a shared water supply pipe, those who are downstream from where the leak is located will also be responsible for the repair costs".
- l. On 2 September 2021, the company wrote to the customer explaining that it had sent the customer an invoice for the work carried out and also telling him that it would set up a separate account for this bill and that it was possible to set up some flexible payment. The invoice was for a total sum of £936.62.
- m. On 13 September 2021, the customer wrote stating that the pipe was not a private pipe but a communication pipe. He said the whole communication pipe was rusted and in need of immediate replacement. He said as it was not within his boundary and therefore not a private pipe, section 75 did not apply. He also complained about impurity in the water due to rust in the pipe and said that the family had been left in a dangerous situation while the work was carried out because a makeshift bridge had to be constructed to cross over his flooded front garden.
- n. Following further communications, including with the Consumer Council for Water (CCWater), the company wrote again on 6 October 2021, pointing out that when the section 75 notice was served the customer had asked when the enforced repair would be carried out. The company said that the charges were correct and payable because the leak was on a section of pipe that feeds only the customers property.
- o. On 5 January 2022, CCWater wrote to the company on the customer's behalf.
- p. The company replied on 14 January 2022. It acknowledged that it could have provided further information in relation to the charges and added further details. The company explained that it had found a total of three leaks on the supply pipe but that, as the

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customer was the only property fed by the supply pipe, it was the customer who was solely responsible for the costs. The company stated that “the easiest and simplest way to explain the downstream rule is, if we were to cap the pipe to stop the leak, you wouldn't receive a water supply. As there were no other properties fed by the stretch of pipe, no one else was issued an invoice.” The company said that it was still a customer's responsibility to repair the pipe, but he could have asked his insurers to make the relevant arrangements to complete the repair.

q. The customer replied, again stating that his neighbour had not permitted him to do the work. He said he could not have changed the portion of pipe that was in the adjacent property because he did not have permission from the neighbours.

5. I am mindful that section 75 of the Water Industry Act 1991 permits a water undertaker that has reason to believe (among other matters) (1) that damage to property is being caused by a defect in a water supply to those premises or (2) that water that is being supplied is likely to be wasted, to serve notice on those premises requiring the situation to be brought to an end. As a substantial quantity of water was being lost and this was causing damage in the customer's garden and to his wall, and as also I am mindful that water companies are required by Ofwat to reduce leakage, I find that the company would reasonably have been expected to serve such a notice. At the time when the notice was served, there was no indication that the situation would be brought to an end in any other way. This finding is consistent with the correspondence of the company dated 7 July 2021.

6. Although the customer says that the pipe in question was a connection pipe, there is no evidence of this: the company has investigated and found that the pipe in question was a shared private pipe, having continued across a number of properties. However, as the company has explained, and again there is no evidence to the contrary, the leak occurred at a point when only the customer's property was benefiting from the water supplied. As the company undertook the repair, I find that it is likely to be correct about the location of the leak.

7. I also find that only the customer was liable for the cost of the repairs, because following the point at which the supply also served his neighbour, the pipe was his private supply pipe alone. However, I also find that this situation was not explained clearly by the company in its correspondence. In the letter of 7 July 2021, the company said:

*As this is a leak on pipe work you and your neighbours are responsible for it will be*

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*your responsibility to jointly find and fix the leak.*

*We don't know exactly where the leak is on the supply which is why everyone needs to work together.*

8. This gives a clear indication that all of the residents of the four properties sharing the pipe would be responsible for fixing the problem, including paying for it. There is no reference in that letter to the “downstream rule”. This remained the case when section 75 Notice was served. The same four properties were referenced but no indication was given that only the downstream properties would bear the cost of any works. I find that these two letters were therefore somewhat misleading. The first time that the downstream rule was mentioned was in the letter dated 8 August 2021. This stated:

*As this is a shared water supply pipe, those who are downstream from where the leak is located will also be responsible for the repair costs.*

9. This is also misleading, because it did not dispel the idea that it was relevant that the leak was on another’s property – rather it suggested that the bill would be shared. The true position, however, was that *only* those who were downstream would bear responsibility for the costs.

10. Until that point, the customer had been keen for the works to take place. He does not state that this information caused him to complain of unfairness, but it is notable that whereas he had previously been keen for the company to complete the work, from this point he considered that it was unfair that he was being asked to pay the cost of repairs when he could not access the location of the leak under his neighbour’s drive.

11. While I have considerable sympathy for the position of the customer and I have taken into account the challenge that he raises to the outcome of my Preliminary Decision on the grounds that he has been unfairly treated in that he was not allowed by his neighbour to carry out the work himself, and therefore had to permit the company to carry out the work, I am satisfied that he would have borne the responsibility for paying for and repairing the pipework, even he had been able to persuade his neighbour to let him excavate their driveway. The difference for the customer is therefore between any costs that he would have had to pay directly to contractors if he had done the work privately and the costs re-charged by the company which it had to pay to its contractors. There is no evidence that there would have been any significant difference between those costs.

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12. However, I do find that there was an element of “bill shock” because the company did not explain the downstream rule. I also find that the email of 23 July 2021 may have been misleading because there is no evidence that these properties were in Council ownership and no reason, therefore, why the customer should have been told that the Council would be liable for the bill. I find that in respect of these matters, the company has failed to supply its services to the expected standard. As, however, I find that it would not have made any difference to the situation because the customer could not undertake the works without his neighbour’s permission, I find that any compensation for the company’s failure to meet expected standards must be modest.

13. Taking into account that I find that there were four items of correspondence that fell short of expected standards, I find that a fair and reasonable sum by way of compensation is £80.00. I therefore find that it is fair and reasonable to direct that the company should credit the account opened by the company for repayment of the repair costs with the sum of £80.00. If the customer has already paid the amount, the credit should be made to his ordinary water account.

#### **Outcome**

The company needs to credit the customer’s account with the sum of £80.00. Unless the customer has paid the company’s invoice of 2 September 2021 for £936.62, the payment shall be made into the account opened in respect of that invoice. If the customer has already paid that invoice, the credit shall be made to the customer’s usual account.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on 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.

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- 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*

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

**Adjudicator**

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