

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X220

Date of Final Decision: 30 November 2022

#### Party Details

Customer:

Company:

#### Complaint

The customers state that the company caused damage to their flank wall whilst it carried out a repair. The customers also state that the company negligently caused damage to the basement of their property by water and sewage leaks and caused them adverse health issues as a result of styrene exposure from the works it was carrying out. The customers also raise issues with the standard of customer service provide by the company. The customers seek that the company carry out remedial works, pay compensation to cover: the engineer report (£1,284,48) and the scope of remedial works report (£856.32) and; for adverse health issues (no amount specified) and provide an apology for the poor communication and service received.

#### Response

The company states that the claims relating to negligence and adverse health issues are outside of the scope of WATRS. Concerning alleged damage caused to the customers' flank wall and dampproofing, this was pre-existing, however the company accepts it dirtied the wall during its repair of a leak on the rear neighbour's private supply pipe, however it says this had been jet washed. The company states it is not responsible for any damage caused by this leak as it was on private pipework, further, it denies there was a leak from its mains. The company apologises that the customers feel they have not received the service to the expected standard however it reviewed this and apologised in writing for any delays in updating them. The company denies it is responsible to pay the customers the compensation sought.

The company did not make any settlement offer to the customer.

#### Findings

The allegation concerning adverse health issues caused by exposure to chemicals is also outside of the scope of WATRS. There is a lack of evidence to establish the company was negligent in their maintenance of its assets. There is no evidence to establish that the company's service did not reach the standard

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to be reasonably expected whilst undertaking the repair to the rear neighbour's supply pipe. However, there were some instances where the company's customer service did not meet the standard to be reasonably expected when handling the customers' communications and complaints.

### Outcome

The company needs to take the following further action:

- Provide an apology to the customers.
- Pay the customers £150.00 for stress and inconvenience caused by instances of where its service failed to meet the expected standard when handling the customers' communications and complaints.
- Proceed with arranging works to "backfill" the customers' garden wall with the customers as agreed.

The customers must reply by 4 January 2023 to accept or reject this decision.

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# ADJUDICATOR'S FINAL DECISION

Adjudication Reference: WAT/X220

Date of Final Decision: 30 November 2022

## Case Outline

### **The customers' complaint is that:**

- The issues concern domestic sewage and potable clean water leaks, subsequent repairs and the resulting flooding that occurred in the cellar of their property and the moisture that was soaked up the flank north east and west facing walls of their end of terrace Victorian property. They believe this happened as a result of negligence from the company that occurred during the period from June-December 2021.
- The customers reference a report (dated 17 February 2022) that they state detail these concerns which has been provided. They have also provided a 'full structural survey' report and a 'superstructure remedial works report' for repair purposes.
- The customers request that the company pay them compensation for:
  - remedial works as described in the Scope of works (no amount specified).
  - the associated structural engineer report and scope of remedial works document cost invoice dated 17 May 2022 for £1,284,48 and invoice dated 7 June 2022 for £856.32.
  - adverse health issues as a result of styrene exposure during the pipe lining procedure (no amount specified).
  - an apology for the poor communication and service received and for ignoring their initial request to investigate the sewerage leaks which turned out to be major leaks and a three-week long road closure just before Christmas 2021.

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

- It was involved in three separate issues where it carried out works in the vicinity of the customers' property. These are:
  - It assisted the customer's neighbour at number REDACTED (the rear neighbour), in goodwill, with a repair to their private water supply pipe as it was leaking. Their property is located in the alleyway/lane between the customer's property at number REDACTED (the property) and the neighbouring property at number 12 (the neighbour) at the rear.

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- It removed an illegal waste water connection from its sewer manhole immediately outside the neighbour's property and from the garden wall of the property. It has backfilled the customers' damaged garden wall as a goodwill gesture, however, states if this had not been repaired, the customers should contact it and it will arrange for this to be done.
- It repaired its waste water assets in the vicinity of the property, the rear property and the neighbour's property and also repaired its sewer which had collapsed in the main road. This involved excavating a new sewer chamber in the road, 6 metres deep, as a new access point for the sewer going forward.
- The company provided a timeline of events.
- The claim regarding the breathing in of any fumes or gasses whilst it was relining its sewer in the vicinity of the property, falls outside of the scope of WATRS. However, it is sorry the customers had an adverse reaction to the Styrene when it was impregnating the liner.
- The allegations relating to issues caused to the customers' property and damage to possessions as a result of negligence on its part, fall outside of the scope of WATRS. The customers set out the basis of this claim in their email dated 17 February 2022.
- Its insurance company accepted this email as a claim and responded to this with a denial on 6 April 2022 advising: *"no statutory responsibility exists when flooding arises as a result of an escape from a sewer pipe. In these circumstances the law requires the injured party to demonstrate that the water company has been negligent. With regard to the flooding which occurred at your property, this was as a result of a collapsed manhole chamber, of which our client had no knowledge prior to the incident. As they had no prior knowledge and the damage was unforeseeable, it would hold that there was nothing our client could reasonably have done to prevent this unfortunate occurrence."*
- Concerning allegations of water ingress into the property causing damage, any water finding its way into the property was possibly from a customer side leak (CSL), i.e. a leak from water pipes belonging to a private residence meaning the customers will need to make a claim against the owner of that property, as they own that pipework, not the company.
- Given the location of the property is on a steep hill and being at the end of a row of terraced houses, and the fact that the basement of the property is not protected (tanked) from ground water ingress or any other type of ingress, then the customers would need to provide "strict proof" that any water or waste from any of its assets are the only cause of issues to their property and it had been negligent in allowing that ingress. The company has provided a definition of tanking.
- Regarding the customers' opinions, comments and allegations concerning its employees (as set out in their 17 February 2022 claim), this is an internal matter which is dealt with privately by it

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and no information will be shared with the customers or WATRS as this is an internal policy procedure which WATRS have no jurisdiction over.

- There has been no information submitted to either it, or to its insurance company, which definitively proves, that it is responsible for any issues to the property or damage to possessions from any water ingress from its water mains, or from negligence from any alleged waste water ingress.
- Regardless of its above submissions, it has provided as much information as possible to enable to decide if the claims fall outside of the Scheme.
- With regards to any clean water entering in to the customers' property from the leak at the neighbouring property, that is a private matter between those parties. Its responsibility for the clean water mains ends at the outside stop valve (OSV) at the end of the alleyway, on the public pavement. Therefore, it cannot accept any claim against it for water ingress from any private clean water leak.
- Concerning any alleged water leak(s) in the customers' road, it is not aware of any such leaks entering into the customers' property and causing the damage specified by them. It would require evidence from the customers that any water leaks from its assets have been the only cause as to the alleged damage.
- Concerning the damage to the customers' garden wall, the drainage pipe which was illegally inserted into its sewer and the manhole which was covered with plywood rather than its correct fitted cover, it does not know who carried this out. The customers allege that it was its CSL team, however, it disputes this and puts the customers to "strict proof" with regards to this. It is evident from the photographs that this illegal connection had been carried out a long time before its CSL Team were on site. It can be seen from the age of the excavation and plywood and vegetation growing around and over the drain pipe and the excavation that this was not new works nor a new connection. It has removed the pipe and repaired its asset.
- With regards to the jet washing of the white wall, it is the company's understanding (based on the last photographs taken) that the wall is now clean, but it regrets it does not know the date the clean was carried out as it was unable to find its contractor's notes confirming this. However, it advises the customers to let it know by emailing it via the email address provided.
- All other alleged damage during the CSL repair was pre-existing as such it is not responsible for this. If the damp proof was damaged in the CSL repairs, then it will need a full report from a damp proof specialist advising that it was due to its works.
- It disputes that it failed to investigate the waste leak; it did investigate this but found the manhole chambers to be empty after its first visit so there was no cause for concern until it became aware

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of a neighbouring property downstream smelling sewage. At that time its investigations began in earnest and works were carried out as documented.

- It ensured mitigation measures (tanking and pump outs) were in place to stop any sewer flooding of properties whilst it considered all specialist and professional reports as to the best way to proceed with the repairs.
- With regards to the allegation that sewage has entered in to the customers' basement, it is "more than likely" that properties downhill will have suffered if any sewerage made its way out of the network, underground and in to other properties on this hill. The customers' property is higher than the sewer which had surcharged before its daily pumping began. The customers' basement is untanked and as such, it is unprotected against damp ground water conditions. There is no evidence that any sewage has entered in to the basement as no smells have been reported to it and when it attempted to take samples, there was insufficient water/waste to test. Again, the customers would have to provide satisfactory evidence that sewage has entered their basement due to its negligence in accordance with section 94 of the Water Industry Act 1991 (the Act).
- Concerning the customer service the customers have received, it apologises that they feel they have not received the expected service, however its Complaint Case Manager (CCM) has reviewed this and apologised in writing for any delays in updating them.
- Concerning the allegations against its employees, this is subject to an internal process which it will not divulge and WATRS do not have jurisdiction over this.
- In summary, it will not compensate the customers as per their requests in their WATRS Application, as there is no evidence to show that it is at fault. Its insurance company has been passed all information which they have not seen previously and they will communicate separately with the customers in due course. However, it does not expect their position to change because there is no evidence or actual proof that any damage has been caused to the customers by its property from its water or wastewater assets, or that there has been any negligence on its part. It has complied with its obligations set out in the Act which its insurers detailed in their denial letter to the customers on 6 April 2022.

## Reply

- The customers reiterate aspects of the claim and provide further details.
- The customers dispute aspects of the Response including:
  - Its suggestions that dampness to their basement may be caused by ground water or that it would benefit from cellar tanking.
  - Its suggestion that its CSL team did not damage the garden wall.

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- Its suggestion that sewage flooding from the manhole on 19 October 2021 was not an emergency.
- The customers advised the garden wall had not been backfilled.
- On 10 November 2022, the company submitted further comments. It provided an email address for the customers to email photographs of the garden wall to progress the repair of this.
- Neither party submitted any comments on the Preliminary Decision.

### **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 customers' main claims concerns alleged damage caused to their property and personal injury as a result of negligence on the part of the company whilst undertaking works in the vicinity of their property between June 2021 and December 2021. The customers also raise concerns regarding the customer service provided by the company.
2. It is noted from the customers' WATRS Application that they seek for the company to pay compensation to cover the cost of remedial work set out in their 'Scope of Remedial Works'. The

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cost of the structural works outlined in this document have not been specified or estimated, however, they appear extensive. I remind the parties that in accordance with Scheme Rule 6.4, the maximum limit award that can be made for household customers under the Scheme is £10,000.00. As the cost of the works requested may exceed the maximum limit for an award, this claim falls outside of WATRS - an award, where justified, would be capped at £10,000.00.

3. I remind the parties that: Scheme Rule 3.4.1 states the Scheme cannot be used to adjudicate disputes where a customer should be referred to a more appropriate forum for the resolution of the dispute; Scheme Rule 3.4.3 states the Scheme cannot be used to adjudicate disputes in exceptional cases the application raises a complicate issue of law.

*Claim regarding impact of company's actions on customers' health*

4. I find that the customers' allegation and associated compensation claim concerning the customers experiencing the health effects of chemical gas exposure from Styrene, concerns an allegation of personal injury. This is a complicated area of law that a court of law or the Health and Safety Executive would be a more appropriate forum to address. Therefore, in accordance with Scheme Rules 3.4.1 and 3.4.3, this element of the claim falls outside of the scope of WATRS and I shall not address this further.

*Claim regarding damage caused by the company's negligence*

5. Regarding the claim concerning damage caused to their property as a result of sewer flooding, I note that the company has stated in its Response that its responsibilities for the sewer network in its area are regulated by Section 94 of the Act. Further, it has stated that, along with all other water utility companies, they are not liable for any damage caused by sewer flooding unless it can be proved that the company was negligent in its maintenance of its assets. This is echoed in the letter sent to the customers from the company's insurer's dated 6 April 2022.
6. I have read Section 94 of the Act, and I am satisfied that the company has correctly understood its responsibilities; under the Act, the company has a duty to maintain its sewers and to ensure the area is, and continues to be, effectively drained and to make provision for the emptying of these sewers. However, it cannot be held responsible for sewer flooding when caused by factors beyond its control; therefore, it has a reactive approach to the maintenance of its sewers and where there is a known issue it will act accordingly. Due to the vast size of the sewer network, it is reasonable for companies to take a reactive approach to the repair and maintenance of sewers; this reflects the historical legal position and recognises that sewerage undertakers unconditionally

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adopted private sewers in 2011, irrespective of their condition and without knowledge of where many of these sewers lay.

7. In this case, between 31 October 2021 and around 18 January 2022, the company investigated and repaired its waste water assets in the vicinity of the property and also repaired its sewer which had collapsed in the main road. This involved excavating a new sewer chamber in the road, 6 metres deep, as a new access point for the sewer going forward.
8. I am satisfied from the company's submissions that after identifying there was a serious issue with the manhole chamber on 30 October 2021, it treated the matter with due urgency by holding a series of emergency meetings with its contractors and by instructing specialists to assist it with inspections and provide reports as to the ground conditions to try and establish the best way to proceed with the repairs to both the manhole chamber and sewer. It carried out daily inspections and "pump outs" of the sewer to avoid the possibility of sewer flooding to any nearby properties whilst it considered all specialist and professional reports (including a structural survey of the customers' property and Risk Assessment). Further, due to risk of flooding to properties in the vicinity, the company then arranged with the local authority to undertake the emergency works without a permit being needed. The repairs were completed by 18 January 2022.
9. Overall, I am satisfied that the company has not been negligent in the maintenance of its assets.
10. In relation to the customers' claim that their property has been damaged by sewer floods during the course of the works, the company denies there is any evidence of sewage entering the customers' property. It has highlighted that because of the steep slope of the road and gradient of the land, the position of sewer is lower than the property and therefore any sewer escapes would likely travel downwards and away from the customers' property not upwards and into it. The company also attempted to take samples to test if dampness in the customers' basement was as a result of sewer flooding but found there was insufficient water to test.
11. In light of the company's submissions and in the absence of any evidence showing otherwise, I am satisfied that the company has not been negligent in its response to the customer's complaints of damage caused by sewer flooding.

*Claim regarding damage caused by a clean water leak*

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12. In relation to the customer's claim concerning a "potential" clean water damage caused to their property (dampness in their basement), generally, water companies are responsible for any leaks or floods from their mains including damage caused as a result of this, although a company's responsibility for the clean water mains ends at the OSV. In the customers' case, I find that it is unclear from the available evidence if dampness in their cellar has been caused by a clean water leak either from the company's mains or otherwise. The company asserts that it did on a number of occasions attempt to take water samples from the customers' basement in November 2021, however, there was insufficient water to test.
13. It may that be water ingress occurred as result of the leak from the rear neighbour's private water supply pipe that the company repaired on 30 June 2021 under its CSL free detections and repair service. However, in this instance, I accept the company's assertion in its Response that any clean water that has entered the customers' property from the leak at the rear neighbour's property, is a private matter between the customers and their rear neighbour. This is because the company's responsibility for a leak from the mains ends at the OSV and in this case, it is clear the leak was from water pipes beyond the OSV which is located at the end of the alleyway, on the public pavement. As such the company's advice given to the customers in this regard is accurate.
14. I note that in their 17 February 2022 communication to the company, the customers also refer to water ingress into their basement foundations caused by a clean water leak from the middle of the road which they say the company's operatives identified during the repair of the sewer which had collapsed in this road. In its Response, the company states it is not aware of any leaks in the customers' road entering into their property and causing the damage specified. As I find that there is sufficient evidence to establish either that there was clean water leak in the customers' road during the company's repair of its sewer or that any such leak caused damage to the customers' basement, no failure in the service by the company has been demonstrated here.

*Damage to the customers' flank wall and dampproof*

15. On 30 June 2021, the customers contacted the company regarding damage caused to their flank wall and dirt splashed on pebble dash which they said had occurred during the company's repair of the rear neighbour's leak from 28 June 2021 to 1 July 2021. The company's records indicate it inspected this area on 1 July 2021 and advised the customers during a call on 8 July 2021 that it would jet wash the dirt on the wall as it accepted it had caused this, however, it denied causing damage to the wall. The company's notes indicate the customers also reported at this time, that

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it had damaged the dampproofing at the bottom of the wall and that they would be referring the matter to their insurance company. The evidence shows that during a subsequent visit on 8 August 2021, the company confirmed it would jet wash their white painted wall but reiterated its position in relation to the alleged damage. On 9 August 2021, the company provided the customers with a claim form to be completed in respect of the alleged damage asking them to send evidence of the damage to its claim team to consider.

16. As the company inspected the site and explained its position to the customers in regards to the alleged damage and then sent a claim form, the company acted reasonably. As it did not receive a completed claim form back from the customers, the company subsequently advised the customers on 17 March 2022 to refer the matter to their household insurance who will contact it directly if it needed further information. As it is usual practice for claims of damage to be dealt with parties' respective insurers, the advice provided by the company in this regard was appropriate.

#### *Damage to garden wall*

17. It is documented in the Response that on 30 June 2021 the company noted the existence of an overland drainage pipe coming from inside the customers' garden wall, which had been placed through the garden wall and into its drainage system immediately outside the rear property. It flagged this as a potential "illegal" connection into its sewer at that time. Photographs of the pipe and connection included in the Response indicate they had been in use for a significant period as they show signs of deterioration and vegetation growing around these excavations. After concluding through further visits documented in Response, that the pipe carrying ground water into its sewer was not part of its network, it attended on 2 February 2022 to remove the waste pipe in the customers' garden wall and remove the connection into its sewer.
18. Therefore, on balance I accept that the action taken by the company to remove the pipe carrying ground water from the inside of the customer's garden into its sewer via an "illegal asset", was reasonable and justified in the circumstances. In its Response, the company said it believed its team had "back-filled" the customers' garden wall following these works to remove the pipe, however, as it could not find a record confirming this, if had not done so, on the customer confirming this, it would arrange for this work to be done. In the Reply, the customers have confirmed that the garden wall had not yet been "backfilled" and in its further comments, the company has provided an email address for the customers to email photographs of the wall with a view to it arranging completion of these works. As the customers have now confirmed the garden

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wall has not been back-filled and the company has agreed to take this action, in the circumstances it is reasonable to include below a direction for the company proceed with arranging these works with the customers.

### *Customer Service*

19. In their WATRS Application, the customers request an apology for poor communication and service received from the company. As this relates to the company's customer service, I shall proceed to consider customer service issues raised by the customers via their communications and complaints to the company.

- a. Regarding the letter to the customer in error on 18 November 2020 regarding the leak at the rear neighbour's property, the customers contacted the company on 21 November 2020 informing it of the error. In response, the company's records show it called the customers to apologise for sending them the letter intended for their rear neighbour and it arranged for the letter to be sent to the correct address. The company reiterated its apology for this in its complaint response to the customers dated 17 March 2022. On balance the company's response was reasonable, as such the service provided on this occasion was to the standard to be reasonably expected.
- b. Regarding the company not informing the customers about the repair to the rear neighbour's leak, I find no evidence to show the company was under a duty to notify the customers of the scheduled repair to the leak on the rear neighbour's supply pipes. However, I accept that because the repair was in close proximity to the customers' flank wall, it would have been good practice to inform the customers of the intended repair. Nonetheless, this issue is not serious enough to establish that the service provided on this occasion did not meet the standard to be reasonably expected.
- c. Regarding the delay in resolving the leak from the manhole, the customers state they reported a leak from the manhole to the company on 30 June 2021 and that the company did not take steps to address this issue until 31 October 2021. The evidence shows the customer did report this to the company at that time; however, it was not until 31 October 2021 that the company commenced daily inspections of the sewer chamber (linked to the manhole) due to finding on 30 October 2021 that the sewer was full and surcharging. The visit on 30 October 2021 had

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been prompted by the customers' neighbour reporting sewer smells to the company on 26 October 2021. Whilst the company then identified the need for extensive works as the sewer in the main road had collapsed (partly due to subsidence), the company's records show it had visited the site a number of times to investigate this issue during the interim timeframe from 30 June 2021. The company's representatives visited on 6 and 25 August 2021, and again on 4 and 6 September 2021, but because on two of these occasions the sewer and manhole had been found to be "empty" and free flowing, it was not progressed as an emergency. On balance, the service provided up to this stage was to the standard to be reasonably expected. Nonetheless, during a further visit on 20 September 2021, the company's notes show it identified the need for follow-on work to understand the waste issues; however, there is no evidence to show that the company took any steps to progress this until approximately four weeks later on 19 October 2021 after the customers had raised a complaint (on 18 October 2021) and after it received a report of sewage smells. On balance, I find that the lack of action to progress investigations during this timeframe indicates a delay on the part of the company. On balance, I find this and the lack of any update provided to the customers constitutes evidence of the customer service provided not meeting the standard to be reasonably expected.

- d. Regarding the conduct of an engineer, in their 17 February 2022 complaint, the customers complained that the company had not responded to their concern raised about an employee's "derogatory" comments made during a visit on 8 December 2021. In these circumstances, it is reasonable to expect the company to have taken steps to investigate the customer's complaint internally. Whilst it has stated this in the Response, it did not explain this to the customer at the time nor adequately respond to the customers' point made in this regard.

Therefore, its failure to appropriately address this point constitutes further evidence of the service provided not meeting the standard to be reasonably expected.

20. In light of the company's failure to progress follow on work identified as needed on 20 September 2021 until 30 October 2021 and its failure to properly address or explain its position in relation to the customers' complaint raised about an employee's conduct, I find it reasonable to direct that the company provide an apology to the customers on this basis and also pay them a measure of compensation for the stress and inconvenience caused. In the circumstances, I find a fair and reasonable amount to be £150.00 in compensation which is proportionate to the issues shown. This falls into the lower end of the Tier 2 of the WATRS Guide to Compensation for Inconvenience

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and Distress. For clarification, due to either related claims falling outside of the scope of WATRS or because it has not been proven that the company's service did not reach the expected standard, the company is not responsible to carry out any remedial works (except in relation to "backfilling" the garden wall) or pay the customers the compensation sought as set out in their WATRS Application.

### **Outcome**

The company needs to take the following further action:

- Provide an apology to the customers.
- Pay the customers £150.00 for stress and inconvenience caused by instances of where its service failed to meet the expected standard when handling the customers' communications and complaints.
- Proceed with arranging works to "backfill" the customers' garden wall with the customers as agreed.

### **What happens next?**

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 January 2023 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.



**A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)  
Adjudicator**

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