

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT-X691

Date of Final Decision: 3 December 2021

Party Details

Customer: The Customer

Company: x, a water-only supply company

Complaint

The customer is dissatisfied with the manner in which the company planned and carried out road works in his area in July 2021 and September 2021. The customer considers that the company carried out the works in a manner that raised safety concerns, caused the customer inconvenience, and the company "abused" the emergency permit system. The customer's claim is for the company to: repair the damage it has caused to the "A" road in the area; issue a formal apology to the residents of the village for the disruption the road works caused; provide a binding assurance of consultation prior to any future work; and pay the customer £400.00 in compensation.

Response

The works that it carried out were lawful, and having been inspected by the local Highways Authority, did not breach any Code of Practice or regulations concerning excavations in the public highway. It understands that road works can cause inconvenience to residents of the area. However, in order to prevent water wastage and to meet its statutory duties, it is required to complete the necessary investigations in order to locate and repair any leaks which are reported to it. On the evening of Friday 2 July 2021, it decided to put the works on hold because the leak was not visible and the leak was causing minimal to no disruption to residents' supplies. It considered the potential of receiving multiple complaints if it continued with the works through the night using larger machinery and creating noise disturbance. It decided that it was a higher priority to prevent noise disturbance overnight than it was to continue with the repair of the small leak. It has followed the correct policies and procedures, and it does not consider that it is appropriate to offer the customer compensation. It has provided informative and timely responses to the customer's concerns.

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Findings

There are a number of allegations in this complaint which fall outside the scope of the Scheme and I cannot adjudicate upon. Firstly, I cannot consider the customer's allegation that the company abused the emergency permit system because the allegation potentially raises a regulatory enforcement issue and is suited to a more appropriate forum. Secondly, the alleged failure to share data requested under the Freedom of Information Act falls outside the scope of the Scheme. Thirdly, I cannot make a direction for the company to issue an apology to the residents of the Village. Fourth, I cannot consider a new complaint which the customer raised in his reply to the company's response but did not raise in his application to WATRS. The customer's complaint which I can consider is limited to the manner in which the company handled the customer's complaints about the works it carried out in July 2021 and September 2021. The evidence does not show that the company handled the customer's complaints about the works in a manner that fell below the standard to be reasonably expected by the average person. The evidence shows that the company took reasonable steps in dealing with the customer's complaints, including responding to them in a timely manner and addressing the issues raised in the complaints.

Outcome

The company does not need to take any further action.

The customer must reply by 5 January 2022 to accept or reject this decision.

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ADJUDICATOR'S FINAL DECISION

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Case Outline

The customer's complaint is that:

- The company erected roadworks in a known dangerous junction late on Friday 2 July 2021. It carried out digging works for around two hours, after which it stopped the works and it did not carry out any works over the weekend despite its commitment to the contrary. It subsequently informed the customer that the road works were not necessary.
- The customer considers that the company has "abused" the emergency permit system in order to avoid the requirements under section 58 of the New Roads and Street Works Act 1991 (NRSWA).
- The customer's claim is for the company to:
 - Repair the damage it has caused to the "A" Road in the area;
 - Issue a formal apology to the residents of the village of (REDACTED) for the disruption the road works caused;
 - Provide a binding assurance that it would consult with him prior to any future works; and
 - Pay the customer £400.00 in compensation for the time spent on the matter.

The company's response is that:

- It apologises that the customer remains unhappy with the response it has provided to him prior to his application to WATRS.
- Under Section 158 of the Water Industry Act 1991, it has statutory powers to lay, inspect, maintain and replace apparatus in the highway. Accordingly, provided it followed procedures set out in the NRSWA, its actions in excavating and closing a road is an entirely lawful and legitimate activity. Schedule 12 of the Water Industry Act 1991 provides the basis for compensation arising out of street works, which is only recoverable for damage or harm caused to third parties. No damage or harm is being alleged in this case, rather the customer has

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complained about the inconvenience of having additional traffic lights within the vicinity of his property.

- The works were inspected by the local Highways Authority and the Authority did not find a breach of any Code of Practice or regulations concerning excavations in the public highway.
- The works were not carried out on the customer's property, but were carried out on the public highway. A member of the public does not have an absolute right to use a public highway, and statutory undertakers have statutory rights to place their equipment on or underneath public highways, and if necessary, to excavate or close them whilst works are being carried out.
- It understands that road works can cause inconvenience to residents of the area. However, in order to prevent water wastage and to meet its statutory duties, it is required to complete the necessary investigations in order to locate and repair any leaks which are reported to it.
- A water leak can give rise to damage to adjacent premises, in addition to being a potential source of contamination to the local distribution network. The inconvenience towards members of the public arising through road works has to be balanced against the wider benefit of a wholesome and reliable water supply to people generally, which is a matter of public health.
- The correspondence and timeline it has provided demonstrate the multiple contacts which it received from the customer, and the informative and timely responses which it provided in order to address the customer's concerns.
- It considered that it carried out the street works and responded to the customer in a reasonable manner.
- It decided to abort the works on the Friday evening and not return until the following week after considering the balance between overnight disturbance on a weekend, and the seriousness of the leak being investigated. It decided to put the job on hold because the leak was a non-visible leak causing minimal to no disruption to residents' supplies. It considered the potential of receiving multiple complaints if it continued with the works through the night using larger machinery and creating noise disturbance. It decided that it was a higher priority to prevent noise disturbance overnight than it was to continue with the repair of the small leak.
- Roads within the (REDACTED) area are generally busy at all times during daylight hours, but only carrying out works at night can be more disruptive to local residents, in addition to the increased dangers of working in the highway generally during the dark.
- It has been transparent and candid in its responses in order to manage the customer's expectations.
- It has provided the customer with information regarding what it has learnt from the customer's complaint and improvements it could make for the future, though changes to its processes take

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time to build and implement into its day-to-day processes. It is reminding its planners to assess the possible time a job could take including backfill and reinstatement when planning work on potential hotspot routes over weekends. It is also looking into new communication methods of keeping local residents up to date with the progress of works, for example sending text messages to residents if works are to be aborted and no workmen will be seen on site over a weekend to explain the reasoning and manage expectations.

- It has followed the correct policies and procedures, and it does not consider that it is appropriate to offer the customer compensation. If it was to offer the customer compensation for general inconvenience arising out of street works, the potential aggregate sums would be a substantial operational cost to it, which in turn would be passed onto customers.

The customer's reply is that:

- He does not dispute the chronology of events the company has provided. However, the company has not addressed the core issue in his complaint.
- It has not answered his question of why an emergency permit was used for a low priority job. The company appears to be “abusing the emergency permit system” and avoiding its obligations under Section 58 of the New Roads and Street Works Act 1991, or the use of emergency permits has become a habit in lieu of proper planning. The company has also confirmed that its leak investigation is ongoing. However, it has not started further works. This does not indicate an emergency and the emergency permit system should not have been used in this case.
- (REDACTED) Council has confirmed that the company accounted for just under half of the 1,100 emergency permits issued in September¹. This appears to be a disproportionate use of the emergency permit system. He has made a request under the Freedom of Information Act to the company regarding its use of the emergency permit system. The company has not yet shared the data he has requested. He is taking this matter up with the Information Commissioners' Office.
- The July 2021 works were carried out under an emergency permit. It should therefore be assumed that the situation was of such severity that significant damage may occur if the works did not proceed. The works were erected on a Friday afternoon, 2 hours work was undertaken and the works were then abandoned for the weekend resuming on the Monday of the following week. This does not indicate an emergency.

¹The customer has not specified the year this statement refers to

- The village of (REDACTED) was significantly impacted and his road safety was placed at risk due to the positioning of the temporary traffic lights. The lights were eventually moved after discussion with him to improve his safety. While the traffic management may have been compliant, it does not automatically mean that the works were safe or considerate.
- While the traffic management may have been compliant, it does not automatically mean that the works were either safe or considerate.
- In September 2021, the company set up works a few meters away from the works completed in July 2021, investigating the same leak and the September works were instigated under an emergency permit. The delay between the July and September works does not indicate that there was an emergency. The company also started the September works on a Friday afternoon and again abandoned the works after a couple of hours leaving the local area severely impacted by traffic delays.
- The traffic management was equally unsafe and, on this occasion, despite his complaints, the company did not take notice of his concerns neither did it make any of the reasonable adjustments he suggested.
- The company has left the newly resurfaced A Road in an unsatisfactory state, and in this respect, it has not shown satisfactory stewardship of taxpayer funds. The company's reinstatement works have not been sealed, which will allow water ingress and subsequent surface deterioration of the road. Page 10 of the Manual of Contract Documents for Highway works Volume 1 states that "saw cuts shall be sealed ... with a hot applied material". This has not been done and the road surface is now at significant risk of damage.

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

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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?

Preliminary issues, including scope of the Scheme

1. References in this decision to 'the Rules' are to the Water Redress Scheme Rules (2020 Edition) unless stated otherwise.
2. I find that the customer has raised a number of issues which fall outside the scope of the Scheme.
3. Firstly, the customer has stated that the company has abused the emergency permit system. He has stated that the company should not have carried out the low priority works in this case under an emergency permit and the company carried out the works under the emergency permit in order to avoid its obligations under Section 58 of the NRSWA. He has also stated that the works were unsafe and dangerous.
4. I find that this complaint falls outside the scope of the Scheme, under Rules 3.4.1 and 3.5, because it is a complaint that potentially raises a regulatory enforcement issue and is suited to a more appropriate forum (for example, OFWAT and/or the relevant Highway Authority that issued and/or is responsible for the supervision of the emergency permit referenced in this complaint). I am therefore unable to make any findings or directions on the customer's complaint about the alleged misuse of the emergency permit systems, including the issue of whether or not the works in this case were suitable for an emergency permit and the safety of the works.
5. Secondly, I note that the customer has stated that the company has not shared the data he requested under the Freedom of Information Act and that he is taking this issue up with the Information Commissioners' Office. I confirm that the alleged failure to share data requested under the Freedom of Information Act falls outside the scope of the Scheme under Rule 3.4.1.

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6. Thirdly, the customer's request for the company to issue an apology to residents in the Village of (REDACTED) is not a direction that I can make. Rule 1.1 states that the Scheme "provides an independent process for adjudicating unresolved disputes between participating water companies....and their "customers" as defined in section 2 of the Rules." It is not clear on the facts that the residents of the village are customers (as defined in the Rules) within the scope of the Scheme.

7. Further, as a matter of procedure, I am unable to make any findings or directions in respect of any party other than the customer or any complaint other than the complaint by the customer who is the only named signatory in this complaint. This is in accordance with Rule 2.3 which states that:

"Applications may be made on behalf of more than one customer. However, each customer must be a named signatory to the application and must confirm that they wish to refer the dispute to the Scheme. Alternatively, each customer must have confirmed on their application that they agree to a representative acting for them on behalf of all of the signatories...."

8. The customer has introduced a new complaint in his reply to the company's response. I note that the customer complained to the company about the reinstatement works it carried out. The customer has stated in his reply that the company has left the A Road in the area in an unsatisfactory state. However, his application form to WATRS does not include a complaint about the reinstatement works. I consider that the customer's complaint concerning the company's reinstatement works on the A Road is different from his complaint about the manner in which the company carried out the works in July and September 2021. The customer did not raise this specific complaint about the company's reinstatement works in his application to WATRS, and the company has not had the opportunity to respond to this complaint. In accordance with Rule 5.4.3, I am unable to consider this new complaint. Rule 5.4.3 provides that:

"The customer cannot introduce new matters or evidence in their comments on the company's response; the adjudicator will disregard any such material if submitted."

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In an attempt to assist with some signposting, I briefly comment that matters concerning the reinstatement of the highway and compliance with technical requirements concerning reinstatement of the highway fall outside the scope of the Scope under Rule 3.4.1.

9. In response to the customer's query for clarity on WATRS' role in resolving complaints, I confirm the scope of WATRS and its role in resolving complaints is set out in the Rules.
10. Given the above findings on the scope of the Scheme, I find that the customer's complaint which I can consider is limited to the manner in which the company handled the customer's complaints about the works it carried out in July 2021 and September 2021. I address this issue below, and in doing so I would clarify that any findings I make in connection with the works is limited purely to the customer service issue of how the company handled the customer's complaints.

Complaints handling

11. I find that the evidence does not show that the company handled the customer's complaints about the works in a manner that fell below the standard to be reasonably expected of the average person.
12. The company has provided a detailed chronology of events, together with its correspondence with the customer and I note that the customer has confirmed that he does not dispute the chronology that the company has provided.
13. The customer complained to the company on 2 July and 5 July 2021 about the works it commenced on 2 July 2021. The company acknowledged the customer's response on 2 July 2021 advising that it would arrange for a person to inspect the works, there was further correspondence between the parties on 5 and 6 July 2021 with a substantive response from the company on 12 July 2021. There was also correspondence between the parties in respect of the September 2021 works.
14. The evidence shows that the company took reasonable steps in dealing with the customer's complaints, including responding to the customer's complaints in a timely manner and addressing the issues raised in the complaints. I note that the company explained the legal basis upon which it is entitled to carry out the works, it explained that its investigations were necessary in order to locate the leak, it explained the works it carried out at the site and

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explained why there were periods of inactivity, it arranged for the site to be inspected by the relevant traffic management team and the Council, and it decided that it did not need to carry out further action at the site on the basis of the findings from the inspections.

15. In his reply to the company's response, the customer has stated that the company has not addressed the key issue in his complaint which is the issue of why it carried out a low priority work under an emergency permit. As stated above, I cannot consider whether or not the works in this case were suitable for an emergency permit. However, I can consider the customer service issue of whether the company addressed the issues raised in the customer's complaint.
16. Having reviewed the correspondence between the parties, I find that the customer's complaints to the company were mainly that the works were unsafe/dangerous and unnecessary, and the company's responses were focused on the safety and necessity of the works. The evidence does not show that the customer had specifically asked the company why it was carrying out a low priority work under an emergency permit. The evidence does not show that the customer asked the company this specific question and I do not consider that (within the context of this complaint) the company had an obligation to respond to an issue that was not put to it.
17. For these reasons, I find that the customer's complaint does not succeed.

Outcome

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 by 5 January 2022 to accept or reject this 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.

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Ile Ezeogu LLB (Hons), Solicitor

Adjudicator

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