

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X745

Date of Final Decision: 11 February 2022

#### Party Details

Customer:

Company:

#### Complaint

The customer complains that the company failed to take appropriate action in respect of a sewage leak in his garden from a company asset and told him to excavate his garden including a dry-stone wall and a tree so that the company could have access to the pipe. The company has failed to pay the customer for this work, done on the company's behalf, and will not pay compensation for reinstatement work. He complains of poor customer service. The customer asks for compensation for work done on behalf of the company, and for stress and inconvenience in the sum of £12,500.00 and for the company to put his garden right.

#### Response

The company says that it was not prepared to undertake the excavation work because it was dangerous. While it suggested obtaining builder's quotations, it did not ask the customer to undertake the excavation and is not liable for reinstatement. It will not pay for the tree or wall, which is landscaping work. The company will pay a proportion of the customer's costs, namely those of filling in the excavation but the customer has not provided a quote. The company will pay £1,000.00 for distress and inconvenience plus £20.00 for failure to meet its guaranteed service standards.

#### Findings

The company has not provided its services to the expected standards in terms of the delay in rectifying the problems with the pipe and has contributed to the difficulties in resolving this dispute by denying that the company advised the customer that he could carry out work himself which the company was not prepared to do for cost and safety reasons. This does not mean that the company is liable to pay the customer for the excavation work, but as the company has repaired the pipe, it is liable to make payment for the cost of the infill. The company was in a position to assess the contribution that it would

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make. I find a fair and reasonable cost of this is £270.00. The company is not liable to pay for other work. The company has increased its offer of inconvenience to £1000.00 plus a guaranteed service standard payment, which is fair and reasonable.

### Outcome

The company needs to pay £1,290.00 to the customer.

## ADJUDICATOR'S FINAL DECISION

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### Case Outline

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

- On 7 November 2020, the customer became aware that there was a leak of raw sewage in his garden towards the driveway and front door. At the time of the leak, his wife REDACTED.
- The customer immediately called the company. Although engineers attended within one hour, these engineers turned out to be fresh water engineers who could not help. They made arrangements for a follow up as soon as possible.
- An engineer was dispatched in the following days and attempted to clear a blockage but could not do this and said a larger truck would be required to clear this so that investigations could be carried out. This took quite a few more days and the company struggled to clear the issue. After a few weeks the sewer pipe was running but CCTV surveys revealed a more than 50% displaced joint (on the downstream side) that was clearly leaking raw sewage into the customer's garden. The customer requested that teams came back to discuss the options to repair the sewer. The customer had multiple visits from contractors and the company's staff. These were not arranged with the customer or his family: people would turn up unannounced and ring the doorbell and expect the customer to know who they were. They wanted the full explanation of what needed doing and what had happened. The customer's reply to them mainly was on the lines that he wanted the pipe work repaired or replaced and it was not significant how this happened. The

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customer said that he was also open to suggestions to help reduce costs if drystone walling was too expensive or if there were other ways to help reduce the company's costs. The company never wanted to discuss options. The contractors would panic and try to pass the job to a different contractor.

- The customer spent months calling, emailing chasing up responses, to be told meetings are going ahead but it was a difficult job etc. Finally, after months and months of stress, sleepless nights and high blood pressure, the customer requested a site meeting with every person involved and asked his father to be present to help with discussions and plans. The request was met by the company sending one manager who looked at the job and advised the customer would go on Long Term Funding. To the customer this meant that the company did not want to do anything about it and the job would not be done. The customer's wife at this point was not sleeping with anxiety issues because of this and wanting to keep the couple's first daughter safe, broke down in front of the manager and pleaded with him to do something. This seemed to have some effect as the customer then had another visit days later by the network controller and the manager. This meeting was more positive. However, the customer says that "it now turns out it was a backhanded ploy to trick a customer in utter desperation to keep his family safe into carrying out work for his water company that he never should have done as they would later turn round and try to wash their hands of it all".
- The network controller and the manager asked the customer to remove a tree (probably 20 years old and well established in the ground), some dry-stone walls, rocks some weighing 50kg+ and approximately 20 cubic meters of earth on a banking above walls and gardens that the company had advised could not be done for the safety of its staff but had no issues in asking the customer to do. The customer and his father spent 6-8 hours excavating with shovels all by hand.
- The customer then contacted the manager as he had asked the customer not to call the call centre. The company attended days later and were amazed and shocked at the work that had been done. The company arranged for teams to attend and replace sections of pipe and then to line the section above and below the excavation. The customer made a complaint about health and safety to the company, who looked into this.
- On the same day as these works, the customer asked the network controller to check his sewer pipes just so the company did not need to come back. He refused to do so and months later the customer had another sewage leak, this time from his pipework. This time it was leaking on to a public footpath and towards two other households. It was repaired within days (mainly because the customer's household was now classed as a high priority client). The team which carried out this work then left fibreglass and rubbish all over the customer's drive so he had to get them back.
- The customer fought for weeks to get the company to accept that it should reinstate his garden which is now becoming very unsafe to use. This is another worry as there are large rocks that are starting to slide and become unstable. The customer has been advised by the company not to do anything with the area until a resolution has been agreed. Following a request from the company to get a cost and give a figure to consider for compensation, the company has now back-peddled on everything even to the point of sending the Consumer Council for water an email stating that there is no evidence that the company asked the customer to take down the tree and walls, yet

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on the same email copying and pasting an ESAR with a report from the network controller stating “ i have asked the customer to....”

- This pipe work is not connected to the customer’s property at all: it merely runs through his grounds, if it was his sewer pipe, he would be dealing with this in a different way.
- The company has also stated in its most recent correspondence that it is responsible to reinstate as was. This would mean a mature tree, dry stone retaining walls and tiered mature planed garden.
- The customer asks for compensation for work done on behalf of the company, and for stress and inconvenience in the sum of £12,500.00 and for the company to put his garden right.

**The company’s response is that:**

- The company explains that on 7 November 2020, the customer contacted the company to report a burst pipe. The company attended the same day and found an external sewage escape. The company’s waste team attended the Property on 9 November 2021 to investigate and found tree roots in the sewer network. The visit was carried out within the company’s required timescales for external sewage escapes, which is within 5 days.
- The company attended again on 16 November 2020 to remove the tree roots from the sewer line. However, it was unable to carry out the work due to parking restrictions caused by parked cars. The company returned on 24 November 2020 to remove the tree roots and carry out a camera survey. The camera survey identified several displaced joints and a partial collapse.
- The collapse was located on unkept and very steep sloping land. The company recognised the land was poorly terraced and appeared to be slipping. For this reason, when its contractor visited to inspect the area that needed excavating the contractor confirmed that they would not carry out any excavation work without fully reviewing it, surveying the land and creating a safe plan to carry out the work
- The structural survey required is very costly and reached a trigger for funding. As the issue was an external sewage escape it was unlikely that funding would have been approved. The company is funded to be able to complete repairs on its network, however it needs to prioritise those customers who are most affected by issues. Work that the company considers funding first are where a sewage escape is causing a pollution or homes are flooded inside. The company also looks at the number of properties/people affected and the number of contacts it receives. The type of solution also plays a major part in the funding, as it has to be cost effective and practical. The required work would need to include a fully engineered solution to reinstate the land safely, which may have included having to fully landscape the area. As the land already showed signs of slipping this would not be the best use of the company’s funds and is the reason why an alternative solution was sought.
- Accordingly, the company put in place an alternative solution in the form of a cyclical visit to check the pipe was not blocked and was flowing as it should. If any blockages were found the company

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would remove these to ensure the sewer was running clear. The customer was unhappy with the time it was taking the company to resolve the issue. Following a visit on 17 February 2021 the customer made the decision to dig the land and excavate the sewer pipe himself at his own risk. The company did not instruct the customer to carry out this work himself. It was suggested by a company technician during a visit on 2 December 2020, that he may wish to instruct a builder of his choice to carry out the work; this suggestion was made because the customer mentioned landscaping and retaining walls, which would not be covered in the scope of any work the company carried out. The company denies that it asked the customer to carry out an excavation himself. The feedback from a visit on 18 February 2021, which is available in the SARs request, confirms that the company's technician asked the customer to expose more of the pipe. This was after the customer had already dug the hole himself. As the company had arranged to mitigate the issue by carrying out cyclical maintenance, lining the sewer or any further work was not being considered. However, once the customer had excavated the pipe, it provided an access point for the company to carry out lining work. Lining work was completed on 5 March and 15 April 2021 by a third party contractor. It is understood by the company that the contractor will have carried out their own risk analysis and safety checks prior to carrying out the work.

- The company attended on 22 December 2021 to check there were no further issues after the completion of the lining work. The customer was not informed of this visit in advance and he contacted the company to find out what the intention of this visit was and was promised that he would receive a call back by 4pm that day. The company apologises that this call back was not made within the timescale promised and that the customer had to call back again on 23 December 2021. The company offers the customer an additional £20.00 for this inconvenience.
- The customer has not substantiated the cost of £10,000.00 for the work that he and his father undertook. The company has, however, recognised that there have been delays and has offered the customer a goodwill payment of £500.00 in recognition of the stress and inconvenience caused. but the Customer declined this offer. Having reviewed the case, the company feels that an offer of £1000.00 is more appropriate for the stress and inconvenience caused. Whilst the company did not ask the customer to carry out the dig nor did they need the customer to do this, the company recognises the time and effort this took and this is reflected in the increased goodwill offer.
- As the company did not dig the hole and the customer dug this himself, without structural surveys carried out, the company will not reinstate the area. This is because the company cannot be sure of what damage may have been caused to the structure of the land that has been dug. The company would still need to carry out structural surveys to reinstate an area such as this, so that the structure and stability of the land can be considered. This work would be very costly and would not attract funding due to the reasons mentioned earlier.
- The customer has also requested that additional work be carried out on the land, including the removal of 2 additional trees and changes to the garden layout. When the company excavates, any reinstatement is done to the same standard as it was before the excavation. The company will not carry out reinstatements that include betterment or that could leave them open to liability

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for future issues. As such, the company will not agree to reinstate the area the customer has dug.

- If the customer would like the company to consider a contribution to the cost of reinstatement he will need to provide the company with an estimate showing a breakdown of the work quoted, so it is clear what each of the costs are for. The company will only contribute towards the cost of reinstating the hole dug and will not consider contributing to further works or improvements to the land.
- The company confirms a total offer of £1,020.00 is made to the customer if he wishes to accept this.

### 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.

I also make clear that I have considered the submissions made by both parties in response to my Preliminary Decision although I have concluded that the outcome in my Final Decision shall remain the same as in my Preliminary Decision.

### How was this decision reached?

1. This case concerns leaks from a sewer pipe that passes under the customer's garden but is an asset of the company and not a private pipe. The customer says that the sewer pipe does not service his property at all and there is no evidence to the contrary, although it is not disputed that the customer is a "customer" within the meaning of the Scheme rules. The current complaint has

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gone through the company's internal complaints process. I am satisfied that I have jurisdiction to consider this dispute.

2. It is common ground between the parties that the sewer pipe developed a leak in November 2021 and was found, initially, to be affected by tree roots, which the company cleared. It was also found to be affected by fractures. The customer's principal complaints, I find, are associated with the company's management of the remediation of this problem. I further find that this was not straightforward because of the presence of structures, terracing and trees within the customer's garden which impeded access to the sewer. It is this aspect of the problem that I find is the basis of the customer's main complaints.
3. I am mindful that the legal background to this issue is that a company is not liable for leaks from the sewer in the absence of negligence. Under the Water Industry Act 1991, decisions relating to the provision and maintenance of a sewerage network are matters that are overseen by Ofwat. A decision by a company that it does not have resources to inspect sewers where there is no known issue, for example, is not a matter that a court can consider. In a case that concerned repeated escapes of sewage called *Marcic v Thames Water*, ([2003] UKHL 66) the UK's most senior court ruled that the courts have no power to review the strategic decisions of companies in relation to improving or maintaining its network. The reason for this decision was that overview of the company's decision-making in this area is, under the Water Industry Act 1991, the responsibility of Ofwat and not the courts.
4. Although WATRS is a specialist adjudication scheme, its position is similar to that of a court. This is because its function is to resolve individual disputes between customers and companies, not to undertake a strategic review, such as would be necessary when considering competing interests for investment or maintenance. I am mindful that in allocating resources and making changes to the company's assets, the company is required to weigh up the relative merits and needs of all its customers. This is a matter that Ofwat may be well placed to undertake, but an adjudicator is not. This is also underlined by the rules of the Scheme which make clear that an adjudicator has no jurisdiction to determine matters that are the responsibility of Ofwat and nor can an adjudicator consider the fairness of the company's commercial practices.
5. Insofar, therefore, as the customer's complaint is that the company's sewer pipe fell into disrepair under his garden and this resulted in a sewage leak, I find that the evidence does not demonstrate the provision of a substandard service by the company. I find that the company has said in

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correspondence that it is not in a position to take proactive checking of its network of sewers and I am mindful that this is also the position of the industry as a whole. I have no jurisdiction to challenge this allocation and prioritisation of the company's resources.

6. However, it is material to consider the speed with which the company addressed the leak once it was discovered on 7 November 2020. On 8 November 2020, the customer explained that his wife was self-isolating due to the pandemic, was vulnerable and the garden was beginning to smell. Additionally, he explained that his daughter had been born prematurely and she also was vulnerable. Neither felt able to use the garden in the circumstances. Notwithstanding this, the company did not remove the tree roots until 24 November 2020. Although the company said that it attended earlier - on 16 November 2020 - to remove the tree roots in the sewer and was prevented by a parking problem, the customer says that the company had been asked to telephone in advance but had not done so. Also, his wife had been present at the time and had not been contacted. I find that there is no evidence that the company contacted the customer or his wife before the visit and so it was unsurprising that arrangements had not been made for parking of the company's vehicles. Moreover, I find that the company had even by 16 November 2020 exceeded its service level requirements (which it is acknowledged in its internal records). Although the company did escalate the customer's case on hearing of the vulnerability of his wife and daughter, there is no acknowledgement in internal documents of vulnerable status. On balance, taking into account these matters, I find that, even bearing in mind the pandemic, this fell short of the standards that an average customer would reasonably expect.
7. Additionally, even after cutting the tree roots in November 2020 and discovering the fractures to the sewer by carrying out a camera survey, it took until February 2021 for the company to reach a decision that there would be a funding problem in respect of further work. Although I return to the issue of the broken pipework below, I find in respect of this timetable that it failed to correspond to the reasonable expectations of an average customer faced with a sewage leak in his garden for which he had no responsibility and could take no action to resolve because it was not his asset. I find that it was foreseeable that an average customer would be caused considerable distress by a time-lag in getting this problem sorted out. I find that the company supplied its services below the standard that would reasonably be expected.
8. Nonetheless, the company has in the response to the customer's complaint made an increased offer of £1,000.00 by way of a goodwill gesture. This is intended to encompass the distress and inconvenience caused by these initial difficulties and other matters to which it relates (see below).

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I find that in the offer as amended in its response, the company has offered recompense within a range that would reasonably be expected and I do not find that the company would reasonably be required to make a further compensatory payment.

9. I now turn to the principal concern expressed by the customer, which relates to the work done to enable the company to have access to the broken pipework below the customer's garden.
10. The documentation submitted by both parties shows that the company began to investigate the best method to address the fractures in the sewer pipe that underlay various features of the customer's garden in late November/December 2020. I note the concerns initially expressed by the company and I also note that the customer's photographs reveal the existence of a steep bank above the sewer with, as the company says, boulders, which the company has described as "poorly terraced" and which the company says, appeared to be slipping. I note that the customer says that the land was not slipping, but I find from the photographs that the company's description of the condition of the land is, from a construction industry perspective, accurate. I accept that the company is likely to have been concerned about causing a slip of the land above by using either manual or mechanical means to reveal the underlying sewer. The company's submissions make clear however, that no risk assessment has been carried out because of concern about the cost of the initial land survey. I have dealt with the question of the time taken to arrive at this point above, but in respect of the company's decision that this was a potentially dangerous situation that required investment, I accept that the company would reasonably be expected to carry out a risk assessment to protect its workers or contractors from the foreseeable possibility of injury if the land moved. While the customer may not have shared the views of the company about the likely risk, I find that an average customer would expect the company to carry out a careful risk assessment at this point. Indeed, the company would have needed to undertake a complete risk assessment by reason of health and safety laws.
11. The company says that it then appeared likely that internal funding would not be provided even for the survey due to the cost. An alternative system of monitoring and regular flushing of the pipework was under consideration. The customer also says that the fact that a high level of funding would be required might have had the consequence that the company would not pay for the work. He did not regard this as satisfactory. The customer states:

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*“However my request was met by x sending 1 manager who looked at the job and turned round and advised we would go on Long Term Funding, this to us meant they didn’t want to do anything about it and we would never get the job done.”*

12. Although the customer says that the company “did not want to do anything”, I find that it is more probable that once the matter had crossed a funding limit, the company was under an internal obligation to compare the customer’s case with other funding priorities. I find that this would have been an internal policy or commercial practice, consideration of which falls outside the scope of this Scheme. See rule 3.5 of the WATRS Scheme rules. An adjudicator under this scheme has no information that would enable comparison of the various priorities, and for the reasons also explained above, this area falls within the company’s own margin of decision making, overseen by Ofwat, not WATRS. I note that the company’s position, however, would have been likely to have increased the pressure on the customer considerably because he had made very clear to the company that he wanted the pipe repaired. Having read the documentation submitted, I find that it is improbable that the customer regarded merely monitoring and flushing as a satisfactory solution. I find that, as is partially acknowledged by the customer, his wish to “get the job done” is likely to have influenced what occurred next. My findings as to what occurred are as follows.

- a. On 2 December 2020, when the company met the customer at his property to discuss the access problems to the fractured sewer, the company indicated that it would be necessary to reveal the sewer in order to carry out a repair. It is clear that at this point, the company envisaged that it would be in principle for the company to meet the costs of this, although, as explained above, it would not necessarily follow that the customer’s needs would take precedence over other spending. That the company might not prioritise his case was understood by the customer. The company’s notes of this visit record that the customer said that he would wish to undertake work so as to create a retaining wall at the back of the garden. The company noted that it might be a cheaper option to pay the customer to get his own builder and the customer was, according to the company’s records, shown the areas that the company needed to be exposed. I find, therefore, that the company probably put into the customer’s mind that the company would pay him for works to be carried out to expose the sewer, but it does not, I find, follow that the company was agreeing to undertake everything that the customer intended to do in his garden and nor do I find that this was a concluded agreement or promise but consideration of a possibility.

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- b. On 16 February 2021, the company refer to the matter being “with risk” which I take to be a reference to the need to carry out a risk assessment.
- c. The company says that there was a visit on 17 February 2021 by which time the customer had already dug a hole down to the sewer pipe. Although the customer says that he and his father spent 6 to 8 hours working to remove a dry stone wall above the pipe it is not clear precisely when this was undertaken. It is likely, however, having regard to the correspondence, that some of the work was done before 18 February 2021.
- d. On 18 February 2021, there was a conversation between the company and the customer on which the customer relies. The customer says that he has a CCTV recording of this conversation, although the online system does not show that this has been submitted to the adjudicator and I note that the Consumer Council for Water (CCWater) was told that this was being held back in case court proceedings ensue. I am therefore dependent on the company’s records and I place no weight on a video recording that I have not been shown. The company’s internal note states that the company “advised the customer to take the rest of the wall down and expose more of the pipe so we can investigate it”. The note also states:

*“I think I found it right under the tree. I have also advised him if he can get this moved and taken down we may be able to do a small dig here to try and locate damage to the pipe”.*

The customer and his father then removed the tree.

- e. The customer characterises the company’s actions as a request to carry out work that the company was not prepared to do. The company says that it would never ask a customer to carry out dangerous work. On 6 September 2021, the company said that its recollection was that it had only asked for the wall to be taken down but it intended to remove the pipe itself. The company also says that it had only ever asked the customer to obtain quotes and it says of the tree, that the company had recommended to the customer that he should obtain a quote for removing the tree but the customer did not want to do this.
- f. I find that the position lies between these two perspectives. I find that the company and its staff were worried about the cost implications of this work and the safety of the

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environment. It was, however, the customer's land and garden and insofar as work involved any steps other than merely exposing the pipe, the company would not do this under any circumstances. I find that the company's internal records show that, even though the company does not acknowledge this, the company gave the customer the option to carry out the works himself, (which, for the avoidance of doubt, I find would include carrying out the work by using a builder). I also find, however, that the company did not require this and did not promise to make payment either for the excavation or for reinstating his garden, which is what the customer says he now wants the company to do.

- g. I find that the lack of compulsion or promise to make payment is consistent with the customer's description of the company having been amazed to find that the pipe had been exposed by the customer and his father.
- h. It follows that even though I find that the company suggested that the customer could do the work (and I accept the customer's argument that this may have been so that the company did not have to take responsibility for the problems associated with the customer's existing landscaping), I also find that the customer's decision to pursue this option did not mean that he could compel the company to pay for work it had not agreed to undertake, any more than I find that the company could have compelled the customer to undertake it if he did not want to. I am satisfied that the customer did the work because he wanted an outcome (repair of the pipe) that may not otherwise have happened.

13. In summary, therefore, I find that the customer did work to expose the pipe in circumstances where the company was not under a legal obligation to prioritise the customer's case and so facilitated a repair and relining that the company had lawfully decided might not otherwise happen. I find that an average customer would not reasonably expect the company to pay for this.

14. The company then repaired/relined the pipe and it has made clear to the customer in this adjudication and in its recent correspondence with the Consumer Council for Water (CCW) that it will contribute to the cost of reinstatement if the customer puts forward an estimate showing a breakdown of the work quoted, so it is clear what each of the costs are for. This is, however, somewhat at odds with the statement in its defence that:

*As X did not dig the hole and the Customer dug this himself, without structural surveys carried out, x will not reinstate the area. This is because x cannot be sure of what damage*

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*may have been caused to the structure of the land that has been dug. x would still need to carry out structural surveys to reinstate an area such as this, so that the structure and stability of the land can be considered. This work would be very costly and would not attract funding due to the reasons mentioned earlier.*

It is hard to see that the costs of backfilling the hole to a reasonably safe standard would be different whether the customer obtains a quotation or whether the company does, but I see the area of concern from both points of view. On the one hand, from the perspective of the company, it may reasonably be concerned as set out above, that by undertaking some work it would acquire a liability for the safety of the work to be done for which it does not wish to volunteer. In particular, the company would not wish to assume responsibility for preventing the collapse of the steep bank. On the other hand, from the perspective of a customer, I find that where a repair has been carried out, an average customer would reasonably expect the company to fill in the hole made, so as to make the immediate area in which the pipe was laid, safe.

15. It is not clear what the customer has done to reinstate the excavation nor whether he has incurred any expenditure, but as I find that an average customer would reasonably expect the company to fill the hole made, I also find that an average customer would expect the company to offer some contribution towards time and effort of the customer in undertaking a task that the company should do but has not. I find, therefore, that the company should be required to make a financial contribution, (as it has itself recognised from at least April 2021). The making of a financial contribution to the customer's work would not place the company at risk of future liability.
16. I find that the company would not reasonably be expected to pay for landscaping repairs such as planting a tree or building a wall, both of which I have found above to have been removed in consequence of the customer's wish to ensure that the repair happened promptly but it is notable that the company has not made an assessment of the work that it is prepared to pay for by way of backfill. Moreover, although the company complains that the customer has not put forward a quotation, I also find that this should not reasonably have been necessary. The company has expertise and contractors which would be able to assess the likely level of contribution without the need, I find, for the company to undertake a structural survey. I find that in not having made a decision as to the amount that the company would reasonably be prepared to pay, the company has obstructed the resolution of this dispute, which an average customer would not reasonably expect.

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17. In my Preliminary Decision, I indicated that I would be prepared to take into account the submissions of both parties as to the likely cost of reinstatement. The company has indicated that it considers the reinstatement costs which I assessed as fair, namely £270.00. I arrived at this provisional sum by reflecting that the customer said that he and his father spent 6 to 8 hours (therefore 12 to 16 man-hours) carrying out the excavation including removing a tree. I found that the backfill was likely to be less strenuous than the excavation and did not involve walls or trees. I therefore assessed this at 10 hours. At a generous labourer's rate of, say, £12.00 per hour, this would mean that the company's contribution to the labour costs of backfill would be £120.00. Additionally, I found that it would be fair and reasonable to make an allowance for the purchase of materials to stabilise and make good the area of the excavation only, such as concrete or grit and some topsoil to add to replacement of the soil removed. I found that this additional provision over the small area of the excavation would be in the order of £150.00.

18. The customer says, however, that the work to be done has been under-estimated. He says that the cost of building the retaining wall would be £400.00, that footings would be needed with additional materials for this at £108.00, walling stone at £50.00 and shingle and piping at £120.00 plus the cost of two men over two days at £220.00. I accept that the customer may be right that what he intends to do may cost more than my estimate and that longer will be required for achieving his intended outcome than I have allowed for. As I have indicated above, however, the work needed to rebuild the wall is not within my award. This is because I find that it is of a landscaping nature and, I accept, would be betterment, because the foundations and stonework is likely to be secure whereas there is no evidence that the stone wall had secure footings previously. Having reviewed the customer's request that I increase the sum allocated to reinstatement work, I have concluded that it would not be right to make an alteration. It follows that the sum to be paid by way of reinstatement work remains in my Final Decision at £270.00.

19. I return now to the company's offer of £1,000.00 goodwill compensation. As indicated above, I am satisfied that some aspects of the company's handling of this situation fell below the level of service that would reasonably be expected. These include:

- a. In addition to the overall delay in carrying out the initial cleansing of the sewer and reaching a decision in February that a higher level of funding would be needed (above), there was, I find, additional delay in reaching resolution.

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- b. Furthermore, as part of the complaints process, the company indicated on several occasions that it had not told or advised the customer to carry out the excavation work, whereas I find, as stated above, that the company made clear to the customer that he could either carry out or arrange for a builder to carry out the excavation, so that the company could repair the fractured pipe. I find that the company's response to the customer's complaint would be understood by an average customer as disingenuous. It is clear from the correspondence that the lack of acknowledgement by the company of its role in causing the customer to excavate the pipe caused very considerable frustration, distress and inconvenience to the customer. At one point, the customer said that if the company had simply apologised, the customer would probably have taken no further action, whereas he has been involved in a long-running dispute.
- c. Both the delays referred to above and the company's correspondence led, I find, to the many calls, emails and chasing up in which the customer engaged. It is plain from the CCWater files that these would have taken up very much time and effort and caused much distress.

20. Overall, I find that these issues form part of the compensation offered by the company for inconvenience and distress of £1,000.00, which is a high tier of compensation, plus the payment of £20.00 in respect of a guaranteed service standard failure. As I have indicated above, this offer is, I find, fair and reasonable.

21. The customer asks for compensation for work done on behalf of the company, and for stress and inconvenience in the sum of £12,500.00 and for the company to put his garden right. For the reasons above, I do not make a direction that the company should put the customer's garden right and I do not direct the level of payment that the customer asks for (which in any event, falls outside the scope of the Scheme). I direct that the company shall pay £1,290.00 to the customer.

#### **Outcome**

The company needs to pay £1,290.00 to the customer.

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## What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- 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.

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*Claire Andrews*

Claire Andrews, Barrister, FC! Arb.

Adjudicator

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**[www.WATRS.org](http://www.WATRS.org) | [info@watsr.org](mailto:info@watsr.org)**