

# WATRS

## Water Redress Scheme

### ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1325

Date of Decision: 9th April 2019

#### Complaint

The customer states that the company has failed to provide him with an adequate water pressure for his domestic supply, at [ ]. ("the Property".) since 2017.

The customer seeks £6,301.61 in compensation. He also seeks a direction that the company seek to resolve the problem and either alter the supply to give the appropriate pressure or fund the installation of equipment at the customer's property.

#### Defence

The company states that the Property is higher than its reservoir. It states that under Section 65 of the Water Industry Act 1991("WIA") it has no responsibility for the low pressure at the Property in these circumstances.

No offer of settlement has been made.

#### Findings

The customer has not shown that the company has breached its duty of care in its actions. The company acted in accordance with the legislation and has interpreted Section 65 (2) of the WIA 1991 correctly.

#### Outcome

The company does not need to take any further action.

The customer must reply by 7<sup>th</sup> May 2019 to accept or reject this decision.

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# ADJUDICATOR'S DECISION

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Date of Decision: 9th April 2019

## Party Details

Customer: [ ].

Company: [ ].

## Case Outline

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

- The company has failed to provide an adequate water pressure to his Property.
- He accepts that this is due to the proximity of his Property to the reservoir.
- However, he states that his Property is not higher than the reservoir, but slightly lower.
- He claims that the company are required to ensure a pressure of at least 1.0 bar.
- He states that the company has repeatedly used Section 65 WIA 1991 as an excuse not to act and that the company is hiding behind its interpretation of this legislation.
- The customer states that the company could either provide pumping facilities to his property or source his water supply from a different reservoir.
- He states that failing this the company should fund the private pumping equipment at the Property.
- The customer seek compensation of £6,301.6. He also seeks a direction that the company resolve the problem and either alter the supply to give the appropriate pressure or fund the installation of equipment at the customer's property.

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

- The customer's Property is situated next to and slightly higher than the supply reservoir.
- It states that under Section 65 (2) of the WIA 1991 it is not obliged to ensure a water supply where the water will not flow by gravitation.

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- It states that the customer already has pumping equipment in his possession at the Property and that this was installed by the previous owner.
- The company states that the customer must have been aware of the situation when he bought the Property as the previous owner was made aware of the company's position.
- The company states that it has communicated with the customer to explain its position.
- It states that it is not obliged to alter the source of the customer's water supply to a different reservoir.
- It states that all the properties in the customer's area are serviced by the same reservoir.
- It has made payments of £30.00 in 2017, 2018 and 2019 as part of the Customer Guarantee Scheme ("CGS") which will continue.
- No offer of settlement is made in this case and the company disputes the claims made by the customer.

**In his comments on the defence the customer states:**

- That the property is not higher than the water source.
- That he has tried to resolve this problem and has always been amenable to working out a solution.

**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.

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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. This application concerns low water pressure and the customer's complaint is that the company is not providing an adequate level of pressure to his property. For context I cite here the OFWAT guidance relating to low water pressure: *"The Guaranteed Standards Scheme (GSS) sets out that water companies shall maintain a minimum pressure of water in the communication pipe serving the premises supplied with water of seven metres static head."* I also cite here section 65 (1) of the WIA 1991 which states that the water company must ensure a supply *"to be laid on 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."* Also, section 65 (2) of the WIA 1991 that states: *"Nothing in subsection (1) above shall require a water undertaker to provide a supply of 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 that supply is taken."*
2. I note here that the GSS is not binding on the company but acts a guidance. The legislative obligations are, however, binding on the company.
3. I find it important to remind the parties that adjudication is an evidence based process and it is for the customer to show that the company has not provided its services to the standard that would reasonably be expected of it. In such cases it is not possible to demand of the company something that it is not obliged to do by law, or something from which it is exempt from doing by law.
4. I note that the customer's claim that his property receives less that 0.5 bar water pressure is not challenged by the company. Further, the company accepts that the previous owner had the same problem. I therefore accept that there is low pressure to the Property.
5. I note that the customer has very carefully prepared his case and included details of his attempts to resolve the issues with the company. I appreciate this time consuming work that the customer has undertaken, however, the crucial aspect in determining whether or not this case is successful is firstly the question of what the company is obliged to provide by law. Only if I find that the

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company is compelled legally to provide an alternative to the present situation shall I be justified in addressing those alternatives and any appropriate remedy.

6. The company has cited Section 65 (2) of the WIA 1991 in its defence. I have made a reference to this in paragraph 1 above. The question to answer is whether or not this does absolve the company from any further action in relation to the customer's supply. It is worth restating the exemption being relied on: "Nothing *in subsection (1) above shall require a water undertaker to provide a supply of 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 that supply is taken.*" I take into account that the company has stated that the customer's Property is higher than Oak Reservoir and that the customer disputes this. At first glance it may seem necessary to ascertain this as a fact before the legislation can be applied. However, the clause above does not require that the Property to which the water is being supplied is higher than the source, rather that the water cannot be provided to a "height greater than to which it will flow by gravitation."
7. In considering the correct application of the legislation I note that the Property already has pumping equipment installed and that part of the remedy requested by the customer is that the company should install a pump at the Oak Reservoir to force the water at the required pressure to his Property. From this, and all the evidence presented, I understand that gravitational flow to the Property is insufficient to provide the required pressure.
8. Further I note that the evidence does not indicate that there has ever been a question raised regarding any cause other than gravitational flow being the root of the low pressure.
9. It follows I find that the company has correctly interpreted its obligations under the legislation and that it is not obliged to provide the supply to the customer's Property at the pressure requested.
10. The customer has stated, in an email to the Consumer Council for Water ("CCW") dated 23<sup>rd</sup> January 2019, that section 65 (2) should be interpreted as: "if pressure cannot be attained by gravity from their preferred source then another source needs to be found." I cannot identify any legislative or case authority for this view. I am not persuaded on the evidence that it is the correct application of the legislation.

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11. The customer has not referred to any other supporting legislative provisions, nor has he referred to any guidance, in making his case that the company has failed in its service. I have carefully considered the legislation and cannot find any support for the customers case in this regard.
12. I anticipate that the customer will be disappointed at this decision, especially given the time and effort he has put into trying to resolve the issue. However, on the evidence presented and on careful examination of the legal requirements, I have not found that any fault on the part of the company has been shown.
13. On balance, I do not find that the customer has shown that the company has failed to provide its services to a standard to be reasonably expected by the average person.

#### **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 7<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.



J J Higgins, Barrister, ACIArb.

Adjudicator

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