

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0734

Date of Decision: 21 June 2018

Complaint

The customer owns two neighbouring properties. These were flooded in June 2014. The customer submits that structural damage and damp was caused by the flooding. He requests that the company cover the repair costs for each property, totalling £5075.00.

Defence

The customer's properties were flooded in July 2014. The company took action to repair a sewage leak in 2014. The customer asked for assistance to check the drains on 30 September 2016, stating that the properties had flooded three times in the preceding months. The company found that land drains were blocked. It also found that a stone box culvert no longer met current standards; though it was operating to its original design, it was causing sewage to leak into the land drains. The company sent an independent structural engineer to investigate the cause of damp at the customer's properties and assess any structural movement. The surveyor did not find any signs of movement. The company denies that compensation is due to the customer.

Findings

The surveyor's report is the most persuasive item of evidence as it was conducted by an expert instructed specifically to assess if the issues complained of were caused by the company. Whilst the customer raises issues with the report, no alternative report has been provided. The report was persuasive in that there was no evidence of damage caused by the flooding or other factors within the company's control.

Outcome

The company does not need to take any further action.

The customer must reply by 19 July 2018 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/ /0734

Date of Decision: 21 June 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer owns two properties: 12 and 14 []. There was a leak of foul water and excrement that was reported to the company on 11 July 2014. The company attended and excavated a hole in the retaining wall. Following heavy rains, the customer's properties were flooded. They now suffer from damp issues. The customer submits that the topography of the ground surrounding the properties has changed and that the company is responsible for both this and the subsequent damp issues. The company employed a structural engineering firm, but they could not identify one property from the other. The company would not comment on the customer's observations on this report. The company has since found that there are 10 properties on a stone culvert and that the culvert is planned to be diverted. The customer states that the culvert was a contributing factor to the deluge of water that caused flooding in July 2014.
- The customer requests compensation to rectify the damage caused to his properties, totalling £5075.00.

The company's response is that:

- The company states that the customer reported waste water leaking through the boundary wall on 7 June 2014. The company investigated and carried out work between June and September 2014. The investigation found that there was no sewer behind the boundary wall, but that there were two land drains acting to de-water the ground. The sewage that was escaping through the retaining wall was addressed in 2014 with the repair of a defect in a neighbouring street. On 30

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September 2016, the customer asked for assistance to check the drains as the properties had been flooded three times in the preceding months. The company's investigations found that the land drains were blocked and that this could have resulted in the flooding reported by the customer, though this was not seen during the company's visit. Tests showed that sewage was flowing into the land drains and investigations in 2017 found the source to be a stone box culvert with wastewater of 10 properties connecting to it. The culvert no longer meets current standards and the company is looking at options in respect of this. The work will require capital investment funding due to its scale. The customer alleged during this period that damp on the inside of the properties and structural damage had been caused by the flooding in 2014. The company instructed an independent structural engineer to investigate the cause of the damp and assess any structural movement. The customer was unhappy with the findings of this report. The company has made the relevant Guaranteed Service Standards payment for the flooding in 2014. It has also made a goodwill payment of £2,400.00 to the customer for delays in its investigations. The company denies that the one-off event is the cause of internal damp issues. The company has provided the customer with details to make an insurance claim and recommended that he informs his own insurers.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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?

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1. The customer's properties were flooded in 2014. The customer submits that this has caused structural damage to the properties and damp issues.
2. I note that the company has made a goodwill payment to the customer in recognition of delays to its investigations. The customer is claiming compensation to cover the cost of rectifying damage to the property only. I therefore find that any complaint in respect of the standard of service provided by the company has been settled and I do not propose to review this issue further.
3. It is also not disputed that the relevant Guaranteed Standards Scheme (GSS) payments were made for the flooding to the occupiers of the properties at the time.
4. In order to be entitled to compensation, it is necessary for the customer to show that actual damage has been caused to his properties and that such damage has not been rectified by the company. This means that the customer must demonstrate that there is structural damage and/or a persistent damp problem that has been directly caused by the flooding in 2014.
5. The customer submits that the company is responsible for damage to his properties on the basis of the 'negligence' of the company's contractor, []'s, in excavating a hole at the bottom of the retaining wall in 2014.
6. The company, in response to the customer's claims, instructed a surveyor to visit the properties. I have been provided with a copy of this report. The introduction to the report confirms that the "customer has raised concerns that in their opinion there has been ground movement which has led to settlement of the top two stone steps adjacent to the base of the west boundary retaining wall".
7. In a WATRS adjudication, the adjudicator does not visit the affected property. The adjudicator must make a determination based on the evidence provided and based on applicable legal principles. In this case, the evidence benefits from a professional report, conducted by an appropriately qualified expert, instructed specifically to assess the customer's concerns of property damage, these concerns also forming the subject of the WATRS adjudication claim.
8. I acknowledge the customer's concerns in respect of the accuracy of this report, including that the report incorrectly identifies which property is which in the photographs. However, the customer has not provided any alternative report, conducted to a similar standard, that would demonstrate

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that the core findings of the report are incorrect, i.e. whether there has been any structural settlement.

9. I also acknowledge the customer's submissions that works have been completed, such as laying concrete slabs with drains, that may affect a surveyor's assessment of any damage caused. However, no invoices for such works have been provided. It does not appear that the surveyor was necessarily made aware of any works that may have been completed. However, in the absence of evidence of such works, and evidence that the surveyor could reasonably have been made aware of the works having been completed, I am unable to find that the reliability of the report is reduced as an assessment of whether the customer's properties have been damaged.
10. I find that the report is the most persuasive evidence that is available to me in determining whether the company is the cause of, and therefore liable for, any structural damage to the customer's properties.
11. In reviewing the report, I am satisfied that the question of structural settlement was specifically reviewed. The report is clear that the external walls of the extensions to both properties "display no evidence of crack damage or settlement" and that the walls "appear to be plumb" and the roof slopes are "consistent with no sign of sagging". The report found no evidence of leaning or bowing to the walls retaining raised level slabs.
12. The stone steps were specifically investigated due to the customer's concern that the top two steps had tilted. The surveyor did not take levels on the steps but they "could see no indications that any of the steps had settled differentially from the adjacent retaining walls which appeared level". I am satisfied that there was no defect that was apparent to the surveyor.
13. The surveyor found that the disused outdoor toilet walls were plumb and without any major cracks or settlement, despite being "not in particularly good condition".
14. The report concludes that the external structures did not show "any evidence of significant settlement or defects", and that the defects to the retaining and former toilet walls "aren't any more significant than those which would normally be expected for structures of this age which have not received regular maintenance".

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15. As above, I find that the surveyor's report is the most persuasive item of evidence as it has been written by an appropriately qualified professional who visited the properties with the specific purpose of assessing if there has been any structural damage to the customer's properties. I have not been provided with any alternative report that would demonstrate that the report instructed by the company was incorrect or unreliable.
16. I therefore accept the report's finding that there was no evidence of structural damage to the customer's properties. I am not persuaded that the evidence shows that any long-term damage has been caused to the properties by the flooding in 2014 or other factors within the company's control. I therefore find that the company is not liable to the customer for the cost of repairs to the properties.
17. I note that the company has advised the customer on how to make an insurance claim, and recommended that he contact his own insurers who would be able to investigate the damp and structural issues. I am satisfied that this advice was appropriate, with insurance companies being well placed to determine both if there is any damage, ensure that this is rectified, and then pursue any party deemed to be at fault, if appropriate.
18. However, as above, I have found from the available evidence that there is no indication of structural damage to the customer's properties. Nor has any ongoing damp issue, distinct from the instances of flooding, been demonstrated to have been caused by the company's assets or as a result of the actions of the company or its agents. I am therefore unable to find that the company is responsible for any damp or structural damage alleged to be present at the customer's properties. The customer's claim is therefore unable to 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 19 July 2018 to accept or reject this decision.

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- 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 handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal stroke that ends in a small flourish.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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