

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X875

Date of Final Decision: 10 May 2022

Party Details

Customer:

Company:

Complaint

The customer complains that an undetected leak occurred from the company's meter following its installation in 2014. This continued until 2019 when it was unexpectedly repaired. The customer says that the leak has damaged his driveway and he also says that he has not been provided with a correctly calculated leak allowance. The customer would like the company to repair the damage to his driveway and clarify the leak allowance.

Response

The company says that after the customer complained about damage to his driveway in 2021, it asked an inspector to report. The inspector stated that the company was not liable to repair the driveway. Moreover, although there was a delay in calculating the leak allowance, the correct amount has now been paid. A goodwill payment of £50.00 has been offered for failures in its customer service and no further remedy is due.

Findings

I find that the company, which does not state that it would not be liable to repair the driveway if it was damaged by the leak from its meter, has not carried out an adequate investigation into whether the leak caused damage or not or whether remediation is still needed following later removal of the meter from the driveway. Moreover, although the evidence does not support that the calculation of the leak allowance is still inaccurate, there were a large number of defects in the company's customer service and a fair and reasonable amount by way of compensation is £200.00.

Outcome

Having taken into account the observations of the parties in response to my Preliminary Decision, I direct that the company shall:

1. Take the following actions in respect of the dispute regarding damage to the driveway:

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- Liaise with the customer for the purpose of selecting an independent expert civil engineer (that is, not an employee or existing contractor of the company) to be appointed jointly by the company and the customer but whose fees shall be met by the company.
 - Appoint an expert selected following such liaison to report at the same time to the company and the customer.
 - Such report shall address the cause of damage to the customer's driveway and whether, if caused by a leak, this has already been remediated.
 - The expert's report shall be obtained within 6 weeks of the date when the customer indicates that he accepts this decision.
 - If the expert reports that damage has been caused by leakage and that remediation work is required, the company shall carry out remediation work within 20 working days thereafter.
2. Pay compensation of £200.00 to the customer.
 3. For the avoidance of doubt, the cost to the company of all actions taken pursuant to this decision shall not exceed £10,000.00.

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Case Outline

The customer's complaint is that:

- The customer explains that he had an unannounced visit from REDACTED on 24 December 2019. This subcontractor, without knocking at his door, repaired a leak that had contributed to the customer's high bills since his meter was installed on his land in 2014. When the customer asked what they were doing, the workmen replied that they had been given a job for his address to repair a leaking meter on Christmas Eve. They confirmed that they were surprised to see the customer and stated 'No, we were told get it fixed asap'.
- Having carried out this repair it was found that 640,000 litres had escaped at pressure for 5 years. Some nine months after the repair the customer noticed a dip in his driveway and contacted the company. REDACTED and worked in the Construction Industry for 39 years managing all types of projects and infrastructure works in the role of a REDACTED. He believes that, as such, his knowledge of such leaks and incidents is great and the damage to his driveway was agreed with two of the company's inspectors to have been due to the leak.
- The first was an engineer sent by the company following the customer's contact with the company and the second was an inspector who came to the customer's property before the meter was moved from the customer's land.
- The contractor's warranted liability period had, however, expired and so the customer was told that he would need to claim against the company. Since then, the company has failed to carry out the repair and has now stated that it will not repair this damage.
- Alongside this, the leak allowance provided to the customer remains questionable based upon the customer's payments before and after the leak.
- The customer would like the company to repair the damage to his driveway and clarify the leak allowance.

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The company's response is that:

- The company is not responsible for the cracks and damage that have appeared in the customer's drive or for any associated repairs. The company acknowledges, however, that the customer has not received a good standard of service and a goodwill credit of £50.00 has been offered. The customer has not accepted this offer.
- The company says that it has completed a review of its technical system and cannot locate a work order which confirms that REDACTED attended the customer's home on 24 December 2019. A search has however revealed a work order for a leak on a meter with repairs undertaken by the company's contractors on 24 December 2019 at a different property address in the same street as the customer's home. The work order shows that the stop valve was replaced to stop a leaking inlet pipe and the existing meter was refitted. The company has no information as to how this leak was discovered or who reported it, as it is not noted on the company's technical despatching database. It is possible it was reported by a contractor or Siemens who read water meters on behalf of the company at the time.
- The company then received a call from the customer on 17 May 2021 who explained that REDACTED attended his property in 2019 to repair a leak and subsequently his driveway had developed a crack near the foul water manhole. The customer asked the company to send an email confirming that an investigation would be made into the damage at the property in December 2019 and that a leak allowance would be calculated.
- An Inspector attended the property on 18 May 2021 at 10.02 to investigate the customer's complaint that the damage to his driveway was caused by the water leak. The completion notes from the work order relating to the attendance state that the company is not responsible for the damage.
- On 19 May 2021 the company confirmed to the customer that a leak allowance would be calculated, and checks would be made to confirm the leak had been repaired. Two meter readings were taken to allow a leak allowance to be calculated.
- Following an unanswered call to the customer on 10 June 2021, the customer called the company asking for an update. The company told the customer that it was not responsible for the damage to his driveway, and he would need to speak with his insurance company for further assistance. As the customer was not happy about this, the complaint was escalated.
- The company reaffirmed the comments made by the Inspector that the damage to the driveway had not been caused by the water leak and no further action would be taken. However, the company would apply a leak allowance once meter readings had been checked.

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- The customer further stated that the temporary tarmac reinstatement around the meter had started to crumble at the edges and a deep depression had formed. The company confirmed that arrangements would be made to make the necessary repairs to the temporary reinstatement. The company explains that when there has been a leak on a meter or on pipework, tarmac is laid temporarily to allow time for the ground to dry out. Once the ground is dry, it is the normal process to lay a permanent reinstatement.
- On 30 July 2021, the company received an email from the Consumer Council for Water (CCWater).
- Due to a technical error there had been a delay in applying the leak allowance. On 6 August 2021, the company contacted the customer to inform him of this and to explain that the company's IT team was working to resolve the error as quickly as possible. It was further reiterated that the company was not responsible for the cracks in his driveway and would not make any repairs. The customer was then directed towards his insurance company. The customer indicated he did not wish to take that course of action as he was concerned his premiums would increase.
- The customer went on to say that he was unhappy that the meter had been fitted in his private drive without his permission. The company stated that permission would have been sought prior to the meter's installation but agreed that a request would be made to its contractors to relocate the meter from the property.
- On 9 August 2021, the company provided an update. It was explained that further corrections were required before the leak allowance could be applied. In addition, an appointment was booked for 24 August 2021 between 8.30 and 10.30 for a survey to be completed to determine whether the meter could be relocated.
- REDACTED called the customer on 10 August 2021 to arrange an appointment to attend to survey for the possibility of relocating the meter from the driveway to the main road.
- A letter was sent to the customer dated 10 August 2021 explaining that a leak allowance had been applied. A leak allowance calculation sheet was enclosed with the letter. In a call on 13 August 2021, the customer expressed concerns that the leak allowance was incorrect. The company checked the allowance amount and determined that the leak allowance was indeed incorrect. The company apologised to the customer and made arrangements to correct the leak allowance.
- On 25 August 2021, the company called the customer to explain that its IT department was attempting to correct the leak allowance. However, there was no reply. On 27 August 2021

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the customer called to speak to his case handler and an email was sent to his case handler to make a call back.

- The company called the customer on 6 September 2021 and confirmed the leak allowance had been applied and there was a credit of £980.86 on his water services account. The customer said the figure was incorrect as a letter sent to him previously advised a refund of more than £2,000.00 was due. The company explained that if this had been the case, it was likely to be the credit balance prior to the amended bills being reissued. The company further explained that the leak allowance was still incorrect but as the calculations were based on 73 litres usage of water per day from June 2019, rather than 230 litres per day which was the customer's actual usage, this was more financially beneficial to the customer.
- CCWater again became involved with the complaint.
- On 7 October 2021 REDACTED attended the property and removed the meter from the customer's driveway and laid new tarmac which removed the depression that the customer complained of. The meter is now situated in the road.
- The company says that there is no expert evidence in support of the claim that the depression in the customer's driveway has resulted from drying out of the ground
- In respect of the claim for clarification of the calculation of the leak allowance, the company says that the customer believes he should receive a refund totalling £2,186.44 which is shown on the leak allowance calculation sheet. This figure is the value of the volume of water that was lost during the period of leakage. The customer's bills were cancelled and reissued based on a substantially lower water consumption rate. The difference between the total amount of the amended bills and the payments made by the customer is the refund due, this being £980.86, and no further refund is due.
- The company acknowledges that there was a delay applying the leak allowance after the repair to the inlet pipe in 2019, as it was unaware a repair had been undertaken by REDACTED until the customer called the company on 17 May 2021.
- The company denies that it is liable for the customer's claim.

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.

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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.

The customer has responded to my Preliminary Decision and the company has replied to his response. In reaching my Final Decision, I have taken the parties' observations into account.

How was this decision reached?

1. The customer's complaint concerns two issues following a leak at his water meter, which was at that time located in his driveway. In his reply to the company's response, the customer has also alleged that the installation of the meter in his driveway was unlawful. The company has objected to this as the issue was not raised in the customer's application. I have concluded that I should not investigate the legality of the installation of the water meter in the driveway. Although the company's objection incorrectly made reference to the rule relevant to the customer's response to a Preliminary Decision (which had not been issued) the WATRS Scheme rules require at rule 4.4 that a customer shall precisely identify in the application the issues that are involved in the dispute. No reference is made in the application for to an illegal siting of the meter in 2014 and the company has not, I find, had a fair opportunity to put forward evidence to the adjudicator about something that had happened as part of its Universal Metering Programme some seven or eight years ago. Although I accept that this was also mentioned by the customer to CCWater, it is clear from the CCWater file that the customer's complaint and the focus of his request for a remedy, related to the damage to the customer's driveway and the calculation of the leak allowance.
2. I do, however, consider the complaints (1) that the leak from the meter resulted in a substantial volume of water entering the subsoil below his driveway and caused damage to the customer's drive when the leak was repaired and (2) that the company has incorrectly calculated the leak allowance to which the customer is entitled.

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Damage to the driveway

3. The company, having initially been concerned that it had no record of a leak repair on 24 December 2019 at the customer's property, has now identified a job request at a different address in the same street. The completion notes for the job provided the customer's name and home telephone number and was the only job attended on that street in December 2019. On 11 October 2021, it accepted that a repair had been carried out at the customer's address by REDACTED.
4. The customer complained of damage to the driveway around the area where the meter was previously placed. He has supported this claim with pictures that show a depression in the ground and cracks and loss of surfacing in that area. He argues that this has happened because the leak has destabilised the ground underneath or moved the subsoil which, when drying out, has been subject to shrinkage.
5. The rival positions of the parties are as follows.
6. The company says that following the customer's complaint, it sent an inspector to investigate the damage to the customer's drive on 18 May 2021. The company has told the customer that the inspector was at the property for around 90 minutes and confirmed that the company was not responsible for the damage. I find, because this has also been confirmed by the company, that the company has relied upon the inspector's finding on that date. It refers to the inspector's record of the investigation which the company has appended as "REDACTED" to its response.
7. The customer says that the visit lasted for 15 minutes, and he was advised that the contractors who fixed the leak were responsible. The inspector then spoke to the contractors and was told that their work was guaranteed for 12 months only. The inspector then advised the customer that he would need to get the claim escalated with the company. The customer has made observations on "REDACTED" with which I agree. He says that this evidence does not in any way reference the case, his address or the issues referred to in this claim. I accept that it is possible that not all of the electronic record has been supplied, but I find that insofar as the document exhibited is complete, it states only "REDACTED not responsible". Not only does this have the defects pointed out by the customer, but what these words mean is unclear. No reasons for the conclusion have been given. In light of the customer's detailed and therefore persuasive explanation that the inspector tried to get REDACTED to take responsibility for the damage

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to the customer's drive, this record is at least equally consistent with a view that REDACTED caused or should remediate the damage to the driveway. I find that this statement cannot reasonably be taken as an explanation that the leak did not cause the damage to the customer's driveway because it is insufficiently explanatory of what the inspector found.

8. The company has referred to a further visit in which it states that the depression in the driveway was re-tarmacked when the meter was moved. There is no report from this attendance and I find that there is no clear evidence whether this action did or did not resolve all of the issues with the driveway.

9. The company says that the customer should not be able to succeed in this claim without the assistance of an expert report. It has not suggested that it is not liable for repairing the driveway if a leak from its assets gave rise to the damage, but argues instead that this matter should be resolved by

“the issue of a county court claim as any issues of causation for the damage to the driveway cannot be considered further without reference to detailed expert evidence”.

10. The customer says that he has suggested to the company that it would be helpful to get an expert, but the company has not agreed to reinvestigate.

11. Against this background, I find that the company has failed to supply its services to the expected standard. I reach this conclusion because:

- Taking into account the size and duration of the leak, which the customer says has been agreed to be 639,670 litres of water, it is plausible that this affected the ground close to the meter under the customer's driveway.
- As the company does not deny that it would be liable to remediate the driveway if damage had occurred, I find that it would reasonably be expected to carry out a proper investigation and reach an informed decision. This is all the more so because the customer says that the cost of repairing the driveway would be several thousand pounds. (The customer supplied a copy of a quotation to CCWater but the figure quoted is not fully legible in the documentation uploaded to the dispute resolution platform.)

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- On the basis of the evidence, I find that the company has not carried out the type of investigation that would enable it to make an informed decision. Instead, it has relied on a report from its inspector that I find to be ambiguous and uninformative.
 - I find that an average customer would not reasonably expect the company in these circumstances to challenge the customer to take his concerns to court.
12. Although, therefore, I accept that there is no clear evidence before me on which I could reach a decision that the leak did damage the driveway, I also find that, in circumstances where the company would reasonably be expected to be able to provide a technical explanation for what it thinks has happened, there is no persuasive evidence that the leak did not cause this damage.
13. I find that it is fair and reasonable to require the company to re-address the question whether damage has been caused to the customer's property as a result of the leak. I have considered carefully how this should be done in the context of an application to WATRS and I have taken into account what the parties have said about my Preliminary Decision and I welcome both parties' constructive remarks directed towards implementing the Decision.
14. I stated in my Preliminary Decision that I had concluded that it would be fair and reasonable to direct that unless the company was willing, having considered this Decision, to remediate any continuing damage to the customer's driveway (which the company might have considered to be the cheaper option), the company should obtain expert assistance.
15. The customer, has, however, asked that if remediation work is to be undertaken as an alternative to further investigation, it should be done by the contractor whose quote has been submitted to me in this adjudication. The company has responded that before this could be agreed, it would need to have three quotes to choose from. I find that these observations indicate that neither the customer nor the company is content with the alternative that I provided to further investigation. I further find that as there is no clear picture of what has happened under the driveway (if anything), continuing debate as to what might be required from the company or from different contractors could impede and not progress dispute resolution. I therefore no longer offer the company the option of undertaking the work to the driveway prior to an investigation.

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16. I find that further investigation is required. In the circumstances, due to the complexity of this case and the positions taken by both parties, I directed in my Preliminary Decision that this should be by way of a report from an appropriately qualified independent civil engineer (that is one who is not an employee or consultant to the company who is already contracted to it in some capacity). The customer has said that it would like there to be a joint instruction and the company is also happy with that and it is content too, to allow the customer to put forward a list of proposed experts. I make clear, however, that even though it is to be a joint instruction, the company shall be liable to meet the fees of the expert appointed. Some uncertainty has additionally arisen, as to the profession of the expert. The customer has agreed that a civil engineer is appropriate but he has also said that what is needed is a "Intrusive civils survey" which has caused the company to be unsure whether a surveyor is preferred.
17. I reiterate my view that this investigation should be undertaken by a civil engineer. Such a person has the training and skills to carry out all necessary calculations and to assess what is required, if anything, to ensure a satisfactory condition of the driveway. He shall be entitled if the customer agrees, to carry out an intrusive inspection, and if this occurs, I find that the company shall make good any damage caused by the intrusion.
18. I direct that the report should be provided at the same time to both parties and shall give reasons for the conclusion that has been reached, including whether, following the action taken by the company to re-tarmac the area where the meter was located before it was moved, the drive has been suitably repaired.
19. I further direct that, if damage is found by the expert to have been caused to the driveway such that remediation is still required, the company shall carry out such work, provided that in accordance with rule 6.4 of the Scheme rules, the total cost of:
- a. the expert's fees plus
 - b. compensation of £200.00 (below) plus
 - c. making good any intrusive inspection
 - d. the remediation costs of the driveway,
- shall not exceed £10,000.00.

Leak allowance

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20. The customer says that there have been a number of different accounts at the property for reasons that are unclear and therefore the calculation of his leak allowance may have been underestimated. Although the company has confirmed that there were a number of different accounts over the 25 years of the customer's occupation of the property, I find that there is no evidence that there was any leak prior to the installation of a meter in 2014. The leak allowance that the company has provided has been applied from the opening of the first metered contract on 23 September 2014 and I find that this is consistent with what an average customer in this situation would reasonably expect.

21. There was a delay to the provision of a leak allowance for which the customer has been offered £50.00 gesture of goodwill (although he has not accepted it). I find that this was a fair and reasonable sum for the company to offer the customer for this delay and in line with reasonable expectations. As explained below, however, this is not the only deficiency in customer service that I have found.

22. I turn first, however, to whether the leak allowance has been incorrectly calculated. The customer was sent a leak allowance calculation sheet on 10 August 2021.

23. This document appears to summarise the loss. The section of the document headed "Explanation to share with customer" indicates that:

- a. The customer had an estimated average daily use of 230 litres during the period of the leak.
- b. The average use including the leak over this period was 486 litres.
- c. This gave a daily average leak of 256 litres per day.
- d. The number of days of leakage was given as 2501 days with total water loss of 640 m³ or 639,670 litres, with a financial value of £2186.44.

This calculation appears under a heading stating open "Amount of allowance" and I find that it was a clear indication to the customer that the amount that he had overpaid for 256 litres of water per day was £2,186.44 and he could expect to be paid this by way of an allowance.

24. The company has seemingly both acknowledged to the customer that this calculation was incorrect and also explained the meaning of this document differently. A summary of the company's understanding of the document is set out in the company's letter to the customer dated 11 October 2021. The company says that the amount of £2,186.44 was "the total of what was lost in the leak" but I find that it did not make clear to the customer why he should

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receive an allowance of less than the amount lost because in the carrying out of that calculation, the customer's average daily use of 230 litres per day has been deducted from the actual readings. Notably, the actual leak of 256 litres x 2501 days gives a total loss of water by way of leakage of 640,256 – the marginal difference I assume to be due to some roundings up in the recorded measurements or it was, as the customer stated, incorrect.

25. Based purely on that explanation, I find that an average customer would on receiving this document, reasonably have continued to believe that it was the calculation of an allowance that would see him refunded the sum of £2,186.44. In a later letter to CCWater dated 26 October 2020, however, the company has stated that this is not the amount of refund because,

“based on the inbound payments made..., once the account had been rebilled, after the leak allowance had been applied this only left 980 86 of overpayments ... to be refunded. This is the amount that we returned to his bank account.”

The company supplied statements and a calculation in support of this which are significantly more difficult to follow. However, they start with the finding that the customer has used 1264.9 m³ of water including the leakage and this has been corrected to show that he should have been charged for 575.4 m³ of water and has in fact being charged for 503 m³. These total figures are similar to the findings on the earlier statement. This finding has been applied across the customer's statements as a whole taking into account the payments made by the customer, including a varying position of indebtedness which was reversed by a credit of £1,108.26 on 10 August 2021. I find that this is the correct method to have used to correct the customer's account, because it enabled the company to take into account the amounts paid from time to time as well as any changes in the amounts of its charges from year to year.

26. The customer has said to CCWater that the company has changed figures to suit their needs and that this “is proven by probably 20 to 30 letters issued by them all being changed for the same period” and in his further reply to the company's response he has said:

“It must also be noted that SW after the complaint was put through to them issued circa 4 different packs of bills backdated for a long period all with different figures which seemed to be adjusted to suit their needs and confuse ourselves. This was discussed with them who sated we should ignore them but we questioned the changes and they assured us they would get the correct figures.

27. I do not find that there is evidence that supports the customer's argument that the bills are incorrectly calculated. He has received re-billed statements that the company now says are

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correct (though have not themselves been put in evidence before me) and the company has shown its detailed current calculation. Although the customer has expressed doubt about this calculation, he has not set out any detail of what he says is the matter with it, other than that it does not reflect the allowance that he was at first promised and is different from other information that he was given. Accordingly, I find in respect of the amount of the bill, I am not satisfied that he has been wrongly billed.

28. On the other hand, while I accept the company's evidence that it was unaware of the leak prior to May 2021, I note that (1) as it did in fact have a job record for the repair in 2019 (albeit at the wrong address) and (2) as REDACTED was the customer's contractor and might reasonably have been expected to report to the company where leak repairs had been undertaken, the company would reasonably have been expected by an average customer to have systems and procedures in place that would have identified that the customer might have suffered a leak. While, therefore, it would have been for the customer to apply for a leak allowance, an average customer would reasonably have expected the company to have informed the customer of his position following an emergency attendance at his address with no notice to the customer. I find that the company fell short of expected standards in this respect.

29. I am also satisfied that, in summary, there is evidence that the leak allowance was first misstated to the customer giving him the impression that he would receive more than twice the amount of his actual allowance; the reason for the downwards adjustment was not clearly explained; the evidence supports that this was at first wrongly calculated and he was given backdated bills that he was told were incorrect and then were replaced; and the allowance was not paid to the customer promptly, seemingly due to an IT error about which the customer was told of only after his complaint to CCWater. I find that these matters also reflected a shortfall in the company's standard of service. An average customer would not reasonably expect this.

30. In relation to the matters that I have found fall short of the service standards that an average customer would reasonably expect, I find that taking into account the number and severity of these, the offered sum of £50.00 by way of goodwill compensation is too low. I find that a fair and reasonable sum by way of compensation for all of the service failings is £200.00.

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Outcome

The company shall:

1. Take the following actions in respect of the dispute regarding damage to the driveway:
 - Liaise with the customer for the purpose of selecting an independent expert civil engineer (that is, not an employee or existing contractor of the company) to be appointed jointly by the company and the customer but whose fees shall be met by the company.
 - Appoint an expert selected following such liaison to report at the same time to the company and the customer.
 - Such report shall address the cause of damage to the customer's driveway and whether, if caused by a leak, this has already been remediated.
 - The expert's report shall be obtained within 6 weeks of the date when the customer indicates that he accepts this decision.
 - If the expert reports that damage has been caused by leakage and that remediation work is required, the company shall carry out remediation work within 20 working days thereafter.
2. Pay compensation of £200.00 to the customer.
3. For the avoidance of doubt, the cost to the company of all actions taken pursuant to this decision shall not exceed £10,000.00.

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Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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