

## **7. Some practical examples**

### **7.1 Access to premises**

A water chemist is engaged in taking a sample from a river. He is asked to leave the land on which he is standing, refuses, and is manhandled back to a public highway.

Legal analysis: was the water chemist a trespasser? He may have been unless he had authority to be on the land, including the legal powers accorded to certain persons under the Water Resources Act 1991 and the Water Industry Act 1991. If he was not a trespasser, then it appears he was assaulted and could report the matter to the police who may decide to prosecute, and/or he could take civil action for assault to obtain both damages and an injunction to prevent a repeat incident. However, if the water chemist was present without the consent of the landowner and did not have statutory authority, then it seems that the occupier of the land used reasonable force to eject him from the premises when he refused to leave voluntarily. He therefore has no legal recourse in that case.

### **7.2 Negligence issues**

#### **7.2.1 A product which causes damage**

A batch of chemicals which is supposed to protect boilers from corrosion is sold to an industrial operator. In fact, an error has been made in making up this particular batch. The product fails adequately to protect the boiler with the result that it suffers from excessive corrosion.

Legal analysis: the organisation supplying the chemical product is negligent in having supplied a product which does not do what it was supposed to do, and is also probably in breach of the contract between itself and the industrial operator. It is unlikely that there is liability as well under product liability legislation as this is mostly directed to a protection of consumers.

#### **7.2.2 Advice**

A water chemist operating as a consultant advises an industrial operator on the suitable composition of a mixture of chemicals to treat a water-cooled air conditioning system, so as to prevent a build-up of legionella. Some months after the advice is acted on, the water system is tested and the air conditioning system is found to have a high count of legionella. The air conditioning system has to be closed down for cleaning. The factory served by the system has to be closed for two days as it cannot operate without the system.

Legal analysis: it seems that the water chemist has given bad advice. However, it may be that he has given perfectly valid advice but that the factory operator has not fully briefed him. Any liability will therefore rest on the evidence, as it always does. It is important the water chemist gave any advice in writing with appropriate caveats and recording in writing the basis on which his advice was given. He may be liable in negligence. He may also be liable for breach of contract if in fact there is a contract directly between him and the industrial operator - we are not told whether there is or not. If a third party such as a member of the public had been infected by the contaminated water system, then they could have sued the water chemist in negligence but not in contract, as there is no contractual relationship between that member of the public and the water chemist.

### 7.2.3 Drilling in the wrong place

In the course of investigating potential pollution of soil and groundwater, a drilling rig goes through an underground line, releasing a toxic substance which requires remediation to be undertaken.

Legal analysis: the operating firm of the drilling rig would seem to be liable in negligence to the owner of the plant. They may or may not be liable in contract, but it seems less likely as presumably the drillers were acting as sub-contractors for an environmental consultancy. There is no direct contractual relationship between them and the plant operator.

## 7.3 Contractual matters

### 7.3.1 Failure to pay

Company X engages a water chemist as a consultant to advise him on a specific matter. The water chemist completes the work and submits his written report. However, in spite of various written reminders the company fails to pay him for the work.

Legal analysis: Company X is in breach of the contract between it and the water chemist. The water chemist should be able to prove that a contract existed - e.g. a letter or order on a standard order form. The water chemist should sue the company in the County Court. It should be noted that for sums less than £3,000 (at the time of writing) the small claims court procedure can be used which is much more user friendly than more formal proceedings.

### 7.3.2 Failure to perform

Company A instructs water chemist Y as a consultant to provide them with specific advice by a specified date. The water chemist is engaged in another matter but even so accepts the contract. He fails to provide the advice by the specified date.

Legal analysis: the water chemist is legally liable to the company in contract as he has failed to provide the services specified. If he has received any advance payment on account then he is legally liable to return it. However, he is also liable for damages if the company has suffered any loss because of his failure to complete the contract. In some cases, the company would not have suffered a loss as they would simply have engaged an alternative consultant.

## 7.4 Copyright

A water chemist prepares a report and has a chapter of a book re-typed to form an Appendix to the report.

Legal analysis: this is breach of copyright. It does not matter whether the copying is done photographically or by hand, it is still a breach. Also, the copying of a whole chapter would seem to be well beyond any possibly "fair dealing". The liability would be in damages to the owner of the copyright.

## 7.5 Corporate problems

### 7.5.1 Fending off liability I

A water chemist gives advice to a client. However, he is employed as a sub-contractor by the consulting company which provided the services to the client. The client believes the advice, acts on it, suffers loss and wants to sue, but who should he sue?

Legal analysis: it is unlikely that there would be any direct contract between the water chemist and the client in the circumstances. It is also unlikely that the client would sue the water chemist alone - it is much more likely that the company would simply be sued. The company itself should be carrying professional indemnity insurance which would pay the legal expenses and damages, up to a limit. They are therefore a better "target" for an aggrieved client. The water chemist could still be sued by the main contractor if it suffers loss.

### 7.5.2 Fending off liability II

A water chemist operates his own "one-man" limited company. He is sued by a client for breach of a contract and for negligence.

Legal analysis: the company provided the services, so it is the company **alone** which can be sued. It is important that the water chemist does not contract in his own name **as well as** in the company's name, otherwise he could be liable as well as the company.

## 7.6 False results or no results

A water chemist carries out an analysis of a water sample to test for compliance with a licence. The analysis shows a lack of compliance with one of the conditions in the licence. His superior pressures him in to recording a result which is not the true one, or to alter the recorded result.

Legal analysis: the document in which the untrue result is recorded is a "false instrument". There are various offences under the Forgery and Counterfeiting Act 1981 including making, copying or using a false instrument which could each apply depending on the circumstances. The superior could be liable in any event for inciting each of the offences or conspiring to commit them. If the results were to be used in court proceedings, the offences of perjury and of suborning perjury could be relevant. If the results were required by a regulator then the offences concerning provision of no information or false information under the Water Resources Act 1991 and the Water Industry Act 1991 would also be relevant.