

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT/X360

Date of Final Decision: 31 March 2023

Party Details

Customer: XX

Customer's Representative: XX

Company: XX

Complaint

The customers state they were not given advance notice of four road closures by the company whilst carrying out repairs to roads in the area. This caused inconvenience to local residents and road signage was confusing and misleading. The customers request that the company provide a service; refund 45 customers affected by the works, £200.00 of their water bills and; pay compensation to the Public House that incurred lost business.

Response

The company states that it acted in accordance with its obligations by: addressing leaks on roads that were reported on three occasions in 2022 in the customers area and responding to these reported leaks as an emergency. It said it applied to the local authority for emergency permits to repair the leaks, such that it was unable to provide advance notice of road closures to customers in the area. The company contends that the claim relating to the position of road closure signage is outside of the scope of WATRS. It does not accept that it is responsible to pay any compensation to the customers or refund any part of their water bills. The company made no offer of settlement.

Findings

The company has shown that the repairs carried out to roads in the customers' area were correctly prioritised as emergencies and that it followed the correct process in applying to the local authority for emergency permits to carry out the works. In such circumstances, I find that it is not reasonable to expect the company to have provided advance notice of road closures to customers in the area. In accordance with Scheme Rule 3.4.1, I find that the complaint relating to the suitability and position of the road closure signage used by the company falls outside of the scope of WATRS. As no instances of the company's service not reaching the standard to be reasonably expected have been shown, the claim for a refund of the customers' water bills has not been justified.



Outcome

The company does not need to take any further action.

The customers have until 2 May 2023 to comment on this preliminary decision.

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Final Decision: 31 March 2023


Case Outline

The customers' complaint is that:

- Events leading up to the complaint: the first of four road closures happened in May 2022, whereby notice was given for emergency repairs which could last for up to 21 days.
- The road is a frequently used link between their village and the nearest town.
- None of the closures could be described as an emergency and on one occasion, no work was in fact done at all (5 to 10 August 2022). The customers submit that the closure signs were confusing and misleading. Further, signs were put up with no notice and not taken down for days after any work had been completed.
- Work could have been done without the need to close the road beyond a short period, and the closures could have been restricted to just one.
- The local public house (Public House) lost "serious business" as the road to it was shown closed when closure was the far side of it. They were left wondering where their customers had disappeared to.
- The most recent and worst case started 2 September 2022 and prompted the complaint.
- They had previously taken up the issue with the local authority who met with the company after the first incident and promised to do better, but nothing changed at all.
- The customers request that the company:
 - Provide a service: "proper delegated management which only calls for emergency closures when there are real emergencies, and organises work well thought out in advance, providing clear and helpful signage as requested, closing roads only where essential and for absolute minimal periods, this minimising inconvenience to residents and local businesses".
 - Refund £200.00 in water bills to 45 residents in the local vicinity that were affected (totalling £9000).
 - Pay compensation to the owner/landlord of the Public House for lost business in the amount of £10,644.56.

The company's response is that:

- It is obliged under Section 37 of the Water Industry Act 1991 (the Act) to ensure that water is not wasted and that it is also available for customers to use. As such, when a leak has been reported to it, it becomes a priority to ensure it is repaired so the “precious resource” it is responsible for, is not wasted or causing damage which could pose a safety risk to the public.
- It responded to three different leaks in the customer's area in 2022; one reported on 14 May 2022; the second reported on 13 July 2022 (it received two separate reports); and the third reported on 23 August 2022. All were treated as emergencies.
- The first was a leak on a smaller communication pipe which carries water from its larger water main and connects up to a privately owned supply pipe for a private property. This type of leak is an emergency because if a leak on a communication pipe gets worse, it could lead to a total loss of supply to a private property.
- The other two leaks were found to be on its three inch water main. Due to the area where the customers live, which is a rural countryside location, leaks on a water main in these locations are also classed as emergencies because the entire area is supplied by only this one water main. The company highlights that had it failed to meet its statutory duty in section 37 of the Act, not only would it be breaking the law, it would be allowing a leak to progressively get worse until the time that there is no water supply in the area. Further damage would also be caused to the road.
- As part of carrying out its duty to repair leaks, it followed the relevant legislation by applying for an emergency permit to work from the Local Authority and repaired its assets to ensure it is meeting its statutory obligations.
- The company explains that given the location of these leaks, the properties which they served and the very quick time a leak on a three inch main can suddenly go from being a trickle to a full blown burst due to the pressure inside the pipework, it had to act quickly. Furthermore, it has to ensure that third party assets are always protected to the best of its ability and in this case, it was the roads in which the leaks were located. Therefore, an emergency permit to work was requested because it has to act quickly to prevent all of the residents in the area losing their supply.
- It had to close the road when it repaired the leaks because its assets run underneath it and it needed to excavate the road to find and repair it. Without blocking the road off so vehicles could not pass, operatives would be in danger of being struck by a vehicle on what is an isolated narrow country road, with a number of blind bends.
- So that there is enough room to excavate the road, space to pile up the spoil, space to place the tools required to work whilst remaining at hand, an area bigger than the excavation site needs to be boarded off. The company states that the road closures were unavoidable.
- Regarding the claim that the road closure signage was misleading, it acted in accordance with the New Road and Street Works Act 1991 in regards to signage and street works. The company



contends that any dispute over whether it has complied with this legislation should be handled by the relevant street works authority which would be the customer's local authority. On this basis, it says this aspect falls outside of the scope of the Scheme Rule 3.5.

- However, notwithstanding its above submission, in respect of the photograph provided by the customers showing two diversion signs leading from one closure notice to another (relating to work carried out on 1 to 3 September 2022), the company explains that all utility companies do this to show that if you need to get to the other end of the closure point, there is a diversion the other way i.e., there are two diversions in place depending on how far down the closed road you need to get to. In its Response, the company has included a map of the diversion route put in place for these works.
- It has apologised to the customer in writing about any inconvenience that may have been caused to him whilst repairing three different leaks.
- Due to its emergency works on three occasions in the customers' area last year, it has ensured that they continued to receive a clean water supply without interruption in what was one of the hottest summers on record.
- In its responses to the customers dated 3 and 27 October 2022, it advised that it will not consider paying compensation to residents. This is because this was essential work to upgrade and protect its network to ensure customers have robust water supply of safe, clean drinking water. It explained that it is not feasible to compensate all customers who may be affected by its works, especially as it relies on its bill paying customers for the income to be able to complete this work.
- Likewise, it will not consider the unsubstantiated loss of business claim from the owner/landlord of the local Public House. Had it left these leaks to get worse, the Public House may have found themselves with no water at all for cooking, cleaning, for their customers, or for their toilet facilities.
- Its actions to repair the leaks that were reported to it were done in the best interest of all and as such, it will not consider this claim.

Reply

- The customers assert that the company's Response demonstrates it "has no idea" or has not made any effort to find out "how deeply frustrated, and confused residents have become, as well as wasting substantial time trying to understand what was going on and making the necessary detours".
- The customers reiterate that there was a road closure on 5 to 10 August 2022 and refer to a photograph showing a road closure sign. The customers state that the company not having any record of this can only mean it did not do any work.
- The customers makes further comments on the company's Response including:

- The leak on 1 and 2 September 2022 was on the edge of the roadway, and this is not an isolated narrow road but a frequently used link between their village and other villages or towns in the area.
- There are other ways of carrying out repairs to avoid road closures, e.g. traffic lights or other controls.
- “Buck passing” to the local authority is unacceptable as the origin of the emergency closures can only be the company.
- The company’s apologies for inconvenience are unsatisfactory.
- A £200.00 reduction in water bills no more than reflects the costs of disruption.

Comments on the Preliminary Decision

- The customers question aspects of the claim being found the outside scope of WATRS including the claim on behalf of the Public House for loss of business and the aspect relating to the suitability and position of road signage.
- The customers provide new evidence of ‘Temporary Traffic Regulation Notice’ dated 22 March 2023 and comment on this.

How is a WATRS decision reached?


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


1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer’s claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

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1. The WATRS Application is made by **XX** on behalf of himself and 44 other residents in the local vicinity who were affected by the company's works and road closures that are the subject of the claim (the customers).
 2. At this juncture, I remind the parties that Scheme Rule 1.6 states that an Application can be made a household customer or a non-household customer. The Application in this instance has been made by household customers. I note that one of the remedies claimed is for lost business incurred by the (owners/landlord) of the Public House in the local vicinity. As this concerns a business loss, I find that this aspect of the claim falls outside of the scope of this adjudication as this type of loss would only be considered in a non-household Application. Therefore, I am unable to consider this element of the claim further, on this basis.
 3. In its Response, the company refers to Scheme Rules 3.4 and 3.4.1 that states: "WATRS may reject all or part of an application to the Scheme where it considers that: a customer should be referred to a more appropriate forum for the resolution of the dispute". The company contends that the claim about the signage informing the public of the road closures falls outside of the scope of WATRS as disputes about whether it has complied with the New Roads and Street Works Act 1991 with regards to carrying out repairs to assets underneath public land should be handled by the relevant street works authority, which in this case is the customer's local authority.
 4. As it is clear that local authority Highways teams approve permits which include any traffic management requirements, I accept that there is a more appropriate body to consider the claim about the suitability and position of the road closure signs used by the company, therefore this aspect falls outside of the scope of WATRS.
 5. The customers' claim concerns the company's service provided whilst it carried out repairs to its assets following reports of leaks in their area on four occasions in 2022. The customers' claim concerns the disruption caused by the repairs due to the lack of notice given (on three occasions) and the road closure/traffic management put in place. The customers state that on one occasion (5 to 10 August 2022), the road was closed but no work was carried out.
 6. I find that under the Act, the company has a duty to maintain and improve its network and ensure that: water is not wasted and; it is also available for customers to use. Therefore, I accept the company's assertion that when a leak is reported, it becomes a priority for it to address the leak by maintaining and repairing its assets in order to prevent the leak worsening and leading to a loss in supply for its customers.

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7. In light of the explanations provided in its Response, I accept that the company's attendance of leaks reported in the customers' area on 14 May 2022, 13 July 2022, and 23 August 2022, is evidence of it meeting its obligation to maintain and repair its network. Furthermore, I am satisfied that the company has demonstrated that it was reasonable for it to prioritise the repair works it needed to carry out to roads in the customers' area on these occasions, as emergency repairs. As the repairs involved excavating a public road, I accept this required the company to apply to the local authority for permission to work, which it did following each report.
 8. On balance, I accept that it is impracticable for the company to provide notice of the emergency works to customers in the vicinity. Therefore, I find that the lack of notice provided to customers living in the area of the works on these occasions does not constitute evidence of the company's service not reaching the standard to be reasonably expected.
 9. In instances where emergency works have been granted by the local authority, I accept that the company is able to close the road without prior planning of the closure. It is acknowledged that in the customers' case, this caused significant inconvenience to them as the diversion route put in place caused confusion and meant they were required to find alternative routes. This is unfortunate, however, the company has explained that due to the need to carry out emergency repairs to its assets and to ensure the safety of the operatives as well as the public, the road closures were necessary. On balance, I accept that in the circumstances the company's decision to close the road in order to manage traffic whilst carrying out repairs to its assets on the occasions mentioned above, was reasonable and proportionate. I am satisfied that this does not constitute evidence of the company's service not reaching the standard to be reasonably expected.
 10. I am mindful that the customers state there were four road closures, including one from 5 to 10 August 2022, whereby they say no work was undertaken by the company. The customers say they were advised of this by the local authority on 8 August 2022. In its Response, the company says it has no records of closing the road during these dates and that they do not correspond with any other works or reports in the area. Having reviewed the available evidence, I find that there is insufficient evidence to demonstrate that the company closed the road in question between 5 and 10 August 2022. Therefore, I am unable to conclude any lack of repair undertaken by the company during this timeframe, constitutes a failure in the service provided by the company.
 11. As this review has not identified any instances of the company's service provided not reaching the standard to be reasonably expected, I find that the request for a £200.00 refund of customers' water bills has not been justified.

12. In any event, I find that the customers' request for the company to provide the service: *"proper delegated management which only calls for emergency closures when there are real emergencies, and organises work well thought out in advance, providing clear and helpful signage as requested, closing roads only where essential and for absolute minimal periods, this minimising inconvenience to residents and local businesses"* falls outside of the scope of WATRS as it is not case specific and therefore it is unenforceable. Therefore, this is not something a WATRS adjudicator is able direct.

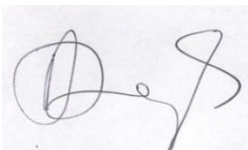
13. I acknowledge the customers' comments on the Preliminary Decision however after a careful consideration of these, they do not affect my above findings. I am satisfied that the reasons for aspects being outside of scope are explained above and new evidence provided of a more recent notice of a temporary road closure is unable to be considered in this adjudication as this has not been the subject of any complaint which has exhausted the company's complaints process.

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 2 May 2023 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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A. Jennings-Mitchell, Ba (Hons), DipLaw, PgDip (Legal Practice)

Adjudicator