

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X344

Date of Final Decision: 3 April 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

The customer complains that she was given incorrect information about the presence of lead in her domestic pipework having requested replacement of lead pipes and expressed the view that her pipework may contain lead. She says that the company omitted to carry out a survey and in consequence undertook replacement of the pipes in the road, which turned out to be made of copper and not lead and caused her unnecessarily to change the pipes of her home where, although some lead pipes were visible, these had been disconnected. The customer claims £1,194.00 paid unnecessarily to her plumber and £1,000.00 for inconvenience and distress, totalling £2,194.00.

#### Response

The company says that it is not responsible for this claim. The customer advised that her pipework tested positive for lead and the company carried out a survey without going to the customer's home, which was not necessary. Although the pipework in the road was made of copper, this could not have been known without digging up the pipes because the customer had said that lead could be found in her water. The company is not responsible for replacing a customer's pipework.

#### Findings

The customer's claim succeeds in part. The company has not taken responsibility for replacement of the customer's pipework. Although the company's correspondence said that the company would carry out a survey for lead at her home, the customer had given the company the impression that lead was present. While I find that some form of survey was undertaken by the company, the customer was aware that no surveyor had come to her property on the day promised. I am not satisfied that the evidence supports that a decision to replace the pipework could reasonably have been based on a belief expressed in a survey report by the company that her pipework was made of lead. However, the company had supplied misleading correspondence about its intention that a surveyor would attend inside her home and gave an incorrect impression about the efficacy of the survey undertaken. This fell below expected standards and

the customer should be compensated in a small sum. A credit of £50.00 is fair and reasonable compensation for these matters.

**Outcome**

The company needs to credit the customer's account with £50.00.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X405

Date of Final Decision: 3 April 2023

## Case Outline

### The customer's complaint is that:

- The customer has spent over £1,000.00 on replacing lead pipework within her property boundary, and the company has dug up the road causing very major disruption to her and to her neighbours. It has been discovered that there was no lead pipework.
- In February, the customer reported to the company that she had found suspected lead piping in her home. She provided photographs of lead pipes within her house but explained in her initial call that she was unsure whether these were old, disconnected pipes or part of the existing supply. Because she had concrete floors, it was impossible to tell from inside the property whether the pipes were connected or not. She had asked for advice from two different plumbers but they also could not tell.
- After many failed attempts she was told that an engineer had been around to assess the property. Although the company says that the visit was undertaken on 23 March 2022 the customer disputes this because she says she had kitchen fitters working in her property and front garden, with the patio doors open all day. There is full view of the road from there. The customer also says that she worked from home because she wanted to speak to the person doing the survey to find out if they could look at the inside too (she was mis-advised on her first call to **XX** 8 February 2022 because she was told that the company would both survey the inside and would quote for this work too). The customer says that she is "very confident" that no one attended the property that day.
- A few days later the customer received an email with attachment to confirm that the company had greenlit 'lead renewal' works to commence on her street and the customer was told that it was her responsibility to arrange the work within her property boundary.
- The customer found a company and paid them £1,100.00 to dig a new pipe through the front garden. This company asked to see the paperwork from the company before agreeing to the job. They did not disturb the existing pipework because they dug through the garden in a slightly different place for logistical reasons. The company put up temporary traffic lights on the main road, causing all neighbours to park a long way from their houses for a number of days, and on 18 May 2022 it dug up the road. The workman then told her that the piping was copper and showed her this.
- The customer informed the company immediately, but it still authorised the second stage of the work. When this was completed on 10 July 2022 the second contractor confirmed the same – the pipes were copper. The customer took photos to demonstrate this.

- When a plumber came to connect the new supply in the customer's property, he had to smash through a wall to find the stop tap / connection - and advised that the lead piping she found was no longer connected to her water supply, and there was no lead connected. So the private work also did not need doing.
- When she complained to the company, it said that it had taken the customer's word that she had lead piping because her email stated that her water had tested positive for lead and she completed the lead replacement application form, but the customer says that she did not say there was lead, only that she suspected the presence of lead pipework.
- Although the company says that it is not responsible for the customer's own pipework and that it did in fact find lead piping on its assets so got this replaced free of charge, the customer feels that she was misled into believing that there was lead piping on the private line following the company's lead replacement confirmation.
- The customer raised a complaint but does not believe that the company has addressed this and it has made up untruths. No plumber confirmed the presence of lead piping within the customer's property, and she denies that it would have been possible for the company's contractor to have seen lead in her home. The customer says that the 'confirmation' of lead piping came from the company which said that there was lead piping in the road, and therefore it must be in her home.
- The customer asks for compensation by way of reimbursement of £1,194.00 paid to the plumber and £1,000.00 for inconvenience and distress, totalling £2,194.00. The customer said that her request for £1,000.00 compensation has nothing to do with disruption on the road. It is because the customer had to halt a renovation project while the company took months to lay new pipework (which as discussed was not needed). The result was that the customer could not lay flooring until works were complete, and she and her four-year-old lived for months with a cold, dusty concrete ground floor of the house. Furthermore, due to inflation on building materials, when the customer eventually ordered the floor, her builders told her that the cost was around £1,000.00 more than they had expected. Lastly, the stress of the whole thing was really acute because the company missed their self-imposed deadlines and caused her to miss work / rearrange work on multiple occasions, only for the company not to attend.

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

- The company has committed to replacing historical lead pipework on its clean water network in affected areas across **XX**. As part of the Scheme, domestic customers are entitled to apply for replacement of any lead pipework serving their property, free of charge. It is the responsibility of the customer to tell the company if they have lead pipes and whether the water supplies their property through lead pipework. It is not for the company to identify this. A customer can qualify for lead replacement if the company finds lead present or the provide evidence of lead. The company will then replace any lead pipework laid in the highway up to the customer's property boundary. The customer is responsible for replacing any lead pipework within the property boundary.
- The customer requested a lead renewal application form on 8 February 2022 and on 9 February 2022, the company wrote to the customer to acknowledge her completed application. As part of the application, the customer provided photographs of the lead pipework that she believed served

the property. The customer also mentioned in the email with the application form that she had lead present in her supply.

- The company then carried out a survey on 23 March 2022. The company did not require access to the property in order to carry out the survey, as this took place outside. It was not necessary for the company to inspect any internal pipework as part of the Scheme because the customer had provided evidence of lead.
- The plans and accompanying letter confirming terms and conditions were sent to the customer on 8 April 2022. This letter confirmed that the company was happy to replace the lead pipes that formed part of its network however, the customer was responsible for replacing any lead pipes within the property boundary.
- The work to begin the lead renewal were initially planned for 16-18 May 2022, pending approval from **XX** as a permit was required to carry out the works. On 12 May 2022, the company contacted the customer to inform her that the permit had been granted by the Council and the works would be going ahead as planned. The first half of the works were completed on 18 May 2022, and the second half of the works were planned for 23 May 2022.
- On 23 May 2022, the works could not go ahead as there were cars parked in the area where the works were to take place. The works were therefore rescheduled and completed on 10 July 2022.
- The company initially said that the pipes in the highway were lead and they were replaced by the company as requested by the customer in her application. In response to the customer's comments, however, the company has explained that having investigated further, it appears that the pipe in the highway was copper. The company's service partners could not have identified the material of the pipework was without digging in the highway to reveal this. Although the company has no commitment to replace copper pipework, the decision was taken to replace the pipework with new blue MDPE pipework as this is an improvement on the network.
- The company argues that although the company's opinion was that lead pipework in the highway needed to be replaced, even if this had already happened, the customer would have been responsible for the replacement of any lead pipework on her private supply.
- In respect of the claim for inconvenience, the company has not been provided with any evidence that proves any losses that the customer suffered as a result of the works undertaken in the highway. The customer herself applied for these works to be done and the letter at Appendix 2 explains that roads may need to be closed to undertake the works.
- The company also notes that the customer says that she planned to lay new floor in February 2022, but she did not make the application for the lead renewal scheme until 8 February 2022. The company has seen no evidence that the flooring costs have any connection to the works that the company completed in the highway.

### 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.

Both the company and the customer have responded to my Preliminary Decision, and I have taken their submissions into account in reaching my Final Decision, even though the outcome of the Final Decision is the same as that of the Preliminary Decision.

### **How was this decision reached?**

1. The company has explained that it is responsible for the replacement of lead pipework in its network, including the supply pipes up to the boundary of a customer's property. It says that where a property has lead pipework, this is an indication that there may be lead in the company's assets, although this is not so on every occasion. However, the company makes clear that the trigger for action to be taken by the company is notification by a customer that they have lead piping in their water supply.
2. There is little supporting documentation in this case from either side although explanations have been given to the Consumer Council for Water (CCWater). Although the file initially uploaded by CCWater related incorrectly to another issue, the correct file was replaced on the PEGA dispute resolution platform on 20 March 2023. As the parties had both engaged with CCWater before application to this Scheme, I find that the contents of the file documents will be known to them and I have proceeded with this Preliminary Decision.
3. I find that such documentation as is available shows:
  - a. That the customer initiated the process for replacement lead piping. Neither party has submitted the application form or covering email, but the customer agrees that she submitted photographs of lead piping in her home to the company and says she told the company that the status of these was suspected lead. The company says that the

customer advised the company that she had had the water tested and that there was lead present within it and she expected that this could have been a contributing factor to some health issues. The company says that as the customer had advised that the water had been tested and that lead was present, the company sent out a lead renewal pack for her to look in to. The customer has elaborated on this issue in her replies to the Preliminary Decision. She says that in her first telephone call to the company, she was told that she had two options. The company said that it could send someone out to test the water and see whether lead was present in her pipes, or to check the piping. The customer says that she then used a fish tank testing stick and it seemed to show a small amount of lead in the water. She mentioned this in the covering email for her application form. Later on, when the company was taking a long time to action anything and was not responding to multiple emails, the customer did start to worry about her health and express that to the company. I therefore find that the customer is likely to have caused the company to believe that her water had tested positive for lead and that it had made her ill. I find that these statements were likely to have confirmed to the company that replacement of its pipework was necessary in case this was responsible for the presence of lead, even though some of these communications may have occurred after the correspondence referred to below.

- b. I note that, having received the customer's application, the company wrote to the customer on 9 February 2022 (emphasis added):

*Thanks for your application for a lead pipe replacement at XX*

*We'll now arrange **for our service partner to visit your property so we can check your piping**. They'll be in touch with you soon to schedule the survey on a date that works best for you. We aim to complete this survey within 28 days, starting the day after we received your full application.*

*Before our surveyor arrives, please make sure you uncover a section of pipework at your property so they can easily access and check your pipes. If you're not sure where or how to expose your pipework, we recommend using a professional plumber.*

*Once the survey's done, we'll get back to you with our assessment and next steps for ordering the work. Please wait until we've finished the survey before you replace any private pipework.*

*We'll aim to replace the lead piping on our side of the boundary within 28 days of your work order but, just so you know, it could take up to 3 months if we find we need to close the road.*

I find that this letter gave a clear impression that the company would send a technician, not merely to look at the conditions in the road, but also inside the customer's home. On

the other hand, the enclosed FAQs said that the customer was required to ensure that the customer's supply pipe was.

- laid in the correct location agreed with the company's surveyor
- laid at the correct depth of 750mm (2' 6")
- fitted with a stop tap after entry into the property
- taped or capped off at both ends to prevent contamination entering the pipe
- compatible with the proposed size of pipe being replaced by us

It follows, I find, that the purpose of the survey was to see whether the company would be prepared to take action to replace its pipes, but as the letter said that a survey would take place inside the customer's home and the company now states that this was not necessary, I find that the letter was confusing and misleading. .

- c. The customer then made a chasing call on 7 March 2022 and was told that she would shortly receive a call from **XX** to advise of the survey date. The customer contacted the company again on 11 March 2022. The company has explained in correspondence that the following telephone call occurred between the customer and a member of the company's staff:

*Customer has had work done and had her kitchen refitted cannot complete as concrete floor needs to come up for lead pipe replacement. I advised I would contact **XX** and see if they could do anything, but this was a relatively new application. **XX** who was very helpful who said she will chase her.*

The survey was then booked for 23 March 2022 and the customer was informed.

- d. On 24 March 2022, the customer contacted the company again. The company's records of this call state:

***XX** called to advise the surveyor didn't come out to do the survey yesterday as she waited in all day - I advised looking from the notes the surveyor did come and he went of knocked on the door as he doesn't need to come inside - **XX** advised she though he was coming to price the job up inside as well i advised we do not do work on private land and she will need to contact a plumber for this - Give the customer water safes number.*

- e. On 29 March 2022, the customer complained that it was not possible to coordinate her builder with the company's and she complained. She wanted to escalate her concerns.

- f. The company's letter of 8 April 2022 stated (emphasis added):



*Just to update you, **we've surveyed the piping at your property** and we're happy to replace any lead pipes on our side of the boundary for free. This covers pipework from the public water main in your street up to the boundary where the street meets your property. We need to remind you that you're responsible for replacing the lead supply pipe that's laid within the boundary of your property. On the back of this letter, you'll find information and advice about what work you need to do before we arrive*

This letter also indicates that the survey took place inside the customer's home, whereas the company acknowledges that this was not thought necessary. This again was confusing and misleading.

- g. It is now common ground that the company did not find there to be lead pipework under the road.

4. In respect of the customer's complaints, my findings are as follows:

- a. I am mindful that adjudication is an evidence-based process and that, in order for a party to be able to succeed in their claim, the evidence, taken as a whole, must support that position. The customer therefore cannot succeed in showing that the company did not supply its services to the expected standard unless the evidence supports this.
- b. I find that as a matter of policy the company does not make changes to pipework within its assets on the grounds that it might be composed of lead unless an application is made by a customer indicating that they are or might be affected by lead. If satisfied as to the presence of lead, the company will then replace the lead in its assets but does not renew the pipework of the customer.
- c. Although the customer says that she was told that the company's contractor would carry out the change of pipework in her private property, I find that this was a misunderstanding on either the part of the company or of a member of the company's staff, but it was corrected at the latest on 24 March 2022.
- d. The customer submitted an application on 8 February 2022. This was an application for replacement of lead pipework and, unless the position was clear that there was no lead pipework, the company would reasonably be expected to understand that the customer's water supply was affected by lead. Although the customer says that this "might" have been the case in relation to her pipes, it is agreed that she had sent images of lead pipes and the company disclosed prior to my Preliminary Decision that her covering email said that

tests showed the presence of lead and referred to health detriments. The customer has now confirmed that she told the company that she had a positive, home completed test for lead and that she later mentioned harm to her health. As indicated above, I find that the overall impression given by the customer was that her water supply was testing positive for lead.

- e. The company's response to the application was, I find, to send two items of correspondence that were misleading. In the wording that I have highlighted above, the customer was given the impression that any survey to be carried out by the company would include accessing her home. Although the company says that this was not necessary, this was not made clear to the customer. I find that an average customer would not expect the company's correspondence to be misleading about the steps that the company would take, and therefore in this respect the company fell short of expected standards.
- f. It does not follow, however, that any such survey would be for the purpose of assessing the composition of the customer's pipes. Those were two separate issues, although a positive water test might suggest the presence of a lead supply pipe, especially if the customer did not have lead pipes. Although the customer says that she was always under the impression that there would be a survey conducted to assess the pipework and that this survey would confirm whether the supply was lead or otherwise and that the outcome of this "pretend" survey was the reason she had her pipework replaced, I do not find that the company has stated that it would undertake responsibility for advising the customer as to whether there was lead in her private pipework. I find that the company's documentation overall makes clear (and the customer understood) that she was responsible for replacing her own pipework if she decided to do so.
- g. I do find, however, that the company also gave the customer the impression that any survey it undertook would indicate whether there was a need for replacement of the pipework in the network. In fact, the company has acknowledged that the survey that took place could not have ascertained this, because such a survey would have involved digging up the pipes to inspect them, which would not reasonably have been possible. It follows, I find that the customer was given an incorrect impression as to the diagnostic efficacy of the survey that was to take place. This also, I find, fell short of expected standards but the adequacy of the test was, nonetheless, a matter falling within the company's realm of responsibility and I find that it did not affect the customer's position.

- h. I would also observe that although the customer says that the survey did not take place and she would have known if an inspection had taken place in the road, I find that it is improbable that she would have been able to keep up close observations of the roadway on that date, especially as the customer had other issues to contend with in her home, namely the presence of kitchen fitters. The company says that the survey took place and I find that a survey of some sort occurred that was sufficient to enable the process to continue.
- i. However, even if the customer was right and no survey took place, it would have been apparent to the customer that the company had carried out no assessment of her private pipework. This is because:
  - i. I find that an average person having been advised that certain findings had been reached on the basis of an inspection that was known not to have occurred would regard this as a shortfall in customer service by the company but would not take decisions to make expenditure based on this.
  - ii. If the customer thought that the survey did take place, (and I note that the customer says in response to my Preliminary Decision that when she was told that a survey had been done, she thought that the engineer must have come on another day and that the issue was communication). I further find that the customer could not reasonably have understood that the company had assessed the composition of her own pipework. On 24 March 2022 she complained that the survey had not happened because no-one had attended at her home. The customer therefore knew that no assessment of her own pipework had taken place and therefore she also knew that no second opinion had been provided by the company as to the state of her pipework. In referring in response to mt Preliminary Decision to an understanding that the survey had happened on a different day, the customer has not explained how the engineer could have had access to her house on another day without the customer's knowledge.
- j. It follows that my findings remain as in the Preliminary Decision. I find that the evidence indicates that when the customer undertook the replacement of her pipework, she did so on the basis of her own beliefs or fears and not on the basis of information provided by or promised the company. Accordingly, I find that the customer is not entitled to compensation associated with the cost of replacing her pipework.


- k. As for whether the company is liable to the customer for the inconvenience caused by this process, I find that the customer had decided that replacement of the pipework was necessary and she was waiting for the pipework to be replaced before her floor could be laid. As indicated above, I find that the need to replace her own pipework was a private matter that the customer would reasonably be expected to resolve herself.
  - l. I do not find that the customer is entitled to claim compensation for the disruption caused by digging up the road (and I note that she says she does not claim this). I find that it was for the company and not the customer to make decisions about work that it was willing to perform to its network and on its assets. While this may cause disruption to road users, I find that this is an inevitable consequence of the provision of public service and individual members of the public are not generally compensated for this.
5. It follows from the above that I find that the customer is not able to succeed in her claim for the compensation that she seeks.
  6. I find, however, that some of the difficulties and misunderstandings that have occurred are due to the confusing correspondence referred to above, by reference to which the customer would reasonably have understood that she would be visited at her home by the company's surveyors. I find that an average customer would reasonably expect that the company would provide some compensation for the sending of confusing and misleading correspondence that had been sent, but such compensation would only be at a very low level. In all the circumstances, I find that a fair and reasonable sum is £50.00, which can be credited to the customer's account.

#### **Outcome**

The company needs to credit the customer's account with £50.00.

#### **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.

- 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**