

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-XX61

Date of Decision: 19/12/2020

Complaint

The customer's complaint is about the company's decision to close his private road for twenty-three days, without permission or notification, while it carried out work on the public highway. The company says that the work was an emergency so it did not need to provide notice, yet it also says that the work took two months to plan, which shows that it could not have been an emergency and the company had ample time to inform the residents. The company has been unable to provide evidence to show that a permit was granted for the road closure. Customer service has been very poor and the company has paid £250.00 for its failings, but the customer wants £920.00 in further compensation for the stress and inconvenience the unexpected road closure caused his family, and a formal apology.

Response


The road was closed to carry out emergency work and all necessary permits were obtained. Unfortunately, due to the limited time between the permits being granted and the work starting, it was unable to give prior notice to the residents. It apologises for the inconvenience caused and accepts that its customer service could have been better at times; however, it has already paid the customer £50.00 for failing to meet its Guaranteed Service Standards and £200.00 as a gesture of goodwill. Therefore, responsibility to pay further compensation is denied.

The company has not made an offer of settlement.

Findings

Having reviewed the evidence provided by the parties, I accept that the company had a valid permit, and that the permit authorised the closure of the customer's road on the relevant dates. The evidence also shows that the emergency work started the day after the permit was granted and, therefore, I accept that the company was unable to provide notice to the residents. In view of this, I do not find that the company failed to provide

its service to the standard reasonably expected by the average customer and, therefore, the customer's claim for compensation does not succeed.

 The company does not need to take any further action.

The customer must reply by 20/01/2021 to accept or reject this decision.

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Party Details

Company: XWater

Case Outline

The customer's complaint is that:

1. • His complaint is about the company undertaking road works on a public highway and its decision to close his private road, without permission or notification, for the duration of the works. • On 22 May 2020, funding was approved for the work on the highway and the company applied for a permit, yet the residents were not notified. On 2 June 2020, the permit was issued for work on the public highway, but it was deemed too late to notify the residents. Therefore, without notice, the company closed his road and started the work on 4 June 2020. On 5 June 2020, he requested a meeting with the dig manager, but this was refused. • On 7 June 2020, he lodged a complaint with the company and explained how the road closure was affecting his family's mental health. On 16 June 2020, nine days after the complaint was sent, the company made contact and offered £100.00 in compensation. • His road was only excavated for three days, between 20 June and 23 June 2020, yet it remained closed throughout for the storage of equipment and the excavated hard core when alternative arrangements could have been made. • On 23 June 2020, the company had promised to call him back to discuss his complaint, but it failed to do so because the customer care manager had gone on maternity leave and the case was not handed over properly. On 1 July 2020, he got an email response to his complaint. • On 27 June 2020, the work was completed and his road was opened, twenty three days after it had been closed. • The company has excused the lack of notice by saying that the work was an emergency, yet it also says that the work two months to plan. The company's Customer Charter states that emergency work is unplanned, so he does not understand how the company can claim that the work was an emergency. Also, the company stopped work part way through to seek additional funds to complete it; however, emergency work is not budgeted for. • The company says that it had all the required permits, but has not provided adequate evidence to show that a permit was granted to close the private road; it has only provided a screenshot of a note

from its internal system that gives some details of the work but shows the wrong dates. He has copies of an email exchange between one of his local councillors and the Council Streetworks Team; this confirms that the council is not responsible for issuing permits to close private roads and this is something the utility company need to arrange with residents. In light of this, he does not believe the company had a permit to close his road.

- In its final response to CCW, the company said he had not sent any evidence to indicate that he had suffered any material losses as a result of the road closure, however, in his original complaint he made it clear that the lack of consultation with residents, and the timing of the works being just after lockdown, impacted the mental health of his family, especially his wife who suffers from depression and anxiety.
- Various customer care managers have tried to look into his complaint, but in the end they refused to return his calls because he wanted evidence to back up what they were saying.
- All of the problems could have been avoided if he had been allowed to meet with the dig manager on the 5 June 2020 to discuss a shorter window of closing access to his road.
- The company has failed to comply with several of the land entry principles from Water UK; to limit the impact and disturbance the works cause, to engage with those who are or may potentially be affected and accommodate reasonable concerns which are expressed, and to establish and maintain effective communication. The company has also failed to meet its guaranteed standards as it did not respond to his written complaint within seven days.
- The company has given him £250.00 in compensation for the way his complaint has been handled and because it consistently failed to meet its obligations, but this is separate to the distress and inconvenience suffered by his family. Therefore, he wants the company to pay £920.00 in compensation, £40.00 for every day the road was closed.

The company's response is that:

1. • It received reports of internal and external sewerage flooding from residents living near the customer's property. Following investigations, it found that the only way to prevent further flooding was to relay 45 meters of sewer. It had to secure funding for this work before the planning phase could begin; it was approved on 22 May 2020 by the industry regulator, Ofwat. • To complete the work, it had to apply for two permits; a road closure permit for the customer's private road, Park View Avenue, and a traffic light notice permit. • It applied for the permits to complete the emergency work and the council approved these on 2 June 2020 with an immediate start. • The customer is unhappy that he was not given any notice that the works were going to start and his road would be closed. However, during the planning stages and before funding is approved for emergency work, it is difficult to notify residents of its intention to carry out work because plans may change or funding may not be available for the work at that time. In this case, as it was emergency work, the work began the day after the permits were approved, leaving no time to inform the residents, however, it updated www.roadworks.org with the

details. • The customer disputes that it had the correct permits in place to complete the work, but a screenshot of the permit was sent to the customer on 1 July 2020. The customer said that the screenshot was not adequate evidence, however, once a permit is approved, amended or cancelled, the planning team update the internal system and there is no other way to show the customer proof of the permit. It is not required to send the customer evidence of any emails it receives or sends to or from a third-party, and it has not withheld any information the customer is entitled to. • The customer believes that the screenshot of the permit shows the incorrect date. However, the date 30 June 2020 shown on the permit is the date of registration of reinstatement. The next date shown, 18 June 2020, is the date the Highways Agency physically granted permission for the works. This can happen at any point after an urgent permit is submitted, but when an urgent permit is approved it becomes live straight away. • The customer states that the work cannot have been an emergency as it was planned. However, the work was categorised as emergency work as several residents were experiencing internal and external sewerage flooding, and gaining funding and permits is part of the normal process for all costly schemes, even emergency works. • The planning stages can often take several months, sometimes longer, depending on the severity and cause of the problem. This is because there are several stages of planning and funding approval required to ensure that the proposed work is the best and most cost effective solution to the problem, and will not push the problem elsewhere on the sewer network. • In this case, it took some time to work through the process, however, once the funding was approved on 22 May 2020, it applied for the appropriate permits and the work was started on 3 June 2020. • The customer believes that it had to seek additional funding during the work, but this is not the case. It started the work by digging trial holes to identify any underground services that it would need to be aware of before commencing the dig. The trial holes were done whilst funding was being approved to prevent any further delays once the funding and the permits were authorised; this is the standard process before works are carried out. • The customer states that it failed to comply with three of the Land Entry Principles, from Water UK. However, it has the power to lay, inspect, maintain, repair and alter pipes in private land. This power is exceptional and reflects the public health need to ensure the availability of water supplies and sanitation. Water companies recognise that this is a power that must be exercised responsibly and in a way that avoids damage to the interests of landowners and occupiers as far as possible. • The principles the customer has quoted are used as guidance for water companies, and are principles that water companies have helped produce. It complies with these principles wherever it is possible and reasonably practicable to do so. • In this case, it tried to limit the impact and disturbance caused and, although it understands that road closures negatively impact residents, sometimes they are unavoidable. However, the

negative impact of the closure has been reflected in its goodwill payment to the customer. • As these were emergency works, it was unable to contact, establish and maintain communication with all residents affected. However, it was able to explain the situation to the customer when he called regarding the work. • The customer complains that his road was closed unnecessarily throughout the entire duration of the works and used for storage. However, a permit can be granted for many reasons, including digging, access and storage of machinery. Although it can seem that a road closure is not being used properly, storing equipment and rubble safely is extremely important and having somewhere to store machinery or materials can sometimes be the deciding factor on whether a job goes ahead or not. However, it always aims to keep road closures to the absolute minimum and will re-open roads as soon as it is deemed safe to do so. • The customer complains that it failed to respond to his complaint within the required time limits and it accepts that it failed to respond to the customer's complaint within seven working days on two occasions. In line with its customer charter, the customer received a £50.00 Guaranteed Standards payment in recognition of this delay. It also provided the customer with a goodwill payment of £200.00 for the inconvenience caused by the work. • The customer has asked for an apology and it is sorry that the customer remains unhappy with the way it has handled his complaint and how it planned and carried out the works to repair its sewer. It would also like to offer sincere apologies that the customer was affected by the work and the road closure; it understands the impact this can have on its customers but, unfortunately, in this case, there was no alternative option other to relaying 45 meters of sewer. It hopes the customer will appreciate that the work was necessary to prevent further internal flooding to nearby residents. • The customer claims £920.00 for stress and inconvenience. As above, it has already paid the customer £250.00, and as there have been no other service failings, and the customer has not provided any evidence of financial loss caused by the road closure, it denies responsibility to pay any other form of compensation to the customer.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

- Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
- 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.

Customer: The Customer

How was this decision reached?

1. Having reviewed the evidence provided by the parties, I start my adjudication by saying that I fully accept that the road closure would have been inconvenient and stressful for the customer and his family, and this would have been made worse by having no notice.
2. However, having reviewed the system screenshots provided by the company showing the details of the permit, I accept, on the balance of probabilities, that the company had a valid permit, and that the permit authorised the work on The Hough, the public highway, and the closure of Park View Avenue, the customer's private road, on the dates that the work was undertaken. The customer feels that the email between the local councillor and the Streetworks Team undermines the evidence provided by the company; however, I find the evidence provided by the company most persuasive and, in view of this, I accept that the company was entitled to carry out the work on The Hough, and close Park View Avenue for the duration of that work, regardless of how long the excavation of the customer's road took, or whether the road was used to store equipment or excavated hard core. In light of this, I do not find that the company failed to provide its service to the standard reasonably expected by the average customer when it closed the customer's road.
3. The customer complains that the company excuses its failure to give notice to the residents of Park View Avenue by saying that the work was an emergency and, therefore, there was no time to provide notice and it was not obliged to do so anyway. The customer states that the company's evidence does not describe the work as an emergency, just as a priority or as urgent, and that the length of the planning, and the fact the work was stopped to apply for more funding, shows that it cannot have been an emergency.
4. Having considered the evidence, including the comments made by the customer, I find that the work carried out by the company was an emergency, despite the language used. I also accept that the time it took to plan the work has no bearing on its urgency; planning and funding procedures still apply to emergency work and

can take a considerable length of time, especially for complex and expensive work such as a sewer relay.

5. The evidence confirms that the company did not give any notice to the residents that the work was going to take place and the road would be closed. I fully appreciate how frustrating and inconvenient this must have been for the customer and his family, however, I do accept that it would have been difficult, and possibly unhelpful, to provide dates to the residents before the permits had been granted because the company would not have been able to give precise and accurate details. The evidence shows that the work started the day after the permit was granted and, therefore, I accept that the company did not have time to give the residents notice.

6. The customer states that the company failed to comply with three of the Land Entry Principles, from Water UK. However, the Land Registry Principles are best practice guidance only and I accept the company's statement that they cannot always be met.

7. On balance, while the lack of notice was far from ideal, considering the emergency nature of the work, I am unable to find that the customer service provided by the company failed to meet the standard reasonably expected by the average customer in this regard.

8. The customer claims £920.00 for the stress and inconvenience of the road being closed without notice. As I have found no failings on the company's behalf, it follows that I am unable to direct the company to pay the customer compensation. I also find no grounds on which to direct the company to apologise further to the customer. I understand that my decision will disappoint the customer, but his claim does not succeed.

9. The customer also complains that the customer service provided by the company was poor and that it did not respond to his complaint within the expected time scale. The company accepts that its response to the customer's complaint was delayed, and that it failed to provide its service to the expected standard, and has provided the customer with two £25.00 GSS payments and a further £200.00 as a gesture of goodwill. On balance, I accept that the amount paid adequately compensates the customer for the service failings shown by the evidence, and I make no direction to the company in this regard.

Outcome

1. The company does not need to take any further action.

What happens next?

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

The customer must reply within 20 working days to accept or reject this final decision.

- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

Kate Wilks
Adjudicator