

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT 0982

Date of Decision: 11<sup>th</sup> April 2019

#### Complaint

The customer advised that from January 2018 to February 2019 the water supply to her fourth floor flat was interrupted by low water pressure and she often had no water at all during peak times. As a result, she frequently had no supply of drinking water, could not wash clothes, prepare food or shower, and she had to buy bottled water to use during these times. The company fitted a pressure logger to the outside stop valve and concluded that the water pressure to the building was above the statutory minimum requirement for a two storey house and that the problem was caused by inadequate internal pipework, for which it is not responsible. Since August 2018 the customer has rented out her property at less than market value due to the problem with the water supply. In February 2019 the company opened a valve that had been closed in 2015 and the problem was remedied immediately. The customer claims £2,500.00 in compensation for the distress and inconvenience she endured by having an interrupted water supply and for the company's failure to remedy the issue within a reasonable timeframe. The customer also claims £300.00 per month from August 2018 to compensate her for reduced rental income, £420.00 as refund of water costs, an unspecified amount for bottled water and a formal apology.

#### Defence

The company has resolved the customer's complaint regarding periods of low pressure/no water by opening the valve, but the decision to do this required careful consideration due to the increased risk of leaks and bursts within the network. The company consider that they have gone over and above its legal obligation as the water pressure logger results confirmed that the water pressure was already above the minimum statutory requirement. The company disputes liability for distress and inconvenience as the customer's water pressure never fell below the legally required level. However, the company accepts that there were initial delays in fitting the water logger and reporting the results and it has apologised to the customer for these delays. The company offered the customer a goodwill payment of £100.00 but the offer was declined. The company disputes that it took an unwarranted amount of time to open the valve and resolve the complaint and states that this was necessary in order to ensure that the network was protected. The company disputes liability to compensate the customer for bottled water costs and reduced rental income on the basis that no evidence has been provided to substantiate these claims. The company also denies liability to refund the customer's yearly water charges, stating that the charges are correct and payable.

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The company has not made an offer of settlement.

### Findings

The company has not provided evidence to show that the pressure level provided to the customer's property met regulatory standards for a four storey building in respect of Section 65 of the Water Industry Act. The company has not provided evidence to substantiate its claim that the delay in resolving the complaint was unavoidable and necessary. Therefore, I find that the company has failed to provide its service to the standard reasonably expected by the average person. I am persuaded that the customer suffered distress and inconvenience as a result of the company's failings and the customer's claim for compensation succeeds. However, I find the amount claimed excessive for the level of distress and inconvenience evidenced by the customer. In view of the company's failings, I find the customer's request for a formal apology justified. The customer has demonstrated that the company's failings caused her a financial loss as she rented her property for £150.00 per month less than the full rent due under the tenancy agreement for the period the property suffered with low pressure. I therefore find it appropriate for the company to compensate the customer for this loss. I find that the yearly water charges paid by the customer remain payable and the claim for bottled water has not been adequately substantiated by the customer. Therefore, these claims do not succeed.

### Outcome

The company shall compensate the customer in the amount of £750.00 for distress and inconvenience and £882.74 for loss of rental income. The company shall formally apologise to the customer for failing to provide its service to the standard reasonably expected by the average person.

The customer must reply by 13<sup>th</sup> May 2019 to accept or reject this decision.

# ADJUDICATOR'S DECISION

Adjudication Reference: WAT 0982

Date of Decision: 11<sup>th</sup> April 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

### **The customer's complaint is that:**

- She is the leaseholder of the property known as [ ]. The property is a fourth floor flat.
- The property has suffered with intermittent low water pressure since January 2018. By March 2018 the pressure was so low that between 7.00 a.m. and 8.30 a.m. on weekdays, and between 9.00 a.m. and 13.00 a.m. on weekends, she often had no water at all. The problem substantially impacted her day to day life as she often had no drinking water and was unable to shower, do laundry or prepare food.
- She complained to the company and an engineer attended the property on 20 March 2018. As a consequence of the engineer's visit, she was told that a water pressure logger would be fitted to the outside stop valve for fourteen days and she would receive the logger report seven days later.
- After hearing nothing for four weeks, she contacted the company and was told that the logger had not been fitted as she was not a priority. She found this alarming as the company's website states that having no water is an emergency and the situation was causing her severe distress, inconvenience and was extremely detrimental to her health.
- The logger was eventually fitted three weeks later but it took several more weeks for the logger data to be analysed. The report showed that the water flow was above the minimum statutory requirement for a two storey house; nine litres per minute or one bar of pressure to the outside stop valve. However, her flat is on the fourth floor so she questions the relevance of the statutory requirement to her situation.
- In light of the logger results, the company concluded that the low pressure was a result of inadequate internal pipework, which is the responsibility of the building's management company.

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However, the management company did not accept responsibility and also lodged a complaint with the company.

- She moved abroad in August 2018 and rented her flat out at £300.00 per month below the market value due to the unresolved water pressure issue. The tenants suffered the same issues, and by February 2019 they were threatening to withhold rent and move out of the property if the problem was not resolved. The prospect of paying the mortgage without a rental income caused the tenant further distress and inconvenience.
- On 5 February 2019 she telephoned the company and complained again. On 8 February 2019 the company informed her that the Water Interruption Team had located a valve that had been closed in 2015 and, after testing, this would be opened to increase the water pressure to her property. The valve was opened on 18 February 2019 and her tenants confirmed that the water pressure issues at the property had been resolved.
- She claims £2,500.00 in compensation for distress and inconvenience on the basis that the issue was not resolved for a year and had a severe impact on her mental and physical wellbeing, both while she was living in the property and afterwards while she was trying to resolve the issue on behalf of her tenants. The company offered her £100.00 but she feels this is an insult considering the circumstances and duration of the issue.
- She claims £300.00 per month from August 2018 for reduced rental income on the basis that she could not get market value for the property due to the on-going water issue.
- She seeks £420.00 for water charges paid during the year the property suffered with no water/low pressure.
- She claims an unspecified sum for the bottled water she had to buy for drinking, washing and cooking.
- She wants the company to formally apologise for its failure to deliver an adequate service and for the delays in resolving her complaint.

**The company's response is that:**

- On 20 March 2018 the customer complained about low water pressure at her property. On 13 April 2018 a water pressure logger was fitted to the outside stop valve and it was removed on 9 May 2018. The results showed that the water pressure was above 1.5 bar at all times. This is above the statutory requirement to supply 1.0 bar, or 9 litres of water flow per minute, to two storey houses. An email was sent to the customer detailing the logger results on 1 June 2018 and the customer was advised to contact the landlord of the building as the issue was internal.
- On 25 July 2018 it offered the customer a goodwill payment of £100.00 due to the delays in fitting the logger and producing the report. The customer declined the offer.

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- The customer complained again on 6 February 2019 and on 18 February 2019 it opened a valve that had been closed in 2015 as part of a pressure management programme, designed to regulate flow and pressure within the mains network, thereby lowering the risk of leaks and bursts caused by high and/or fluctuating pressure. At no time has the pressure been below regulatory requirements and no customers reported any problems as a result of the pressure management programme until 2018. The decision to open the valve was taken at the risk of increased leaks and bursts on the network, and in doing this the company has gone over and above its statutory duty in order to resolve the customer's complaint.
- It is not liable to pay the customer for distress and inconvenience suffered during the periods of no water/low pressure. Payments for periods of no water or low pressure are covered by its Customer Guarantee Scheme, but this is not applicable in the customer's case, as she has not reported periods of no water that exceed the 4 hour time frame and the pressure supplied to the property has not, as evidenced by the logger results, fallen below ten metres head (1 bar) at any time. It also met the OFWAT Guaranteed Standards of Service (GSS).
- It cannot be held responsible for any reduction in pressure on a private section of pipework after it leaves the mains and, as such, it does not accept any liability for the issues the customer has experienced.
- It disputes liability to provide the customer with a formal apology as it has not failed to supply water with pressure below the regulatory requirements, has already apologised to the customer for the delay in fitting the logger and has offered a goodwill payment of £100.00 to the customer.
- The customer claims for loss of rental income but she has not substantiated her claim; she has not provided evidence of the market value of her property or the amount of rent she is receiving from her tenants.
- The customer claims £420.00 for one year's water service charges and, although it understands the customer's frustration with having experienced times of no water/low pressure, the water service charges for both the customer and her tenants are correct and payable.
- It denies liability to pay for bottled water as the claim has not been substantiated.

### 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.

### How was this decision reached?

1. Having reviewed all the evidence provided by the parties, I accept as fact that the customer's property suffered periods of having no water/low pressure from January 2018 until February 2019. I also accept that this will have been extremely inconvenient and distressing for the customer.
2. The evidence demonstrates that the customer complained about the problem in March 2018 and after an engineer attended the property on 20 March 2018 she was told a pressure logger would be fitted to the outside stop valve for two weeks and the logger report would be provided one week later. The logger was not fitted until 13 April 2018 and the logger report was provided to the customer on 1 June 2018.
3. The customer asserts that there was a delay in fitting the logger and reporting the results. The company accepts this to be the case and offered the customer £100.00 as a goodwill payment in recognition of these delays, but the customer declined the offer. The company refers to its Customer Guarantee Scheme, and states that it did not breach the terms of the scheme by failing to fit the logger to the outside stop valve on the date it first stated it would do so. The Customer Guarantee Scheme covers missed appointments but as the evidence suggests that fitting the logger did not require the customer to be present, I accept that the delay does not qualify for a payment under the scheme.
4. The company has provided the logger recordings in evidence and, having reviewed this evidence, I accept that the water pressure did not fall below 1.5 bar during the period it was recorded, which is over the statutory requirement of 1 bar for a two storey property. However, the customer's flat is on the fourth floor and she questions whether the requirement to supply water at a pressure of

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1 bar to a two storey house is applicable to her circumstances. This was the only information provided by the company.

5. Under section 65 of the Water Industry Act 1990 (“WIA”), the company has a duty to provide water “constantly and at such a pressure as will cause the water to reach to the top of the top-most storey of every building within the undertaker’s area.” At this stage, I find it is important to distinguish between the requirements of providing a certain pressure to the building and whether water reaches the top of the top-most storey. Water companies are legally responsible for the water main, communication pipe from the water main to the boundary of the property and the Outside Stop Valve (OSV). It follows, therefore, that the water pressure measurements are to be taken at the OSV and it is the pressure here that must satisfy certain measurable requirements. S.65 of the WIA sets out that water need only ‘reach’ the top storey - it does not impose a minimum pressure of the water that reaches the top storey. Notwithstanding that these requirements are therefore different and in the absence of any further information, I find that the company would need to satisfy both in order to provide its services to the standard to be expected.
6. The company’s defence of the customer’s claim is that sufficient pressure was supplied to the building at all times but the internal pipework was the cause of the problem. However, in respect of the s.65 WIA obligation for water to ‘reach’ the top most storey of a building, I acknowledge the customer’s account that the flat was without water during certain periods, in particular the mornings. Further, I acknowledge that this appears to be the case fairly consistently over a prolonged period of time. Although there is no specific requirement for the measure of water pressure that must ‘reach’ the top storey of a building, I am conscious that it seems that there were multiple occasions when the pressure was not sufficient to ‘reach’ the customer’s fourth-floor flat. Therefore, although on the face of it the provision of a minimum of 1.5 bar would appear to satisfy standard industry norms, I find it more likely than not that s.65 of the WIA was not being satisfied. I am also mindful that, whilst the company set out that the requirement is for a minimum of 1 bar to be provided to a two-storey house, no explanation has been given as to how this relates to a property with more storeys or how more storeys may impact upon pressure supplied at the OSV.
7. It is undisputed that when the closed valve was re-opened on 18 February 2019 the water pressure increased and the low water pressure was immediately rectified, despite the fact that no works had been undertaken to the internal pipework. The customer states that at the time the

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water valve was closed in 2015 the building had 50% occupancy, but it is now fully occupied, which may explain why the pressure became inadequate. I find that in the absence of evidence to demonstrate otherwise, the evidence suggests that before the valve was re-opened the water had not been supplied “constantly and at such a pressure as will cause the water to reach to the top of the top-most storey” of the building.

8. The company claims that by opening the valve it has gone over and above its statutory obligations. However, I find that, on the balance of probabilities, by opening the valve the company has fulfilled its statutory obligation to provide a constant supply of water to the customer’s fourth-floor flat, rather than gone beyond the service level required by law. Nonetheless, I do, at this point, appreciate certain considerations the company has highlighted it had to have in respect of this – namely, that the opening of the valve may put the network at a higher risk of leaks because of the increase in pressure. Further, this is not to say that opening the valve was definitively the course of action the company should have taken when the problem arose, but rather that finding a solution to the issue (whatever this solution ended up being) was needed to fulfil its statutory obligation.
9. In view of this, and on the balance of probabilities, I find that in failing to provide water pressure adequate to supply constant water to the fourth floor flat, the company failed to provide its service to the standard that could reasonably be expected by the average customer.
10. For completeness, however, I accept the company’s explanation in respect of payments for periods of no water or low pressure covered by its Customer Guarantee Scheme. As there are no reported ‘no water’ incidents that exceed the four hour time frame, I am satisfied that there was no failure on the part of the company for not providing such payments. I find that the company can only be expected to compensate specifically reported incidents in this respect.
11. The customer claims that the delay in resolving her complaint exacerbated the distress and inconvenience she suffered as a result of having no water/low pressure. As mentioned above, the company explains that the delay was due to it carefully considering the leak and bursts risk associated with opening the valve and that all other options had to be considered first. However, the evidence provided by the company does not explain what other options were considered as an alternative to opening the valve and does not evidence that any action was taken or considered between June 2018, when the company concluded that the fault lay with the internal pipework, and February 2019, when the valve was opened to increase the pressure.

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Furthermore, the evidence supplied by the company suggests that its Water Interruptions Team only arranged for the valve to be opened after the company's representative approached it for a resolution following a conversation with the customer on 5 February 2019. In relation to this, although I accept the company felt that the issue was with the internal pipework (and I am not commenting on whether or not works on the internal pipework would have increased the pressure) I am satisfied that it remained the company's responsibility to ensure s.65 of the WIA was being complied with in the first instance.

12. Although I appreciate that the company has wider considerations to take into account, the evidence does not demonstrate that the delay in increasing the water pressure was unavoidable or that a solution could not have been found sooner, particularly if further investigations had been undertaken sooner. In view of this, I find that on the balance of probabilities the company failed to provide its service to the standard that could reasonably be expected by the average customer in this regard.
13. The customer claims £2,500.00 for the distress and inconvenience suffered as a consequence of having periods of no water/low pressure when she lived at the property, for the distress and inconvenience she suffered as a result of trying to remedy this issue on behalf of her tenants since she moved out, and for the company's delays in dealing with her complaint.
14. I consider it fair for the company to pay the customer a measure of compensation for the stress and inconvenience caused as a result of its failings outlined above. However, whilst I accept that the customer suffered considerable distress and inconvenience, I find that the customer has not provided substantive evidence to demonstrate that the level of stress and inconvenience suffered warrants the level of compensation claimed. Similarly, I accept the company's stance that the customer is unable to receive compensation for distress in respect of her tenant. Having considered the WATRS Guide to Compensation for Inconvenience and Distress, I direct the company to pay the customer in the amount of £750.00. I am satisfied that this amount is proportionate to the level of distress and inconvenience shown in evidence. In particular, I take note of the period of time this issue remained as well as that the company has since rectified the problem.
15. The customer also seeks a formal apology from the company and, in view of the company's failings outlined above, I find an apology would be appropriate in this case. I therefore direct the

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company to provide the customer with an apology for failing to provide its services to the standard reasonably expected by the average customer.

16. The customer also claims £300.00 per month for the deficit between the rent she achieved from her property during the period it suffered with low pressure, and the market value of the property with an uninterrupted water supply. The customer has provided the tenancy agreement to substantiate the claim and this demonstrates that the monthly rent was reduced from £1,150.00 to £1,000.00 from the start of the tenancy until the low water pressure was resolved. Therefore, the evidence demonstrates that the customer suffered a loss of £150.00 per month rather than the £300.00 claimed. As I have accepted that the service provided to the customer fell short of the standard that she was reasonably entitled to expect, and I am satisfied the customer has proven that she lost £150.00 per month as a direct result of the company's failing, I find that the claim for lost rental income should succeed. The customer has not specifically stated how many months of reduced rent she claims for but, as the tenancy agreement commenced on 24 August 2018 and the water pressure was remedied on 18 February 2019, I find that the company should compensate the customer for 179 days of reduced rent, amounting to £882.74.
17. The customer also claims £420.00 for water charges paid by herself and her tenants during the time the water supply was interrupted. I cannot make any award for payments made by the customer's tenants as they are not a party to this claim but, in any event, I find that the charges are payable as the company did provide water services to the customer. Furthermore, the customer has already been compensated for the periods of having no water/low pressure in the successful claim above for compensation for distress and inconvenience. Therefore, the customer's claim in this respect cannot succeed.
18. The customer also claims an unspecified sum for bottled water. The customer has not substantiated the claim by providing receipts and, therefore, the claim cannot succeed.

#### **Outcome**

The company shall compensate the customer in the amount of £750.00 for distress and inconvenience and £882.74 for loss of rental income. The company shall formally apologise to the customer for failing to provide its service to the standard reasonably expected by the average person.

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### What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 13<sup>th</sup> May 2019 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.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

*KS Wilks*

Katharine Wilks

**Adjudicator**

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