

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1908 – Sewerage - Leak

Date of Decision: 9 April 2020

#### Complaint

In 2016, the customer carried out extensive repairs to her property following damage caused by rising damp. The customer believes the source of that damp to be a leak from the company's mains that was discovered and repaired in 2016.

A further leak to the company's mains was repaired in 2019. The customer believes this second leak was the result of an inadequate repair to the leak in 2016. The customer considers this ongoing leak may have continued to cause damage to her property.

The customer claims the sum of £10,471.56 in respect of the costs of repairs to her property and for distress and inconvenience.

The customer seeks an assurance that the repair in 2019 was properly carried out and that there will be no further leaks.

#### Defence

The company detected a leak on the customer's communication pipe in February 2016 as part of its leak detection programme. The leak was repaired on 19 February 2016.

The company detected and repaired a further leak on the customer's communication pipe in April 2019.

The customer has not provided evidence supporting her claim that the damage to her property was the result of a leak.

The company rejects the customer's claim for compensation.

#### Findings


The customer has not demonstrated that the damage caused to her property was the result of a failure on the part of the company. The customer's claim for compensation fails.

The company has failed to meet the standards expected in dealing with the customer's complaint. A substantive response was not provided within the timescales required under the Guaranteed Standards Scheme. When the response was finally issued, it gave no detailed explanation of the outcome.

#### Outcome

The company shall pay the customer the sum of £20.00 for failing to provide a substantive response to the customer's complaint within the prescribed timescales.

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The company shall pay the customer the further sum of £150.00 in respect of distress caused from the delay in providing a response to the complaint.

The company shall verify and confirm to the customer in writing that the repair carried out in 2019 was carried out correctly and that there is no evidence of any further leak.

The customer must reply by 13 May 2020 to accept or reject this decision

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1908

Date of Decision: 9 April 2020

## Party Details

**Customer:** The Customer

**Company:** XWater

## Case Outline

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

- The customer had an incident of rising damp in the kitchen within her property in 2016. This required extensive repairs to the property. The customer submits that the cause of the rising damp was a leak from the company's water supply mains.
- In 2016 the company identified and carried out repairs to a leak adjacent to the customer's property. In 2019, the company identified and carried out repairs to a further leak adjacent to the customer's property. The customer states that she had been advised by the company that the original leak in 2016 has not been correctly repaired.
- The customer states that she has experienced many years of leakage from the company's water supply mains affecting the part of her property containing the kitchen and that this leakage was the cause of damp in the kitchen.
- The customer claims the sum of £10,471.56 in respect of the repairs to her property and for the stress and inconvenience caused.
- The customer seeks an assurance from the company that the repair carried out in 2019 was completely correctly and will not leak in the future.

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

- In February 2016, during routine leak detection work, the company identified and repaired a non-visible leak on the communication pipe serving the customer's property. The repair was carried out on 19 February 2016.

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- During further routine detection work in April 2019, another leak was detected on pipework owned by the company. This was repaired on 17 April 2019.
- In April 2019, following the recent repair, the customer contacted the company regarding the leak and the damage to her property that occurred in 2016. The company requested evidence of the damage to the customer's property and, on receipt, passed this to the company's claims handling agent to be dealt with.
- On 4 December 2019, the company's claims handling agent contacted the customer and reported that they found no evidence that the company was responsible for the damage to the customer's property. The customer's claim was declined.
- The company submits that it is not liable for the damage to the customer's property and therefore not liable to pay the customer any compensation.

### How is a WATRS decision reached?

In arriving at my decision, I have considered the following key issues:

- a. Whether the company failed to provide services to the customer according to legislation and to standards reasonably expected by an average person.
- b. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing of the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on the balance of probabilities that the company has failed to provide its services to the standard which would be reasonably expected and 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 I have not considered it in reaching my decision.

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## How was this decision reached?

1. In February 2016, the company identified and carried out repairs to a leak at the customer's property. Notes provided by the company show that a repair was carried out to a communication pipe at the customer's address. The company states that this leak was identified during routine leakage detection work. The company also states that this was a small non-visible leak. There is no indication that the company attempted to quantify the leakage rate.
2. In 2016, during the course of work involving the installation of a new kitchen at the customer's property, it was discovered that there was water ingress into the property, specifically the kitchen floor. This was believed to be rising damp but the cause was not fully established. The water ingress resulted in damage to the customer's property which was repaired at the customer's expense. It is understood that the damaged area of the property was located a few metres from the leak repair carried out by the company.
3. In April 2019, the company identified and repaired a further leak adjacent to the customer's property. The company's letter to the customer dated 28 August 2019 states that this leak was on the communication pipe serving the customer's property and the leak was repaired on 17 April 2019. The letter notes that it was understood the repair team commented that a fitting on the pipe had not been correctly fitted. The company also confirmed that it attended the area on 25 April 2019 and found no further leaks.
4. On 20 April 2019, the customer sent an email to the company. The customer referred to the repairs carried out in April 2019 and to comments made by the repair team that the latest leak related to an earlier incorrect repair. The customer stated that she considered the earlier leak was the cause of the problem she experience in 2016 that required significant repairs to her property.
5. The issues to be determined are:
  - a. Whether or not the leaks in the company's pipework were the result of a failure on the part of the company.
  - b. If the leaks were due to a failure on the part of the company, whether there is evidence to show that the leaks caused damage to the customer's property.

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- c. Whether or not the company has acted reasonably in responding to the customer's complaint.
6. It is noted that the leak repaired in 2016 was discovered as a result of a programme carried out by the company to detect leaks. It has been explained that this programme targets areas showing higher than normal usage and narrows the area down until a leak is detected. There is no indication that any leak had been reported to the company prior to this leak being detected. It is not known how long the leak had been ongoing when it was discovered. The company has not stated when it began investigating this area as part of the programme. However, it is reasonable to conclude that the leak may have been ongoing for some time before being identified. The company has stated that the leak was small although it was not quantified. A small underground leak can result in a significant loss of water into the adjacent ground area if that leak is ongoing for a prolonged period.
  7. The company has a responsibility to maintain its infrastructure and equipment. This includes identifying and repairing leaks in the system. The company has stated that it has an active leak detection programme. It is recognised that a water company is only able to repair a leak when a leak is identified. In the case of the leak repaired in February 2016, it appears no visible leak existed or had been reported. The leak was traced through the company's leak detection programme. I find this to be a reasonable approach by the company to maintain its systems, providing leaks detected are rectified in a timely manner. In respect of identifying and repairing the leak in February 2016, I find no failure on the part of the company.
  8. It is not possible to determine from the evidence provided how long the leak had been ongoing. It is reasonable to conclude that this may have been an active leak for some time but there is no information available to determine how much water escaped into the surrounding ground area or what the effects may have been. The customer is of the opinion that the leak was the cause of the damp in her kitchen floor. Whilst I understand this may be feasible, since investigations carried out by the customer's contractors made no reference to this, it is not possible to determine whether or not the leak was the cause of the damage to the customer's property in whole or in part.
  9. The company states that during further routine leak detection work in April 2019 another leak was detected in the area. The notes from the company show that a repair was carried out on

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the communication pipe outside the customer's property on 17 April 2019. It is reasonable to conclude that this was the same communication pipe that was repaired in 2016.

10. The customer first raised the matter of the damage to her property in an email to the company on or around 20 April 2019. The customer stated that she believed the earlier leak had been the cause of the damage to her property in 2016. The customer followed this up with a further email on or around 1 May 2019. The company responded on 3 May 2019, advising there was no longer a leak at the customer's property and requesting further information from the customer in support of her claim.
11. Following various email exchanges during May 2019, the customer was provided with an address to send a letter and invoices relating to her claim. The customer was also advised in an email from the company sent 13 May 2019 that when her invoices had been received, they would be forwarded to the company's insurer's for investigation.
12. The customer sent a letter to the company on 27 May 2019 setting out in detail the events that occurred in 2016 while she was having her kitchen installed and describing the repairs necessary. The customer included documents supporting the costs incurred in carrying out repairs. The company replied to the customer on 14 June 2019 acknowledging receipt and informing the customer the claim had been forwarded to the company's claims handling agent. A claim reference number was provided together with contact details of the claims handling agent.
13. The customer has provided a copy of a letter dated 11 June 2019 from the company's claims handling agent. The letter includes a form for completion by the customer which includes a requirement to provide details of the incident and the events leading up to the incident. It is noted that there is no mention in this letter or form that any expert reports may be required. The customer has not provided a copy of the completed form but has noted on the copy provided that the form had been completed and submitted.
14. The company's claims handling agent sent a further letter to the customer on 28 June 2019. This advises the customer that no compensation could be offered. The copy letter includes handwritten notes, which I have taken to be the customer's notes, referring to the leak in 2019 and the earlier leak. I note the customer had also sent a copy of this letter to her own insurers on 28 June 2019. From this I have taken it that the customer believed this letter to relate to her

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claim. There are, however, certain inconsistencies in this letter when compared to the customer's claim.

15. The letter dated 28 June 2019 has a different reference number to that used in other communications with the customer. It refers to an accident and gives the date of the accident as 16 December 2018. It also refers to its clients, who are not named, as having a statutory duty to maintain the highway. It refers to an examination of the location where the incident occurred being carried out on 12 December 2018, prior to the accident. It also refers to sharing information with motor insurance organisations. None of these matters appear relevant to the customer's claim against the company. I believe that this letter relates to an entirely different incident and is not related to the customer's claim. I have, therefore, discounted this letter as I conclude it is not relevant to the customer's claim. I note however, that the letter may have misled the customer as it appears she believed it related to her claim.
16. The company wrote to the customer on 28 August 2019. The company refers to the matter having been passed on to the company's insurers. The company acknowledges that leaks from the communication pipe serving the customer's property were repaired in February 2016 and April 2019. The company also refers to the customer arranging a structural survey via her own insurers. I have found no other reference to a structural survey. The customer's email reply dated 30 August 2019 indicates no survey was commissioned.
17. The claims handling agent sent an email to the customer on 4 December 2019 and a letter dated 6 December 2019. The contents of the email and the letter are the same. The letter confirms investigations had been concluded and declined the customer's claim. I have taken the letter from the claims handling agent dated 6 December 2019 to be the final reply on the matter. I note that the letter states that the company had confirmed that the leak repaired in 2016 would not have caused the amount of damage described by the customer. It is not clear how this conclusion has been reached. The amount of the leak was not quantified but only referred to as a small leak. It is also not known how long the leak had been active. The company has also stated in its defence that it does not believe the leaks found would have caused the damage claimed.
18. The Guaranteed Standards Scheme (GSS) sets time limits for water companies to reply to written complaints. Under the GSS, a company must provide a substantive reply to a written complaint within ten working days. Failure to do so means that the company has not complied

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with the requirements of the GSS and must make an automatic payment to the customer of £20.00.

19. The customer raised the matter with the company in her email received by the company on 20 April 2019. The company's reply was sent on 3 May 2019. This reply was within ten working days. Whilst the reply was not substantive, the company requested further information concerning invoices and evidence of the damage to the customer's property for their review. I consider this to be a reasonable response in the circumstances. The requested documentation was sent by the customer to the company on 27 May 2019.
20. The letter from the claims handling agent dated 6 December 2019, which is the detailed response to the customer's complaint, only offers a simple explanation of the reason for rejecting the customer's claim. The response appears to be based solely on the company's view that the leak in 2016 would not have caused the damage to the customer's property. With the exception of the request for the customer to complete a claim form in June 2019, there is no indication that any other investigations were carried out. There is also no indication that the customer was asked for any supporting information beyond that which she submitted.
21. I have stated previously that, from the information provided, it is not possible to determine whether or not the leak was the cause of the damage to the customer's property in whole or in part. However, in order for the customer's claim against the company to succeed, it is for the customer to show, on the balance of probabilities, that the damage to her property was caused by the company. The customer has provided invoices and other evidence that shows the detail of work carried out and the cost of that work. However, no evidence has been provided that shows any link between the damage caused and the leak that was repaired.
22. Whilst the customer has set out why she believes the leak was the cause of the damage, this has not been supported by any report or statement from a contractor or other professional. The customer has also made reference in her letter dated 27 May 2019 to an old map showing a natural spring a short distance from her house. This suggests an alternative source of ground water existed in the area and provides a possible alternative contributory cause of damage.
23. I find that the customer has not provided sufficient evidence to show that the damage caused to her property was a result of the leak on the company's pipework discovered and repaired in

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2016. The customer's claim for recovery of costs and for stress and inconvenience therefore fails.

24. However, I find that the company has not acted in a manner that would be reasonably expected in dealing with the customer's complaint. The company failed to provide a substantive response to the customer's complaint detailed in her letter dated 27 May 2019 within the timescale prescribed. The company shall therefore make a payment to the customer in the amount of £20.00 for failing to provide a substantive response within ten working days as required under the GSS.
25. The company did not provide a substantive response to the customer until the claims handling agent's letter of 6 December 2019. This was over seven months after the customer's initial complaint and over six months after the customer's letter dated 27 May 2019 including supporting documentation requested by the company. The reply contains little explanation and the decision appears to have been based only on a statement by the company that the leak was insufficient to cause the damage to the customer's property. In view of the time taken to respond, it would be reasonable to expect that detailed investigations had been conducted and that a more comprehensive explanation would have been provided.
26. The fact that a second repair had to be carried out on the customer's communication pipe approximately three years after the first repair indicates in my opinion that there may have been a problem with the first repair. This has been suggested by the customer and not denied by the company. The communication pipe started leaking again some time after the repair in 2016. The customer has reported incidents of slugs entering the property in her letter of 27 May 2019. She also expressed concern about continued leakage from the water main affecting her property. The customer seeks an assurance that the repair carried out in 2019 has been correctly carried out and that there will be no further leaks.
27. I conclude that the time taken by the company in responding to the customer's complaint, together with the doubt over the adequacy of the repair carried out in 2016 and continued doubt over the adequacy of the repair carried out in 2019, has caused distress to the customer.
28. Rule 4.3.3 of the WATRS Scheme Rules permits an adjudicator to consider remedies not claimed by the customer. In respect of distress and inconvenience caused by the time taken for

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the company to finally respond to the customer's complaint, together with the concern over the adequacy of repairs, I direct that the company shall pay the customer the sum of £150.00.

29. I also direct the company to verify and confirm to the customer in writing that the leak repaired in 2019 has been properly carried out to appropriate standards and that as it stands there is no evidence of a further leak. As this may require an investigation on site by the company and in view of the current restrictions arising from Covid-19, this remedy should be actioned within eight weeks of the removal of any applicable restrictions relating to the spread of Covid-19.

#### **Outcome**

The company shall pay the customer the sum of £20.00 for failing to provide a substantive response to the customer's complaint within the prescribed timescales.

The company shall pay the customer the further sum of £150.00 in respect of distress caused from the delay in providing a response to the complaint.

The company shall verify and confirm to the customer in writing that the repair carried out in 2019 was carried out correctly and that there is no evidence of any further leak.

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

- This adjudication is final and cannot be appealed or amended.
- The Customer must reply by 13 May 2020 to accept or reject this decision.
- When the Customer notifies WATRS of acceptance or rejection of the decision, the Company will be notified of this. The case will then be closed.
- If the Customer does not inform WATRS of her acceptance or rejection of the decision by the date required, this will be taken as a rejection of the decision.

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Signed

A handwritten signature in black ink, appearing to read 'Ian Raine', with a long horizontal flourish extending to the right.

Name

Ian Raine (BSc CEng MIMechE FCI Arb MCIBSE)

**Adjudicator**

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