

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1682

Date of Decision: 23 March 2020

Complaint

The customer submits that she is the leaseholder of the Property. [] (A&B) is the landowner. She has had water seeping into the basement of her property since 2012. She is unhappy with the company's response and the contradictory information she has received from it in the last seven years. She has been passed between A&B and the company with each telling her that it is the other's problem to deal with. The customer requests that WATRS provide an expert to take an independent water sample; and that the company provide a written apology for poor customer service and contradictory information; and pay compensation for all the issues she has experienced and for the damage caused to her property and the furniture.

Defence

The company submits that it has attended the property on a number of occasions to investigate the source of the water ingress. It has eliminated its assets, assisted with private leak repairs and proven through water sampling that the cause is groundwater. In addition, following the customer's initial contact in October 2012, the source of the water ingress was concluded as underpinning issues at the property. It has acknowledged that its communication with the customer could have been better and it has apologised for this. However, the information the customer has received is not contradictory. Seepage investigations are the most complex of all investigations it carries out. At times, this may take several months and sometimes years to discount its assets. In addition to the fact that it has no liability in this matter, the customer has not provided any evidence of damage. As it has previously advised the customer, her home insurance company would be best placed to assist with this matter.

Findings

This decision can only deal with issues between the customer and the company only. Any complaints or claims against A&B cannot be considered. In addition, it is not part of the adjudicator's function to carry out an independent investigation of the issue. The adjudicator's role is to balance the evidence that is submitted. The evidence submitted to this adjudication supports the company's submissions that there are underpinning issues at the property and that, with its assets having been eliminated and leaks on private pipework having been addressed, the seepage is due to ground water. I can appreciate the distress that this issue has been causing the customer and I appreciate that

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the customer will be disappointed that I am not in a position to direct the redress sought. However, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard and is responsible for the seepage. I accept the company's submissions that these investigations are long and complex. However, there are some gaps in the company's account notes where it is not clear what actions were being taken by the company and/or that the company was acting within a reasonable timeframe. The company itself also acknowledges that the customer had to contact it a number of times and that its communications with the customer could have been clearer. I am therefore not satisfied that the company has shown that it met its obligations to the customer in these regards. However, I accept the company's submissions that the information provided to the customer although unclear at times, was not contradictory as leaks on the private pipework may have added to the problem.

Outcome

The company needs to take the following further action:

I direct that the company pay the customer further compensation in the sum of £140.00. An authorised representative of the company should also provide the customer with a written apology.

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ADJUDICATOR'S DECISION

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Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She is the leaseholder of the Property. [] (A&B) is the landowner.
- She has had water seeping into the basement of her property since 2012. This is causing damage which has result in mould growing on her internal walls and the smell of damp everywhere. She has had to throw away soiled furniture, and the damp and mould has affected her health. The matter has also caused her serious mental health issues.
- She is unhappy with the company's response and the contradictory information she has received from it in the last seven years. The company will not take ownership of the seepage, yet A&B has informed her that it is for the company to resolve the issue. She has been passed between A&B and the company for seven years, each telling her that it is the other's problem to deal with.
- She has lived in the property for over 25 years and never had water in the basement until A&B took control of management from [] Council. A&B told her that she was getting a full underpin. However, it only carried out a partial underpin. A&B has put in a temporary sump pump which runs off her electricity, so for the last 7 years it has been costing her money to pump the water away. The pump pumps out thousands of litres every 10 – 15 mins.
- The customer requests that WATRS provide an expert to take an independent water sample; that the company provide a written apology for poor customer service and contradictory information; and pay compensation for all the issues she has experienced and for the damage caused to her property and the furniture.

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The company's response is that:

- It has attended the property on a number of occasions to investigate the source of the water ingress.
- It has eliminated its assets, assisted with private leak repairs and proven through water sampling that the cause is groundwater.
- It has acknowledged that its communication with the customer could have been better and it has apologised for this. A goodwill payment for £260.00 was sent to the customer on 17 April 2019 and was cashed on 30 May 2019.
- While it may appear that the information the customer has received is contradictory, this is not the case. Throughout the course of its investigations a number of leaks were identified, some of which affected the ingress of water at the customer's property. Its water sampling in August 2019 confirmed that the remaining ingress of water was ground water. So, while at times leaks on the private pipework of neighbouring properties may have added to the issue, ultimately the cause was found to be groundwater.
- On 9 October 2019 the customer advised the Consumer Council for Water (CCW) that A&B had also tested samples of the water and confirmed that it was ground water. In addition, following the customer's initial contact in October 2012, the source of the water ingress was concluded as underpinning issues at the property.
- Its responsibility in this scenario is limited to the elimination of its assets. It has invested a vast amount time and resource in to assisting in this matter and believes that it has provided sufficient evidence to demonstrate that it has taken all reasonable steps to fulfil its obligations and eliminate its assets as being the cause of the seepage.
- It is only responsible for finding and curing any leaks on its water or wastewater network which it is responsible for. This can take a considerable amount of time because of the very nature of the vast water and waste networks it has in place. Once it has completed a repair, it then has to return to the property and see if there has been any improvement to the seepage, then take samples and the process can start all over again. It will be appreciated that at times, this may take several months and sometimes years to discount its assets. Nevertheless, throughout the entire process, if it does come across private customer leaks and private drainage issues, it will notify those occupants and ensure those repairs are completed by them.
- Seepage investigations are the most complex of all investigations it carries out. The process of investigations to rule out its assets can take a considerable amount of time and it causes frustration to its customers, which it understands. It is a process of elimination. For example, if

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multiple leaks are found in an area on its network and on private supplies, it cannot repair these all at the same time. The reason for this is because it is trying to discount its assets as being the cause. So, it is a step by step process and at every step new samples need to be taken after a time, on a dry day, and dependant on what the samples reveal, the process starts again.

- In addition to the fact that it has no liability in this matter, the customer has not provided any evidence of property, or furniture, that has been damaged. As it has previously advised the customer, her home insurance company would be best placed to assist with this matter.

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. I must remind the parties that adjudication is an evidence-based process.
2. 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.

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3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is submitted.
4. It is not part of the adjudicator's function to carry out an independent investigation of the facts, or for instance, contact witnesses. If evidence is said to be relevant, it should have been submitted to WATRS. Only in very exceptional circumstances would WATRS appoint an independent technical expert, such as in a scenario where the parties had each submitted an expert report that reached differing conclusions; a third technical expert may then be appointed to break the deadlock. This is not the case here.

A&B

5. I acknowledge the customer's submissions about A&B. However, for the purposes of this decision my remit is to determine the issues between the customer and the company only. Any complaints or claims against A&B cannot be considered.

Responsibility for seepage

6. It is not in dispute that there is an ongoing seepage issue that is affecting the customer's property. The customer submits that thousands of litres are pumped out of the property every 10-15 mins, and that this has been ongoing for the past seven years.
7. A company is not liable for seepage at a customer's property unless the leak is caused by one of its assets.
8. In addition, companies are legally only responsible for the water main and the communication pipe from the water main to the boundary of a property. Property owners or occupiers are responsible for the supply pipe, which runs from the boundary of the property to the property and all the pipework, fixtures and fittings inside the property. If a leak is identified on private pipework, any repairs are the responsibility of the property owners or occupiers.
9. Evidence has been submitted to support the company's submissions that a water sample taken in August 2019 confirmed that the remaining ingress of water is ground water.

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10. An account note of the Consumer Council for Water's (CCW) conversation with the customer on 9 October 2019 also confirms that A&B had tested samples of the water and confirmed that it was ground water.
11. I note the customer's request for WATRS to provide an expert to take an independent water sample. However, as discussed above, it is not part of the adjudicator's function to carry out an independent investigation of the issue. The adjudicator's role is to balance the evidence that is presented.
12. I also accept the company's submissions that its account notes show that following the customer's initial contact in October 2012, the sample taken tested negative for chlorine and in 2013 the source of the water ingress was concluded as underpinning issues at the property. I am mindful of the customer's own submissions about underpinning problems at the property.
13. In view of the above, having carefully considered the evidence submitted to this adjudication, in the absence of any evidence showing otherwise, I accept the company's submissions that it has eliminated its assets as the cause of the water and is not responsible for the seepage in the customer's property. I can appreciate the distress that this issue has been causing the customer and I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard and is responsible for the seepage.

The company's attempts to locate the source of the seepage

14. The evidence indicates that the customer first reported the seepage in her property around October 2012. On 11 March 2013, investigations concluded that the property had not been underpinned correctly. Both parties submit that A&B then fitted a sump pump. The company's account notes show that the customer subsequently then contacted the company again about the matter on 30 January 2017; some four years later.
15. The company has set out in detail the actions it took over a considerable period of time to investigate the matter. In view of the company's submissions, about the process involved in seepage investigations, I accept the company's submissions that these investigations are long and complex. However, there are some gaps in the company's account notes such as between

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October 2012 and March 2013; February 2017 and May 2017; November 2017 and January 2018; and January 2018 and April 2018, where it is not clear what actions were being taken by the company and/or that the company was acting within a reasonable timeframe. The company itself also acknowledges that the customer had to contact it a number of times and that its communications with the customer could have been clearer. I am therefore not satisfied that the company has shown that it met its obligations to the customer in these regards.

16. However, notwithstanding the above, I accept the company's submissions that it carried out extensive investigations and has eliminated its assets. The evidence also confirms that during the investigations the company assisted a number of private leaks. I therefore accept the company's submissions that the information provided to the customer although unclear at times, was not contradictory as leaks on the private pipework may have added to the problem. I therefore find no failing on the company's part in this regard.

Redress

17. In respect of the customer's request that WATRS provide an expert to take an independent water sample; as discussed above, it is not part of the adjudicator's function to carry out an independent investigation of the issue. The adjudicator's role is to balance the evidence that has been submitted. This aspect of the customer's claim is therefore unable to succeed.

18. In respect of the customer's request that the company provide a written apology for contradictory information; as above, I accept the company's submissions that the information provided to the customer although unclear at times was not contradictory. This aspect of the customer's claim is also unable to succeed.

19. In respect of the customer's request that the company provide a written apology for poor customer service, in light of my findings that the company has not shown that it acted within a reasonable timeframe on a number of occasions and the company's own acknowledgment that that its communications could have been clearer, I find that that it would be fair and reasonable to direct that an authorised representative of the company provide the customer with a written apology.

20. In respect of the customer's request that the company pay compensation for all the issues she has experienced and for the damage caused to her property and the furniture, the company is

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not responsible for the seepage and is therefore not responsible for any damage to the customer's property or furniture. However, in light of my findings above that the company failed in its obligations to the customer, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience caused. I note that the company has already paid the customer £260.00. Having carefully considered the evidence provided, I am not satisfied that this sum is sufficient, and fair and reasonable for all the failings shown, bearing in mind the gaps in the company's account notes discussed above. I find a further sum of £140.00 to be a fair and reasonable level of compensation. I therefore direct that the company pay the customer further compensation in the sum of £140.00.

Outcome


The company needs to take the following further action(s):

I direct that the company pay the customer further compensation in the sum of £140.00. An authorised representative of the company should also provide the customer with a written apology.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 22 April 2020 to accept or reject this decision.
- 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.

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A handwritten signature in black ink, appearing to read 'G. J. ...', enclosed within a thin, hand-drawn oval.

**U Obi LLB (Hons) MCI Arb
Adjudicator**

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