

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1626

Date of Decision: 26 November 2019

Complaint

The customer states that the company undertook work outside the Property that resulted in the need for remedial work on and near the Property. She requests that the company guarantee its work and pledge to fully investigate and remedy any future problems. She also requests an apology for the time taken to resolve the matter.

Defence

The company states that all remedial works carried out at the Property and in its vicinity were undertaken as a gesture of goodwill, not as an admission of liability. The customer has already received an apology for the length of time it took for the matter to close, as well as a gesture of goodwill of £230.00.

No offer of settlement was made.

Findings

The company remains potentially liable for the effects of the work it has performed, but it cannot be required to accept responsibility in advance of specific problems developing. It has already satisfactorily apologised to the customer.

Outcome

The company does not need to take any further action.

The customer must reply by 24 December 2019 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/ /1626

Date of Decision: 26 November 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The company undertook work outside the Property after a series of blockages.
- She believes that the work undertaken by the company was the cause of subsequent damage to the exterior of the Property.
- The company has undertaken remedial work to the damaged parts of the Property, but will not accept liability for that damage or ongoing responsibility for future problems.
- She requests that the company guarantee its work and pledge to fully investigate and remedy any future problems. She also requests an apology for the time taken to resolve the matter.

The company's response is that:

- All remedial works carried out at the Property and in its vicinity were undertaken as a gesture of goodwill, not as an admission of liability.
- The company will continue to attend the Property if there are drainage problems, but other problems relating to the Property and to the paving outside the Property should be reported to the customer's home insurer and the local council respectively.
- The customer has already received an apology for the length of time it took for the matter to close, as well as a gesture of goodwill of £230.00.
- The company does not believe an additional apology is warranted.

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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.⁹⁰

How was this decision reached?

1. The customer and the company have been involved in an extended interaction, but both parties have now accepted that the work thus far undertaken by the company has, to the degree that evidence is currently available, been undertaken acceptably. The customer's claim, that is, is not founded on a belief that there is a particular remaining problem that must be addressed, but on an ongoing concern that the work undertaken by the company will result in unknown damage in the future.
2. The company emphasises that it performed the remedial work in question as a gesture of goodwill, rather than as an admission of liability, but it is important to be clear on what this distinction does and does not mean.
3. Firstly, no evidence has been produced in this case that contradicts the company's statement that it has not accepted liability for any of the remedial work undertaken on and near the Property. This does not, of course, mean that the company is not liable for any negative consequences of that work, but only that if a problem develops at any point in the future, the

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company retains the right to deny that what has happened is indeed a consequence of the work it performed, rather than of something else.

4. Nonetheless, it should also be emphasised that even accepting the company's position that the remedial works at and near the Property were undertaken as a gesture of goodwill, with no admission of liability, this does not preclude the company from subsequently being found to be liable for a problem that develops. Even when works are undertaken voluntarily, rather than under compulsion, the company has a duty of care to the customer to ensure that those works are undertaken to a minimum level of quality. If it is subsequently found that those works did not meet this minimum standard, and this failure caused damage to the customer, the company may be liable to the customer for any damage she suffers.
5. Importantly, however, whether the company's work is responsible for any problem that develops is a fact-based question that can only be addressed once the problem has developed. The company cannot, therefore, be required to make any kind of general pledge regarding the work it has undertaken that would deprive it of its right to deny liability for specific future incidents.
6. Nonetheless, it should also be emphasised that if a future problem develops, the customer retains the right to contact the company about that problem, despite the company's insistence that she should contact her home insurer or the local council instead. The company may then choose not to respond, or it may decide that its own best interests are protected by responding and ensuring that it is not liable, both for the consequences of its prior work and for its response to the customer's new complaint. Again, however, this is a decision that the company must take at the time a problem occurs.
7. Consequently, the customer's request that the company guarantee its work and pledge to fully investigate and remedy any future problems does not succeed.
8. The customer also requests that the company apologise for the time taken to resolve the matter. However, the company has satisfactorily established that it has already apologised to the company and has paid her compensation for this delay.
9. Consequently, this element of the customer's claim does not succeed.
10. For the reasons given above, the customer's claim does not succeed.

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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 24 December 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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Tony Cole, FCI Arb

Adjudicator

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