

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/1854

Date of Decision: 21 July 2020

Complaint

The customer claims that the company has failed to make repairs to faulty drains for which it bears responsibility. The customer alleges that the drains are leaking and this has caused subsidence in the fabric of his residence. He states that the ongoing situation has caused him and his family stress and inconvenience.

The customer seeks a direction that the company should repair the drains, make an apology and pay an estimated amount of £10,000 for the repairs.

Response

The company states that it has acted appropriately and fulfilled all its legal requirements. It states that it does not find that repairs are necessary nor that it is liable for the subsidence. It states that it has signposted the customer to the proper route to be taken, which is that he should refer to his insurers.

No offer is made.

Findings

I do not find that the customer has succeeded in making out a claim that the company is liable for any damages to his property nor that it has failed in its provision of service to a level to be reasonably expected by the average person. I find that the company has satisfied its legal obligations.

Outcome

The company does not need to take any further action.

The customer must reply by 18 August 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 21 July 2020

Party Details

Customer: (Removed)

Company: (Removed)

Case Outline

The customer's complaint is that:

- There is a fault in the water service to his residence, (Address Removed) ("the Property").
- The company is aware that the pipe work is faulty and that the shared drains are damaged and cracked.
- The customer has been able to show this by means of an independent investigation into the drains.
- The damage has caused leakage which has, in turn, caused damage to his Property.
- The advice received by the customer from third party contractors is that the drains need to be repaired.
- The drains are the responsibility of the company as they are a shared asset.
- The customer first reported a blockage in the Foul Water Sewer ("FWS") on 29th October 2019.
- The customer arranged a survey on the 25th October 2019, which report he sent to the company.
- The company attended the Property on the 27th October 2019 and carried out its own survey.
- The customer disagrees with the company's conclusions and states that it also identified damage.
- The company also visited the property on the 10th January 2020. On this occasion it stated that it considers that there is no damage, contrary to its former opinion.
- The customer states that the continued water leakage will continue to compromise the Property.

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- The customer seeks a direction that the company fix the damaged pipework, make an apology and pay an estimated £10,000 for the repairs.

The company's response is that:

- It disputes this claim and it has not identified any liability or damage.
- It states that if there is subsidence at the Property the proper course of action for the customer is to refer to his insurance company.
- A telephone complaint was received on the 26th October 2019 following which an email was received stating that the customer had obtained a CCTV report.
- The company attended the Property on the 27th October 2019.
- The company states that its own investigation detected no damage, only minor cracks and no roots.
- The company states that it cannot carry out the work requested by the customer.
- The company states that it received a copy of the customer's private report on the 1st December 2019.
- It states that its position remains the same and that it does not consider that it is liable to carry out repairs where it has not identified any damage.
- It states that it has properly signposted the customer to the Consumer Council for Water ("CCW") and his insurance company.
- A further CCTV investigation was carried out on 10th January 202 after the involvement of CCW.
- No damage was found by its operatives on this occasion.
- The only thing found in the investigations was a hairline crack which could not permit the seepage of water.
- The company states that it has acted properly and advised the customer, in the correct manner, to approach his insurance company.
- No offer is made and no admission of liability is made.

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.

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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. This decision is made based on the evidence and facts placed before me by the parties in light of the relevant legislation and guidance. I have assessed the application made by the customer in order to assess whether or not a case is made that the company has failed to provide its services to a reasonable standard.
2. The customer states that there is damage to a drain which falls within the responsibility of the company to fix. His claim is that this damage is causing a leak and that, in turn, this leak has caused subsidence in his Property and continues to undermine the Property while it remains unaddressed.
3. The company states that it has assessed the private report and made its own investigations and it does not find that the drains are damaged nor that the sewer is dysfunctional. It states that there have been no reports of issues with the drains since 2014 and that it has carried out all necessary actions in response to the customer's complaint.
4. The customer does not make the case that there was any contact prior to October 2019.
5. The customer has submitted a private survey dated 25th October 2019. This was carried out by a Third Party, (Removed). The report indicates that there are two areas assessed as Grade B meaning that these areas, which include the sewer, are highlighted as areas where, "there is an issue that might require remedial works".

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6. The company has stated that it disagrees with the necessity of work. It has also carried out two CCTV investigations and submitted its findings in evidence. It states that minor cracks do not allow for leaks or even air to seep through the drain.
7. I note here that both the company's reports and the report of the Third Party are thorough. The dispute is a matter of opinion regarding whether or not work is required to be carried out.
8. I note here that the company did carry out some jetting work to clean the drains in October 2019.
9. In considering this matter I am aware that the customer has alleged that the company contradicts itself in its second report. Upon looking at the evidence I do not find this to be the case. The company was looking for damage that needed to be repaired and, in its opinion, did not find such damage. This is in keeping with its original opinion. I also note that the company reacted within a very short time frame to the customer's initial complaint on the 26th October 2019. An investigation was carried out the following day. I further note that a second investigation was carried out as a result of the involvement of the CCW.
10. I have to take into account that the company has informed the customer that the most appropriate action he could take is to inform his insurers of the issues he is having with the Property. I note that this option has not been undertaken by the customer.
11. The matter of dispute between the parties is whether or not the work is required to the drains. The matter of whether or not the alleged subsidence is caused by damage to the drains and leakage is not directly addressed. I note that this is a dispute based on the opinions of the company and the Third Party. (Removed) report itself does not amount to liability on the part of the company being evidenced. In deciding between two such opinions I have looked at the fact that their findings are not so far apart, in that the company accepts that there are hairline cracks, but does not accept that work is necessary and (Removed) report only considers that work *may* be required. My position is not to determine who is right between these professionals, but to decide whether or not the company has failed in the manner in which it has acted. I do not make that finding. I consider that the evidence indicates that the company undertook two investigations, exercised its opinion based on these investigations and advised adequately.

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12. The customer has not referred me to any particular legislation or guidance in this case and I am not aware of any authority, from my own knowledge that requires the company to undertake repairs in such circumstances.
13. The customer has stated that the situation is causing distress. This is not disputed and I accept that any such problem as that alleged by the customer can be stressful and upsetting. However, I have to consider the liability of the company in terms of what actions it has taken and what it is obliged to do.
14. Based on the evidence before me I find that the company has acted reasonably and has signposted the customer appropriately in terms of the best route he could pursue to achieve a resolution to his problem. I also find that the company has responded to the complaint adequately in terms of the time it has taken to investigate and the detail and content of its replies to the customer and to the CCW.
15. Consequently, it follows that this application fails.

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 18 August 2020 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.

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A rectangular box containing a handwritten signature in cursive script, which reads "J J Higgins".

J J Higgins (Barrister, ACI Arb)

Adjudicator

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