

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1512

Date of Decision: 26 July 2019

#### Complaint

The customer has a dispute with the company regarding the continuous presence of damp inside his property over a long period of time. The customer asserts that the company wrongly advised him of an absence of a leak at his property in 2006 and that all subsequent and ongoing work and expense to rectify the damp conditions is the fault of the company and consequently he requests the company to pay compensation in the amount of £9,986.00 for damp-roofing works, stress and inconvenience.

#### Defence

The company asserts that the dampness inside the property is not caused by any failings in its assets, either clean or foul water services. The company states the leak causing the damp is located inside the property and thus not its responsibility to maintain or repair. The company stresses that it has attempted over a long period to assist the customer to locate the source of the leak and continues to carry out investigations despite the claim to the WATRS Scheme. The company has not made any offer of settlement to the customer, and believes it has acted in a fair and reasonable manner, and thus declines to pay the requested compensation.

#### Findings

The customer has not presented sufficient evidence to support his claim that actions or omissions of the company are responsible for the dampness in his property. A large number of evidential documents have been submitted by the customer but a high proportion of these pertain to a separate dispute outside the scope of this particular referral. Thus, I find the company has not failed to provide its services to the extent to be reasonably expected by the average person.

#### Outcome

The company needs to take no further action

The customer must reply by 23 August 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 26 July 2019

## Party Details

Customer: [ ]

Company: [ ].

## Case Outline

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

- The customer has officially appointed [ ] as his representative [CR] in this claim.
- The CR claims she has experienced an ongoing dispute with the company regarding the presence of a water leak at her property, which she asserts has been present since March 2006. She believes that the leak is from the water supply pipe belonging to the company and that since May 2017 she has been liaising with it to identify the location of the leak and fix it. The CR further states that she has spent a considerable amount of money on having to rehabilitate areas of her property and to redecorate rooms and consequently requests the company to compensate her for these costs. The company denies it is obliged to pay these costs, and despite the CR's ongoing communications with the company and the involvement of CCWater, the dispute has not been settled.
- The CR states that in March 2006, when excavating for utility connections adjacent to her property, she identified water ingress into a dug trench and contacted the company. The CR asserts that the company, upon investigation, advised her that a pipe leakage was not present, and the trench was subsequently backfilled.
- The CR advises that in November 2016 the customer fitted a water meter at the property, and that in April 2017 it advised her that its records indicated very high water consumption. As a consequence, the company replaced the water supply pipe from the outside stop valve to the

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meter and the CR asserts that shortly afterwards water was identified under her driveway adjacent to the outside stop valve.

- Following further investigations by the company, the CR asserts that it advised her that a leak was present on her property and was thus outside its responsibility to repair. The CR states she organised a third-party company in July 2017 to undertake tests to identify any internal leak and that these investigations did not find such leak. Subsequently, on 21 July 2017 she again contacted the company to complain and she states that on 02 August 2017 the company sent an engineer to her property to investigate further.
- The CR claims that on 08 August 2017 her third-party company identified that the previous continuous flow through the water meter had stopped and that the water level in the driveway trench excavation was greatly reduced. The CR asserts that the company did not admit fixing a problem during its recent visit and as such she remains unaware as to why the water flow ceased.
- The CR states that although the water level in the trench excavation reduced it did not disappear entirely and is still present up to the date of the application to the WATRS Scheme dated 12 June 2019. The CR further asserts that since September 2017 investigation and testing has been ongoing in attempts to identify the source of the water constantly present in the trench excavation, and she asserts that she understands the three separate tests on water quality undertaken in 2018 strongly indicate that the seepage is from drinking water.
- The CR further claims that she believes the company is continuing to test the water because it is satisfied it is its own drinking water supply but that it persists in declining to confirm this understanding. The CR notes that she refuses to accede to the company request to backfill the trench until such time as it positively identifies and repairs the source of the leak into the excavation.
- The CR asserts that she has spent an estimated amount of ±£10,000.00 on repair and redecoration to date, and she further claims that if the company do not stop the seeping water she will have to spend a further estimated amount of between £10,000.00 and £15,000.00 to prevent any further damage to her property.
- The CR records that she has escalated her complaint to CCWater who investigated the issues with the company on her behalf. However, despite the intervention of CCWater, the dispute is ongoing and the company has not revised its standpoint and CCWater are unable to facilitate a resolution between the parties.

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- The CR is not satisfied with the response of the company and consequently, on 12 June 2019, has referred the matter to the WATRS Scheme whereby she sought to have the company pay her compensation in the sum of £12,170.80 for the costs of repair and redecoration and for stress and inconvenience. As the claimed amount exceeded the limits of the WATRS Scheme, on 21 June 2019, the CR revised the claim down to £9,986.00.

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

- The company, in its Defence document dated 10 July 2019, confirms that its records show the customer's account was opened on 18 November 1993. The company asserts that it was not until 06 February 2007 that it was first advised by the customer that he had dampness inside his property, and after an investigation the following day it informed him that no leak was identified. The company further confirms that it installed a water meter at the customer's property on 15 November 2016 and that between this date and 06 February 2007 it had had no contact with the customer.
- The company states that after the water meter went active it monitored the usage on a daily basis and advised the customer that the meter was constantly recording and thus was indicative of a leak on his supply pipe. The company asserts that although not responsible for supply pipe maintenance it effected a repair for the customer free of charge on 19 May 2017. However, after the replacement pipe was installed the meter continued to register constant flow and the company states it advised the customer that he appeared to have a leak inside his property, and that the company did not perform internal plumbing works.
- The company records that it understood a third-party private company failed to find a leak inside the property but that on 02 August 2017 the company visited the property and established an internal leak and that a report provided by another third-party company on 03 August 2017 confirmed the presence of an internal leak. The company asserts that the next day, 04 August 2017, the meter stopped registering a constant flow but that the customer declares he has no understanding of what actions had occurred to stop the flow.
- The company states that from August to December 2017 it undertook numerous tests of the seepage water in the excavated trench and confirmed that it was not leaking from either its fresh or foul water systems. The company further asserts that it continued testing and investigations throughout 2018 in attempts to assist the customer establish the location of the leak, and it states this work is continuing beyond the date of the customer's WATRS application. The company insists the investigations continue because it has a statutory obligation to prevent

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water damage to properties and that it has undertaken widespread probing over a large area and not only adjacent to the property.

- In summary, the company confirms that it has undertaken extensive investigations to date and has found no evidence whatsoever that the seepage of water (previously into the property and currently into the excavated trench under the driveway) emanates from any of its resources. It further notes that the customer had two previous leaks inside the property and these were not the responsibility of the company, and it reiterates that maintenance of the supply pipe is also outside its remit and it effected repairs for the customer free of charge. As a result, the company believes it is not responsible for the provision of damp proofing measures to the customer's property or for any stress and inconvenience purportedly experienced.
- Additionally, the company believes it has acted reasonably and taken all possible measures to assist the customer. It further notes that it has offered a gesture of goodwill in the sum of £200.00 and that when the file is eventually closed on this matter it will reassess the level of compensation potentially payable. Consequently, the company denies responsibility for any of costs identified by the customer and declines to pay the amount of £12,170.80 as requested.

**The customer's comments on the company's response are that:**

- The CR submitted comments to the company's Defence document in her e-mail dated on or around 12 July 2019, along with an "analysis of the defence". The CR asserts that the company has been selective in the information contained in its Defence document, and claims that its detailed reference to the driveway excavation is irrelevant as her WATRS claim is for the cost of damp proofing the property, and stress. The CR emphasises that her application to WATRS is to recover costs for damage occurring prior to 04 August 2017 caused by water undetected by the company before the activation of its water meter. The CR strongly refutes the company belief that she had two separate internal leakages and she contends there have been no internal leaks. The CR believes the company has failed to establish that the leaks are not from its services.
- The company responded to the CR comments on or around 15 July 2019. The company reiterates that the third-party company investigated the property on 03 August 2017 and its report confirmed an internal leakage. The company asserts that the CR is relying on the first visit of the third-party on 07 July 2017 and is downplaying the findings of the engineers on 03 August 2017.

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- The CR submitted further comments on 15 July 2019. She again refutes any suggestion of internal leakages, and states that the third-party company conducted a further test on 14 September 2017 and no leak was identified, and additionally a third-party retained by the company undertook a separate investigation in March 2018 and also found no internal leak.

### 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 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 relates to the CR's dissatisfaction over the company's perceived failure to address her complaints regarding long term water ingress into her property and the cost of consequent preventative and remedial actions.
2. I note that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it.
3. The parties have submitted to me a considerable volume of evidence and data in support of their respective positions, and I am grateful to CCWater for the detailed bundle of pertinent information they have presented.

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4. The CR, in her various submissions, has emphasised that her claim to the WATRS Scheme dated 12 June 2019 is in respect of the cost of the damp-proofing works she has undertaken inside her property. She asserts that the ongoing issue of water ponding in an excavated trench adjacent to her property is not included in the scope of her claim for compensation.
5. Having familiarised myself with the evidential submissions I am satisfied that the crux of this particular dispute, and claim to the WATRS Scheme, is the source of the water that has penetrated into the CR's property, and particularly whether that source is an asset of the company.
6. From the evidence submitted to me, I understand that the customer took up residence in her property on 18 November 1993. In the period around November 2005 she constructed an extension on a side of her property and asserts that the work was "straightforward and without incident". Giving these words their reasonable common usage, and having in mind the context of this dispute, I am satisfied that the CR is recording that no water was identified during the construction works.
7. In March 2006, a further excavation was made at the front of the property for the connection of utilities, and at this time water seepage into the dig was noted. The CR claims that she contacted the company who sent an engineer to check the site and he advised her that no leak was present, and the excavation was subsequently backfilled. Unfortunately, the CR has not submitted any substantiation that a company engineer inspected her property and the company in its letter to the CR dated 17 June 2019 states that it has no record of such visit.
8. The company, in its Defence submission, notes that its first recorded contact from the CR regarding internal dampness was on 06 February 2007 and that it sent an engineer to investigate the next day – 08 February 2007. Similarly, the company records that it received a further contact from the CR on 13 March 2008 and that again it sent an engineer to investigate on 18 March 2008. The company records that on both occasions its engineers did not detect any water leaks on the supply pipe to the property. The CR states that she has no recollection of the visits in 2007 and 2008 and cannot remember what testing was carried out.
9. I am aware that the events of 2006, 2007, and 2008 are 13, 14, and 15 years respectively in the past and that the records of both parties are not complete. However, I am satisfied from the documents laid before me by the company that the two site inspections in 2007 and 2008 did take place and no leakage was identified. It is also pertinent to note that the records state that the engineers were undertaking a "customer side leak inspection". From the evidence set before me I find that the company has acted reasonably in managing the CR's account; it has

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responded promptly when contacted by the CR in sending engineers to inspect the site, and has advised that no leaks are present in its assets.

10. The CR has stated that she believes the failure by the company in 2006 to identify the location of a leak in its system is responsible for the ongoing damp problems within the property. However, I find on a balance of probability, from the evidence submitted, that the company has undertaken a reasonable quantity and variety of testing in attempting to identify any leak present on its assets and pipe systems.
11. On 15 November 2016, the company fitted a water meter at the property of the CR, and states that it was activated on 24 May 2017. (Taking into consideration the subsequent timeline, I believe the date was 24 April 2017). The company, from monitoring of the daily meter readings, identified a constant flow at the property and advised the CR on 04 May 2017 that this was highly likely to be the result of a leakage. Subsequently, on 19 May 2017 the company re-laid the supply pipe from the outside stop valve to the property, and did so free of charge to the CR despite having no legal obligation to do so.
12. I note from evidence supplied, that subsequently, on 29 June 2017 the CR advised the company that she believed she had identified a leak on the supply pipe underneath her ground floor and would use her own resources to fix the issue. Thus, on 02 and 03 August 2017 third-party companies retained by the CR attended upon the property and on 04 August 2017 it was noted that the continuous flow through the meter had ceased. Neither party has been able to offer an explanation as to why the continuous flow ceased at this time, but I find on a balance of probability that it is not unreasonable to deduce that the third-party contractor was responsible.
13. The CR has cast doubts on the accuracy of the report prepared on 03 August 2017 by the third-party, while the company holds the report as a plank of substantiation to its defence that a leak was present inside the property. The report is one of several prepared by the same company, each with differing conclusions, and as such I have not given substantial weight to any of their documents.
14. I have sympathy with the situation in which the CR finds herself over the ongoing dampness problem. However, I must recall again, that the WATRS adjudication scheme is an evidence-based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it. The CR has provided an extensive number of documents, reports, and invoices covering the many years of the issue, but I have to record that much of it is relevant to the situation since August 2017 regarding the trench outside the property while her claim is regarding the internal scenario prior to 2008. The legal position is,

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that the company is responsible for the pipe network up to the point it enters the CR's property, and once the pipework crosses the boundary into the property it becomes the obligation of the CR regarding maintenance and repair. I am not satisfied, on a balance of probability, that the evidence submitted by the CR is sufficient for me to make a decision in her favour.

15. In summary, I have found no failure by the company to provide its services to the standard to be reasonably expected. I find the company has dealt reasonably with the CR's claims, and I have found that the CR has not provided sufficient evidence to justify the claim.
16. My conclusion on the main issues is that the company has not failed to provide its services to a standard to be reasonably expected by the average person, and therefore, my decision is that the claim does not succeed.

#### **Outcome**

The company does not need to take further action.

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

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 23 August 2019 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.



Peter R Sansom  
MSc(Law); FCIArb; FAarb; Member London Court of International Arbitration;  
**Adjudicator**

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