

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0970

Date of Decision: 7 September 2018

Complaint

The customer indicates that his dispute with the company falls under two headings. Firstly, his dissatisfaction with the actions of the company's subcontractor during water supply construction works for a housing development; and secondly, his dissatisfaction with the actions of a third-party organisation ([] Groundworks) who he hired to do sewerage works at the same housing development. The customer believes that the issues, caused mainly by [] Groundworks, have negatively affected the profit he was able to make on the entire development. The customer is therefore claiming an apology and compensation for his loss of profit on the development in the amount of £200,000.00 (with interest).

Defence

The company confirms that it subcontracted the work to install the development's supply main to KLP Utilities ("KLP"). The company states that it cannot comment on KLP's behaviour on site. However, it has very high expectations from its subcontractors; therefore, the issues highlighted by the customer were taken very seriously and investigated. It accepts that KLP cut the supply pipe too short and caused damage to it. However, the company states that this issue has already been rectified. The company states that, in accordance with section 104 of the Water Industry Act 1991, all works undertaken by a third-party contractor on a sewer prior to adoption by the company are the responsibility of the developer. The company explains that its approved contactor list only shows that the contractors are pre-approved for confined space entry (as it only allows contractors on this list to access its manholes for health and safety reasons). The company confirms that up to the point when it agrees to adopt a sewer, a developer (such as the customer) is responsible for managing the work of any third-party contractors they opt to hire (such as [] Groundworks). In light of all the above, the company does not accept any liability to provide the customer with the redress claimed.

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Findings

I am satisfied that the company (through the actions of its subcontractor acting on its behalf) failed to provide its services to the standard to be reasonably expected by the average person. Furthermore, as a result of this failure, I am satisfied that the customer suffered a degree of inconvenience and expense. Accordingly, under the circumstances, I am satisfied that it is fair and reasonable for the company to provide the customer with an apology and compensation in the total sum of £700.00. I am not satisfied that any further compensation is warranted under the circumstances.

Outcome

The company shall provide the customer with an apology and compensation in the total sum of £700.00.

The customer must reply by 5 October 2018 to accept or reject this decision.

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an apology and compensation for his loss of profit on the development in the amount of £200,000.00 (with interest).

The company's response is that:

- The company confirms that it subcontracted the work to install the development's supply main to KLP. The company states that it cannot comment on KLP's behaviour on site; however, it states that it has very high expectations from its subcontractors and therefore, the issues highlighted were taken very seriously.
- The company explains that subcontractors have a performance clause in their contracts and if they do not meet the grade required, they are removed from its contractor list.
- The company states that the estimated cost to the customer for it to do the works directly was higher than KLP's costs. Therefore, it does not believe that KLP had actually overcharged the company for its work.
- Nonetheless, following the customer's claims of fraud on the part of KLP, the company commissioned an independent third-party to investigate the matter. Whilst the report is legally privileged, the company has confirmed that the customer's concerns were not supported by the evidence uncovered. The company has provided the invoice for the independent reviewer's investigation.
- The company accepts that KLP did cut the supply main too short and caused damage to the pipe, but it confirms that it carried out repairs and completed testing.
- The company states that, in accordance with section 104 of the Water Industry Act 1991, all works undertaken by a third-party contractor on a sewer prior to adoption by the company are the responsibility of the developer.
- The company explains that its approved contractor list only shows that the contractors are pre-approved for confined space entry (only contractors on this list are permitted to access its manholes for health and safety reasons).
- The company confirms that up to the point when it agrees to adopt a sewer, a developer (such as the customer) is responsible for managing the work of any third-party contractors they opt to hire (such as [] Groundworks).
- The company draws attention to the fact that this is the customer's development and not the company's.
- Consequently, in light of all the above, the company does not accept that it is liable to provide the customer with the redress claimed.

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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 customer's dispute with the company relates to two main issues. Firstly, his dissatisfaction with the actions of a company subcontractor (KLP) during water supply construction works at a housing development; and secondly, his dissatisfaction with the actions of a third-party organisation ([] Groundworks) who he hired to do sewerage works at the same housing development. The customer believes that the issues, caused mainly by [] Groundworks, have negatively affected the profit he was able to make on the development. He is therefore claiming an apology and compensation for loss of profit in the amount of £200,000.00 (with interest).
2. I remind the parties that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. I will first address the customer's complaints against the company's subcontractor, KLP. I note that a significant portion of the customer's complaints against KLP relate to its alleged fraudulent activities against the company. I must draw attention to the fact that, in accordance with section 3.5 of the rules of this scheme, disputes concerning allegations of fraudulent or criminal activity

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cannot be examined. Accordingly, I am unable to address or examine any of the customer's complaints concerning the allegations of fraudulent/criminal activity on the part of KLP. I will proceed accordingly.

4. It is not in dispute that KLP, acting as the company's subcontractor, made errors when constructing the supply connections (specifically, cutting the supply main too short and causing damage to the pipe). Accordingly, under the circumstances, I am satisfied that the company (through its subcontractor acting on its behalf) did fail to provide its services to the standard to be reasonably expected by the average person.
5. As a result of the above, the customer claims he experienced inconvenience and expense. Taking into account the nature and extent of the company's failure as detailed in the parties' submissions, I am satisfied that the customer would have inherently experienced a degree of stress and inconvenience. With regards to the expense allegedly incurred by the customer as a result of this issue (such as having to lift up the floors for repairs to be completed), the evidence available does not enable me to verify the actual expense that was incurred by the customer. However, on a balance of probabilities based on the information available, I am inclined to accept that there would have been some degree of financial impact to the customer as a direct result of this issue.
6. Consequently, taking into account the nature and extent of the company's established failure, the actions it took to rectify the issue and the reasonable degree of inconvenience and expense that the customer would have suffered as a direct result of this issue, I find that it is fair and reasonable to direct that the company provides the customer with an apology and compensation in the total sum of £700.00.
7. I now turn to the second branch of the customer's complaints. The customer states that the third-party organisation ([] Groundworks), who he hired to do sewerage works on the development, did not do satisfactory work (and even left in the middle of working on the development to attend a more urgent job without confirming when they would return). I draw attention to the fact that section 3.5 of the rules of this scheme states that third-party complaints are outside the remit of WATRS. Accordingly, I am unable to address or examine the alleged

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actions of a third-party organisation who is neither an agent for the company nor a party to this adjudication.

8. However, only in the interest of addressing the customer's concerns fully, it is the customer's claim that the company should be liable for the third-party's actions as they are listed on its approved contractor list. However, I note that the company explained to the customer that this list only shows that these third-party organisations are pre-approved for confined space entry (as only contractors on this list are permitted to access its manholes for health and safety reasons). The evidence available does not show that the company puts forward any guarantee regarding the work quality/competency of the third-party organisations on the list. Consequently, under the circumstances, I would not have been satisfied that the company had failed to provide its services to the standard to be reasonably expected by the average person.

9. For the reasons detailed above, I am satisfied that a failure to provide the company's services to the standard to be reasonably expected by the average person has been established (as a result of the actions of its subcontractor, KLP). Whilst it is not in dispute that the issues caused by KLP were rectified, I find that the customer did suffer a degree of inconvenience and expense as a result of this matter. Consequently, I find it fair and reasonable to direct that the company provides the customer with an apology and compensation in the total sum of £700.00.

Outcome

The company shall provide the customer with an apology and compensation in the total sum of £700.00.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 5 October 2018 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.



E. Higashi LLB (Hons), PGDip (LPC), MCI Arb.

Adjudicator

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