

The seat of Arbitration is in England & Wales

The Arbitration is conducted by Mr Ayub Sadiq, the appointed ADR official by the London Arbitration Centre Limited and Mr Alan Duffy acting as building construction expert.

Under the ADR Procedure for the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015

In accordance with the London Arbitration Centre Rules of Procedure

Date of Award; **14th October 2021**

Between;-



██████████

The 'consumer'

And

██████████ trading as LW Building & Roofing

The 'trader'

Final Decision

Introduction

This is a dispute about building work carried out by the trader to the property known as 55 Long Leys Road Lincoln LN1 1DR. This claim is made by the consumer on behalf of her elderly parents, ██████████ and ██████████ although I understand the property to be owned by ██████████ and her husband.

I have not been made aware of any disability suffered by Mrs ██████████'s parents which prevents them from bringing the claim in their own right although I understand ██████████ is on medication for depression. I understand that the contract with the trader was initially agreed with trader by ██████████ and ██████████. Since about the 10th March 2021, Mrs ██████████ has taken over the management of the works. By this date, however, the works or lack of thereof were well advanced. On 28th May 2021 the Alternative Dispute Resolution (ADR) became effective after the presentation of this claim by Mrs ██████████ to London Arbitration Centre (LAC) for dispute resolution.

When I refer to the consumer in this Decision, I mean Mrs ██████████'s elderly parents being the contracting parties in this dispute. I have been provided with authorisation by ██████████ and ██████████ for Mrs ██████████ to represent them in this ADR and confirmation that they will be bound by the decision of the ADR Official appointed by the LAC in accordance with the LAC procedure. In any event, as the property owner, Mrs ██████████ would appear be the ultimate beneficiary of improvements to the property.

The Contract

Early in the ADR, I sought to ascertain the material terms of the contract. This is fundamental to English contract law. In the English legal system, it is no function of a court of law to substitute one contract for another or insert new matters into the contract which the parties themselves have not bargained for in their agreement.

With hindsight, one party may believe they should have contracted differently. For example, a trader may believe he should have charged more for the work which he or she has carried out, perhaps because prices of materials have changed. Another example might be where the consumer believes he or she should have included works which were not included in the contract but because circumstances of now changed, additional work is necessary.

These are but examples why a court or tribunal is only concerned with what the parties themselves agreed. The function of the court is to enforce the contract agreed between the parties and provide the appropriate remedy where one party is in breach of contract. The first task must be to ascertain what were the material terms of the contract. Once ascertained, it is then possible to proceed to work out the rights and responsibilities of the parties.

Against this background, on 1st June 2021 I asked the consumer to “*provide full details of the agreement entered into with the trader*”.

I have set out below the reply in full because of the importance;-

There was no initial contract between LW and my parents, only verbal.

The verbal agreement was that the property was to be renovated by the 4th March 2021. This was just to a liveable standard (Kitchen, 1 bedroom, bathroom & the property being fully watertight, asbestos free and heated with an insulated roof). Furthermore external damage caused by LW and colleagues was also to be rectified at a cost to him after this date.

LW took ownership of dealing with the Local Building Authority and sourcing subcontractors. In addition LW advised that due to Covid & Brexit building materials were in short supply and he would source and procure everything if payment was made in advance.

LW informed my parents that he had liability insurance and that he offered a 25 year guarantee on his roof work.

The initial agreement was that the roof would be worked on first which began on the October 27th 2020. By the middle of February 2021 the roof was and is still incomplete & not watertight.

When I took over from my parents due to a breakdown of communication and stress with LW I did however start to produce meeting notes and outlaid my expectations and a timeline as soon as I knew there were issues.

Please find attached meeting notes and additional letters as advised.

LW also confirmed verbally & in writing that he had to jump on other jobs to enable him to complete my building work as he required funds. My argument was my parents have paid you £72,000.00 for an incomplete & not to building regulation standard property. LW insisted that if we paid him a further £6,000.00 that would be enough to finish the whole property.

Ascertaining what were the material terms of the contract from a verbal agreement is no easy matter in the best of situations. Typically, the contract should include the following terms;-

- what work was the trader to carry out ?

- what materials were to be used ?
- when was the work to start ?
- when was the work to be completed ?
- how much was the consumer to pay for the works ?
- when was payment to be made ?

Very often a good quotation for the works will cover all of these points. A quotation is not necessary for the formation of a contract but a quotation will very often form an important ingredient. I have not been made aware of any such quotation having been provided in this case by the trader although I understand the issue of one not being provided a quotation by the trader is the subject of complaint by the consumer (I refer here to the letter from the consumer dated 21st March 2021). I cannot say this criticism is well founded.

Prudence in one's affairs is a term which I believe is not inconsistent with a reasonable consumer. Obtaining at least three quotations before agreeing works that might cost above £1,000.00 is prudent. Not obtaining a quotation for works that eventually cost over £72,000.00 is not prudent at all. I would not expect to find any reasonable consumer without a quotation before committing to a substantial building contract. If one had been obtained from the trader by the consumer before the contract was agreed, it would have been easier to see how matters have drifted away from the quotation (if at all).

I have filled out below the key contractual provisions according to the information provided by the consumer;-

- *what work was the trader to carry out ?*

The property was to be renovated to a liveable standard comprising work to the kitchen, (single) bedroom, bathroom. The property being *fully watertight*, asbestos free and heated with an insulated roof.

- *what materials were to be used ?*

The trader would source and supply the materials and the consumers would pay for the cost.

No specific materials appear to have been specified. All I have is evidence of the actual materials used by the trader. The suitability of the materials is another question.

- *when was the work to start ?*

This is not clear although I understand the works began in October 2020. No period appears to have been specified.

- *when was the work to be completed ?*

The works were to be completed by 4th March 2021.

- *how much was the consumer to pay for the works and when was payment to be made ?*

Not known.

- *Other material terms*

25 year guarantee.

It is important to stress that these are the material terms of the contract according to the consumer. The trader may have a different view of the material terms but we are only concerned with those terms, express or implied by law which the consumer claims the trader has been broken.

I have been able to form an impression of the scale of the works from the meeting notes provided by the consumer in support of her case dated 14th and 16th March 2021. These works appear substantial on the scale of a total renovation of the property.

Procedural history in the LAC

In building type disputes where each item of defect can be listed and commented upon by the parties, it is convenient to use a 'Scott Schedule'. The consumer was requested to list the items of defect in this way at the outset of the ADR. The Scott Schedule was completed by the consumer and returned with the amended online claim form which had previously been completed by the consumer at the start of the process.

In the claim form under '**how the trader should put things right**' the consumer states;-

The trader needs to provide a full refund for the incorrectly installed roof & Velux windows - £22,500. I have calculated this sum based on what was charged for the roof work and installation of incorrect Velux roof windows which now need converting or replacing along with a 7 month old leaking roof which is still incomplete and paid in full.

The opinion of the work being incorrectly installed and incomplete has been verified by an Independent and reputable roofing company whose inspector has provided a report highlighting 13 issues.

Additionally, £24,000 is for work that has been incomplete to finalise the rebuild of 55 Long Leys Road. The trader's reluctance to provide invoices to describe what work, labour or materials used shows that it cannot be justified.

In accordance with the Consumer Rights Act 2015, we want a full refund as previously requested for the soffit installed as cladding.

We also require reimbursement for the deliberate damage of the lead pipe which leaked in our property as mentioned above.

Lastly, I will be submitting the cost to rectify the damaged window lintels as mentioned. I will expect this to be reimbursed also.

The consumer relied upon the following documents in support;-

1. Roof Inspection Report (undated and unsigned). The report contained 13 images of defects;
2. A copy of the letter before action from the consumer to the trader dated 17th April 2021;
3. Emails exchanged between the parties between 17th April 2021 and 27th April 2021. The first attaches the letter before action referred to above and ends with an agreement to refer the dispute to ADR. I note that by email dated 24th April 2021, the trader was already saying;-

I can prove that the £24000 was spent on materials and labour. In regards to the roof, as for the porch roof as the materials are on site apart from a new piece of felt i am more than happy to pay for labour to get that finished.

The main roof is boarded correctly, and fivreglassed properly although you are saying there are leaks. Yes the velux need them kits supplied. I am happy to pay for the velux kits and the labour for someone to do them.

If you get a price to rectify what needs to doing on the roof we can take it from there.

It would be unfair if I was to read too much into the trader's early comments when the thrust of the communication is about agreeing ADR.

4. A copy of a (5 page) letter from the consumer to the trader dated 21st March 2021. In the letter, the consumer terminates the contract because of the alleged defects and claims compensation.
5. A copy letter from the consumer to the trader dated 30th March 2021. In the letter, the consumer responds to an email from the trader. I have not been shown a copy of the email from the trader to which the letter is directed.
6. Meeting notes for 10th March 2021 (dated 14th March 2021) and meeting notes for 16th March 2021. It appears the meeting notes were made by Mrs [REDACTED] with the aim of putting the works 'back on track'.

I have extracted and set out below the Scott Schedule completed by the consumer as part of the claim in this ADR;-

SCOTT SCHEDULE- 55 Long Leys Road LINCOLN LN1 1DR				
Item No.	Term of Agreement complained about	Remedial work required	Consumers additional comments	Value according to consumer
1	Flat roof with 5 Velux windows	<u>Roof requires complete removal</u> due to the poor workmanship that has been highlighted in the independent roofing report provided by D.P. Wilkinson. Please see attached. Within the report there are 13 issues along with photos which have been provided to explain the extent of the unliveable roof we have been left with.	We waited for over 5 months for this roof to be completed and this is what we were left with. We tried to have meetings to discuss a route forward to complete the work, see letter attached ' <u>Meeting at 55 Long Leys Road 10th March 2021</u> '. Unfortunately LW barely attended the property after agreeing to fix the issues, and when he did he was damaging the roof even further. Please see attachment ' <u>Roof Inspection 55 Long Leys Road</u> ', specifically pictures 1, 2, 4 & 8. The roof leaks everytime there is rain and no fascia companies are willing to work on it due to the structure being insufficient to enable fascia, soffit and guttering to be installed. After a meeting with the Local Building Control Officer on the ** 2021. Further issues relating to this work has come to light that needs fixing.	£22,500.00 - This sum been calculated based on what LW charged for the roof work and installation of incorrect Velux roof windows which now need converting or replacing along with a 5 month old leaking roof which is still incomplete and paid in full. Furthermore, not carried out to building regulation standard.
2	Outstanding work to complete the internal build of the property	Completion of internal and external building work which was paid upfront in good faith. Work outlined in attached letters ' <u>Meeting at 55 Long Leys Road 10th March</u> ' & ' <u>Lewis Whitaker trading as LW Building dated 30.03.2021</u> '.	Missing invoices made up from (£10,000 paid 21/12/2020, £10,000 paid 22/01/2021 & £4,000 paid 13/02/2021). Within the ' <u>Final letter before commencing legal action</u> ' (attached) and in accordance with the Practice Direction on Pre-Action Conduct, requests were made to LW for these invoices again. His reluctance to provide evidence of this work for said amount leads me to believe he is avoiding providing these due to tax reasons or fraud as he clearly hasn't carried out the final £24,000.00 of work to finish my project.	£24,000.00 - This is for work that has been incomplete to finalise the rebuild of 55 Long Leys Road. LW is extremely reluctant to provide invoices to describe what work, labour or materials was used. Requests for invoices are now 5 months overdue even though payments were provided in advance as requested.
3	Install cladding to front of the property	Hollow soffit board was installed under the disguise of cladding. This had to be ripped out as it was a fire hazard, not up to building regulation standard and not what was agreed to be installed.	Fraudulently installed hollow soffit board to property under the disguise as cladding. Notified this to LW in writing on the 21st & 30th March 2021 but LW declined to answer our request for refund under the Consumer Rights Act 2015. Please note, when removing the soffit the entire length of every strip had printed over it 'Far Soffit Use Only'. LW's excuse that this can be used as cladding is untruthful. Even so, this was not what we paid for and therefore we still request a full refund under the Consumer Rights Act 2015.	£1,585.20 - This is the cost of labour and materials to remove the soffit board, fix the internal wall structure behind this and insulate correctly as per the Building Control Officers guidance.
4	Cap and box in garden tap within stable	Emergency plumber called out to fix the damaged lead pipe	This is a new issue that has come to light since the initial submission of the information sheet. The plumber who was employed had capped a lead pipe internally within the stable as agreed. LW was to then box in or over the pipe so that plasterboard could be installed. Instead the pipe was hammered into the ground so that plasterboard could be installed. This cause the lead pipe to slowly leak into the ground and eventually burst. We had to call an emergency plumber to come and fix this due to LW and/or employees deliberately damaging the lead pipe out of pure laziness. We have kept the pipe which can be clearly seen with a hammer mark making part of the lead flat and the emergency plumber also confirmed in his invoice this was deliberately damaged.	£190.00 - Cost of invoice from emergency plumber.
5	Install 3 window lintels	Newly employed builders have been instructed to reinstall 3 window lintels because they have been damaged by LW and/or employees by filling the gap between the bricks and the window with slate tiles and expanding foam.	This is a new issue that was identified by the Local Building Control Officer. The windows will potentially need removing and the lintel replacing along with resealing and reinstalling the windows to Building Control standard.	Cost to be identified - This requirement has only just been notified to us in the last week by the Local Building Control Officer. There is a quote pending which will be provided to rectify this damage.

The trader's response to the claim

Item 1 in the Scott Schedule- *Roof requires complete removal*

The trader denies that the work to the roof was carried out incorrectly. The trader states;-
"£22,500.00 was a total costing for all the roof work including stripping out the asbestos roof, supplying and fitting all the roof timbers and OSB Boards..." The trader states the Velux window just require 'a kerb kit to raise the pitch'. The trader further states that the work was carried out to 'BR' standards and the building officer was happy with the works. I understand BR to mean British Standards.

The claim of £22,500.00 by the consumer calculated according to what the trader charged for the roofing work cannot form the correct basis for calculating the loss suffered by the consumer even if the work carried out by the trader was defective. The court must seek to put a party in the position he or she would have been had the contract been properly performed. The loss suffered by the consumer is the cost of putting the right any defective works. The trader values the cost of remedial work at £3,000.00. In the Reply to the Response, the consumer supplied quotations ranging between £22,500.00 and £27,300.00. These are predicated on the roof being replaced.

I cannot make any judgement on the cost of putting right the works. I must defer the alleged defect and loss suffered by the consumer to the expert opinion.

Item 2 in the Scott Schedule- *Outstanding works to the complete the internal build of the property*

The consumer's claim is confusing. A claim for outstanding works becomes mixed up with a different complaint to provide an account. Under *consumers additional comments* for this item, she states;-

Missing invoices made up from (£10,000 paid 21/12/2020, £10,000 paid 22/01/2021 & £4,000 paid 13/02/2021).

Within the 'Final letter before commencing legal action' (attached) and in accordance with the Practice Direction on Pre-Action Conduct, requests were made to LW for these invoices again.

His reluctance to provide evidence of this work for said amount leads me to believe he is avoiding providing these due to tax reasons or fraud as he clearly hasn't carried out the final £24,000.00 of work to finish my project.

The trader states in his response that he has all the proof were the money was spent. He says £11,000.00 was expended on materials and £9,000.00 was paid to labourers and sub-contractors. The remaining (£4,000.00) was used to pay for the trader's wages for 'Christmas'. I have read the Reply where the consumer deals with these points on page 11.

I can see a 'seed' of a complaint but the trail does not lead into a legal case for a return of £24,000.00 because there is no legal requirement to provide invoices (unless the trader is VAT registered which I understand is not the case here). It is my view that the consumer is asking, in legal terms, for the trader to *provide an account*. This is a recognised cause of action and is available where money is placed with another party for a particular purpose on a form of *trust*. In this case, it appears the £24,000.00 was paid over to the trader on account of the renovation work. It is my view that there is duty on the trader to provide an account as to where this money was spent but the difficulty I have is that the contract agreed with the trader does not specify how the trader is to be paid for the work to be carried out. There is nothing in the evidence supplied to me by the consumer

with which I am able to refute the charging basis put forward by the trader and order a repayment and say the payments taken by the trader are in breach of contract.

I have read the Reply by the consumer were she comments upon the trader's Response at page 11. I am not sure how the picture of the scribble on the MDF board helps to resolve this issue as this was made on 21st January 2021 (I refer here to the consumer's letter dated 30th March 2021) whereas at least £10,000.00 had already been paid by 21st January 2021. These rough 'scribbles' cannot serve as a quotation or a contract as the works were already well into the contract at this point;

£10,000 paid on 21.12.20

£10,000 paid on 22.01.21

£4,000 paid on 13.02.21

If there are outstanding works, these should have been listed in the Scott Schedule under each individual item. Against each item, the consumer should have stated the cost of carrying out the works not completed by the trader and the cost of putting right the works. These instructions were provided by myself to the consumer and she has followed these instructions with regards to the other items of work listed on the Scott Schedule. The claim under this item has been presented in a very confusing way mixed up with a failure to provide an account and a failure to carry out works.

I am unable to reconfigure the complaint. In these circumstances, an order for the trader to provide an account above the information already provided by the trader (i.e. materials, labour and wages) would not lead to a claim for a refund or any other meaningful remedy based on the evidence presented under this claim. This is because the charging basis under the contract agreed with the trader is not clear.

Item 3 in the Scott Schedule- Hollow soffit board was installed under the disguise of cladding. This had to be ripped out as it was a fire hazard, not up to building regulation standard and not what was agreed to be installed.

The Response by the trader is that he was advised to use the boards as cladding. The consumer says the supplier confirmed to her that the boards were not sold as cladding.

The sum of £1585.20 is claimed for this item. The trader's valuation is nil. I understand the works have been carried out but I have not been provided with an invoice, receipt or other proof of payment.

I cannot make any judgement on the cost of putting right the works. I must defer the alleged defect and loss suffered by the consumer to the expert opinion.

Item 4 in Scott Schedule- Cap and box in garden tap within stable

The consumer states an emergency plumber was called out to fix a damaged pipe. The pipe was not capped off but hammered into the ground.

The trader states that the plumber was employed directly by the consumer. In the Reply, the consumer states the complaint is that the trader should have boxed in the pipe with the plasterboard but instead one of the trader's labourers bashed it into the ground. It seems that the trader cannot escape liability for this item if installation of the plasterboard was part of the works carried out by the trader.

The trader claims £190.00 for this item. Nil is allowed by the trader. Again, I have not seen any invoices to support this item of claim. I have referred the reasonableness of this item of claim to the expert.

Item 5- reinstall 3 lintels.

This is no longer forms part of the consumers claim.

The questions for expert

The issues I have not been able to determine above I have sought expert opinion.

The opinion of Mr Alan Duffy

This part of the decision has been written and provided by Alan Duffy.

My knowledge and experience

I started in the building trade in 1965. In 1972, I formed my own building company and in 1984, I formed a company to carry on business as a building contractor. I have always employed tradesman bricklayers, plasterers, joiners, and sub-let to specialist trades; electricians, plumbers, scaffolders and tool hire etc. I have carried out numerous house extensions (single and double storey), house refurbishments/ shop refurbishments over this period.

I also have extensive knowledge of the management of a business in the building trade.

My Findings on the evidence

I have carried out a review of the documents that have been supplied by the parties to this ADR as follows;-

1. Scott Schedule
2. Lincoln Roofing & Building Limited (Roof Inspection) (no date)
3. Response to claim (consisting of images of manuscript)
4. Reply by Consumer (21st July 2021)
5. Bafti Quotation (15th June 2021)
6. Bafti Invoice (13th September 2021)
7. Roofgiant invoice (22nd June 2021)
8. Video
9. Emails, 31.8.21, 7.9.21 (2), 15.09.21 (2), 16.09.21.

1. The cost to rectify defective works to the roof (if any) to the property;

I have come to the opinion based upon the evidence that the whole roof needs replacing. I believe there are too many faults identified in the images shown in the report by Lincoln Roofing & Building Limited to be able to complete the outstanding works to assure the integrity of the roof structure. Bearing in mind also, had remedial work been carried out (and not the whole roof), the new trader engaged would be taking on responsibility for works already in situ.

For example, carrying out remedial work and replacing Velux windows requires the roof to be disturbed and therefore having to make water tight where the flashings are sealed to the existing roofing system. Another example, where the roofing system is shown unfinished (see photo 8 and others), the new trader would have to carry out work to ensure his work is completely secure and watertight against work that has not been done properly in the first instance.

I have considered the cost claimed by the consumer for the roof to be replaced, in particular, the documents listed 5, 6 and 7 above. The quotation dated 15th June 2021 in the sum of £22,660.00 is in my view excessive. The invoice dated 13th September 2021 in the sum of £970.00 is also not consistent with the quotation either. It is not clear whether this invoice is included in the sums originally quoted.

I have not seen any proof of payment, just an acknowledgement of a sum paid. This evidence may have assisted in my forming a view as to the reasonableness of the sums claimed, however, I have set out below what I believe is a reasonable cost for same items;

Remove the velux windows and reinstall include plasterboard and plaster	Allow £ 1,500.00
Insulation for the roof 130 square meter and labour	Allow £ 3,900.00
Os b 18mm plywood and labour	Allow £ 2,600.00
Upstand for velux windows *5 supply and fit	Allow £1,363.92
GRP Fibre glass to cover the roof, materials and labour	Allow £ 5000.00
New fascia and guttering, materials and labour	Allow £ 850.00
Screws for the insulation and osb	Disallow
Sub total allowed	£15,213.92

2. The use and appropriateness of soffit board installed as cladding as part of the works and the cost to rectify such works (if inappropriate);

The soffit board should not have been used for cladding and the trader should have been aware of this. I believe a sum of £1200.00 is a reasonable amount.

Sub total allowed **£1,200.00.**

3. The reasonableness of the £190.00 claimed by the consumer for alleged damage to a water pipe.

I am of the opinion that this is a reasonable sum.

Signed.....
Alan Duffy
(Building construction expert)

The Order

On the basis of the findings by the expert, I order the trader to pay the consumer £16,603.92 within 28 days of the date of this award.

Signed.....

Ayub Sadique

ADR Official appointed by the London Arbitration Centre Limited