

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0830

Date of Decision: 10 August 2018

Complaint

The customer submits that an issue of damp in his property came to light after he purchased the property in September 2017. He was initially informed by the management company for the property that the company was aware of a leak and queries should be directed to the company. On speaking to the company, it confirmed that it was aware of a leak and had issued a Waste of Water Notice to his immediate neighbour, as it had been identified that she was responsible for the leak. On the basis that the damage was caused by a neighbour, his insurers declined his claim. However, the company subsequently informed him that it had given him incorrect information and it had not issued his neighbour with a Waste of Water Notice or had any official dealings with her at all. The company therefore caused an unnecessary delay in the resolution of the damp issue. The customer requests: £2,639.56 to cover his mortgage for four months; £480.00 to cover his council tax for four months; £1,790.24 to cover maintenance charges for four months; £500.00 for dry cleaning; £1,512.00 to replace a carpet; £400.00 to replace a mattress; £400.00 for a dehumidifier; £200.00 electricity costs for drying out the property; and £2,500.00 for inconvenience.

Defence

The company admits that on 28 September 2017 it incorrectly informed the customer that his neighbour's supply pipe was leaking and that it had issued a Waste of Water Notice. However, during a telephone call on 23 October 2017, it correctly advised the customer that the information he had previously received was not accurate and confirmed that a Waste Notice had not been issued. The company states that the misstatement lasted only 25 days therefore compensation should be minimal. No offer of settlement was made.

Findings

The company gave the customer incorrect information, which has caused an unnecessary delay in resolving the damp in the customer's property. The company could not fully re-tract its misstatement that the customer's neighbour was not at fault until January 2018. The company was responsible for the delay for four months from 28 September 2017 to January 2018. The company is not liable to meet the customer's requests for the cost of: his mortgage; council tax; service charges; dry cleaning; carpet and mattress replacement; a dehumidifier; and electricity. However, the company should pay the customer compensation for inconvenience.

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Outcome

The company needs to take the following further action:

I direct that the company pay the customer £600.00 compensation.

The customer must reply by 10 September 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0830

Date of Decision: 10 August 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- An issue of damp in his property first came to light after he purchased the property in September 2017. He was initially informed by the management company for the property that the company was aware of a leak and queries should be directed to the company.
- As the damage was quite significant and deteriorating he also started a claim with his insurers.
- On speaking to the company, it confirmed that it was aware of a leak and had issued a Waste of Water Notice to his immediate neighbour as it had been identified that she was responsible for the leak.
- On the basis that the damage was caused by a neighbour, his insurers declined his claim. He re-contacted the company several times and was simply told that it was aware and would be dealing with his neighbour directly. However, on 6 December 2017, the company informed him that it had given him incorrect information and it had not issued the customer with a Waste of Water Notice or had any official dealings with her at all. He had to re-approach his insurers.
- His insurers have eventually agreed to help repair the damage. A consent to proceed was given on 12 June 2018 but it will still be over 12 weeks until builders can schedule repairs, meaning the process will have taken over a year to complete.
- The issue was so bad he was unable to live in the property. The wall and floor in the bathroom is saturated, tiles have fallen off the wall causing damage to the shower tray, the carpet is full of mould, and dampness in the closet caused clothes to go green. He has made no claim for

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alternate housing costs as he travels a lot and has been able to sleep in the living room if he could not find a friend to stay with.

- The costs he is claiming are reasonable. The company's mis-information caused him ongoing problems.
- The customer requests: £2,639.56 to cover his mortgage for four months; £480.00 to cover his council tax for four months; £1,790.24 to cover maintenance charges for four months; £500.00 for dry cleaning; £1,512.00 to replace a carpet; £400.00 to replace a mattress; £400.00 for a dehumidifier; £200.00 electricity costs for drying out the property; and £2,500.00 for inconvenience.

The company's response is that:

- Shortly after registering at the property as a new occupier, the customer made contact by telephone call on 28 September 2017 to report a damp patch within his flat. Following advice from his management committee, the customer asked that it check for leaks and assist with the repair.
- During this call, the customer was incorrectly advised that it had been trying to contact the neighbouring property, but had been unable to make contact. It was confirmed that the supply pipe was leaking and that it had issued a Waste of Water Notice.
- However, within this initial call the agent did confirm to customer there are no leaks on its pipes, the "leak" was believed to be from a customer's private pipework, and it was for the customer to fix this.
- It discharged its legal responsibilities as soon as it confirmed to customer there was no leak from its pipes. It is responsible for detecting and fixing leaks on its own network. It has no legal obligation to detect and fix leaks from third party pipes (although it does have powers to do so to prevent waste of water).
- During a telephone call on 23 October 2017, it correctly advised the customer that the information he had previously received was not accurate and confirmed that a Waste Notice had not been issued.
- Following the realisation that it had given the customer incorrect information, it liaised with his neighbour to try to establish whether there was actually a leak on her supply. Due to the vulnerability of the customer's neighbour, the appointment took some time to arrange, but this was entirely outside of its control. Again, any leak on private pipework is not its responsibility to locate or repair and it cannot be held responsible for any delays these further investigations may have caused.

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- Damages are subject to the principles of remoteness, causation and mitigation, so in this case it admits that it provided incorrect information to customer which he relied on to his detriment, however, the misstatement lasted only 25 days. Damages should therefore be minimal. The customer has not incurred any financial loss as a direct result of its negligent misstatement (or has not provided any evidence of such). The customer's mortgage, council tax payments and maintenance charges would remain payable to ensure continued ownership of his flat. Any compensation payment or payment of goodwill is therefore limited to the distress and inconvenience caused by its misstatement.

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. The company admits that on 28 September 2017, it incorrectly confirmed to the customer that it was aware of a leak; that the customer's neighbour's supply pipe was the cause of the leak; and that it had issued a Waste of Water Notice to the customer's neighbour. I find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person in this respect.

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2. I acknowledge the company's submission that during the call on 28 September 2017, the agent informed the customer there were no leaks on its pipes and the leak was on private pipework. The company states that it discharged its legal responsibilities as soon as it confirmed to customer there was no leak from its pipes. I accept the company's further submission that it is only responsible for detecting and fixing leaks on its own network. However, I am mindful that evidence of the parties' conversation on 28 September 2017 has not been submitted by the company. I am also mindful that it was the misinformation that the customer's neighbour was the cause of the leak, and not whether the company was responsible for the leak, which the customer relied on to his detriment and which was the basis on which the customer's insurer declined his claim.
3. A transcript of a conversation between the parties on on 23 October 2017, submitted in evidence by the company, confirms the company's submission that the customer was informed that the information he had previously received on 28 September 2017 was not accurate and a Waste Notice had not been issued.
4. However, I am mindful that there was still some uncertainty as to whether or not the customer's neighbour was at fault; albeit that the company's misinformation had confirmed an assertion made by the customer. Both parties' submissions indicate that further investigations were undertaken at the neighbour's property. The customer's submissions indicate that investigations were concluded in January 2018. The company does not refute this. I am therefore inclined to find that the company could not fully re-tract its misstatement that the customer's neighbour was not at fault until January 2018. No evidence has been submitted to support the company's submissions that the delay with its investigations at the customer's neighbour property was entirely outside of its control. In the absence of any evidence showing otherwise, I am therefore also inclined to accept the customer's submission that the company was responsible for a delay for four months from 28 September 2017 to January 2018.

Redress

5. Although I have found that the company was responsible for the delay in fixing the leak for a period of four months, I am inclined to accept the company's submission that the customer requests for the cost of his mortgage, council tax and service charges for four months should not succeed. The customer's submissions indicate that the property was not completely uninhabitable and he was able to use other parts of the property. I also accept the company's

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submission that the customer's mortgage, council tax payments and maintenance charges were payable irrespective of the damp issue, and that the customer has not incurred any financial loss as a result of the misstatement in this regard. I am not satisfied that the customer has shown that the company should be liable to pay these costs. However, I acknowledge that the customer has not had full enjoyment of his property and it is likely that this is the basis upon which he is requesting these payments. I will take this into consideration when dealing with the customer's claim for inconvenience below.

6. In respect of the customer's request that the company pay £500.00 for dry cleaning; £1,512.00 to replace a carpet; £400.00 to replace a mattress; £400.00 for a dehumidifier; and £200.00 electricity costs for drying out the property, the customer has not submitted any receipts or invoices to support his claim. Only a quote for the carpet replacement has been submitted and this is in the lesser sum of £1,086.01 and not the £1,512.00 claimed. More importantly, I am mindful that the customer states that his insurance company has now accepted his claim and is assisting with the matter. The customer has not clarified if his insurance has reimbursed him for any of these items. I am mindful that the customer cannot receive double recovery and that these items may be covered by his insurance claim. Consequently, in the absence of any evidence showing otherwise this aspect of the claim does not succeed.
7. The customer also requests compensation for distress and inconvenience. In light of my findings that the company gave the customer incorrect information which caused an unnecessary delay in resolving the damp in the customer's property, 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. Bearing in mind the fact that the impact of the company's actions was serious and the customer's submissions about the distress that the delay caused, I consider the sum of £600.00 to be a fair and reasonable level of compensation. No evidence has been submitted to support a higher sum of compensation for the failings shown. I acknowledge that the inconvenience caused of the leak in its entirety would have been fairly substantial, however, I can only consider the inconvenience caused by the company. I therefore direct that the company pay the customer £600.00 compensation.

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Outcome

The company needs to take the following further action(s):

I direct that the company pay the customer £600.00 compensation.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 10 September 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.



U Obi LLB (Hons) MCI Arb
Adjudicator

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