

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1268

Date of Decision: 12 March 2019

Complaint

The customer submits that water has been accumulating in his back garden since 2017. The company, local council and the Environment Agency have all been involved. Sampling first indicated that the possible source was clean and foul water. However, the water has now been deemed to be groundwater. His garden has been totally ruined. Even in the hot dry season, the water is still present. His property is on a slope and the water could be flowing downhill from the streets above. The customer requests that the company take some responsibility for the accumulation of water; provide a more detailed breakdown of its tests; pay £1,000.00 for the cost of a soakaway; and £500.00 for damage to his garden.

Defence

The company submits that it has discounted all of its assets as the cause of the water and will not take any responsibility for the accumulation of the water. Extensive investigations were undertaken on both its clean and waste water networks near the customer's home. During its inspections, it completed several repairs on its assets in the local area and assisted other customers in resolving private leaks as a goodwill gesture. It also used its powers to enforce repairs under Section 75 of the Water Industry Act 1991. None of these actions improved the issue. Each time water samples were taken, the chemical makeup of this differed at times, giving it reason to believe that its assets may possibly have been contributing to the cause. However, its most recent samples have not found any of these present and are indicating the likely source is sub surface water. The water could have made its way to the customer's garden from private pipework. The customer's property is located at the bottom of an incline, and immediately opposite is a brook and nature area. The property is built on a band of clay that is some 50-60 metres thick and, due to this; there are issues with water draining away in the sub soil. It believes that the geographical location and the make-up of the sub soil structure are likely to be the cause of the issue. It has paid the customer a total of £280.00 for customer service failings such as missed appointments and failed call backs, and for the length of time take to bring its investigations to a conclusion.

Findings

The company is not liable for seepage at a customer's property unless the leak is caused by one of its assets. The company has set out in some great detail the actions it took, over a considerable period of time, to investigate the matter.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

Detailed seepage comparison reports have also been submitted in evidence by the Consumer Council for Water (CCW). Most recent tests have concluded that the water is likely to be sub surface water, which could be water remaining on/in the ground following a leak. I accept the company's submissions that the water could have made its way to the customer's garden from private pipework. Further, in view of the evidence submitted, I accept the company's submissions that it has carried out extensive investigations to its clean water, waste water and surface water assets in the area, and carried out a number of repairs to both its own and private assets. However, these repairs have had no impact on the issue being experienced by the customer. In view of the above, and in the absence of any evidence showing otherwise, I accept the company's submissions that it has eliminated its assets as the cause of the water and it is not responsible for the seepage in the customer's garden. I can appreciate the distress that this issue has been causing the customer and I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected and is liable to provide the redress claimed.

Outcome

The company does not need to take any further action.

The customer must reply by 9 April 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1268

Date of Decision: 12 March 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- Since 2017, there has been a lot of water leaking into his back garden.
- The company, local council and the Environment Agency have all been involved.
- Sampling first indicated that the possible source was clean and foul water. However, the water has now been deemed to be groundwater.
- His garden has been totally ruined. Even in the hot dry season, the water is still present. His property is on a slope and the water could be flowing downhill from the streets above. At one point, a number of properties were complaining.
- The customer requests that the company take some responsibility for the accumulation of water; provide a more detailed breakdown of its tests; pay £1,000.00 for the cost of a soakaway; and £500.00 for damage to his garden.

The company's response is that:

- It has discounted all of its assets as the cause of the water and will not take any responsibility for the accumulation of the water.
- Extensive investigations were undertaken on both its clean and waste water networks near the customer's home. During its inspections, it completed several repairs on its assets in the local area and assisted other customers in resolving private leaks as a goodwill gesture. It also used its powers to enforce repairs under Section 75 of the Water Industry Act 1991. None of these actions improved the issue.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- Samples of the water were taken. Treated water from its water main would test positive for chlorine, whilst water from its sewer would test positive for detergents, phosphates and ammonia.
- Each time water samples were taken, the chemical makeup of this differed at times, giving it reason to believe that its assets may possibly have been contributing to the cause. Earlier samples detected chemical compounds found in drinking water from its network. However, its most recent samples have not found any of these present and are indicating the likely source is sub surface water.
- Even though the tested water did, at times, show it was treated, this does not mean that its assets were the cause as the water could have made its way to the customer's garden from private pipework.
- The customer's property is located at the bottom of an incline, and immediately opposite is a brook and nature area. The property is built on a band of clay that is some 50-60 metres thick and, due to this; there are issues with water draining away in the sub soil. It naturally follows that any water entering the sub soil will have difficulty in draining because of this. Over time, there is a possibility that channels will open up in the clay so the water can make its way to either the surface or below the clay into further sub soil areas. Naturally, water will always find the easiest route to follow and it appears that in this instance the customer's garden is where the water is showing itself.
- It believes that the geographical location and the make-up of the sub soil structure are likely to be the cause of the issue.
- Investigations to determine whether any of its assets are the cause of water pooling in customers' properties can be very lengthy. It is often the case that when it takes samples of the water, the chemical makeup of this can change. This may be due to several factors and it can be a process of elimination to eventually determine the cause which can take some considerable time.
- Its investigations are also limited to determining whether its assets are the cause. If it is proven that none of its assets are leaking or faulty, then the customer will need to seek assistance from the local authority, or their buildings insurance company, whose role is to protect customer's properties.
- It has paid the customer a total of £280.00 for customer service failing such as missed appointments and failed call backs, and for the length of time take to bring its investigations to a conclusion.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. I must remind the parties that adjudication is an evidence-based process.
2. The evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect.

Responsibility for the seepage

3. It is not in dispute that there is ongoing seepage issue that is affecting the customer's property externally.
4. The company is not liable for seepage at a customer's property unless the leak is caused by one of its assets.
5. In addition, the company is legally only responsible for the water main and the communication pipe from the water main to the boundary of a property. Property owners or occupiers are responsible for the supply pipe, which runs from the boundary of the property to the property

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

and all the pipework, fixtures and fittings inside the property. If a leak is identified on private pipework, any repairs are the responsibility of the property owners or occupiers. If repairs are not carried out by the property owners or occupiers, the company may undertake an enforced repair and recover the cost from the customer.

6. The evidence shows that the customer first reported the seepage in his back garden to the company on 16 May 2017.
7. The company has set out in some great detail the actions it took, over a considerable period of time, to investigate the matter. Detailed seepage comparison reports have also been submitted in evidence by the Consumer Council for Water (CCW).
8. Initial tests in May and September 2017 indicated that the water was groundwater and not originating from the company's assets. Subsequent tests then suggested that the water may be emanating from the company's water and sewage networks. However, the company's most recent tests have found no chlorine or ammonia, and concluded that the water is likely to be sub surface water, which could be water remaining on/in the ground following a leak.
9. I accept the company's submissions that the water could have made its way to the customer's garden from private pipework.
10. Further, in view of the evidence submitted, I accept the company's submissions that it has carried out extensive investigations to its clean water, waste water and surface water assets in the area. It also surveyed the customer's own private drainage. The evidence also shows that during the investigations, the company carried out a number of repairs to its assets, assisted a number of neighbouring properties to repair leaks on their private assets and undertook an enforced repair under Section 75 of the Water Industry Act. However, these repairs have had no impact on the issue being experienced by the customer.
11. No evidence has been submitted to this adjudication to show that the company could have or should have undertaken further or different tests. I am also particularly mindful that a determination of what tests should be undertaken falls outside of WATRS adjudications.
12. In view of the above, having carefully considered the evidence submitted, in the absence of any evidence showing otherwise, I accept the company's submissions that it has eliminated its

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

assets as the cause of the water and is not responsible for the seepage in the customer's garden. I can appreciate the distress that this issue has been causing the customer and I appreciate that the customer will be disappointed that I am not in a position to direct the redress sought. However, the customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard and is liable to provide the redress claimed.

13. It is not in dispute that during its investigations, the company failed to provide a reasonable level of customer service at times. The company's investigations also took well over a year to reach its conclusions. The company has paid the customer a total of £280.00 for the distress and inconvenience caused. I am satisfied that this was appropriate and sufficient to cover the failings shown and the time taken.

14. Consequently, in view of all of the above, this claim does not succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 9 April 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.



This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.



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

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

www.WATRS.org | info@watsr.org