

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1592

Date of Decision: 25 September 2019

Complaint

The customer complains about subsidence that has taken place at the rear of his property, causing his fence to drop in excess of 300mm. He considers that this was caused by works undertaken by the company in 2012 in order to install a new main sewer. The customer requests that the company take responsibility for the subsidence, repair his fence, and compensate him for the trouble caused by this problem.

Defence

The company rejects the customer's claim. It has visited the property to investigate the claim and did not find any evidence that the subsidence was caused by the works in 2012. However, it recognises that there were some service failings and that the customer has suffered stress and inconvenience, and has therefore credited the customer with the sum of £300.

Findings

Having considered all of the evidence before me, I do not find that there are sufficient elements to establish that the subsidence has occurred as a result of the works performed by the company in 2012 or is otherwise the responsibility of the company. I am therefore unable to uphold the customer's complaint.

Outcome

The company does not need to take any further action.

The customer must reply by **15** 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1592

Date of Decision: 25 September 2019

Party Details

Customer: [] (the "customer").

Company: [] (the "company").

Case Outline

The customer's complaint is that:

- The customer has experienced subsidence in the back garden of his property, which has caused two fence panels to drop by over 300mm. This has resulted in damage to the fence, as well as causing the customer considerable distress and anxiety. The customer has exhibited photographs showing the extent of the subsidence and the effect it has had on the fence.
- The customer notes that the company carried out work in 2012 in order to replace a sewer which had been damaged by unauthorised waste tipping. The works involved excavation and tunnelling along a footpath that runs near to the customer's property. The customer considers that these works were the cause of the subsidence.
- The customer has raised the matter with the local council (which owns the land on which the company's works took place), as well as with his member of parliament, but he has not yet found a resolution to the problem.
- The customer asks that the company take responsibility for the subsidence, and claims an order that the company repair his fence (including filling in of the subsidence), and compensate him a reasonable amount for the trouble caused by this problem.

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The company's response is that:

- The company acknowledges that subsidence has occurred in the customer's garden and that two of his fence panels have dropped as a result, but it submits that it is not responsible for this problem, and in particular that it was not caused by the works carried out by the company in 2012.
- The company explains that in 2012, it carried out works known as the Acre Way Road Sewer Replacement Scheme. The works involved installing a new sewer line to replace two existing pipelines. As further explained in a document entitled "Acre Way Road Sewer Improvement Scheme" exhibited by the company, the works involved the drilling of two reception shafts and a drive shaft, followed by micro-tunnelling on the land belonging to the local council and located to the rear of Mr Green's garden. The land was subsequently reinstated and a number of new trees were planted.
- The company attended the site to map the sewer on 9 September 2019, and concluded that the sewer is located 7.8m to 9.5m from the boundary of the customer's property.
- After the company was notified about the subsidence by the local council in October 2018, the company visited the property in November 2018 and January 2019. It carried out a survey of the sewer and found no structural defects or deviations in alignment. The customer contacted the company again in March 2019 and the company sent an engineer to investigate on 15 March 2019, 20 May 2019, 7 June 2019 and 17 July 2019. During these visits, the company carried out various inspections, as well as a sound test and a CCTV survey of various sewer lines. Following this investigation, the company concluded that the subsidence was unconnected with the company's sewerage system and with the works it carried out in 2012.
- The company acknowledges that it failed to return the customer's calls on four occasions and in recognition of this service failing it has credited the customer with the sum of £100. It has also credited him £200 for the stress and inconvenienced caused by its investigations. The company confirms that these payments were made on 25 July 2019.
- However, it denies responsibility for the subsidence, and does not agree with the remedies requested by the customer.

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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 raised concerns about subsidence that has taken place in his back garden. Both he and the company have exhibited photographs of his garden and his fence, and on the basis of these, I am satisfied that subsidence has in fact taken place, leading to a significant misalignment of two panels of the customer's fence.
2. The problem of subsidence was raised with the company, first by the local council and then by the customer himself. As set out in its response, the company performed a number of investigations with a view to determining whether the subsidence was caused by the works it carried out in 2012 to replace a sewer line behind the customer's property, or was otherwise caused by the sewerage works in the area.
3. The company notes that it investigated a number of sewerage lines, by way of visual inspection, CCTV survey and sound tests. It found a blockage caused by a tree root mass which it removed. However, it concluded that this was unconnected with the subsidence problem and I

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have no reason to doubt that this was the case. Otherwise, the company's investigations concluded that there was no link between the subsidence and the works or the sewerage system, although it was unable to determine the cause of the subsidence.

4. I consider that the investigations carried out by the company were thorough, occurring across a number of visits, and including meetings with the customer in order to allow him to express his concerns.
5. I see from the CCWater documents that there were indeed several occasions on which the company did not phone the customer back when it had promised to do so, but I consider that the amount already paid by the company to the customer is sufficient compensation for this service failure.
6. I can see no other element in the papers before me which suggests that the subsidence was in fact caused by the company. The lack of a causal connection between the works in 2012 and the current subsidence is reinforced by:
 - the fact that the works took place a considerable time (7 years) ago and the subsidence only occurred recently (it appears from the CCWater documents that the customer indicated that it first appeared some 4-5 years after the works took place),
 - fact that the sewerage pipe that was installed was some 8m from the customer's fence at its closest point,
 - the fact that, as described in the company's letter of 25 July 2019, the ground between the fence and the sewerage pipe dips, but then returns to its original height at a point closer to the sewerage line, and
 - the fact that no damage to the sewerage pipes in the area has been identified.
7. I am therefore unable to determine that the company is responsible for the subsidence or required to fix it, or that it is required to pay compensation to the customer. The customer's claim is therefore unable to succeed.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 23/10/2019 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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Natasha Peter (Barrister, FCIArb)

Adjudicator

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