

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X463

Date of Final Decision: 17 May 2023

#### Party Details

Customer: XX

Company: XX

#### Complaint

Following a leak on the main running through the customer's garden, the occupiers of the forty-five properties on her estate were issued with Section 75 notices to repair the leak on the basis that the supply was private. When the leak was not repaired, the company carried out the work itself. The company then said that the pipe providing water to the development would be adopted, but it now says this was a mistake. The customer wants the company to acknowledge ownership of the pipework and commit to maintaining it going forward.

#### Response

The leaking supply pipe was installed by the developer and is privately owned by the residents of the estate. Therefore, when it leaked, the company issued Section 75 repair notices to all residents. The company accepts that, by mistake, it repaired the leak free of charge when it should have charged the residents, but says that this does not mean it accepts liability for the pipework. As the company does not own the pipework, it will not accept ownership of it or responsibility for maintaining it.

#### Findings

The evidence shows that on the balance of probabilities the pipework is privately owned by the residents of the estate and, therefore, I do not find that the company's refusal to accept ownership of it, or responsibility to maintain it, amounts to a failing on the part of the company to provide its service to the standard reasonably expected by the average person. In view of this, the customer's claim does not succeed.

#### Outcome

The company does not need to take any further action.

# ADJUDICATOR'S FINAL DECISION

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Date of Final Decision: 17 May 2023

## Case Outline

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

- In July 2022, she reported a substantial leak in her back garden, and in order to stop the garden from flooding, she had to use a pump to divert the water down the drain. However, the company said that it did not own the leaking pipework, so it was not responsible to repair it.
- Her property is part of a development of 45 houses that were built in the 1950's. The development is on a shared supply but she believes that the company owns the supply as, prior to privatisation, the previous water board took care of the pipework.
- All 45 residents were given a Section 75 notice by the company to repair the leak and, when the leak was not repaired, the company carried out the repair itself at its own cost.
- The company then said that the four-inch pipe providing water to the development would be adopted, but it now says this was incorrect and the pipe will not in fact be adopted.
- The company has stated that the leak was on a supply that feeds water to 45 properties, but this is incorrect. When the company turned off the supply to fix the leak on 6 October 2022, more than 45 homes in the village lost their supply. Therefore, the company's statement that she is on a private supply of 45 properties shows that the company does not understand its own infrastructure and how it supplies her community.
- As the company does not know who shares the supply, it is unacceptable to tell the residents of the estate to find out who they share the supply with.
- The company states that it found the leak on the private stop tap in her back garden but this is not correct. There is a large water main running through her back garden and other back gardens in her locality. From this water main, a smaller supply pipe leads to her property, and there is a stop tap to isolate the water supply coming from the water main to her house. However, the leak was on the water main side of the stop tap away from the smaller supply pipe, and this is the reason she could not fix the leak. She has provided photographs to prove that the leak was on the main.
- The company's contractors dug a hole to expose the pipework and the leak, and even they could not turn off the water main. The contractors realised it was a major problem and said the company would need to take over and plan for the repair.

- To repair the leak, the engineers had to replace part on the water main and this is shown with a new collar fitting around the main water supply on the photographs she has provided in evidence.
- The company appears to believe that the housing developer laid the pipes and caused this issue on the basis that the housing developers who would have requested to join the water main. However, her house and all the surrounding properties were built in the 1950's by the local authority, long before the company came into existence in **XX**. Prior to the company taking over the water supply, the local authority water board was responsible and there is no record of it discharging its responsibility, or the company stating that the pipe was excluded from the handover.
- In the company's defence, it says her partner implied acceptance of the pipework as a privately owned asset. However, in an email sent to the company on 4 September 2022, it clearly states that her partner did not accept or agree that the pipework is private, however, he asked the company to treat it as such to speed up the repair. It was also important to resolve the issue as a matter of urgency as her father, who was living with her, was receiving palliative care and had a compromised immune system.
- The company states that it is confident it has never accepted responsibility for the pipe, however, the email dated 6 October 2022 clearly states the leak was on the company's asset. This email was provided as evidence but has been left out of the company's defence pack and timeline of communication. The company only said this was a mistake when the case was referred to CCW. If the company is confident that the acceptance of responsibility was an error, she questions why this was never communicated to her.
- She believes that the company knows it owns the pipework but is trying to push responsibility for it onto its customers because the ageing system presents a large challenge. The engineer that attended originally accepted and acknowledged the problem, but after speaking to a manager the tone changed and the company made the decision to off load the problem to its customers.
- It is very important that this situation is resolved as none of the home owners in the village realise they are on a shared supply, and the situation will reoccur if there are further leaks on the pipework that the company will not take responsibility for.
- She wants the company to acknowledge ownership of the four-inch main connecting the development.
- She also wants the company to make it clear to the residents who is on a shared supply and with whom the supply is shared, so that they can take financial responsibility for water supply pipe repairs they are responsible for in the future. For clarity, in saying this she does not mean that the local community should take responsibility for the water main which runs across people's private property in the village as this is the pipe she believes the company owns, just

the supply pipes they may share with other properties to take water from that main to their homes.

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

- The customer made contact as there was a leak on her private supply pipe. It confirmed that the issue would need to be repaired privately as the pipework is not part of its network.
- The private supply pipe also feeds 44 other properties. The residents, including the customer, feel it should be responsible for the pipework, but it belongs to the residents and is their responsibility to maintain.
- The customer and her partner were made aware of its position regarding the ownership of the pipework, and had also been told about this by the technicians who attended the site. The customer's partner made contact and asked it to treat the issue as private and issue Section 75 notices to each of the residents on the supply.
- It has also advised the other residents of the estate that the pipework is private, and it will not consider adopting it.
- It accepts that it repaired the leak free of charge in error, and it should have passed this cost on to the residents, but this does not mean it accepts liability for the pipework.
- The supply pipe feeding all of the properties was installed by the developer, and this includes the only controlling stop tap. It had no power or control over where the developer laid the private pipework, or how the properties were connected to the water main. Therefore, it cannot be held responsible for the lack of individual stop taps outside the properties.
- It is confident it never accepted responsibility for this pipe, or confirmed with any of the residents it would do so. The Section 75 letters also confirm that the pipework is private, and do not mention it would be adopted.
- It is not trying to avoid expenditure or pass any costs on to the residents, as it does not own the pipe and never has owned the pipe.
- In any event, the WATRS guidelines state that the maximum amount of compensation which can be awarded to a single customer is £10,000 for physical damages/losses. If the adjudicator directs it to adopt the private pipe, it would need to install a controlling external stop tap outside each of the 45 properties, which would cost approximately £19,000, and renew the pipework, which would cost around £60,000.00. Therefore, the costs involved exceed the amount WATRS can direct the company to spend.
- In view of the above, it will not accept responsibility for the pipe or adopt it for future maintenance.

## 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 customer would like the company to acknowledge ownership of the pipework and responsibility for its maintenance, on the basis that prior to the privatisation of the water industry, the pipework was maintained by the water authority, and when the industry was privatised, the pipework was transferred into the company's ownership. The customer states that the four-inch asbestos main is ageing and will require maintenance in the future, and it is impractical and unfair to expect the unknown number of properties connected to it to organise and pay for repairs on a pipe owned by the company. The customer also states that the company accepted ownership of the pipe at one point, and then retracted this when it realised the extent of the issues it would have to resolve and pay for.
2. The company states that the pipework was installed by the developer of the estate and is privately owned, and this was acknowledged by both the company and the customer when the company issued Section 75 notices to all the residents of the estate at the request of the customer's partner. The company also states that it has never accepted responsibility for the privately laid pipes, and WATRS cannot direct it to adopt the pipework as the costs involved exceed the compensation WATRS can direct a company to pay.

3. On the customer's application form for adjudication, the customer states that the remedy she requires is for the company to adopt the pipework. However, the evidence shows that the customer believes that the pipework is already owned by the company, and she simply wants the company to acknowledge this fact and admit that it is responsible for the maintenance of its asset.
4. With regard to the company's assertion that the remedy required cannot be granted by WATRS, I find that the remedy sought by the customer is the company's acknowledgement of its ownership of the pipework, but the customer does not seek compensation. Therefore, I do not accept that I am unable to provide the remedy sought should the evidence show that the company does in fact already own the pipework. While I understand that a direction to acknowledge ownership of the pipework may result in expenditure for the company, the company is responsible for maintaining its assets anyway, so the cost of carrying out this duty is not relevant to this dispute.
5. In order to resolve this dispute, I must consider the evidence to determine whether, on the balance of probabilities, the company owns the main that feeds the supplies to the estate, or the residents of the estate own it.
6. I have considered the contents of the email sent by the customer's partner to the company on 4 September 2022, but I do not accept that the customer or her partner accepted that the pipework was privately owned in this correspondence. In any event, even if the customer or her partner had clearly stated that the pipework was privately owned in this email, I do not find that an opinion expressed by the customer on this matter could determine the actual ownership of the pipe. Similarly, I do not find that the company's action in paying for the repair to the pipework, or any opinion expressed about the ownership of the pipework by the company's employees, could determine the actual ownership of the pipe.
7. A water undertaker is normally responsible for water pipes and infrastructure on public land, up to and including the external stop tap. Having considered the evidence, including the mapping provided in the company's defence pack showing the location of the company's assets, the external stop tap and the leak, I accept that the leak was located on pipework a considerable way from the external stop tap, most likely laid by the developer, and I find no evidence to show that the company adopted that pipework.

8. Therefore, on the balance of probabilities, I find that the pipework is privately owned by the residents of the estate. Further, as the company is not responsible for maintaining privately owned pipework until it is adopted by the company, I also accept that the company is not responsible for maintaining the pipework going forward.
9. In view of this, it follows that I do not find that the company has failed to provide its service to the standard reasonably expected by the average person by refusing to acknowledge ownership of the pipework, or responsibility for maintaining it. I understand that this will be most disappointing for the customer, especially as the evidence demonstrates that the pipe feeds a large number of supplies to properties and this could create a difficult situation should repairs be required in the future. However, the evidence does not show that the company owns the pipework, so I make no direction to the company in this regard and the customer's claim does not succeed.
10. For completeness, I add that it is not the company's responsibility to determine who shares the private supply pipes that take water from the private main to their properties.
11. Following the preliminary decision, the customer provided some further comments. Some of the comments made were considered during my preliminary decision, so I find no need to revisit them, but others need further consideration.
12. The customer explains that the large shared water main has smaller shared supplies coming from it each with their own stop tap, and the smaller shared supplies added together feed 45 houses. The customer accepts that the residents are responsible for the smaller shared supply pipes but says that the main water pipe must be the company's responsibility otherwise the residents would be responsible for two shared supplies; the one they are on with neighbouring properties after the stop tap for the smaller shared supply, and the larger shared supply that all the smaller shared supplies come off, which the company disputes ownership of. I reassure the customer that when I made my preliminary decision, I understood the customer's position on this.
13. The customer also says that the complexity of the pipework arrangements shows that the large main with the shared supplies coming off it must be a company asset as smaller contractors could not repair the leak and the company's street team was needed to remedy the issue. I understand that this arrangement is unusual and complex; however, the complexity of pipework cannot inform a decision regarding ownership because private pipework arrangements installed by developers are often complex.

14. The customer asks me to clarify whether I find that the main water supply pipe which the smaller shared supplies come off is the company's or the residents' asset. For clarity, I state that in my preliminary decision I decided that the large main is not owned by the company because I was presented with no substantive evidence to show that it is, the evidence indicates that the company does not own the pipe, and the company denies ownership of it.
15. I understand the frustration felt by the customer, but my decision remains unchanged because the customer's comments have not changed my understanding of the case.
16. The customer also asks me to consider a claim for compensation. The WATRS Scheme Rules do not allow a customer to add to a claim at this stage in the process but, in any event, as I do not find that the company owns the pipe, a claim for compensation for distress and inconvenience caused by the leak could 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 31 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.

*K S Wilks*

Katharine Wilks

**Adjudicator**