

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X400

Date of Final Decision: 4 April 2023

Party Details

Customer: XX

Company: XX

Complaint

The customer says that the company is responsible for the pipe under the street beside the Property.

She requests that the company accepts responsibility for the pipe.

Response

The company says that the pipe is a shared private supply pipe.

No offer of settlement has been made.

Findings

The evidence produced by the parties is most consistent with a conclusion that the pipe is a private supply pipe.

Outcome

The company does not need to take any further action.

The customer must reply by 5 May 2023 to accept or reject this decision.

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Case Outline

The customer's complaint is that:

- In March/April 2022, the customer's neighbours contacted the company to address a water leak in the pipe running under **XX**
- The company denied responsibility for the pipe, stating that it was a private supply pipe, and served an order on the customer's neighbours to have the pipe repaired.
- The customer's grandparents bought the land for the Property in 1923, building the house, and they never had to pay for any work performed on the pipe beyond the Property's stopcock.
- She requests that the company accept responsibility for the pipe under **XX**

The company's response is that:

- In most cases the company is responsible for the water mains and for the pipe from the mains until it reaches the boundary of a customer's property.
- Most properties have an underground stopcock at or near the boundary, so the company's responsibility ends at the stopcock.
- Under Section 46 of the Water Industry Act 1991, the company is responsible for pipe up to the boundary of the street in which the water main is laid or the stop tap is located.
- If a water main does not run under a street, the company's responsibility ends at the boundary of the street in which the water main is located, or at the relevant stop tap.
- Ofwat guidance supports this position.
- In the present case, the company's responsibility ends at the stop taps at the boundary of **XX**.

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 dispute between the parties concerns whether the pipe running under **XX** is a communication pipe, as argued by the customer, or a private supply pipe, as argued by the company. If it is a communication pipe, then the company is obligated to ensure it functions effectively, including performing repairs. If it is a supply pipe, then these obligations are shared by all property owners served by the pipe.
2. An important question for addressing this issue is whether or not **XX** constitutes a "highway". This is because only a pipe passing under a highway can be classified as a communication pipe. In this respect, a communication pipe differs from a water mains, which certainly may also pass under a highway, but may also pass under private land that is not traversed by a road.
3. Whether or not a road constitutes a highway is not determined by whether it is on private or public land, or whether the road has been adopted by a highway authority. It is a function of the land's accessibility to the general public. In short, a highway is a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not because they have been given permission by the landowner.
4. No evidence has been presented that indicates that **XX** has in any way been blocked to public use, and so I find on the basis of the available evidence that **XX** constitutes a "highway".

5. Nonetheless, a finding that **XX** is a highway does not resolve the question at issue in this dispute, as although a communication pipe must pass under a highway, a private supply pipe may do so as well. Indeed, this is unsurprising given that a highway may be a private road.
6. In its submissions, the company has highlighted Article 46 of the Water Industry Act 1991, arguing that it provides the applicable rule for ownership of pipe. However, Article 46 only provides guidance on how a particular situation should be approached, and does not provide the general rule suggested by the company. Indeed, the Water Industry Act 1991 does not at any point provide such a generally applicable rule, arguably reflecting the complex history of pipe ownership and responsibility in **XX**. As a result, responsibility for a water pipe is a factual question, rather than one that is directly resolved by the Water Industry Act 1991.
7. In her submissions, the customer has highlighted that documents from 1923 relating to the sale of property alongside **XX** stated that “Water and Gas are available and it is expected that Electricity will be laid on shortly”. She argues that this shows that “the pipes were therefore the responsibility of the water authority before the plots were even sold.” However, while this is an accurate quotation from the documents, which were supplied by the customer alongside her comments on the Preliminary Decision in this case, that statement does not entail that the water in question was being supplied through pipes owned by the water company of the time. It merely notes that a water pipe is available, as would also be true if a private supply pipe had been installed.
8. The customer has also highlighted a document from 1924 with handwritten notes that appear (the writing is not perfectly clear) to support a conclusion that the pipes under **XX** were supplied and laid by the water company of that time. However, while that document provides some support for the customer’s position, it cannot be determinative, as the water company would have possessed both the supplies and expertise necessary to lay a supply pipe, and the document does not confirm whether the work in question was done on behalf of the property owners in exchange for payment, as a goodwill gesture, or as a responsibility of the water company of the time. Only in this latter case would the fact that the water company of the time supplied and laid the pipe be evidence of the present water company’s responsibility for the pipe.
9. In her comments on the Preliminary Decision in this case, the customer argued that “It does appear from this documentation that a charge of £40 was made for supply to bath and WC (£20 each). At the time the houses [were] being built they were required to cost a minimum of £400.



This would make the cost of the laying the water supply pipes 10% of the cost for building the house, it seems to me unlikely that such a significant charge would have been made if the water authority was only acting in a building/plumbing capacity and not accepting responsibility for mains supply.” However, while with further evidence relating to costs and customs of the time this might form part of an argument sufficient to support the customer’s claim, on its own it is only an invitation to the kind of speculation that cannot properly form the basis of an adjudicator’s decision.

10. The customer also emphasises her recollection of her family’s and their neighbour’s view of responsibility for the pipe, namely that they did not regard it as something with which they could interfere, and that they saw problems with the pipe as something to report to the water company of the relevant time. However, no evidence has been produced of these views other than the customer’s own stated recollections, which consist of general impressions rather than specific events or statements that can be verified by independent evidence. Similarly, no evidence has been provided of work that was undertaken by a water company in circumstances best explained by that company recognising a responsibility for the pipe.
11. Ultimately, I find most persuasive that the evidence produced by the parties shows the development of **XX** and the properties alongside it as having been a private development, as indicated by the property owners retaining responsibility for maintenance of the road. Given the lack of reliable direct evidence supporting a conclusion that the water company that installed the pipe under **XX** did so because it recognised a responsibility to do so, or that a water company subsequently accepted responsibility for the pipe that had previously been a private supply pipe, or even clear evidence that actions were taken by a water company that are most reasonably explained by that company acting from an acknowledgement of responsibility for the pipe, I must conclude that the pipe under **XX** more likely than not was originally laid as a private supply pipe, and has remained so.
12. The preceding being said, it is often the case when historical documentation is central to a dispute that new evidence subsequently becomes available, and it is certainly possible that additional historical evidence may later be found that supports a conclusion that the pipe under **XX** is a communication pipe, rather than a private supply pipe. However, the present decision must be made on the basis of the evidence presently available, rather than on the basis of speculation by the adjudicator.
13. For the reasons given above, the customer’s claim does not succeed, as I find that the company has provided its services to the customer to the standard to be reasonably expected by the

average person in its determinations regarding ownership of the pipe and responsibility for repairs to the pipe.

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 5 May 2023 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 FCI Arb

Adjudicator