

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1610

Date of Decision: 10 October 2019

Complaint

The customer submits that the company has overcharged her for a new connection to her property. She was originally quoted £478.00 for automatic traffic lights. However, this increased to £1,286.48 for two-way traffic lights with manual control. In addition, the work was also carried out in the footway of the driveway rather than in the carriageway. She also assessed that there was no more than five hours work carried out over two days, despite paying for three days in total. The road is in a rural area with low traffic passing and is only deemed sensitive everyday between 7.30-9.30 and 15.30-18.30 in the winter for gritting. She also feels that the nature of the work was misrepresented by the company to the local council. The customer requests that the company provide a refund of £808.48 additional costs for the manned two-way traffic lights.

Defence

The company submits that the location of the connection is on a traffic sensitive road. [] Highways Authority approved its application to use manual control traffic lights in this location and later on a request confirmed that they would expect traffic lights used at this location to be manually controlled. The cost charged is as per its charging document at the time. Its charges comply with Ofwat charging rules. Although there was no requirement for it to excavate in the carriageway, the proximity to the edge of the carriageway from the required excavation meant that the works set up would include carriageway incursion. The charge included in the new connection quotation is allocated per job regardless of the timescale involved. No offer of settlement was made.

Findings

It is not in dispute that no work was carried out in the carriageway. However, I accept the company's submissions that due to proximity of the edge of the works to the carriageway, it needed to set up a safety zone for its workforce which extended into the carriageway. As the workers' safety zone extended into the carriageway, I accept the company's submissions that a system of traffic management for the carriageway was required. The company states that it subsequently assessed that manual control traffic lights were required. [] Highways Authority also later confirmed the requirement for manual control traffic lights. No evidence has been submitted to this adjudication which shows that the company misrepresented the nature of the works to the Highways

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Authority. In addition, the scope of WATRS is limited, I have no power to review and/or challenge the company's or [] Highways Authority's assessment of the traffic control method required. The company's New Connections Charging 1 April 2018 to 31 March 2019 confirms the cost of the manual control traffic lights. The charging document also confirms that charges are levied per job and not on an hourly or daily basis. There is no evidence to show that the company's charges do not comply with OFWAT's charging rules. In view of the above, there is no evidence to show that the company has failed to provide its services to the customer to the standard to be reasonably expected in relation to the use of manual control traffic lights and the charge levied for the manual control traffic lights.

Outcome

The company does not need to take any further action.

The customer must reply by **8** November 2019 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 10 October 2019

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The company has overcharged her for a new connection to her property.
- She was originally quoted £478.00 for automatic traffic lights. However, this increased to £1,286.48 for two-way traffic control with manual control.
- The company included the additional traffic control costs prior to work commencing, stating that it is a traffic sensitive road and that it would take three days with traffic management Stop/ Go signage. She was promised a refund if it was not used. At a later date the requirements changed to a man controlling the lights manually, which was not used as the amount of traffic was low. Traffic data recorded by the lights can prove this. She has requested the traffic data twice but the data was not given.
- In addition, the work was also carried out in the footway of the driveway rather than in the carriageway. She also assessed that there was no more than five hours work carried out over two days, despite paying for three days total.
- The road is in a rural area with low traffic passing and is only deemed sensitive everyday between 7.30 – 9.30 and 15.30 -18-30, for winter gritting contrary to what the company stated in their communications with her. She also feels that the nature of the work was misrepresented by the company when presented to the local council and should have been assessed on its own merits.
- The customer requests that the company provide a refund of £808.48 additional costs for the manned two-way traffic lights.

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The company's response is that:

- The location of the connection is on a traffic sensitive road.
- [] Highways Authority approved its application to use manual control traffic lights in this location and later on a request confirmed that they would expect traffic lights used at this location to be manually controlled.
- The cost charged is as per its charging document at the time. This cost is charged per connection.
- Ofwat issued a new set of charging rules in August 2017 which meant that water companies are required to provide fixed charges (with no exceptional circumstances) for the services they carry out. This is to achieve a strong balance between predictable and affordable charges. Its charges comply with these rules.
- It is committed to being transparent and open with its customers and all of its charges are published in its charging document so customers can understand exactly what they will pay. This does also mean however that it will not look to deviate from these charges.
- Although there was no requirement for it to excavate in the carriageway, the proximity to the edge of the carriageway from the required excavation meant that the connection works set up would then include carriageway incursion. This then dictated the requirement of two traffic lights in order to carry out the connection works safely. This subsequently required manual control, due to the location of the works.
- The charge included in the new connection quotation is allocated per job regardless of the timescale involved.
- On carriageways with a speed limit above 40mph a minimum 1.2m lateral safety zone is required under the New Roads and Street Works Act 1991 (NRSWA).

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.

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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?

I must remind the parties that adjudication is an evidence-based process. 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. It is almost inevitable in such adjudications that conflicts of evidence arise. The adjudicator's role is to balance the evidence that is presented.

Location of the works

1. It is not in dispute that no work was carried out in the carriageway. However, a photograph submitted in evidence by the customer shows that the company's excavation works for the new connection ended very close to the carriageway.
2. The customer submits that the carriageway is a 50mph road.
3. The company has submitted an excerpt from the Traffic Signs Manual Chapter 8 – Traffic Safety Measures and Signs for Road Works and Temporary Situations, which supports its submissions that under the NRSWA 1991 a minimum lateral safety zone of 1.2mm is required for carriageways with a 50mph speed limit.
4. I therefore accept the company's submissions that due to proximity of the edge of the works to the carriageway, it needed to set up a safety zone for its workforce which extended into the carriageway.

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Traffic management

5. As the workers' safety zone extended into the carriageway, I accept the company's submissions that a system of traffic management for the carriageway was required.
6. The company states that it subsequently assessed that manual control traffic lights were required. The company submits that following its assessment this was the safest and most cost effective method. Other options such as out of hours working and/or speed restrictions would not have been as safe as manual controlled traffic lights during the day and would have cost more in application costs and out of hours charges. The company further submits that overall it tends to use manual control lights on traffic sensitive routes.
7. The company has submitted evidence to support its submissions that the carriageway has been designated as traffic sensitive by the Highways Authority.
8. I acknowledge the customer's submissions that the road is only deemed sensitive everyday between 7:30 – 9:30 and 15:30 -18:30 for winter gritting. However, I also note the company's submissions that [] Highways Authority also confirmed the requirement for manual control traffic lights. No evidence has been submitted to this adjudication which shows that the company misrepresented the nature of the works to the Highways Authority. In addition, the scope of WATRS is limited, I have no power to review and/or challenge the company's or [] Highways Authority's assessments.
9. I also note the customer's submissions that the manual control traffic lights were not used as the amount of traffic was low. However, no evidence has been submitted to support this. The company refutes the customer's submissions. I am also mindful of the company's submissions that it would have been in breach of its permit from the Highways Authority were operatives not on site to manually control the traffic lights if required.
10. For the avoidance of doubt, I note the customer's submissions that she requested the traffic data twice but the data was not given. The company does not refute the customer's submissions. I also note that the company's undated Pre-investigation response also supports the customer's submissions as to a delay. I therefore find that the company failed to provide its services to the standard to be reasonably expected in this regard. However, I note that in its Pre-investigation response, the company provided clarification about the traffic data and offered

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its apologies for not having answered the customer's request previously. I am satisfied that this was appropriate and sufficient.

Cost of manual control traffic lights

11. Under Section 143 of the Water Industry 1991 Act, the company is entitled to make a Scheme of Charges that fixes the charges for any services provided by the company in the course of carrying out its functions.
12. A company's Scheme of Charges must be approved by OFWAT, the Water Industry Regulator. There is no evidence to show that the company's Schemes of Charges have not been approved by OFWAT or do not comply with OFWAT's Charging Rules. It is not within my remit to challenge the company's charges.
13. The company has submitted in evidence an excerpt from its New Connections Charging 1 April 2018 to 31 March 2019 document to support its submissions that the cost charged for the traffic lights with manual control was as per its charging document at the time.
14. I note the customer's submissions that she assessed that there was no more than five hours work carried out over two days, despite paying for three days total. However, the charging document also confirms that charges are levied per job and not on an hourly or daily basis. The evidence therefore does not show that the company has charged the customer incorrectly.
15. In view of all of the above, there is no evidence to show that the company has failed to provide its services to the customer to the standard to be reasonably expected in relation to the manual control traffic lights and the charge levied for the manual control traffic lights. Consequently, the customer's claim for a refund of £808.48 additional costs is unable to succeed.

Outcome

The company does not need to take any further action.

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Next actions

- This adjudication decision is final and cannot be appealed or amended.
 - The customer must reply by 8 November 2019 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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U Obi LLB (Hons) MCI Arb
Adjudicator

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