

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X053

Date of Final Decision: 29 July 2022

#### Party Details

Customer:

Company:

#### Complaint

The company carried out an enforced repair to a shared supply pipe serving various properties, including the customer's property. The customer is unhappy with the quality of the reinstatement and materials used for reinstatement following the repair.

The company used black tarmac for the reinstatement rather than the customer's original paving blocks. The customer says that this is ugly. He also says that the reinstatement is uneven and slippery.

The customer is unhappy with the service provided by the company. He says that on one occasion that he was waiting in for the company's contractor, no one turned up.

The customer seeks to have the reinstatement carried out to a higher standard and using the correct materials. The customer also seeks compensation for customer service failings.

#### Response

The company identified a leak on a shared supply pipe serving a number of properties including that of the customer. On 11 May 2021, it notified the customer of his responsibilities to carry out the repair. It advised the customer that if the repair was not carried out, the company would repair the leak and recover costs from the customer.

The reinstatement was carried out in line with the company's policy regarding materials. It notified the customer before undertaking the work that reinstatement would be in black tarmac. It also advised the customer that the reinstatement would be temporary and the customer would be responsible for permanent reinstatement.

*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.*

The company has checked the reinstatement and considers it to be satisfactory.

The company does not agree that there have been any customer service failings. It says that the customer was not required to be in attendance during the work.

The company rejects the customer's claims for reinstatement and compensation.

### Findings

The company has made no settlement offer.

The company acted in accordance with its obligations under the Water Industry Act in notifying the customer of a leak and giving notice to the customer that he was required to carry out repairs. It also provided the customer with sufficient opportunity to have the leak repaired before carrying out the work itself.

The company informed the customer that the reinstatement would be in black tarmac and that it would be temporary. This was advised prior to the company initiating the repairs. There is no evidence supporting the customer's position that the reinstatement has not been carried out correctly.

There has been a failing in customer service. On one occasion, the company's representative failed to turn up at the appointed time to carry out the work. This is a failure under the Guaranteed Standards Scheme.

### Outcome

The company needs to take the following further action:

Make a payment to the customer in the sum of £20.00 under the Guaranteed Standards Scheme.

# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT X053

Date of Final Decision: 29 July 2022

## Case Outline

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

- The customer paid the company over £1,000.00 in respect of a compulsory repair order to repair a leak on the customer's pipework. He is unhappy with the reinstatement carried out by the company.
- The customer says that tarmac has been used for the reinstatement instead of the paving blocks that make up his driveway. He says that this is ugly and has not been properly finished.
- The customer notes that whilst the work was underway, the company removed and reinstated the paving blocks twice, but then used tarmac for the permanent reinstatement.
- The customer is unhappy with the service from the company. He says that he waited at his property on two occasions when the company's contractors did not do any work or did not turn up.
- The customer seeks to have the company replace the tarmac or reimburse his costs in having the paving blocks correctly reinstated.
- The customer also seeks compensation in respect of customer service failings.
- The customer has made comments on my preliminary decision. These are dealt with at the end of this decision.

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

- The company wrote to the customer on 11 May 2021 advising him that a leak had been detected on a private supply pipe. The letter advised the customer of his responsibilities in relation to repairing leaks. This was followed on 1 June 2021 by the issuance of a statutory notice letter and on 16 June 2021 by an enforcement letter.
- The company provided the customer with sufficient time and opportunity to have the leak repaired at his property. Since the work had not been carried out, the company carried out repairs as it is entitled to do under the Water Industry Act.

*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.*

- The company says that it notified the customer prior to starting the work that reinstatement would be in black tarmac only and that final reinstatement would be the customer's responsibility. It also says that it advised the customer it offered no guarantees on repairs or reinstatement.
- The company says that the reinstatement had been checked and no issues had been reported.
- The company says that it followed the correct process in providing the customer the opportunity to repair the leak. It rejects the customer's claim for reimbursement of costs or compensation.

### **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 complaint concerns a repair to a leak on the customer's shared private supply pipe. The repair was carried out by the company as an enforced repair under Section 75 of the Water Industry Act 1991 (the "Act"). In particular, the customer has complained about the standard of reinstatement carried out by the company.
2. The company carried out the repair in early 2022. The repair involved the replacement of a section of the shared pipe. The included work excavations and reinstatement on the customer's property.

***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.***

3. The customer set out his complaint in a letter, which the company says was received on 25 April 2022. He refers to a diversion in his supply carried out by the company to resolve a leak on the shared private pipework. He says that the tarmac used to carry out the reinstatement following the diversion work is uneven and slippery. He also says that he believes during summer the tarmac will heat up and cause further problems. He notes that the paving blocks removed during the work could have been replaced. In his letter he requests that the company return to carry out a higher quality repair.
4. The company has provided a copy of its reply dated 5 May 2022. The company says that its operatives had confirmed they had no concerns with the tarmac laid. The company also says that it did not offer a guarantee on any repairs and confirmed its position that reinstatement would only be in black tarmac. In a further response sent on 5 May 2022, the company refers to its policy for reinstatement of land. It says that it only uses soil, stone or black tarmac. It also says that the contractor had checked the reinstatement and found no issues.
5. The company has provided copies of the letters issued in 2021 following the identification of the leak.
6. On 11 May 2021, the company wrote to the customer advising him of a leak on a private supply pipe. The company says in the letter that a leak had been identified on a shared supply pipe serving a number of properties.
7. The company issued a further letter on 1 June 2021 giving notice to the customer that the leak was required to be repaired within seven days. The letter referred to section 75 of the Act and set out the company's power under section 75 of the Act.
8. On 16 June 2021, the company issued a letter giving notice of its intention to carry out repairs to leaking pipework. It advised the customer that, as the pipe was a shared pipe, customers sharing the supply from the pipe would also be responsible for repair costs. It also advised that a contractor would be attending the customer's property any time from 28 June 2021.
9. I have examined the letters sent by the company. The letter dated 1 June 2021 includes the following statement:

*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.*

*“If we have to dig any holes to make the repair, we will ensure that they are made safe by reinstating them with a temporary cover of black tarmac. Unfortunately, we cannot reinstate like for like and the final reinstatement is the responsibility of the consumer to complete.”*

10. The company's letter dated 16 June 2021 includes a similar statement concerning materials used for reinstatement. It adds that if the customer finds a contractor to carry out repairs, that contractor may be able to source materials to match the finish.
11. Section 75 of the Act refers to the powers of water undertakers to take steps to prevent waste. It permits a water undertaker to serve notice on a consumer to take action to prevent waste. It also permits a water undertaker to take such steps itself, should the consumer fail to do so, and recover costs incurred in doing so.
12. I note that the customer had raised the issue of the leak with his insurer. I also note that the insurer found no leak during its investigations. However, the insurer's investigations did not cover the entire shared pipe. The leak was therefore not located or repaired.
13. Responsibility for shared supply pipes serving more than one property is the joint responsibility of all property owners served by the shared pipe. This is explained by Ofwat in their notes for responsibility for pipes and sewers. Responsibility for repairs to a leak in a shared supply pipe is therefore the joint responsibility of all property owners served by that pipe. This is irrespective of where the leak has occurred on the shared pipe. In this case, although the insurer found no leak on the pipework it checked, the customer still has shared responsibility for the leak on the shared pipework.
14. I find that the company has served notices as required under section 75 of the Act. I also find the company had given the customer the opportunity to carry out repairs. Since the customer had not been able to locate or repair the leak, the company was entitled to carry out repairs to the shared pipework.
15. The company's position concerning reinstatement has been set out in its letters dated 1 June 2021 and 16 June 2021. As noted earlier, this position is that reinstatement is temporary and carried out in black tarmac. The customer has said that the company's operatives advised him that they would use the paving blocks to reinstate the work. However, there is no evidence of an agreement by the company to do this.

***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.***

16. I find that the company had notified the customer of the extent to which it would carry out reinstatement and the materials it would use. I appreciate the customer's position and note from the photograph provided that the reinstatement is not in keeping with the surrounding area. However, I find no basis to order the company to replace the tarmac with any other material.
17. The customer has also complained about the quality of work, noting that it is uneven. The company has stated that there are no issues with the reinstatement.
18. I have examined the photograph provided of the reinstated area. I cannot determine from the photograph whether or not the surface of the tarmac is uneven. The level appears to be correct where the tarmac meets the paving blocks. There are no obvious signs of dips or bumps in the remaining surface. No other evidence has been provided. From the evidence available, I find that, on balance, the customer has not proved his point that the surface is uneven. I therefore make no direction on this matter.
19. The customer has expressed concern that the tarmac will heat up during the summer and cause further problems. As noted earlier, this reinstatement is temporary. Permanent reinstatement is for the customer to carry out. The reinstatement carried out by the company should not be regarded as a long-term solution. I therefore make no direction on this matter.
20. The customer has also complained about the customer service received from the company. In particular, he has advised that he took three days off work. He says that on one day, no work was done and, on another day, no-one turned up. The company has apologised but has stated that it does not require customers to take time off work for this type of activity. It says that is only requires that access is granted.
21. I have reviewed the content of the company's letters dated 16 June 2021 and 23 February 2022. The letters refer to access being required to attend the property. No mention is made in either letter that the customer does not need to be in attendance. The letter dated 23 February 2022 advises the customer that the company's contractor will, "...make one last attempt to carry out the repair. They will visit your property to undertake this work on 8 March 2022." The letter also emphasises the importance of granting access to the contractor and says that if they do not have access on that date, that would be treated as a refusal to grant access.

***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.***

22. The letters do not state that all work is external or that there is no requirement for the customer to be present. No description of the work is provided. With the requirement to give access to the customer's property, I find that it would be reasonable for the customer to conclude that he did need to be present.
23. The Guaranteed Standards Scheme (GSS) sets out standards water undertakers are required to follow in relation to appointments. Where those standards are not followed, a company is required to make an automatic payment to the customer.
24. The customer says that he took time off work when the repairs were being carried out. It is reasonable to conclude that this had been arranged to coincide with dates notified to the customer by the company. The customer says that on one of the days, no-one turned up. The company has not denied this. Under the GSS, failure by the company's representative to visit on the appointed day requires a payment by the company to the customer of £20.00.
25. I find that the company's representative, the contractor, failed to turn up to carry out works on one of the days notified. I therefore direct the company to make a payment to the customer in the sum of £20.00. The company may, at its discretion, apply this payment as a credit to the customer's account.
26. The GSS also requires that water undertakers provide a substantive response to a written complaint within 10 working days from receipt of the complaint. The customer's complaint is dated 26 April 2022. The company's response was issued on 5 May 2022. This is within the 10-day period allowed and therefore the company has complied with the required standard in relation to a complaint. I make no direction on this matter.
27. The customer has made comments on my preliminary decision. I have addressed these comments below.
28. The customer says that there has been a misunderstanding on one key point. That point is that the company said the customer made no attempt to repair the leak and that ample time was allowed for the repair to be carried out. The customer says that this is incorrect. He says that in June 2021, his insurer appointed contractors who carried out full investigative work. They found no leak on the section of pipe that served his property. The customer says that he informed the company of this and that the findings were consistent with where the company believed the leak

*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.*



to be. He says that the company repaired the leak and a new leak became apparent. He says that the company repaired that new leak without giving him the opportunity to repair it himself. He also says that he was not given an opportunity to repair the damage to his front garden.

29. The customer has provided additional photographs that he says show the repair was carried out to a poor standard.
30. In paragraph 12 of this decision, I have noted that the customer had raised the matter with his insurer. In the customer's comments on the company's response he says, "...my insurer attended on 04.06.21 and excavated down to the tee for REDACTED, inspected the pipeline and found no leak on this section of the pipeline." In paragraph 12, I have noted that the insurer found no leak. That is consistent with the statement made by the customer which indicates no leak was found within the excavations carried out on behalf of the insurer.
31. An email dated 7 June 2021 from the contractor carrying out the investigations says, "*The leak is on the side of the REDACTED that serves 34, 32, 30, (28, 26, 24 & 22 block of flats).*" My conclusion from this was that the insurer believed that the leak was on the shared pipe. As noted in paragraph 13, responsibility for shared supply pipes serving more than one property is the joint responsibility of all property owners served by the shared pipe. Whilst the leak may not have been on the pipe branch serving only the customer's property, he has a responsibility for a leak occurring anywhere on the shared pipe.
32. In paragraph 14, I said that the company had given the customer the opportunity to carry out repairs. As noted, letters were sent to the customer on 11 May 2021, 1 June 2021 and 16 June 2021. The enforced repair was carried out early in 2022. The customer's insurer conducted investigations but no repairs were carried out. I am satisfied that the company gave the customer sufficient opportunity to carry out repairs.
33. The customer has referred to a new leak and that he was not given the opportunity to repair that leak. If this was a different leak that occurred at a later stage, it would be reasonable to expect the company to issue further notices. However, I find nothing in the evidence provided to indicate that this was a leak that occurred after the company had carried out repairs to the initial leak.
34. The customer has also commented that the company did not give him the opportunity to repair damage to his front garden. Apart from the complaint concerning reinstatement, I could see no

*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.*

reference to damage to his garden in the customer's original application. I conclude that this comment relates to the reinstatement carried out by the company. This has already been addressed.

35. I have reviewed the additional photographs provided by the customer. I can see nothing in these additional photographs that shows that the surface is uneven as suggested by the customer. As I have noted in paragraphs 15 and 19, the reinstatement should be regarded as temporary.

36. I have carefully considered the further comments made by the customer, together with the customer's complaint set out on the application and the evidence provided. I make no changes to my decision.

#### **Outcome**

The company needs to take the following further action:

Make a payment to the customer in the sum of £20.00 under the Guaranteed Standards Scheme.

#### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 26 August 2022 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.

***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.***



*I H Raine*

**Ian Raine**, CEng, MIMechE, FCI Arb, MCIBSE

**Adjudicator**

*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.*

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