



## Action on Flat Water Leaks

### Overview

In recent years, there has been a very poor record of water leaks on St Benedicts and resulting insurance claims. Insurance premiums rose significantly in 2019 as a result. Before July 2020, the Management Company had policies that required flat owners to have any plumbing alterations undertaken by a qualified plumber with prior consent of the Management Company and leaks were handled by the Managing Agent, Rendall and Rittner, without action on the breaches of lease. Often, repairs costing over the previously lower excess were claimed on the Estate insurance.

These policies have proved ineffective in controlling water leaks. Leaks causing damage, many arising from poor quality plumbing installations and work and from lack of maintenance, continued at an unacceptable rate. Together with the claims for movement, this resulted in the building insurance premium more than doubling in 2020 compared to the previous year, contributing significantly to flat service charges rising on average by around a quarter despite other annual costs being held to the same level as in the previous year.

Some residents have suffered repeated leaks into their property from the same flat above, causing considerable distress and making them nervous to go out in case of a further leak. We very much regret that some property owners seem indifferent to their responsibilities, the consequences and the impact on others. This impacts how responsible owners are treated, because the Management Company has to treat all owners equally.

The current position is intolerable and numerous property-owning shareholders, including some later responsible for leaks, demanded that the Management Company take more action to reduce leaks and the impact on service charges.

As it represents all owners' interests, the Management Company has acted as requested in a way that it believes is in the best interests of the Estate and owners overall. It has tightened its policies on what plumbing alterations will be permitted and on how flat water leaks will be handled. These are intended to reduce the likelihood and impact of leaks and allocate more of the costs to the owners of the properties with leaks rather than other owners collectively. This is in accordance with flat leases, which require that costs should be shared by those owners receiving services or those responsible for costs.

If a water leaks occurs, the Management Company now requires inspection of the plumbing by its own contractor and requires that any remedial work recommended is carried out. Because this action is required to remedy a breach of their lease and the flat owner is required to provide access for inspection as permitted by the lease, these new procedures have to be handled by the Management Company's solicitors. More details are set out below under *Action taken*.

The new policies and procedures were notified to all owners in the July 2020 Newsletter, on the Estate website and in documents with the request for service charges due on 1 July 2020.

It is believed these changes will reduce the number of leaks for two main reasons:

1. The Management Company can ensure that future plumbing work and any repairs required are carried out to proper professional standards, so leaks are less likely to occur; and
2. It is now likely to be more cost effective for owners to maintain plumbing and carry out plumbing work to proper professional standards rather than incur the costs for which they are liable if a leak occurs. These costs include legal fees, inspection costs, costs of repair and, if an insurance claim causes higher premiums, increased charges. In the past, some owners may have found it more cost effective not to carry out proper maintenance and to have plumbing work carried out cheaply to lower standards, with increased risk of leaks.



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### Action taken

Plumbing alterations are now required to meet higher standards that make leaks less likely. This includes any work to fixtures attached to the water supply or soil stack including tanks, pipes, cisterns, taps, showers and toilets or work requiring the water supply to be turned off.

- The Management Company now requires flat owners to produce plumbing qualifications for their chosen contractors before work starts. This is because very poor quality work, some of which has caused repeated leaks, has been found that was carried out by plumbers that owners had stated were qualified when only the owner's declaration was required.
- The water system must remain at normal pressure from the water main and open tank. Pressurised systems, which increase flow and require more maintenance, are not allowed.
- Water supply pipes must be solid metal with brazed joints and plastic waste pipe joints must be fully welded. Flexible piping, compression joints and push-fit joints are not allowed.

The Management Company now requires inspection of a flat's plumbing by its contractor after any leak. This is because plumbers used by owners have claimed that poor quality work that had leaked was satisfactory and it has subsequently leaked again.

If there is a leak that damages another property or results in an insurance claim, the following action is now taken:

1. Rendall and Rittner advises of the leak as an emergency to get it stopped, using any contact details it has for the property owner and, if the owner lives off site, the resident. This is necessary to get the leak stopped and prevent further damage. It usually warns that the matter is being passed to the Management Company's solicitors.
2. The Management Company's solicitors, Sills & Betteridge, then write to the flat owner regarding the breach of lease involved by reference to the lease clauses, which are explained below under *Lease clauses*. The letter from the solicitors sets out in detail the steps necessary to remedy the breach of lease, with deadlines. These steps are summarised in the next paragraph. Only solicitors are allowed to handle legal matters and Rendall and Rittner are not authorised to carry out legal work.
3. The flat owner and any tenants are required to allow entry into the property as permitted by the lease for the Management Company's contractor to inspect the plumbing. The owner is then required to carry out or to allow the Management Company's contractor to carry out any maintenance and work required to bring the plumbing up to the required professional standard. If the work is carried out by the owner's contractor, the owner and any tenants are required to allow re-inspection by the Management Company's contractor to confirm that the work has been carried out to the required standard. The flat owner is liable for the costs of this work under the terms of the lease.
4. Once the flat owner complies with the legal requests made by Sills & Betteridge, the matter is passed back to Rendall and Rittner to arrange the non-legal work required. Further Sills & Betteridge involvement is only needed if the owner fails to comply with the requests by the deadlines specified.
5. When the cost of repairs to the neighbouring property or properties damaged by the leak is known, the owner of the flat where the leak causing the damage originated needs to pay the cost of work below the insurance claim excess (increased by the insurer to £500 in 2020) and is invited to pay any costs above this limit. The owner is entitled by law to claim on the Estate's insurance policy but, if water leaks cause further premium increases, these increases may be allocated for payment by the owners of flats incurring them that had water leaks resulting in claims in the previous year, rather than by all flat owners.



## Questions and answers

*Why is the solicitor, Sills & Betteridge, now involved with water leaks not just the managing agent, Rendall & Rittner?*

The breach of lease and action to remedy it, including access to the property under the terms of the lease, are legal matters. Rendall and Rittner is not authorised to provide legal services so its contract does not include legal matters and it would be breaking the law for it to provide such services. It is consequently unable to do so. It handles non-legal work like arranging inspections.

*Why am I being charged for the solicitor letter and plumbing inspection?*

Under its terms, you are liable for costs to secure compliance with the flat lease. Only charges applicable to all similar properties are covered by the quarterly service charges, which are set in line with the budget provided to you as required by the lease. Additional work needed for specific properties is charged to their owners as the lease also requires. It would be unfair and against the lease terms for other owners to have to pay these charges, for which you are legally responsible.

*What are the costs?*

At the time of writing, the costs are £50 + VAT for the solicitor letter and £120 + VAT for the plumbing inspection. Sills & Betteridge's fee is at a reduced rate compared to usual charges because it uses a standardised initial letter. The Management Company's contractor will provide a quote to correct any defects with the plumbing and bring it up to proper professional standards, with costs depending on the work involved.

*How can I keep costs to a minimum?*

If you respond to the solicitor letter, allow the plumbing inspection(s) and any work required by the required deadlines, costs are limited to those for the initial solicitor letter, plumbing inspection(s), any work required to the plumbing and the costs of repairs for damage caused by the leak.

*Why is this a breach of the lease?*

A leak into another property is a nuisance to the owner and residents of the property damaged and risks increasing the cost of insurance for the Estate. Both are prohibited by the lease, so the damage and insurance claim are the evidence of breach of lease. This may well not be intentional but the lease applies to what actually happens, not to intent. There may also be further breaches of the lease requirement to maintain the property and, if the leak arises from alterations, failure to obtain consent or follow the conditions of consent for those alterations. The Management Company took legal advice on this. The lease terms are explained below under *Lease clauses*.

*I'm a responsible owner, why does this apply to me as well as to irresponsible owners?*

The damage, nuisance and distress to others and impact on insurance premiums from leaks is the same irrespective of the attitude of the owners concerned. The Management Company has a legal duty to treat all owners equally, so must follow the same process. By taking this approach with all owners, the Management Company believes this will help to reduce leaks, which cause a nuisance to others, and reduce resulting insurance premium rises, to the benefit of all owners.

*How can I avoid leaks and additional costs in future?*

Please maintain your plumbing and have it inspected regularly. Items like washers and seals deteriorate over time and require regular inspection and replacement when they deteriorate. Any plumbing fixtures must be inspected and maintained in accordance with the manufacturers' instructions. Use a properly qualified plumber for plumbing work and check its plumbing qualifications, not just its consumer reputation. Ensure your plumbing and any plumbing alterations meet the professional standards required, set out above under *Action taken*.



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*Surely plumbing can just fail, it isn't my fault?*

Properly maintained plumbing that is to appropriate professional standards rarely fails. You should inspect it regularly to identify and repair worn parts like washers and seals before they cause leaks. All four leaks handled in the two months since this policy was introduced were caused by poor plumbing, poor work, lack of maintenance or carelessness. All could have been avoided.

*Four leaks in two months?!*

There has been a fifth in the following fortnight! The number and rate of water leaks on the Estate is intolerable and have been increasing. If the Management Company does not take the action set out in this document and leaks continue at this rate through poor plumbing, poor work and lack of maintenance, insurance premiums are likely to increase hugely again in future years causing further unacceptably large rises in service charges, the excess on claims for water leaks may increase further or damage from water leaks may become uninsurable.

*If I want to dispute the process, what will happen?*

Disputes on legal matters have to be handled by the Management Company's solicitors, as explained above. The managing agent is not authorised or allowed to handle such matters and the Management Company can only provide the information in this document, which fully explains the policy, the reasons for it and the lease requirements. Under the terms of the lease, you are liable for the costs to secure your compliance with the lease, so you would be charged the solicitors' usual fees for each letter to answer your further queries as these letters are not standard and require specific preparation, typically around £75 + VAT to £125 + VAT each.

### Lease clauses

The initial solicitors' letter explains how the terms of the lease have been breached, which it is accepted may well not be intentional, and how the action being taken is provided for by the lease terms. Not everyone will have the lease readily available, so the relevant clauses are set out below for reference with explanations of how they relate to events causing the breach, action taken, your obligations and your liability for the costs involved.

References are to the original 125-year lease. References to the 999-year lease if you have one are similar: clause 2(2) in the 125-year lease is clause 2.2 in the 999-year lease, for example.

*2(2) [You are required] to pay all rates taxes duties charges assessments outgoings and impositions of every description which now are or may hereafter be payable in respect of the Premises or upon the lessor lessee owner or occupier or the Company in respect thereof (whether exclusively or in conjunction with any other premises or person) to the extent of the liability relating to the Premises and in the event of any of the foregoing being payable in respect of the Premises and any other premises the Lessee shall pay such proportions thereof...*

This clause requires you to pay the costs incurred for your property (proportionately where more than one flat is involved). You alone are responsible for the costs of a leak in your flat and the action taken to secure your compliance with the lease.

*2(3) [You are required] to pay to the Lessor all reasonable costs charges and expenses which may be incurred by it in connection with or incidental to the preparation and service of any notice or proceedings under Sections 146 and 147 of the Law of Property Act 1925 notwithstanding that forfeiture may be avoided otherwise than by relief granted by the Court*

This clause requires you to pay the costs of action taken to secure your compliance with the lease even if you take the action required to return to compliance with the lease.



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2(5) [You are required] *to permit the Lessor and others authorised by it at all reasonable times (upon reasonable notice save in an emergency) during the said term to enter the Premises for the purpose of ascertaining whether the Lessee's covenants are being complied with and to view the state of repair of the Premises and of any defects wants of repair or maintenance or other items of non-compliance with the terms hereof to give notice to the Lessee*

This lease clause requires you to permit access for inspection of your flat to confirm that you are complying with the terms of the lease. After a leak, the Management Company now requires that you allow inspection of the flat plumbing by its contractor under this lease clause.

2(6) [You are required] *to repair and make good all defects wants of repair or maintenance or other items as aforesaid notified in writing by the Lessor to the Lessee and if the Lessee shall not within Two calendar months after such notice execute such works and remedy such non-compliance then the Lessor may (but without prejudice to any other right or remedy) enter the Premises with all necessary workmen and execute such works at the Lessee's expense and the costs and expenses thereof shall be forthwith recoverable as rent in arrear and to permit the Lessor and the Company and other persons authorised by it and the owners and occupiers of other parts of the Estate with all necessary workmen and appliances to enter upon the Premises to exercise the rights hereby reserved*

This lease clause allows the Management Company and its contractor to carry out any work necessary if you fail to do so after being given notice in writing by the solicitors that it is required. It also allows the costs of this work to be charged to you and requires you to permit the necessary access for the work. If you choose for a contractor you appoint to attempt to repair the defects and it fails to do so to the required professional standard, the Management Company's contractor will complete the necessary work under this lease clause when it re-inspects the plumbing.

3(1) [You are required] *To repair and keep in good and tenantable repair and condition the Premises... so far as included in this demise...*

This clause requires you to maintain the flat and its fixtures, including plumbing, to a reasonable standard. If you fitted plumbing below appropriate professional standards or did not maintain the plumbing, this clause has been breached.

3(9) [You are required] *Not at any time do or suffer anything on the Premises or the remainder of the Estate which may be or grow to be a nuisance detriment or annoyance to the Lessor or the Company or the owners or occupiers of other parts of the Building...*

Damage to another owner's property is a nuisance, detrimental and an annoyance so the leak into another property breaches this clause.

3(10) *No building or addition to any building shall be erected on the Premises and no alteration or addition shall be made to the Premises (whether internally or externally) except with the previous written consent of the Lessor...*

Alterations to the flat and its fixtures, including plumbing, require written consent in advance from the Management Company. This consent is subject to conditions with which you must comply, otherwise you cease to have the consent necessary for the work under the lease.

3(12) [You are required] *Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on the Premises or any Other Units or which may cause an increased premium to be payable in respect thereof*

Given the existing claims record for water leaks on the Estate and past insurance premium increases as a result, making an insurance claim (which you are entitled to do by law) is likely to result in an increased premium or even make water leaks uninsurable so breaches this clause.



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10 *If the Lessee shall at any time fail or neglect to perform or observe any of the covenants or conditions herein contained and on the part of the Lessee to be performed or observed then and in any such case (and without prejudice to any other right or remedy of the Lessor) it shall be lawful for the Lessor in that behalf to re-enter into and upon the Premises or any part thereof in the name of the whole and thereupon the term hereby created shall absolutely cease and determine but without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants on the part of the Lessee herein contained*

This clause gives the Management Company the right to enter the flat if the lease has been breached. It also gives the Management Company the right to seek forfeiture of your lease (where you would lose ownership of the flat) if the terms of the lease have been breached, although this would need to be in accordance with the relevant legislation and would only be sought as a last resort in extreme cases where necessary to protect others and their interests. The Management Company has not yet ever brought forfeiture proceedings to court as owners have always decided to comply with the lease rather than risk losing their flat and anyone with an interest like a mortgage company would insist on this.