

Business losses arising from works in the highway

Introduction

As part of our commitment and duties of a statutory water undertaker, it is often necessary for us to maintain our pipework and apparatus within the public Highway. We will always try our best to keep any disturbance and inconvenience to a minimum. Sometimes engineering or safety reasons require us to close a lane or road. Diversionary routes and signage are considered and agreed with the local authority prior to the works and implementation of any associated closure.

Before we start

We will notify businesses that we think that will be directly affected by our works before they start. If you think you are likely to be significantly affected by our works, please let us know so we can discuss with you how it might be possible to reduce any impact.

During

If you are experiencing significant disruption to your business during our works, you should also let us know. If you think you may suffer a loss, we recommend you keep a diary of events to support any claim. Please contact us straight away so we can meet with you to see if there is anything we can do to reduce the disruption you are experiencing and to discuss how we deal with any claim.

Our experience is that issues are dealt with more efficiently if there is early face to face contact with you at your business premises. We will therefore offer you one or more face to face meetings at your premises, depending on the complexity of your claim.

You have a duty to mitigate any loss. This includes remaining open for business and continuing to trade during our works. We may be able to help by improving signage during our works.

Compensation

The legal basis for compensation is Schedule 12 of the Water Industry Act 1991. To be entitled to compensation under Schedule 12, you must prove that:

- You have sustained particular loss or damage other than, beyond, the general inconvenience experienced by the public and
- This loss was direct and substantial. Your premises must be sufficiently close to the site of our works for a clear causal link to be made between the works and the loss.

Compensation is unlikely to be paid if the only effect of the works is that potential customers had to follow traffic diversions to travel to your premises or if your customers unable to park as nearby as usual.

If you consider you may be entitled to compensation, please email details of your claim to customer.services@bristolwater.co.uk or write to us at Bridgwater Road, Bristol, BS13 7AT. We will acknowledge your claim within 5 working days of receipt.

We may appoint a loss adjuster, external agent or third party claims handler to investigate your claim. In these circumstances, we will let you know as soon as possible. Our representatives may need to meet with you at your premises to help them assess your claim.

We will consider reasonable charges payable by you to your professional accountant for producing such particulars or details of any other proofs, information or evidence as may be required by us and certifying that such particulars or details are in accordance with your book of accounts or other business books or documents.

Evidence we will require

For your claim to be successful, you must provide evidence that, on the balance of probabilities, proves you are entitled to compensation under Schedule 12 of the Act.

The burden of proof is on you to substantiate your claim through relevant evidence. The standard of evidence required is the standard that a court would expect in a legal dispute. We will treat any information you provide in confidence, except where we are required by law to disclose it, for example to HMRC, government agencies, Ofwat or the Consumer Council for Water

We will write to you confirming the evidence, records and information we need to consider your claim within 10 working days of receiving your claim.

We expect your claim to include evidence that shows:

- The proximity of your premises to the location of our works
- The normal means of access to your premises
- Whether access to your premises was prevented or restricted and the dates, time and periods when this occurred
- How much longer it took to gain access to your premises during our works
- The steps you took during our works to bring the prevention or restriction in access to our attention.

We would also expect you to demonstrate your loss by providing:

- Copies of the accounts and, if appropriate, VAT returns of your business for the previous three years showing the daily/weekly/quarterly sales of the business with evidence these have been agreed with HMRC
- Records of the dates for which disruption to your business is claimed, i.e. start and end dates, number of working days, and any other relevant factors relating to the period
- Details of the methodology you have used to quantify any claim for loss of profit including profit margin calculations
- Information concerning any reductions in overheads due to reduced business activity and how you have sought to mitigate losses, for example pay roll records
- Sales figures and VAT returns for periods following the completion of our works.

Our decision

Once we have received all of the information and evidence we need to consider your claim, we will provide a substantive response, which may include an offer of settlement, within one calendar month.

Where a sum of compensation has been agreed, we will request written confirmation from you and payment by cheque will normally follow within 10 working days.

Disputes

If having considered your claim and we are not satisfied you are legally entitled to compensation or we are unable to agree on the level of compensation, you (or we) are entitled to refer your claim to arbitration under Schedule 12 of the Water Industry Act 1991. The dispute is then for determination by a single arbitrator. The arbitrator is to be appointed by agreement between you and us. If we are unable to agree, the appointment will be made by the water industry regulator, Ofwat.

Arbitration proceedings are an alternative to court proceedings and are governed by the Arbitration Act 1996 (the "Act"). Section 94(1) of the Act applies to the provisions of Part 1 of the Act to arbitration under Schedule 12 of the Water Industry Act 1991. ***We recommend that you seek independent legal advice before commencing arbitration proceedings.***

Arbitration proceedings are commenced when one party serves on the other party notice in writing requiring them to appoint an arbitrator or to agree to the appointment of an arbitrator. We will consider whether any arbitrator you nominate is suitable to determine the dispute, having regard to their professional experience of disputes relating to compensation and the exercise of statutory powers.

We may nominate an alternative, if we consider the arbitrator you have nominated is unsuitable. If we are unable to reach agreement with you about the arbitrator to be appointed within 28 days, you (or we) may ask Ofwat to appoint an arbitrator.

Under the Act, we and you are jointly responsible for paying the arbitrator's fees and expenses. In practice, we will pay half of the arbitrator's fees and expenses and expect you to pay the other half direct to the arbitrator.

The appointed arbitrator will decide an appropriate procedure for the arbitration and, at the end of the arbitration, whether or not to make an award of compensation. Costs (including the arbitrator's reasonable fees and expenses) will generally be awarded to the successful part, unless the arbitrator considers this would not be appropriate in the circumstances.

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