

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT-X582

Date of Decision: 1 October 2021

#### Complaint

The customer says that the company damaged his driveway and lawn, and provided poor customer service.

#### Response

The company says that it acknowledges that there were customer service failings, but the work performed on the Property was undertaken in accordance with its obligations.

The company offered the customer compensation of £200.00, but this was declined.

#### Findings

The company failed to provide its services to the customer to the standard to be reasonably expected by the average person with respect to some elements of the customer service provided.

#### Outcome

The company needs to take the following further action: It must pay the customer compensation of £200.00.

The customer must reply by 29 October 2021 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

Adjudication Reference: WAT-X582

Date of Decision: 1 October 2021

## Party Details

**Customer:** The Customer

**Company:** The Company

## Case Outline

### **The customer's complaint is that:**

- The company undertook work on the pipes in his front garden.
- The work was performed negligently, resulting in unnecessary damage to his driveway and lawn.
- The reinstatement of the driveway is inadequate and the lawn needs further work.
- He experienced poor customer service.
- He requests compensation of £5,000.00.

### **The company's response is that:**

- The company was contacted by the customer on 14 December 2020, as his water consumption was higher than usual.
- The company attended the Property on 15 December 2020, confirming that there was a leak on the customer's private pipework.
- The company subsequently agreed to undertake an ex gratia repair, and the customer agreed to the terms of that repair.
- Work was initially undertaken on the customer's driveway, but the leak was subsequently located under the lawn.
- The repair was completed on 18 January 2021.
- The driveway was backfilled with tarmac.

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- The lawn was reinstated and the company subsequently offered to lay grass seed to avoid future patches.
- Under the terms of the Leak Repair Agreement, the company is not liable for the work performed unless there has been negligence or the work is not effective, and “final reinstatement” is the responsibility of the customer.
- The company argues that the work provided met the requirements of the Leak Repair Agreement.
- It acknowledges that there were delays in communication and has offered the customer a goodwill gesture of £200.00.
- It denies that the customer is entitled to the remaining remedies requested.

**The customer’s comments on the company’s response are that:**

- The company did not respond with appropriate speed to address the leak.
- The company has not addressed the report arising out of the visit of 23 December 2020, which has not been reproduced by the company in full.
- The company has not properly addressed prior work at the Property, which would have put the company on notice that the leak was likely to be under the lawn.
- He informed the company’s agents that the pipe was likely under the lawn, but his comments were disregarded.
- The repair of the driveway has already begun to fail and also constitutes a health and safety hazard.
- The company has not disclosed all the relevant evidence in its possession.

**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

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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. Under the terms of the Leak Repair Agreement entered into by the parties, the company agrees to provide an “effective” repair and to backfill any excavation “to safe condition” using “similar materials” to those originally used. The customer expressly remains liable for any “final reinstatement”.
2. The customer has not argued that the repair undertaken by the company was not “effective”, and so under the terms of the Leak Repair Agreement the company is only liable for the amounts claimed by the customer if the works in question have resulted from the company’s “negligence” or from the company’s failure to backfill any excavation “to safe condition” using “similar materials” to those originally used.
3. The customer has expressed concern about the company’s handling of the leak, suggesting that it could have been resolved more quickly, however there is no evidence that any delays in repair resulted in the need for the works for which the customer is now claiming. As a result, such delays can only be addressed under the customer’s additional claim for inconvenience and distress, which will be discussed later.
4. The customer argues that the company acted negligently in commencing work on his driveway, when he had informed its workers that the Property’s pipework had been relocated to under the lawn and the company’s own records should have confirmed this fact. However, the company has emphasised that the decision to commence work by excavating the driveway was made not on the basis of a presumption that this was the most likely location of the pipework, but because this was the location of the “best noise” heard by its inspector when examining the location of the leak.

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5. While records of prior work are certainly a relevant consideration in determining the likely location of a leak, I do not find that the company acts negligently by placing priority upon the conclusions reached by a contemporaneous physical inspection. Indeed, a case of negligence would be stronger if the company ignored the results of such an inspection and insisted on excavating in accordance with its records, despite contemporary evidence that a leak was located elsewhere.
6. I do not, therefore, find that there is evidence sufficient to justify a conclusion that the company acted negligently in commencing excavation on the customer's driveway rather than on the lawn.
7. The customer has, however, also complained about the quality of reinstatement work provided by the company.
8. As argued by the company, the reinstatement work promised under the Leak Repair Agreement is limited, with the company only responsible for backfilling "to safe condition" using "similar materials" to those originally used, and the customer remaining responsible for "final reinstatement". In short, the company's obligation was to provide a "safe" reinstatement that was reasonably similar to the original condition, rather than identical to it. The company was not obligated to reinstate the customer's driveway to its original condition, this being the responsibility of the customer.
9. The customer has produced clear evidence that the company's reinstatement of the driveway is visually different to the original driveway. However, no evidence has been produced that this reinstatement was not done with "similar" material, even if not identical material.
10. Nonetheless, it follows from the fact that the company is responsible under the Leak Repair Agreement for the consequences of "negligent" work by its agents that the reinstatement it provides must not only be safe, but must be of reasonable quality.
11. The customer has argued that the reinstatement provided by the company is already failing, and this might support the customer's claim. However, the visual evidence provided to support the customer's statement is insufficient to justify a conclusion that this section of the driveway is not reasonably usable as a driveway. The customer has referenced comments by contractors that the quality of reinstatement provided by the company was inadequate, but no evidence of these

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statements has been provided beyond the customer's own testimony. The customer has also argued that the reinstatement now constitutes a health and safety hazard, but no evidence has been provided that would justify a conclusion that this is correct.

12. Ultimately, while I accept that the customer has legitimate grounds to be unhappy with the visual state of his driveway after the reinstatement performed by the company, given the limited obligations imposed on the company by the Leak Repair Agreement I cannot find that the company has failed to meet its obligations under that agreement.
13. The customer has also expressed unhappiness about the reinstatement of the lawn at the Property, but says that he has not included a financial claim for this work as the company has agreed to undertake the work required.
14. As a result, I will not address this element of the customer's complaint, as it has already been resolved between the parties.
15. The customer has also complained about the quality of customer service he has received. However, while I do not question the distress that the customer experienced while waiting for the repair to be performed, I find that the company acted with reasonable speed to address the leak.
16. Moreover, while the customer is obviously unhappy with the quality of work the company then provided, I have found that the company did not breach its obligations to the customer in that respect.
17. Nonetheless, the company has acknowledged that there were delays in responding to the customer's communications and has offered the customer compensation of £200.00 for these failings. In consultation with the WATRS Guide to Compensation for Inconvenience and Distress, I find that this amount is appropriate, recognising as it does both the company's failing but also that overall I have found that the company provided satisfactory customer service.
18. Therefore, the company must pay the customer compensation of £200.00.

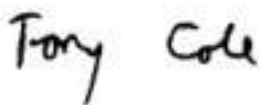
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### Outcome

The company needs to take the following further action: It must pay the customer compensation of £200.00.

### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 29 October 2021 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



**Tony Cole, FCI Arb**

**Adjudicator**

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