

PRESS RELEASE

21 AUGUST 2020

SIX UTILITY COMPANIES PENALISED FOR FAILURE TO COMPLY WITH SCOTTISH ROAD WORKS LEGISLATION

The Scottish Road Works Commissioner has issued penalties totalling £94,000 to six utility organisations for failing to comply with their statutory obligations when placing cables and pipes in roads.

These failings were identified by the latest Scottish National Coring Programme in which cores were taken to confirm that the correct materials, layer depths and compaction were used in the bituminous layers of excavations.

In July 2020, the Commissioner wrote to six utility organisations advising that he was considering penalising them due to their poor performance. He gave organisations the opportunity to submit representations detailing any mitigating factors.

Having considered their responses, the Commissioner decided that penalties should be issued against each of the six organisations. The values of the penalties which have been issued are as follows:

BT	£50,000 (maximum)
Virgin Media	£34,000
Last Mile Asset Management	£3,000
ES Pipelines	£3,000
Network Rail	£2,000
GTC	£2,000

The Commissioner has powers to issue penalties up to a maximum of £50,000 where a utility has failed to comply with duties to co-operate with roads authorities. The value of the above penalties take into account the rate of failure below 85% and the overall number of road works undertaken by the organisation to estimate the potential degree of harm caused. Previous performance, including penalties for similar failures, and the mitigation provided by each organisation, particularly where recent data was able to show improvement, were also taken into account in determining the level of penalty.

The organisations penalised have failed in their duties under section 119 of the New Roads and Street Works Act 1991. They have also failed to comply with the Specification for the Reinstatement of Openings in Roads (SROR).

Angus Carmichael, Scottish Road Works Commissioner said: “Organisations with statutory powers to lay apparatus in Scotland’s public roads must comply with legislation for reinstating their excavations. As undertakers, these companies have statutory rights which allow them to place, inspect and maintain their apparatus under the road. These statutory rights come with obligations set out in the New Roads and Street Works Act 1991. Compliance with these duties

is essential to protect the road network across Scotland. Failed reinstatements reduce the serviceable life of the road, leading to further road works to replace the failed sections, additional costs to roads authorities and unnecessary disruption and inconvenience to road users.

“I am extremely disappointed with the poor performance of a number of utility companies, specifically where their performance has declined since the previous National Coring Programme and/or they have previously received a penalty for a similar breach of the legislation. In particular, large companies operating in the telecommunications sector, specifically Virgin Media and BTplc.

BT were penalised £38,500 in 2012, £30,000 in 2014 and £50,000 in 2017 for similar failings. Despite ongoing engagement with senior management in Openreach, acting on behalf of BT, performance has not improved to the required standard of 90%, with the organisation recording substandard results over the past 5 National Coring Programmes. In view of their continuing poor performance, which demonstrates only minor improvement, I have no option other than to apply the maximum penalty available to me of £50,000 once again.

Virgin Media who were penalised at a failure rate of 63% in 2012, improved their performance significantly to 86% in 2014, fell to 76% in 2015/16 and unfortunately have not managed to regain their improved performance, recording only 79% in the latest programme.

The performance of GTC, Last Mile Asset Management, ES Pipelines and Network Rail was also unacceptable and in need of early improvement.

Whilst two of the large players in the telecommunications sector performed badly, it is encouraging that a number of smaller telecommunication companies performed well, notably CityFibre, Arqiva, SSE Telecoms and Vodafone who all achieved around or above the 90% pass rate. The major Water, Gas and Electricity organisations again achieved pass rates at or in excess 90%, maintaining their 2017 performance levels and demonstrating that improvement is possible and can be maintained.

In 2018/19, road works undertaken across Scotland by organisations penalised totalled 39,621 against 95,133 utility company road works registered. At an average failure rate of 23% of 39,621 this suggests that the legacy left by the six organisations penalised totals 7,924 failed reinstatements. This is completely unacceptable and I hope these penalties serve as a clear warning.

All organisations penalised have provided assurances that processes are being modified to demonstrate early improvement. My office will continue to scrutinise their performance closely.”

NOTES FOR EDITORS

Angus Carmichael completes his 5 year term as Scottish Road Works Commissioner at the end of September 2020 after 49 years in the public sector.

The post of Commissioner was established under the Transport (Scotland) Act 2005 to improve the planning, co-ordination and quality of road works throughout Scotland. The Commissioner monitors performance and promotes good practice across both utility companies and roads authorities (Councils for local roads and Transport Scotland for the trunk road network).

Contact:

Office of the Scottish Road Works Commissioner
Tel: 0131 244 9936

Email: enquiries@roadworks.gov.scot