

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 1675

Date of Decision: 2 March 2020

Complaint

The customer's case is that she has been putting up with an inadequate water supply for over 27 years at her home. She claims that the company has not properly addressed her issues and that she has suffered stress and inconvenience due to the failings of the company. She seeks a payment of £10,000 and a direction that the company provide her with an adequate water supply and a sustainable solution.

Defence

The company states that it has complied with its duties under legislation and that it has tried to resolve the customer's problem with water pressure. It states that the issues faced by the customer, whilst accepted as true, are not due to the failing of the company in its actions in any way.

No offer of settlement is made

Findings

The evidence does not indicate that the company has acted in accordance with its duties under legislation and guidance. In particular, that it is obliged to supply water sufficient for domestic usage and provide Guaranteed Service Scheme payments for failure to affect such a supply.

Outcome

The company needs to take the following further action: Pay compensation of £1,500 to the customer.

The customer must reply by 30 March 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

Adjudication Reference: WAT 1675

Date of Decision: 2 March 2020

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- She has been experiencing poor water pressure at [] ("the Property").
- This problem has been going on for 37 years and the company have been apologising for 27 years but the issue has not been remedied.
- She has waited long enough for a resolution and that every time the company has tried to deliver a resolution previously it has failed.
- She has been receiving letters from the company reassuring her that things will be resolved since 2010.
- She has had to remove showers from the guest rooms as they are unusable due to the poor pressure and this caused an unpleasant smell.
- She has had two Christmases spoiled and numerous family dinners spoiled.
- She can no longer invite guests to the house for fear that the facilities such as the toilet will not be operational due to the lack of water.
- On some occasions there is no water at all for days.
- Intermittent low water pressure is a regular occurrence especially at peak times.
- She and her husband are now elderly and find this ongoing problem intolerable.
- There is to be more accommodation linked to the water system which the customer fears will make matters even worse.
- The ongoing works over the years have caused inconvenience and emotional strain.
- She has only ever had one visit from a customer representative to talk to her.

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- A leak that was reported in October 2018 to that representative was only actioned a year later.
- She states that she does not want to avail of the temporary installation of an Arlington Tank and pump due to anti-social behaviour in the area.
- She states that she is seeking £10,000 in compensation for the years of inconvenience suffered and a direction that the company provide her with an adequate water supply and a sustainable solution.

The company's response is that:

- It accepts that there is a longstanding problem at the Property.
- It states that it has worked with the customer over the last 27 years to try and work the problem out.
- It states that it is compliant with the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 ("the Regulations) and Water Industry Act 1991 ("the Act").
- It states it has made goodwill payments ("GSS") where it has not met the required standard of service.
- It states that it has taken steps and undertaken work to resolve the low-pressure issues in the area of the Property.
- It states that it cannot guarantee that the pressure will never fall below a certain level and that it cannot guarantee to return the service to the level that it was 37 years ago.
- It does not accept that the sum of £10,000 is substantiated in this claim. It states that the stress and inconvenience caused was due to the issue and not the company's actions.
- The particular problem with the Property is its location on the top of a hill and the fact that it is last in the supply network line.
- It states that when there is water pressure reduction due to ongoing works the customer is first to lose pressure and last to regain it.
- It states that the risk to other properties would be too high if it increased the pressure.
- It states that it has already increased pressure to 1.5 bar and that loggers show a stable 2 to 2.2 bar pressure from 2018 when a new pumping station was installed.
- It states that the customer is on the special needs register and that she has been offered an Arlington Tank.
- It disputes the compensation figure sought as unsubstantiated.

In reply the customer advised the following:

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- Disputes that the problems have been resolved and states that she lost water again on 1 February 2020.
- States that she has only had one Customer Representatives visit.
- Disputes the defence in as much as it states that the service has been adequate.
- States that she has not been receiving GSS payments or any compensation payments over the 27 years.

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.

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. Please note that 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?

1. In relation to this matter I find it necessary to set out the statutory obligations of the company in relation to its delivery of a domestic water supply. The Act states: ***"The domestic supply duty.(1)The domestic supply duty of a water undertaker in relation to any premises is a duty, until there is an interruption of that duty—(a) to provide to those premises such a supply of water as (so far as those premises are concerned) is sufficient for domestic purposes; and (b) to maintain the connection between the undertaker's water main and the service pipe by which that supply is provided to those premises."*** Further, in relation to this, the Regulations state:

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“Pressure standard 10 (1) A water undertaker must maintain, in a communication pipe serving premises supplied with water, a minimum water pressure of seven metres static head. (2) If in a period of 28 days the pressure in the communication pipe serving a customer’s premises falls below seven metres static head on two occasions each lasting one hour or longer, the undertaker must, except in the circumstances described in paragraph (3), pay the customer £25.”

2. The customer states that she has been receiving an inadequate water pressure, and on occasion a complete loss of water, on and off for 27 years. The company has not directly challenged this and in its correspondence dated 23rd September 2019 to the customer the company states *“Regrettably, I understand that you’ve been experiencing intermittent and lower than normal pressure to your home for over 27 years.”*
3. I further note that the Consumer Council for Water (“CCW”) has stated in its letter to the customer dated the 30th September 2019: *“I now have a copy of the response from Thames Water and I can see that they have: 1) Confirmed that the pressure at the property is too low but this is due to the position of the property- at the top of the hill.”*
4. On the evidence presented I am prepared to accept that this problem exists and has been ongoing for 27 years.
5. The company states that it has complied with its legislative obligations and cites the Act and the Regulations that I have laid out in Paragraph 1 above. The company states in its defence that the customer has received GSS payments. The customer has stated in reply that she has not received any compensation payments over the last 27 years.
6. I have looked carefully at the company’s defence and note that there are no particulars given in relation to the GSS payments made. It states: *“Where we have failed to meet the service standards, we have made the compensation payments to the affected customers.”* And, *“We’ve paid all relevant Guaranteed Standard Scheme payments as appropriate.”* I do not find that the evidence tendered supports the company’s assertion that GSS payments have been made to the customer commensurate with the loss of service experienced as is required by the Regulations. I find that this is a failing in service on the part of the company.

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7. The company states that it has carried out works in relation to the pressure issues in the customer's area. These works are not disputed, and it is not contested that the company has carried out numerous works over the last 27 years. This includes the installation of a new pump in 2018. I note here that the Regulations exempt the company from liability for GSS payments if it is undertaking work on the system. I consider that it is reasonable to assume, without specifics being provided to me of the correlation of the water loss to the customer and the works undertaken by the company that at least some of the loss of service to the customer was due to the company carrying out works. However, I find, on the case made by the customer of prolonged and frequent loss of service over the years that it would not be reasonable to accept that all the loss of service was due to works being undertaken to fix the problem with water pressure in the area. I note also that the company has not made this defence in any case.
8. I consider it important to state that the list of repairs carried out by the company in the customer's area is lengthy. I do not propose to recount everything here as it is not disputed. I take into account that this is indicative of the difficult task facing the company in relation to supporting a complex and growing customer base.
9. The legislation cited above requires the company to provide a supply that is: *"sufficient for domestic purposes."* Given the undisputed history of the problems faced by the customer, which include basic domestic functions such as the toilet flush not working, I am persuaded that the supply provided to the customer was frequently insufficient for domestic purposes over a number of years.
10. The company has stated that the reason for the problems faced by the customer was the fact that the Property is situated at the top of a hill and is last in the supply line. The company has not cited any aspect of legislation or guidance that supports its assertion that this would be an exemption to its duty under the Act and I have not noted any exemption myself in looking at the relevant legislation and guidance, apart from the aforementioned exception for works being carried out by the company.
11. The company states in its defence: "[] states we must provide her with adequate water pressure to the property at all times. Regrettably whilst we would like to be able to say we could provide this, it is impossible to do so. If there was an issue with the network such as a leak or burst water main, a failure in the pumping station, or something outside of our control, []'s water supply and pressure may be affected. We could never guarantee this for any customer in

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our area and any previous issues appear to have been resolved from all the actions we've taken." I note that this statement is correct in as much as it would be unreasonable for the company to guarantee an adequate supply *at all times* given the natural occurrence of issues with the system. However, I also consider that it is important to note that the company is obliged, outside the times when it is dealing with works on the system, to provide a sufficient supply and that this obligation is subject to the GSS where the company fails to supply an adequate service.

12. Regarding customer service the company has stated that the customer received visits from company representatives. The company states: *"We've case managed these incidents by keeping in touch with [] and our Customer Representatives, and Network Engineers have visited her at home over the years."* The customer has stated that she only received one Customer Representative visit from [] and a colleague in 2018. I further note from the customer's application and reply that she states that she was not kept informed on a regular basis by the company and that the person dealing with her case changed on a number of occasions. She has also provided in evidence a list of people that she contacted herself within the company regarding her problem. I appreciate that a large company with many customers has limitations to its ability to keep all customers informed. However, I note that the customer is on the Special Needs register and that her issue was one which had been going on for a very long time. In my opinion, I do not consider that one Customer Representative visit was an adequate support to the customer in the circumstances. I find that this aspect of the company's service was not adequate.

13. I note from a letter dated 4 October to the customer from the company that it is accepted that the customer made reference to a possible leak when she was speaking to []. It is accepted in this letter that the company did not investigate this report until a year later when a leak was in fact found and repaired on 25 September 2019. I find that in this instance the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.

14. The customer has stated that she was not confident that work which was to be completed in December 2019 would resolve the issues. The company has stated in its defence that it is unaware of what the customer refers to here. It states: *"With regards to the comment in the WATRS Application that December 2019 is too long to wait, I am unsure what exactly this relates to."*

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15. In the CCW documents supplied to me there is a letter dated 23rd September 2019 from the company to the customer. In this letter it is stated: *“We are undertaking work to replace pipes in your area and this work is designed to further improve the flow of water and stabilise pressures. This work is ongoing and will be completed by December 2019.”*
16. The final letter from the CCW dated the 30th September 2019 to the customer also states: *“I now have a copy of the response from [] and I can see that they have 2) confirmed that it does have planned works which will resolve the issue.”*
17. I note that the customer was not convinced that the company would be able to carry out plans that would result in a solution and that the CCW advised her to wait until the work was finished in December 2019. I note that, from the reply sent by the customer, it appears that she has had issues as recently as 1 February 2020 thus postdating any work carried out in December 2019, if any such work was undertaken which is not clear on the papers.
18. I consider that it is reasonable to accept that the customer was told that there were works planned and that this would result in a solution to her problem with her supply. I find that the defence in this instance is indicative that there is a lack of clarity with regard to the ongoing supply situation at the Property. It is also indicative that the customer’s expectations were raised.
19. The company states that it offered the customer an Arlington Tank as a temporary resolution. The customer has stated that she does not want to avail of this offer due to the anti-social activity in her area. I find that, notwithstanding the customer’s concerns, the offer of an Arlington Tank was made as a gesture of goodwill and is something that a service provider may be expected to offer in the circumstances.
20. I note that the customer has emphasised her age and the age of her husband. Further, that they are disabled and struggling to cope with a situation that they now find unbearable. I accept the customer’s assertion of the inconvenience caused by the repeated failures of supply, given that what she describes is in keeping with what one would expect to be the result of an unstable water supply over a number of years. I note that the company, to its credit, has not diminished the effect of the problem on the customer and her family and has accepted that it has caused her stress and inconvenience. I do also accept that the company was sincere in its letters wherein apologies were offered by customer representatives. The company does however

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dispute that this has been caused by its own actions and states that the issue itself has been the cause of the strain on the customer.

21. I have restricted my decision to the most important elements of this very lengthy case. Both parties can be assured that I have fully considered all the papers in making my decision.
22. On balance, I find that the company failed to provide its services to the customer to the standard to be reasonably expected by the average person and that this has caused the customer stress and inconvenience. It follows that this application succeeds and I shall go on to discuss an appropriate remedy.
23. Remedy: The customer is seeking £10,000 in compensation for the years of inconvenience suffered and a direction that the company provides her with an adequate water supply and a sustainable solution.
24. The customer has claimed £10,000. For clarity this is the maximum amount available for provable financial loss and damages. I do not find that I have evidence before me of particulars of loss or damage amounting to this figure. On the evidence presented I am prepared to make an award for stress and inconvenience. I find that the correct analysis of the evidence is to estimate a global sum of compensation taking into account that the information before me does not indicate that the customer has ever received GSS payments or any other compensation for the intermittent loss of service over 27 years. Given the age of the customer, her particular personal circumstances and the undisputed disruption that the faulty water supply has had on her and her family life, I am prepared to award the sum of £1,500 for stress and inconvenience to account for all the aforementioned. I direct that the company pay the customer £1,500 for stress and inconvenience.
25. The customer also requests a direction that the company provides her with an adequate water supply and a sustainable solution. She seeks a direction that the supply is returned to the service that she was receiving 37 years ago. I find that there is no way of making this particular direction that would bring closure to this case. On the facts presented it is not possible to know whether or not a sustainable solution is available. Any direction made on the basis of unknown facts would leave the matter open and not bring the final solution necessary for the parties. This does not alleviate the company of its statutory duty to provide a sufficient supply of water to the

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customer. Consequently, I do not make this direction. I find that the fact that I have awarded a substantial financial remedy is a fair reflection of the whole case in the circumstances.

Outcome

The company needs to take the following further action: Pay compensation of £1,500 to the customer.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 30 March 2020 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.



J J Higgins (Barrister, ACI Arb)

Adjudicator

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