

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0637

Date of Decision: 15 January 2018

Complaint

The customer lives with his family in a seventh floor flat ("the Flat"). Since moving in in 2000, the water pressure and flow to the Flat has dropped very significantly. The family now has no running hot water (and sometimes no water at all). The company deliberately reduced the pressure and flow and is guilty of racist and inhumane conduct. It has used its superior expertise, financial standing and refusal of access to information to exert an unfair advantage over the customer in this matter. The customer wishes to ensure that water is supplied to the Flat at a minimum 1 bar static pressure and 9 litres per minute flow. He seeks an apology from the company and compensation of £10,000 to reflect his family life being turned "*to absolute misery*" for a "*very prolonged period*" of time.

Defence

All of the customer's allegations are denied. In terms of pressure, the company's only responsibility for water supply is to the Outside Stop Valve ("OSV") of a property. All maintenance and internal plumbing fixtures and fittings are the responsibility of the homeowner / occupier. The company has not lowered the pressure in the District Metering Area ("DMA") where the Flat is located. Monitoring shows that the pressure delivered to the OSV outside the Flat has consistently met or exceeded minimum regulatory requirements.

The company previously made a gesture of goodwill offer, to pay £300 to the customer, but this offer was declined.

Findings

The drop in pressure and water flow to the Flat has not been caused by any acts, omissions or failings on the part of the company. The company is delivering water pressure to the Flat at a level that meets or exceeds the relevant regulatory requirements.

Outcome

The company does not need to take any further action.

The customer must reply by 12 February 2018 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0637

Date of Decision: 15 January 2018

Party Details

Customer:

Company:

Case Outline

The customer's complaint is that:

- Gradually but deliberately, the company has reduced the delivery of water pressure and the flow of water supply to his home. The predicament in which he and his family now find themselves, as a result, is unacceptable.
- He and his family live in a flat on the seventh floor of a block ("the Flat"). He moved in in the year 2000.
- In 2000, at the Flat " ... *the pressure and flow of water was very high. It was great. It could easily serve [the] kitchen and the two bathrooms at the same time ...*" However "... *by spring and summer 2017, [the company had] reduced water pressure and flow to such [a] low level that we lost permanently running hot water, and sometimes there was no water at all ...*"
- The company gave no advance warning that the reduction in pressure would be happening.
- In its dealings on this matter, the company has been guilty:
 - of racism, racial discrimination, racist conduct or institutional racism; and
 - of subjecting him and his family to inhumane and degrading treatment; and
 - of unfairly refusing him access to technical and historical information that it holds (such that the customer has been unable properly or effectively to progress his investigation into the water supply situation as it affects him and his family); and
 - in terms of its superior expertise and financial wherewithal, of unfairly exploiting its advantage over him in this matter; and
 - of standing as a flag-bearer of the 'Grenfell Tower state'.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- As to the service that he requires the company to provide, the customer wishes to ensure that water is supplied to the Flat at a minimum 1 bar static pressure and 9 litres per minute flow.
- He further seeks an apology from the company and compensation of £10,000 to reflect the fact that – due to the company’s conduct - his family life has been turned “*to absolute misery*” for a “*very prolonged period*” of time.

The company’s response is that:

- The allegations regarding racist and inhumane conduct are unsubstantiated and in any event, are strenuously denied.
- The claims that the company has acted unfairly - in exploiting its superiority of expertise, access to information and financial means – are also contested.
- The company has repeatedly advised the customer that the issue he suffers from (i.e. low water pressure) is a private matter for which the company bears no responsibility.
- When it comes to questions of pressure delivery, the company is only responsible for water supply to the Outside Stop Valve (“OSV”) of a property. At the OSV, a supply pipe is connected that runs into the building and into the Flat. The supply pipe is owned by the property owner and is where the water company’s responsibility ends. All maintenance and internal plumbing fixtures and fittings are the responsibility of the homeowner/occupier.
- The company’s technicians attended on site on several occasions, fitting a data logger to measure the pressure on the customer’s supply. Each time, it was found that the pressure at the OSV outside the Flat met - or exceeded - minimum regulated requirements.
- No reports of low water pressure have been received from any other occupiers within the building. Having checked its records, the company has had bill-payers for all of the flats within the building without gaps. (The company submits this means it can reliably infer that all the flats are constantly occupied.)
- The company cannot directly manage or control the pressure of water to the Flat specifically. This is because there is no Pressure Reducing Valve (“PRV”) connected to customer’s water supply. There is, however, a PRV in the District Metering Area (“DMA”) of the Flat.
- A DMA is an area of water supply that is metered for the purposes of monitoring wastage (leakage) on the company’s network. Effectively, the company ‘boxes off’ an area that is proved tight and controlled by a District Meter, which shows accurate readings for flow and pressure. All other valves (on the edge of the DMA) are closed so there is no water leaving/coming into this DMA without being accounted for. Subject to Ofwat’s requirements, it is possible for the company to reduce or increase pressures inside any DMA.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- In 2005, the company changed the DMA in which the Flat is located. When it did this, it fitted a PRV. Since fitting the PRV at the entry point to this new DMA, the company has never lowered the pressure further. In fact, during the course of the customer's complaint, the company has *increased* the pressure to the new DMA on two occasions.
- The company seizes on the customer's statement that his low pressure issues began in 2008 and notes that this was three years after the change in the DMA and the fitting of the PRV. It was also seven years prior to the customer's first complaint to the company (2012) about the problem.
- The company also notes that the customer has a combination boiler in the Flat (and that the low pressure experienced means his boiler is unable to produce hot water.) The company points out that a combination boiler requires a minimum pressure standard whereas a 'system' boiler - which uses water tanks – is not so pressure dependent. The company submits that:
 - due to the nature of how a combination boiler works, in low-pressure situations, if other appliances/taps are used at the same time, pressure will likely reduce further; and
 - ultimately, it was the customer's decision to alter the plumbing in his home in this way; and
 - it is the occupier/owner of a property's responsibility to buy appliances that suit the plumbing arrangements around their home.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

How was this decision reached?

1. I should remind the parties that adjudication is an evidence-based process where the burden of proof rests on the claimant, in this case the customer, to prove his case on the balance of probability.
2. I note that the substance of the allegations – with three distinct ‘points’ of complaint – are set out in the customer’s email dated 3 December 2017, timed at 14:26 (“the Email”). I should also acknowledge that I have had the benefit of reading the customer’s 4-page comments on the company’s defence (“the Comments”).

Aspects of the customer’s complaint that **cannot** proceed to adjudication

3. Having carefully reviewed the detail of the Email and the Comments, it seems to me that parts of the claim fall outside the scope of the Water Redress Scheme (“Scheme”) and/or a more appropriate forum exists for resolving the disputes that the customer is raising. In my opinion, having regard to Scheme Rule 6.2.4, it would not be proper for me to adjudicate - or make findings - on any of the following strands of the customer’s claim:
 - a. the allegations of racism, racial discrimination, racist conduct or institutional racism: section 114 of the Equality Act 2010 provides that (only) the county court has jurisdiction to determine a claim in that category; or
 - b. the allegations of degrading and inhumane conduct: this Scheme is not an appropriate forum for resolving a dispute of that nature in my opinion and/or it is not a dispute that can be reconciled with the list in Scheme Rule 3.3; or
 - c. the allegations around the company’s refusal to give access to technical or historical information or documentation: as I see it, the appropriate forum for dealing with a dispute of that sort would be an application to court - under Part 31 of the Civil Procedure Rules - for a disclosure order; or
 - d. the alleged course of acting unfairly through the advantage of the “*three asymmetries*”, as referred to in section 5 of the Email: in my opinion, this falls outside the scope of the Scheme. For the purpose of Scheme Rule 3.3, this strand cannot properly be regarded as constituting a dispute about “*water supply services*”, for example; or
 - e. allegations about the company acting ‘dishonestly’ or about its being ‘a dishonest organisation’: in my opinion, Scheme Rule 3.5 applies (because, as I see it, this strand amounts to the raising of a dispute concerning fraudulent activity); or

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- f. allegations about the company's status as a flag-bearer of 'Grenfell Tower state': in my opinion, this falls outside the scope of the Scheme.

'Point 3' of the customer's complaint: the company's management of water supply to the Flat

4. For the most part, I consider that the dispute as set out in paragraphs 6.1 to 6.15 of the Email does fall within the scope of the Scheme. The customer refers to a timeline between the year 2000 and the present day ("the Relevant Period"). He explains that – when he moved into the Flat in 2000: “ ... *the pressure and flow of water was very high. It was great. It could easily serve [the] kitchen and the two bathrooms at the same time ...*” However, the customer goes on to submit that “... *by spring and summer 2017, [the company] reduced water pressure and flow to such [a] low level that we lost permanently running hot water, and sometimes there was no water at all ...*” This is the core aspect of the claim, therefore, on which my adjudication proceeds.

The allegation that – over the Relevant Period - the company deliberately reduced the pressure and flow of water supply to the Flat

5. It does not appear to be disputed that – over the Relevant Period and as a matter of fact – there has been a significant drop of pressure and flow of water to the Flat (“the Drop”). The customer argues that the company is squarely responsible for causing the Drop. On this, I have taken on board the points that the customer makes at paragraph 6.1 of the Email. He argues, I see, that it is “*immaterial*” whether the Drop came about as a result of ‘active’ or ‘passive’ management measures by the company.
6. I have closely examined the response given by the company to this allegation. In terms of any (‘active’) management measures that might conceivably have led to the Drop, I accept both the principle and factual basis of the following submissions made by the company:
- a. that, on any question of pressure delivery, the limit of the company's responsibility for water supply is (only) to the OSV of a property. The supply pipe (i.e. that runs into the Flat, in this case) is owned by the property owner and that this “... *is where the water company's responsibility ends ...*”; and
 - b. that the company is/was unable to affect or control the pressure of water to the Flat specifically (because no PRV was connected to customer's water supply); but
 - c. that the company can manage water pressure by DMA for the reasons explained in its defence; and

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

d. that, in 2005, the company changed the DMA in which the Flat is located. When it did this, it fitted a PRV.

7. Against this specific backdrop (and in light of the explanation of where the limits of its responsibilities lie), the company asserts that it “*never*” lowered the pressure since the PRV was fitted in 2005. I accept the company’s assertion in this respect. There is no substantive evidence that I can see to suggest that, since 2005 at least, the company applied any active management measures that could conceivably have caused the Drop. As to the company ‘deliberately’ reducing the pressure and flow of water supply to the Flat, therefore, I do not consider that the customer has made out his case. Accordingly, I am unable to find that the Drop has come about because of any (negligent) act or omission on the company’s part or because the company has failed in any obligation that it was expected to fulfill in this instance.

Actual cause or explanation as to why the Drop has come about

8. I note the implication of the company’s submissions about the “*ageing plumbing system*” and the customer’s choice to “*alter the plumbing*” in order to use a combination boiler in the Flat. The company’s submissions in this vein seem rather speculative to me. I note the customer’s forthright replies, in the Comments, on this topic.

9. On the balance of probability and working from the presented materials, I am satisfied that the Drop has been caused by factors that lie outside of the company’s realm of responsibility. Beyond this, I do not consider it necessary or helpful for me to make any findings as to the actual forensic cause of the Drop. (I do not consider that there is sufficient evidence available, anyway, to enable me to reach any reliable conclusions).

Whether the company has met its regulated obligations with regard to supplying water to the Flat (at the required pressure)

10. I have carefully read the customer’s submissions in paragraphs 6.10 and 6.11 of the Email (and in paragraph 4 of the Comments). I note the points made by the customer about ‘passive’ reduction in pressure. The company’s response is detailed on pages 5 and 6 of its defence. I note, in particular, that the company points to the qualification on its basic duty, which is applied by reason of section 65(2) of the Water Industry Act 1991. The company argues that it is not subject to any duty “ ... *to provide water at a height greater than that to which it will flow by gravitation through its water mains from the service reservoir or tank from which the supply is*

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

taken ...” As a statement on the extent of the company’s obligations in this context, I accept this position as correct.

11. The company goes on to submit that the effect of section 65 of the 1991 Act and of Condition J of the company’s Licence (granted by Ofwat) is that the company’s domestic water supply duty “... *is to provide water in its mains at the OSV at a minimum of 10 metres head. This duty is enforceable only by Ofwat and not by individual customers, under section 18 [of the 1991 Act]* ...” Again, I accept the correctness of the position contended for by the company in this respect. I further accept the implication that the company makes – on page 5 of its defence - regarding regulation 10 of the Water Supply and Sewerage Services (Customer Services Standards)(Amendment) Regulations 2008.

12. Against this relevant statutory and regulatory framework, I have examined the evidence items put forward by the company, specifically:

a. Evidence item 4 – the company’s letter to Ofwat dated 20 November 2017; I have been assisted by looking at the extract from the Ofwat letter, which is highlighted by the company in its defence, i.e. “... *Under section 65 of the Water Industry Act 1991, we have a duty to supply at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the water undertaker’s area. However, this is subject to the general rule that we do not have to provide a supply of water at a height greater than that to which it will flow by gravitation through our water mains from the service reservoir or tank from which that supply is taken. This is referred to as the ‘Gravity Standard’. The source of supply which feeds ■■■ flat has been identified as ■■■■ WTW [Water Treatment Works]. This WTW is at ground level approximately 3.0m above sea level and water is supplied to customers via the ■■■ Ring Main. The ground level at Mr ■■■■ flat is 5.0m above sea level, using a laser level the distance to Mr ■■■’s kitchen tap was found to be 19.7m above ground level, therefore the absolute height is 24.7m above ordnance datum (“AOD”), i.e. 21.7m above ■■■ WTW. We have therefore, met our section 65 duty in full in this case ...*”; and

b. Evidence items 5, 6, 7 and 8 – being graphs of data retrieved from pressure loggers.“

13. I do find Evidence items 4, 5, 6, 7 and 8 to be persuasive and substantiating of the position that the company adopts in its defence. On the strength of these materials, I am satisfied (and find) that:

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- a. at all material times, the pressure being delivered to the OSV of the Flat has met or exceeded the minimum (regulatory and/or statutory) requirements; and
- b. therefore, as I see it, the company has provided its services in this case to the standard to be reasonably expected by the average person.

Failure to warn in advance that the Drop would be happening

14. I appreciate that the following is a key element of the customer's submissions: " ... After 2000 the pressure and flow of water was gradually, slowly going down. There was no advance notice of such reduction coming. It's been happening without any consultation or warning ..." However, in view of my findings above (i.e. that the occurrence of the Drop was not attributable to any acts or omissions by the company), I do not consider that the company was under any duty to give advance warning to the customer in these circumstances.
15. This part of the customer's complaint is unable to succeed, therefore.

Conclusion

16. For all the reasons set out above, I cannot find any failing on the part of the company in the provision of its services to the customer to the standard to be reasonably expected by the average person. It follows that the customer has not made out his case about the company's inadequate delivery of pressure and flow of water supply to the Flat. His complaint in this regard – together with his request for an apology and compensation – is unable, therefore, to succeed.

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 12 February 2018 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.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.
-



Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.