

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0694

Date of Decision: 31 May 2018

Complaint

On 21 September 2017, a leak was discovered on field drainage pipes in the customer's property. The first test confirmed that the water was from the mains supply and the company's responsibility. However, subsequent tests later identified the water as untreated ground water. Information from the company caused him to take decisions regarding the diversion of the leaking water. This led to significantly increased costs for construction works, which were being undertaken at the time. The company should be liable for these costs. A member of the company's staff also suggested he tampered with the water sample.

Defence

The water has been proven not to be emanating from any of its assets. The results from the initial sample indicated that the seepage was possible mains water. It carried out some further investigations, a second water sample was taken. This identified the water as possible ground water. As this contradicted the initial sample result a third sample was taken. This confirmed that the water was ground water. It did not suggest that the customer install two new drains. It accepts that a member of its customer services team suggested that the customer could have tampered with the initial water sample. No offer of settlement was made.

Findings

There is no evidence that the company is responsible for the seepage. Nor is there any evidence to show that the decision for the drainage system put in place by the customer was based on the company's advice. However, the company delayed in locating the source of the seepage between 11 October 2017 and 24 October 2017, and provided a poor level of customer service in three instances. The company therefore failed to provide its services to the customer to the standard to be reasonably expected in these regards.

Outcome

The company needs to take the following further action:

I direct that the company pay the customer £200.00 in compensation. I also direct that an authorised representative of the company provide the customer with a written apology.

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The customer must reply by 28 June 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 31 May 2018

Party Details

Customer: []

Customer's Representative: []

Company: []

Case Outline

The customer's complaint is that:

- On 21 September 2017, during construction of a swimming pool on his property, the customer discovered a leak on field drainage pipes. This was reported to the company and other organisations.
- The first test of water confirmed that it was from a mains supply. However, subsequent tests later identified the water as being ground water. Information from the company caused him to take decisions regarding the diversion of the leaking water which led to significantly increased costs for the construction works.
- The customer is seeking £5,019.95 compensation as a contribution from the company towards the costs of works and for stress and inconvenience. The customer also requests an apology from the company for the accusation made by a member of staff that he had tampered with the initial water sample.

The company's response is that:

- The customer reported water leaking into his garden on 21 September 2017. It attended the same day to investigate and take samples. It advised the customer that the sample results would take up to 10 working days.
- A suggestion was made that the customer could divert the flow of water away from the excavation if this was causing issues with the construction work. The decision to install two new

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drains to take the flow of water was made by Mr [] of [] Ltd, a consultant employed by the customer, as confirmed by the customer in correspondence.

- The work to install the drains was carried out between 22 and 25 September 2017, prior to the sample results being known.
- The results from the initial sample indicated that the water running into the garden was possible mains water. It carried out some further investigations to identify whether there were any water mains leaks in the area. A possible leak was identified at a neighbouring property, however after further investigation this was found to be as a result of the customer filling up his pond.
- As none of the investigations identified a leak from any of its apparatus or fittings in the area, a second sample was taken from the site. This identified the water as possible ground water. As this contradicted the initial sample result a third sample was taken. This confirmed that the water was ground water, and it advised the customer that it could offer no further assistance.
- It has followed a process in investigating the water in the customer's garden, and there have been no unnecessary delays. The water has been proven not to be emanating from any of its assets. It did not suggest that the customer install two new drains.
- During conversations with the customer's father he suggested that it had tampered with the initial water sample as the second sample gave a different result for the source of the water. It advised him that this was not the case, but that equally the same could be said of the customer if treated water had been added to the area where the sample had been taken from. It is happy to apologise for any remarks made to the customer.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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.

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How was this decision reached?

1. Both parties have made submissions about other organisations: the Highways Agency, the Environment Agency, and []County Council. For the purposes of this decision my remit is to determine the issues between the customer and the company. Any issues in relation to other organisations cannot be considered.
2. Finally, I remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of the evidence.
3. Submissions made without supporting evidence are unlikely to be accepted as proven.
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.

Responsibility for seepage

5. It is not in dispute that there is an ongoing leak that is affecting the customer's property. The customer states that around 7,200 litres of water is leaking on a daily basis.
6. The company is not generally liable for flooding to a customer's property unless the leak is due to any issues with the water main or the communication pipe, which runs from the water main to the boundary of a customer's property. Service pipes on a customer's property are the customer's responsibility. In this case, I note that the customer's submission that the Highways Agency has confirmed to him that the field drain pipework which runs on the customer's land is its responsibility.
7. Although the initial sample indicated that mains water could be the cause of the problem, I note that two subsequent tests undertaken by the company have concluded that the water is untreated ground water. I am also particularly mindful that the customer also arranged for his own independent tests to be conducted and no evidence has been submitted that confirms that the seepage is emanating from the company's assets. Consequently, in the absence of any

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substantive evidence showing otherwise, the customer has not shown that the company is responsible for the seepage in his property.

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

8. The customer submits that it took the company some 55 days from the date of the original visit on 21 September 2017 until 15 November 2017 when the company informed him that the seepage was not being caused by mains water but by untreated groundwater. The customer submits that the company unreasonably delayed in investigating the matter, and that the company had to be chased to address the issue.
9. On 21 September 2017, both parties state that the company informed the customer that the results of the initial sample would be provided within 10 working days. The evidence shows that the customer was informed of the results on 4 October 2017; within the timeframe promised. No evidence has been submitted to show that the company could have or should have been able to test the water quicker. For the avoidance of doubt, it falls outside the remit of adjudications under WATRS to determine or review what tests should be done by a company. I therefore find no failing in this regard.
10. In its letter of 4 October 2017, the company informed the customer that mains water could [adjudicator emphasis added] be the cause of the problem and that it would check its assets as well as the customer's service pipe for the possible cause of the leak.
11. The company has submitted a timeline of the actions taken following receipt of the sample results on 4 October 2017. The evidence shows that the company acted promptly to investigate the issue from 4 October 2017 – 11 October 2017, including checking its apparatus in the area and then investigating a possible cause on a private supply pipe in a neighbouring property. There is also no evidence to show that the company failed to act appropriately or within a reasonable timeframe from 24 October 2017 – 15 November 2017, when the customer was informed of the results on the second sample testing. I find no failings on the company's part during these time periods.
12. However, I note that after the company determined, on the evening of the 11 October 2017, that the issue was not to do with the neighbouring property, there is no evidence to show that the company took any further action until 24 October 2017; nearly two weeks later and after the

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customer contacted it to chase. I am therefore not satisfied that the company provided its services to the customer to the standard to be reasonably expected in this regard.

Decision to install the drainage system and continue with the construction works

13. The customer submits that on 21 September 2017, the company's engineer suggested that he consider fitting drains and piping the water to a culvert at the bottom of his garden. The customer also submits that the company's report of 4 October 2017 misled him in identifying treated water and on the basis of this information he continued with the swimming pool build as he believed that the leak would be identified and repaired. The customer states that the company's advice and erroneous information caused him to take decisions regarding the diversion of the leaking water, which led to significantly increased construction costs for which the company should be liable.
14. The company refutes the customer's submissions. The company states that a suggestion was made that the customer could divert the flow of water away from the excavation if this was causing issues with the construction work. It did not suggest that the customer install two new drains. The decision to install two new drains to take the flow of water was made by Mr [] of [] Ltd, a consultant employed by the customer, as confirmed by the customer in correspondence dated 13 November 2017. The company also submits that the work to install the drains was carried out between 22 and 25 September 2017, prior to the sample results being known.
15. I note the customer's submissions in his Reply to the Defence that Mr [] of [] Ltd did not make the decision to install the drains and that he did not attend the site until 22 September 2017, on the day work for the drains commenced, to confirm his agreement to the decision reached. However, an invoice from the [] Ltd submitted by the customer himself shows that Mr [] visited the site on 21 September 2017.
16. I am also particularly mindful of the customer's 13 November 2017 letter to the company in which the customer states:

"The [company's] Engineer believed this was a private issue as it was on my land and could only suggest to pipe the excess water to a culvert at the bottom of my garden. [] were contacted as expert advice to assist (Invoice No AMC0151) It was stated by Mr [] that a minimum 2

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drains were required to be fitted plus additional shuttering to contain the leak. It was stated that unless the advice was followed then the conservatory/house and fence were at risk of subsidence due to water ingress.”

17. In light of the above, I am inclined to accept, on a balance of probabilities, the company's submission that the customer appointed an independent expert and it was based on the advice of this expert that the customer made the decision to install the drains.
18. In his letter of 13 November 2017, the customer also confirms that following visits from K []Ltd Civil Engineering, as arranged by Mr [], the works to construct the swimming pool continued from 29 September 2017. I note that this was five days prior to the company initially confirmed that the seepage was mains water. I am therefore not satisfied that the customer has shown that the company's report of 4 October 2017 misled him in identifying treated water and that it was on the basis of this information he continued with the swimming pool build.
19. The customer has not shown any failings on the company's part in his decision to install the drainage system and continue with the construction works of the swimming pool.

Customer service

20. The customer has also raised a number of complaints about the level of customer service provided by the company.
21. It is not in dispute that a member of the company's customer services team suggested that the customer could have tampered with the initial water sample. I find that this was inappropriate and that the company failed to provide its services to the standard to be reasonably expected in this regard.
22. The company does not refute the customer's submission that it informed him that it was liaising with the Environment Agency (EA). However, both parties have submitted an email from the EA to the customer, in which the EA states that it has not had any contact from the company about flooding in the area. The company has not provided any evidence to clarify the matter. In the absence of which I accept the customer's submission that the company provided him with incorrect information and failed in its obligations to him in this regard.

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23. The customer queries the company's refusal to meet to discuss the matter. In light of the company's email of 5 December 2017, I am satisfied that the company clearly explained why it had been unable to attend the site when the independent samples were being taken, as it had not received the request with enough time to arrange attendance. I am also satisfied that its subsequent letter of 27 December 2017 explained that it was not responsible for the seepage and why. In its letter the company signposted the customer to other organizations who may have been able to assist. There is no evidence that the company has acted inappropriately. I therefore find no failing in this regard.
24. The customer states that the company initially refused to supply documentary evidence of its findings when requested prior to the second sample. The company does not address or refute this complaint. In the absence of any evidence from the company that it was fair and reasonable for it to initially refuse to provide documentary evidence of its findings from the first sample, I am not satisfied that the company has shown that it provided its services to the standard to be reasonably expected in this regard.

Redress

25. The customer requests compensation in the sum of £5,019.95 comprising £2,299.95 for the installation of two drains; £220.00 for a diesel water pump; and £2,500.00 for stress and inconvenience.
26. There is no evidence that the company is responsible for the seepage and that the decision for the drainage system put in place was based on the company's advice. The customer's claims for the installation of two drains and a diesel water pump are therefore unable to succeed.
27. However, in light of my findings that the company delayed in locating the source of the seepage between 11 October 2017 and 24 October 2017; and provided a poor level of customer service in three instances, I am satisfied that the customer is entitled to a measure of compensation for the stress and inconvenience caused. However, I find that the sum claimed is disproportionate to the failings shown. Having carefully considered the evidence, I consider the sum of £200.00 to be a fair and reasonable level of compensation. No evidence has been submitted to support a higher level of compensation. I therefore direct that the company pay the customer the sum of £200.00 in compensation.

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28. In respect of the customer's claim for an apology, in light of my findings that the company delayed in locating the source of the seepage between 11 October 2017 and 24 October 2017; and provided a poor level of customer service in three instances, 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 for these matters.

Outcome

The company needs to take the following further action:

I direct that the company pay the customer £200.00 in compensation. I also direct that an authorised representative of the company 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 28 June 2018 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.



Uju Obi LLB (Hons) MCIArb
Adjudicator

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