

WATRS

Water Redress Scheme

ADJUDICATOR'S FINAL DECISION SUMMARY

Adjudication Reference: WAT X213

Date of Final Decision: 21 November 2022

Party Details

Customer:

Company:

Complaint

The customer complains that the company indicated that it would make a payment of £150.00 to customers suffering a loss of water for more than 24 hours following a catastrophic burst to a water main that affected thousands of customers in the REDACTED area. He says that he received no restoration of his supply for 3 days but the company has said that he had a loss of supply for less than 12 hours. He wants the company to consider his complaint and give appropriate compensation of £150.00.

Response

The company says that the customer is not eligible for the promised payment of £150.00 but only for £30.00 because data monitoring shows that supply to his property was restored within 12 hours. The company has no legal obligation to make a payment to the customer nor is this required under the Guaranteed Service Standards or the company's own Code. The customer has been paid the amount for which he is eligible.

Findings

I find that in its communications with the customer, the company promised to make a payment of £150.00 if the customer had an interrupted supply or it was "off" for more than 24 hours. The company did not make clear that the service would not be treated as "off" or interrupted if a service of 0.3 bar was restored, even though water of this pressure did not meet normal legal requirements. This led the customer to believe that he was eligible to receive £150.00 when, under the company's criteria, he was not. The position was only clearly explained to the customer as a result of his engagement in the WATRS process. The company did not supply its services to the customer to the expected standard in relation to the transparency of the compensation arrangements following the burst. It is fair and reasonable that the company shall apologise to the customer and compensate him for distress and inconvenience within Tier 1 of the WATRS Guide to Compensation for Inconvenience and Distress.

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**Preliminary
Outcome**

The company needs to:

1. Apologise to the customer for:
 - a. Omitting to explain to the customer the criteria by which “interruption” of the service and the service being “off” were to be assessed so that he was led to believe that he qualified for a £150.00 payment when under the company’s approach he did not; and
 - b. Omitting to explain clearly why he did not qualify for the £150.00 payment until it provided a response within the WATRS process.
2. Pay £50.00 to the customer

ADJUDICATOR’S FINAL DECISION

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Case Outline

The customer’s complaint is that:

- The customer experienced a loss of water commencing during the weekend of 16 July 2022.
- The background to this is that over that weekend, he understands that approximately 600 customers of the company were impacted by a large mains burst in the REDACTED area.
- Many customers reported their loss of water supply directly to the company and it is believed that when the company repaired the burst and supplies of water were restored, some customers continued to receive an intermittent supply of water for many hours.
- The company has set up a scheme for compensation that enhances its obligations under the Guaranteed Service Standards Scheme. Compensation has been promised as follows:
 - Where supplies were not restored for more than 24 hours, compensation of £150.00.
 - Where supplies were restored between 12 – 24 hours after the burst, compensation of £45.00.
 - Where supplies were restored within 12 hours, compensation of £30.00.
- The customer’s complaint is that he lost water for more than three days, as have certain other of the company’s customers. He said he contacted the company by telephone but then

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received a letter and compensation indicating that the period for which he had received no water was less than 24 hours.

- He says that it was not made clear that he needed to make a complaint in writing, and he wants the company to consider his complaint and give appropriate compensation of £150.00.

The company's response is that:

- The company has a legal obligation under the Water Industry Act 1991 to supply water and sewerage services to every property in its area.
- The company says that in the event of an emergency, or unplanned interruptions to the water supply, this will usually be restored within 12 hours. This is explained to customers in the company's "Core Customer Information". If the company fails to restore the water supply within 12 hours, a customer becomes entitled to a credit of £30.00 and a further £30.00 for every 12 hours that they remain without water. The company must automatically make a payment under the Guaranteed Standards of Service Scheme (GSS) if the supply is not restored within 48 hours.
- Additionally, the Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 require the company to supply water to its customers at a water pressure of 7 metres static head (0.7 bar). The company's Guaranteed Service Promise (the Code) states:
"If your water pressure falls substantially below normal, please let us know. We will first check whether this is due to an operational fault, for example a burst main. If not, we will carry out further checks using pressure loggers. If we identify a pressure level in the communication pipe below seven metres static head for at least an hour on two separate occasions within a 28-day period, we will give you a £25 payment. Claims for low pressure must be made in writing within three months of the last of the two occasions and can only be made once in a 12-month period."
- On 16 July 2022, a trunk main failed in the customer's area, which led to a major loss of water supply. The incident caused approximately 4000 customers to be off water for less than 12 hours, with a further 3000 customers off water for more than 12 hours.
- The Company used a range of alternative pipes to transfer water into the affected system from adjoining systems and deployed its tanker fleet to inject directly into the distribution systems at critical locations to increase water pressures.
- Even with the temporary network configuration and tanker injections, the demand on the network from the company's customers was greater than the amount of water the company could supply. Consequently, because the demand fluctuated, so did the pressure the

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customers experienced. This was exaggerated by the extremely hot weather during the event. The repair was fully completed on 18 July 2022.

- On 18 July 2022, the company wrote to all the customers who had experienced a loss of supply stating that it would credit its household customers with £30.00 for every 12 hours their supply was interrupted; and for those households who were off supply for more than 24 hours the company would credit their customers' account with £150.00.
- In the customer's case, the company's monitors show that his water supply was not off for a period exceeding 12 hours. The company points out that the industry definition of being on water does not mean that a customer will be receiving full pressure
- The company has supplied its monitoring data for the customer's property. It says that there were periods where the pressure supplied to the customer's property returned above the stipulated amount, which is 3mh. This, however, does not always reflect in the customer's experience and every property will be different based on their position, length of service pipe and internal plumbing. Any increase above 3mh for one hour resets the ODI clock. This means that whilst customers will have experienced pressure issues across the multi day duration, procedures mean it looks at the longest continuous duration where pressure remains below 3mhd.
- On 28 July 2022, the Company credited the Customer's account with £30.00.
- The company says that under GSS and/or the Code, clause 4 "Interruptions to Supply", the customer would not be entitled to any payment.
- The company points out that the same correspondence has been sent to all its affected customers and no confusion has arisen. It says that the company has apologised for the interruption to the water supply and has reviewed its payment of £30.00 to the customer and believes that the amount paid is fair in the circumstances.

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.

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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. 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.

Both parties have commented in the Preliminary Decision in this case and I have taken the parties' comments into account in arriving at my Final Decision.

How was this decision reached?

1. I am mindful that the background to this dispute is that a company's obligations to its customers are set out by law, the GSS and the Code, all of which combine to explain to customers what they may be entitled to if certain circumstances apply.
2. Additionally, providers of water services may also make promises to all of its customers or to a specified group of its customers (for example, those whose water supply is affected by a mains burst) that it will provide further services or benefits if particular situations arise. I find that where such promises have been made, an average customer would reasonably expect the company to honour these in respect of those customers who qualify for performance of the promises.
3. It is this situation which gives rise to this dispute. The company has made promises to provide compensation that exceeds that required by law, the GSS and the Code, to customers in the REDACTED area affected by the catastrophic failure of the water main on 16 July 2022 over a weekend of very hot weather.
4. The customer says that he qualified for the maximum payment of £150.00 that was promised by the company. This was promised to those customers who experienced interruptions to their water supply that have persisted for more than 24 hours. He says that this was how he was affected. The company says, however, that he is ineligible for a payment of £150.00 but only qualifies for a payment of £30.00 as a customer whose service was interrupted for less than 12 hours.

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5. For the reasons I explain below, I find that the basis on which the company found that the customer did not qualify for the maximum payment were not transparent until the customer's engagement in this process.

6. The history of this dispute is as follows:

- a. The customer relies on the statement made by the company in its letter to him of 18 July 2022 and he says as well that he had reported the loss of service to the company by telephone. The company wrote to its customers:

We're very sorry for the disruption with caused and would like to thank you for your patience. By way of apology, will be crediting your account with £30 for every 12 hours that your supply was interrupted.

For those who were off for more than 24 hours, we'll be crediting your account with compensation of £150 to recognise the significant disruption this has caused during this particularly hot weather. This is equivalent to about six months of water charges for most households. We'll send a separate letter explaining your compensation amount once we've confirmed how much you're eligible for.

- b. I find about this letter that its impact was unclear. It refers to the supply being "interrupted" and "off" without explaining to the customer that the company had ascribed to these words a specific meaning that did not include periods of service with substandard water pressure or an intermittent supply. On the other hand, I also note that the company made clear to the customer that it would be the company and not the customer that would be deciding on the question of eligibility in its second letter.
- c. By the time that the second incident letter was sent to the customer, I note that it had been realised by the company that there were some problems with its first communication. CCWater had become involved, and the second letter appears to have been sent by CCWater. This letter acknowledged that some customers continued to receive an intermittent supply and that this had led to debate about whether the GSS should apply and at what level. I find, however, that the letter did not address what the significance of intermittent supply or low pressure might be for the promises made in the letter of 18 July 2022.

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- d. The second incident letter was also that in which the customer's entitlement was explained. It was not, however, explained by reference to any information that the customer would have been likely to have understood. The letter stated:

... the company has told CCW that its data monitors show that supply to your property was restored within 12 hours. Unfortunately, this means that REDACTED will not be making any additional compensation payment to you on this occasion despite CCW's involvement.

- e. I find that it is improbable, however, that the customer would have understood what the company's data monitors were or what they may have measured and I find therefore, that in a context where the customer believed that he was eligible for a payment of £150.00 because he had not received normal service during a period of nearly three days, this letter did not explain why the customer did not qualify for the maximum amount. This is especially the case as the reference to the supply having been "restored" would reasonably have been understood by the customer as a return to compliance with the statutory minimum level of water pressure. The customer complained about this letter by telephone on 5 and 8 August 2022.

- f. The company has supplied in this adjudication a copy of a graph that it says shows information obtained from the data monitors. It is unclear precisely what information I should draw from this because no value has been ascribed to the y-axis, so that it is impossible to interpret the information supplied. However, there is a footnote which states:

There were periods when the pressure supplied to the property returned above the stipulated amount, which is 3mh. This, however, does not always reflect the customer's experience and every property will be different based on their position, length of service pipe and internal plumbing.

Any increase above 3mh for one hour resets the ODI clock. This means that whilst customers will have experienced pressure issues across the multi day duration, procedures mean we look at the longest continuous duration where pressure remains below 3mhd."

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I interpret this to mean that even if the water pressure of 3mh were to be present, the customer might experience pressure that was very significantly less than normal – possibly even to the extent that his taps would trickle and his toilet cistern would take a very long time to refill. Moreover, even if the customer were to receive pressure of 3mh, I understand that to reflect 0.3 bar, which is less than half of the statutory minimum. I find that an average customer would not reasonably expect that to be treated as a restoration of service and would therefore be likely to consider that this was also a period of interruption.

- g. I find that the customer's actual comments on the company's response are therefore predictable. The customer stated:

utter nonsense; on the basis you have provided 'data' from a meter indicating the very slightest volumes this is supposed to constitute some kind of return to a viable and 'normal' service!

7. Against the above background, I find that the company did not supply its services to the customer to the standard that would reasonably be expected. In summary this is because:

- a. I find that the company had indicated to the customer that a payment of £150.00 might have been made to him for an interruption to his supply of more than 24 hours but it did not explain that he would be ineligible for this if he received a partial service for more than one hour so that the clock was reset. This meant that the company misled the customer as to the level of compensation that he might receive; and
- b. The basis for his ineligibility was not made clear until his application to WATRS and it is clear from his application to WATRS that his concern was that he had not made his complaint in writing, rather than that the company thought that he had received a water supply because he had benefitted from water supply at low level.

8. Although I take into account that the company says that the customer was sent the same correspondence as was sent to 'x thousand' other customers and no such confusion arose with them, I am only concerned with the customer in this case. I find that the customer was led to believe that he had an entitlement to compensation which has not been honoured and is entitled to some redress.

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9. Although the customer has not specifically asked for this, I find that it is fair and reasonable that the company should apologise to the customer for the matters referred to in paragraph 7 above.
10. As for the question of compensation, I have considered whether I should direct that the customer should receive compensation of £150.00. On balance, I have decided that I should not approach the question of compensation as though the customer had qualified under the criteria that the company has applied to all its customers as a matter of policy. I have no jurisdiction to challenge the fairness of the company's policies or commercial practices and I find I should not approach the question of redress in a way which undermines the application of these. This is particularly so because there is no evidence that the company was required under any legal rule, the GSS or the Code to make any payment to the customer.
11. I find, instead that it is fair and reasonable to treat the customer as a non-qualifying individual who has not been provided with clear explanations as to his entitlement and not been given clear reasons, such that he has been put to inconvenience and distress including the need to contact the company on a number of occasions and sustain the disappointment of not having received a sum of money that he believed had been promised to him. This is consistent with my findings above. Having regard to WATRS Guide to Compensation for Inconvenience and Distress, I find that this is a measure of compensation that falls within Tier 1, and I find that a fair and reasonable sum by way of compensation is £50.00.

Outcome

The company needs to:

1. Apologise to the customer for:
 - a. Omitting to explain to the customer the criteria by which "interruption" of the service and the service being "off" were to be assessed so that he was led to believe that he qualified for a £150.00 payment when under the company's approach he did not; and
 - b. Omitting to explain clearly why he did not qualify for the £150.00 payment until it provided a response within the WATRS process.
2. Pay £50.00 to the customer.

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- This adjudication decision is final and cannot be appealed or amended.
 - 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.
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Claire Andrews

Claire Andrews, Barrister, FCI Arb.

Adjudicator

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