November 2023

Final determination of a dispute under section 181 of the Water Industry Act 1991

Complaint against United Utilities Water Limited regarding work in private land



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Summary of our decision

This is our final determination of a dispute between United Utilities Water Limited ('**United Utilities**') and **('the Complainant**'), over work carried out on a site owned by the Complainant known as **('the Site**').

This determination relates to United Utilities' exercise of its powers to work on private land under section 159 of the Water Industry Act 1991 ("**WIA91**")

This determination considers whether, in carrying out those works, United Utilities, failed to adequately consult the Complainant as required by the above section or, by exercising its powers unreasonably, caused loss, damage or inconvenience to the Complainant.

In summary, we find that United Utilities did adequately notify the Complainant about work at Fox Field as required by section 159 of the WIA91, but did not specifically consult the Complainant in relation to the level of ground structures remaining on the Site following the conclusion of the works. In particular, regarding the height of a concrete plinth to be installed on the Site.

We have considered whether United Utilities should pay compensation to the Complainant in recognition of the above failure. We have concluded that United Utilities should make a payment of £500 to the Complainant.

1. Introduction

A. The determination

- 1.1 This is the final determination of a complaint submitted by the Complainant to Ofwat for determination under section 181 of the WIA91.
- 2.1 The dispute is between the Complainant and United Utilities, regarding the exercise of United Utilities' powers under section 159 of the WIA91, enabling it to conduct work on private land.

B. Overview of our determination

- 1.1 Our determination and the reasoning for it is set out in full, in section 7 below.
- 2.1 In light of the legal framework of the WIA91, and the evidence that we have gathered from the parties to this dispute, we determine that United Utilities did provide adequate notice of the work to be completed at the Complainant's land but it failed to consult the Complainant during the course of the work, specifically regarding the concrete plinth to be installed on the Site.
- 3.1 In recognition of the above, we direct United Utilities to pay the Complainant a sum of \pounds 500.

2. Background

- 1.1 The Complainant is the owner of a Site where United Utilities exercised its powers under section 159 of the WIA91. The Site is located in
- 2.1 The Complainant first contacted Ofwat in regarding this dispute.
- 3.1 The dispute relates to work completed on the Site as part of a United Utilities' large infrastructure project,

part of this project United Utilities has also undertaken work on other land owned by the Complainant but this dispute specifically relates work on the Site.

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- 4.1 The work on the Site consisted of installing two 900mm diameter raw water pipes by open cut excavation, with a service duct for electronic communication cables. The air valves, washout chambers and line valve installed as part of the works on the Site, sit in a concrete plinth (also referred to by United Utilities as a 'concrete surround').
- 6.1 Due to the drawings for the construction on the Site being amended, a revised notice, in the form of a substitution letter, was issued to the Complainant on The revision showed an amendment to the location of pipelines, accessories and a control kiosk on the field's boundary. The control kiosk is required to operate the line valve on the aqueduct. Between United Utilities undertook a series of engagements with the Complainant, his land agents and the general public about the planned works. Further detail of this engagement is set out in section 3 below.
- 7.1 The dispute specifically relates to whether United Utilities properly consulted the Complainant regarding the installation of the concrete plinth and in particular the height of the concrete plinth which, once constructed, stood above the original ground level of the Site. There were no concrete structures on the Site prior to this work by United Utilities.
- 8.1 United Utilities states that the work to construct the concrete plinth on the Site was completed on but landscaping work around the concrete plinth

and chambers on the Site was expected to be completed in subject to there being suitable dry weather conditions to do this.

- 9.1 The Complainant considers that United Utilities has unreasonably exercised its powers under section 159 of the WIA91, as it has installed a concrete plinth on the Site without notifying or consulting him of this. Therefore, as a result of this he considers he has suffered loss, damage or inconvenience. The Complainant considers the construction of the plinth on the Site is contrary to an assurance given to him in writing in the site of the Site after United Utilities' work was completed.
- 10.1 In the Complainant had contacted United Utilities regarding a number of concerns with the proposed work on the Site, including the final level of his land once United Utilities had finished its work. In response to this, the Complainant considers that United Utilities' Chief Executive provided an assurance in writing that the final height of the land would match its original height. The Chief Executive's response reads:
- 11.1 The Complainant also considers United Utilities installing this concrete plinth on the Site without consulting him amounts of a breach of paragraph 23 of its Code of Practice on Pipelaying ("COP on Pipelaying), as 'he was not consulted or informed before United Utilities breached the above assurance and installed the concrete plinth'. Paragraph 23 of United Utilities' COP on Pipelaying states ''where we need to install an accessory above ground level, we will always discuss this with you first".
- 12.1 The Complainant considers that the installation of the concrete plinth has caused him loss and damage, particularly the loss of the amenity value of the Site. The Complainant states that the height of the land prior to the construction of the plinth was 80 meters high, and now with the concrete plinth it sits at 82.76 meters high. The Complainant considers that this has significantly altered the appearance of the Site. The Complainant states that a less elevated plinth would not have been visible from the nearby highway, whereas the concrete plinth is visible from a distance and anyone driving towards the Site, can see that the plinth is higher than the surrounding land. The Site is located within the refore, the Complainant considers that the aesthetics of the Site are important for its owners and for members of the public visiting the local area.
- 13.1 The Complainant also states that he has been seriously inconvenienced by having to contact United Utilities regarding the breached assurance from its

Chief Executive. The Complainant is self-employed, and states that he has lost earnings and time in trying to resolve this matter with United Utilities.

- 14.1 The Complainant first contacted us on the complaints process, we initially advised the Complainant to raise his complaint with the Consumer Council for Water ('CCW'). the statutory consumer body for the water sector. However, as the Complainant considered that the complaint was outside CCW's remit, he did not contact the CCW. Subsequently we completed a preliminary assessment of the complaint and confirmed we would investigate this matter. On 19 April 2023, we opened an investigation to determine the dispute.
- 15.1 The Complainant requested that that we make a determination on this matter under both section 181(4)(a) and (b) of the WIA91, because he considers that he was not consulted about the installation of the construction plinth on his land, and that he has suffered loss, damage and inconvenience as a result of the work United Utilities has done on the Site. The Complainant is seeking the maximum award of compensation possible under section 181 of the WIA91, which is $\pounds 5,000$.
- 16.1 Therefore, our investigation specifically relates to the concrete plinth installed on the Site and has focused on:
- 17.1 Whether United Utilities has failed to adequately consult the Complainant regarding its work on the Site, namely the construction of the concrete plinth on the Site and the final height of it; and;
- 18.1 Whether, in carrying out its work on the Site, United Utilities acted unreasonably and, in doing so, caused the Complainant loss, damage or inconvenience.
- 19.1 Following receipt of the Complainant's request we contacted United Utilities to obtain its views on the dispute. Further details of United Utilities' position are set out in section 3 below.

3. United Utilities' position on the dispute

- 20.1 We asked for United Utilities' views on the matters under dispute in this complaint.
- 21.1 United Utilities states that the reassurance its Chief Executive provided to the Complainant was in relation to the below ground level pipework and temporary work areas. It states that it has done work to reinstate the ground levels of some of the temporary work areas to the original ground levels, but this is not possible across all the work area due to the air valve, line valve and washout chambers that have been installed.
- 22.1 United Utilities states that all notices such as those served in this case under section 159 WIA91 are given with a covering letter, which provides information about the nature of the work, the size of pipe, the method of construction and the timing of the works. It states that neither the notice nor the accompanying drawings seek to provide detailed construction and technical information, such as information on surrounding elevations, as this information can be found in the construction designs.
- 23.1 United Utilities states that the concrete plinth is integral to the design of the chambers installed at the Site, as it acts as a retaining structure to the various manhole covers and provides a level area for safe access and maintenance. United Utilities also state that the pipe installation on the Site was influenced by the challenging engineering and ground conditions, sloping topography, and temporary access requirements.
- 24.1 United Utilities has advised that it intends to do further work to reinstate the land surrounding the air valve, line valve and washout chambers to reinstate the land to its original conditions where possible, and that it will sympathetically aim to keep to the surrounding landscape. However, we understand that this will not result in any change to the height of the concrete plinth. It also states that it has engaged with a specialist agricultural contractor and landscape architect to ensure the land is appropriately reinstated back to its existing land use and within the local planning guidelines. United Utilities stresses that its intention is to reinstate the land back to its original condition where reasonably possible.
- 25.1 United Utilities states that as the pipework and accessories, i.e., the concrete plinth, is installed on a slope, it has only been possible to reinstate the land on a like-for-like basis above and below the chambers. We understand that United Utilities has shared the reinstatement designs with the Complainant.

- 26.1 United Utilities states that it has not been able to modify the project design at the Site to address the Complainant's concerns but has done so at other locations owned by the Complainant that are affected by works undertaken by United Utilities. In those cases, this has involved reviewing pipeline hydraulics and extensive re-engineering of the pipe depth, to address the Complainant's concerns about finished ground levels and the position of surface structures.
- 27.1 United Utilities states that all of its work and communications have been in line with its COP on Pipelaying.
- 28.1 United Utilities states that its project team held an extensive series of public exhibitions run in four phases between March 2014 and October 2016. At the exhibitions attendees were able to view plans and photo montages of the proposed pipeline route and above ground surface structures (line valve, air valve, washout chamber and the concrete plinth). These showed the scale and the location of structures.
- 29.1 United Utilities provided us with details of the following exchanges between it and the Complainant or his land agents, which it considers were conducted in line with its COP on Pipelaying:
- United Utilities held a meeting with the Complainant, at which the proposal to install above ground surface structures at the Site was discussed.
- United Utilities send an email to the Complainant containing annotated notes and drawings to complete the meeting notes for the above meeting.
- United Utilities held a meeting with the Complainant and his land agents to discuss the proposed pipeline and the extensive site investigations required as part of the planning process to assist the design of the project.
- United Utilities issued two notices to the Complainant under section 168 of the WIA91 (Entry for works purposes), ahead of the construction of the pipeline and over ground structures.
- United Utilities issued a section 159 of the WIA91 notice to the Complainant to give formal notice of its intention to lay pipes and build over ground structures (line valve, air valve, washout chamber and the concentre plinth). Attached to this notice were drawings to show the location of the pipework and accessories.

- United Utilities held a further meeting with the Complainant and his land agents, to update them on the project design and the location of the pipework and temporary working areas and the access required for that work.
- United Utilities provided the Complainant with details of the air valves, washout chambers and line valve specifications.
- United Utilities gave the Complainant notice of the start of work; work commenced on the same day.
- United Utilities issued a revised notice to the Complainant under section 159 of the WIA91 following design modifications work on the Site.
- 9 August 2018, 21 November 2018, 16 May 2019 & 21 November 2019 United Utilities held four public briefings at the local village hall inviting group discussions on matters of concern. Discussions included the location and size of the required pipeline accessories essential to operate the pipes and in particular the raised nature of the air value structures.
- 30.1 United Utilities states that since the beginning of the work on the Site, it has considered the losses incurred by the Complainant, and has made several compensatory payments to the Complainant. We note that United Utilities has made compensatory payments in excess of to the Complainant to date. These payments were to cover losses suffered by the Complainant for things such as site investigation works, archaeological surveys, etc. No payments made to date have been to compensate the Complainant for any loss, inconvenience or damage caused by the construction of the concrete plinth on the Site.
- 31.1 United Utilities states that once all the work is complete, the Complainant's land agents will submit a final claim for compensation, to consider any permanent loss to the value of his land. United Utilities is expecting to receive this claim later in the Utilities advises that this claim may include payment in relation to the pipeline and accessories installed on the Complainant's land and payment in recognition of any depreciation to his land caused by the presence of the above ground surface features (reflecting paragraphs 18 and 54 of its COP on Pipelaying). United Utilities considers this is still an ongoing matter and advises that it is continuing to liaise with the Complainant and his land agent to reinstate the land and agree final compensation and disturbance payments.

4. Legal framework

- 32.1 Section 159 of the WIA91 empowers water and sewerage undertakers to lay and maintain pipes in private land. The undertaker is required to give reasonable notice to the owner and to the occupier of the land of its intention to exercise this power.
- 33.1 Ofwat has a qualified duty under section 181 of the WIA91 to investigate any complaint made or referred to it with respect to the exercise by an undertaker of any powers conferred on it by section 159 of the WIA91 (i.e. the power to lay pipes in private land, the power of entry for works purposes, and other related powers).
- 34.1 The duty referred to above is qualified in that we are not required to investigate a complaint if any of the following exceptions apply:
- 35.1 The complaint appears to Ofwat to be vexatious or frivolous;
- 36.1 Ofwat is not satisfied that the complainant has given the undertaker a reasonable opportunity to investigate and deal with the complaint; or
- 37.1 The complaint was first made to Ofwat or CCW more than 12 months after the matter to which the complaint relates first came to the attention of the complainant. We may consider a complaint outside the 12 months period where special reasons permit us to do so.
- 38.1 If, after considering the representations of the parties, Ofwat is satisfied that the undertaker:
- 39.1 Has failed to adequately consult the complainant, before and in the course of exercising those powers, about the manner in which they are exercised; or by acting unreasonably in the manner of its exercise of those powers, has caused the complainant to sustain loss or damage, or to be subjected to inconvenience; It may direct the undertaker to pay to the complainant an amount, not exceeding £5,000, in respect of that failure, loss damage or inconvenience.
- 40.1 In deciding whether to direct a payment in respect of any failure, loss, damage or inconvenience, we will take into account any sums that have already been paid by the undertaker. We will not direct an undertaker to pay any amount to a complainant in respect of any loss, damage or inconvenience for which compensation is recoverable under any other enactment (except in so far as it appears appropriate to do so by reason of any failure of the amount of any such compensation to reflect the fact that it was not reasonable for the undertaker to

cause the complainant to sustain the loss or damage or to be subjected to the inconvenience).

41.1 Section 182 of the WIA91 obliges an undertaker to have an approved code of practice in place, dealing with work on private land. A contravention of the code of practice does not of itself require that a payment be directed under section 181 of the WIA91. However, Ofwat will take into account any contravention of an undertaker's code of practice in determining whether to direct any payment.

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5. Jurisdiction to determine the dispute

43.1 Ofwat is satisfied that the dispute between the Complainant and United Utilities is a dispute about the exercise by United Utilities of powers conferred on it by section 159 of the WIA91. We consider that none of the exceptions to our duty, which we list at section 4 above, are applicable.

1.1 This is because:

- We do not consider the Complaint to be vexatious or frivolous;
- The Complainant has exhausted United Utilities' complaints procedure; and
- The Complaint was first made to us within twelve months of the Complainant becoming aware that the reinstatement work by United Utilities would not resolve the issue of the height of the concrete plinth on the Site.
- 44.1 The work on the construction of the concrete plinth is complete but the reinstatement work of the surrounding area is still ongoing. United Utilities is not expecting to do any further work to change the structure or the height of the concrete plinth.
- 45.1 Therefore, we consider we have a duty to investigate, both whether adequate notice was provided regarding the construction of the plinth on the Site and the final height of it, and to consider whether United Utilities acted unreasonably in the exercise of its powers, resulting in the Complainant suffering loss, damage or inconvenience.

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6. Our draft determination

- 48.1 On we issued a draft determination to both parties to provide them with opportunity to comment on the decision we were minded to make on this dispute.
- 49.1 We received representations from both the Complainant and United Utilities. A summary of the parties' responses are set out below.

Section A: Response from the Complainant to our draft determination

50.1 The Complainant has asked that Ofwat consider the following three points:

- That United Utilities' interpretation of the assurance given by its Chief Executive is incorrect, and not a fair reading of the statement provided. The Complainant has stated that the words used were not limited to 'below ground level pipework and temporary work areas'.
- The Complainant states that if United Utilities' interpretation of the assurance given was to be correct, it would suggest that United Utilities 'intended to restore ground levels above buried pipes and saw no limitation at all to the extent to which above-ground structures could be raised above pre-entry levels'.
- The Complainant states from his considerations there is no distinction between 'ground level over buried pipe' and 'finished levels of visually obtrusive above-ground structures'.
- 51.1 The Complainant states that he considers the engagement with United Utilities prior to the superseded by the Chief Executive's assurance and/or were not with him or his land agent specifically and that this engagement did not directly refer to the assurance so that the Complainant could have reasonably understood it to be withdrawn or altered.
- 52.1 The Complainant states that Ofwat's draft determination suggests it was not 'unreasonable for United Utilities to act inconsistently with its Chief Executive express written assurance'.
- 53.1 The Complainant states that the proposed award of \pm 500 is not sufficient for the following two reasons:

- The CEO assurance given to the Complainant has been broken and this is beyond a failure to consult on the work by United Utilities and:
- Addressing this matter has taken up a lot of the Complainant's time and it does not sufficiently cover his loss of earnings.

Section B: Response from United Utilities to our draft determination

- 54.1 In its response to our draft determination, United Utilities raised concerns with our view that United Utilities had failed to adequately consult the Complainant and our finding that it failed to comply with its COP on Pipelaying. It wished to reiterate the efforts it made to fulfil these requirements.
- 55.1 It again noted that it had first made contact with the Complainant in 2014, and over the subsequent duration of the project had been in regular contact with the Complainant as the landowner, and with his land agent and tenant. United Utilities referred Ofwat to the timeline and several pieces of evidence it had previously provided to Ofwat in relation to this engagement.

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7. Our final determination

58.1 We have been asked to consider, under section 181 of the WIA91, whether:

- a) United Utilities failed to adequately consult the Complainant before constructing the concrete plinth on the Site; and
- b) Whether United Utilities has acted unreasonably in the manner in which it constructed the concrete plinth on the Site, resulting in the Complainant suffering loss, damage or inconvenience.

Section A: Consultation and notice of the work

- 59.1 Under section 159 of the WIA91 water undertakers are obliged to provide reasonable notice of three months before laying a new pipe on private property.
- 60.1 As set out above, under section 181(4) of the WIA91, Ofwat can direct the company to pay compensation if it is satisfied that the company "has failed adequately to consult the complainant, before and in the course of exercising [its] powers, about the manner in which they are exercised."
- 61.1 United Utilities has provided us with a copy of the section 159 WIA91 notice it issued to the Complainant and the subsequent substitution letter issued, as detailed above.
- 62.1 From the information that we have been given it is not clear whether any of the correspondence or meetings between United Utilities and the Complainant or his land agent covered ground levels of the Site. We understand that the revised notice issued did not explicitly cover the concrete plinth installed on the land. It is likely that the material displayed at the public exhibitions showed that the plinth was an above ground structure, but we do not know if the Complainant was invited to or saw the exhibitions. We note that United Utilities has stated that the concrete surrounds of the pipework were shown in plans at these public exhibitions and that United Utilities believes the Complainant attended a meeting on the the confirm either the content of the meetings or the Complainant's attendance.
- 63.1 Under section 182 of the WIA91, undertakers must have a COP on Pipelaying in place and in deciding whether to grant compensation under section 181 of the WIA91, Ofwat must take into account whether there has any been contravention by the relevant undertaker of its COP.

- 64.1 As noted above, paragraph 23 of United Utilities' COP on Pipelaying says that "where we need to install an accessory above ground level, we will always discuss this with you first".
- 65.1 Having reviewed the notice and substitution letter issued to the Complainant we note the information provided in the notice and substitution letter did not provide the Complainant with any explicit details of the concrete plinth to be installed on the Site or the height of it. The location of the assets to be installed is marked on the plans but from viewing the plans it is not evident that a concrete plinth would be substantially above ground level. While we understand that there was no direct discussion or notification of the final height of the concrete plinth, section 159 of the WIA91 does not prescribe the level of detail to be included in notices.
- 66.1 Ofwat does not dispute that United Utilities was in extensive communication with the landowner and his land agent over the course of the works, however it is unclear from the evidence provided by United Utilities that any notification or confirmation was provided to the Complainant or his land agent regarding the extent of the remaining infrastructure that would remain on the Site. We have not been provided with written evidence confirming that the height of the plinth was explicitly discussed with the Complainant or his land agent.
- 67.1 Our determination does not dispute that notice was issued to the Complainant, nor that there were lengthy ongoing discussions between the parties. However, from the evidence provided it has not been demonstrated that it was made explicitly clear that concrete infrastructure exceeding the original ground levels would remain permanently on the Site.
- 68.1 We understand that through earlier communications in **accele** the Complainant made United Utilities aware of his concerns relating to the ground levels of his land once United Utilities had completed the work on his land. The work in installing the concrete surrounds was completed in **accele** but we understand some reinstatement work on the Site is outstanding. We note that United Utilities does not consider that the reassurance given by its Chief Executive to the Complainant extended to overground structures, however, its COP on Pipelaying explicitly informs its customers that any accessories installed above ground will be discussed first.
- 69.1 Given the above, we consider that United Utilities complied with the requirement to give three months' notice of the works before the works began, as required by section 159 of the WIA91. However, we consider that United Utilities failed to adequately consult the Complainant during the works and failed to comply with paragraph 23 of its COP on Pipelaying, specifically in

relation the structures that would remain above ground level following completion of the work. United Utilities did not provide any new evidence in its representations that changes our view on this.

- 70.1 United Utilities was aware of the Complainant's concerns in relation to the appearance of the Site after the works as is evident from the assurance he received from the Chief Executive. We would therefore expect that the height of the plinth would have been expressly raised with the Complainant, and there is no record that was done.
- 71.1 We recognise the Complainant's comments in his response to our draft determination, regarding the specific assurance he received from United Utilities' Chief Executive. We note that these statements appear to contradict United Utilities' subsequent assertions that the Complainant was aware that there would be remaining concrete structures on the Site.
- 72.1 Our role in considering this dispute is not to determine whether United Utilities' ultimate actions did or did not reflect assurances provided by its Chief Executive, but rather to establish, in the round, whether it consulted adequately. We appreciate the particular weight the Complainant placed on the correspondence from the Chief Executive in this context. As set out above we find that that United Utilities failed to adequately consult the Complainant in relation to the concrete plinth that would remain on the Site, and the correspondence the Complainant had with the Chief Executive should have alerted the company to particular concerns on which to engage with him specifically.

Section B: Loss, damage or inconvenience suffered.

- 73.1 We have also considered whether United Utilities has acted unreasonably in the construction of the concrete plinth on the Site, thereby causing the Complainant loss, damage or inconvenience.
- 74.1 We note that on other sites owned by the Complainant, United Utilities was able to adapt their planned schemes to address his concerns about above ground assets, but was not able to do so here. We recognise this would likely be subject to timing or the specific nature of the works required.
- 75.1 Whilst we recognise that the Complainant remains unhappy with the nature of the works completed, we have not been presented with any evidence that indicates that United Utilities has acted unreasonably in how it has completed those works, with resulting loss, damage and inconvenience suffered as a result of that itself.

Section C: Award of compensation

- 76.1 The Complainant is seeking the maximum amount we can award under section 181 of the WIA91, which is £5,000.
- 77.1 United Utilities has stated that the Complainant is entitled to make a final claim for compensation to cover the loss of depreciation of the Site and that it has made compensatory payments previously in relation to other losses.
- 78.1 We consider that the failure to properly consult the Complainant about the height of the plinth is a significant failing, particularly given that this is a World Heritage Site and the appearance of the Site is therefore important. We also recognise that the Complainant had communicated with United Utilities for some time regarding this matter, and as result of this United Utilities was aware that the issue of above ground structures on the Site was of importance to the Complainant.
- 79.1 In his response to our draft determination, the Complainant stated that he did not feel the proposed award of £500 was sufficient given the time he has put to resolving this matter and the conflicting information given to him by United Utilities' Chief Executive.
- 80.1 Whilst we recognise the time taken to resolve this matter and the conflicting information provided, in this case we have determined that there was inadequate consultation in relation to works, but we have determined that United Utilities did not act unreasonably in exercising its powers. We therefore do not consider loss, damage or inconvenience (as those relate to an unreasonable exercise of powers). This award recognises the failure of adequate consultation and is line with previous determinations we have made on that.
- 81.1 In addition, we note that previous payments in excess of have been made to the Complainant by United Utilities

United Utilities has also stated that there is an ongoing claim to be settled with the Complainant following the final reinstatement of the land.

82.1 Therefore, we direct United Utilities to make a payment of £500 to the Complainant as redress to cover the failure to properly consult.

Ofwat (The Water Services Regulation Authority) is a non-ministerial government department. We regulate the water sector in England and Wales.

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