

March 2024

**Final Determination of a dispute
under regulation 170 of The
Water Supply and Sewerage
Services Regulations 2008 (as
amended 2017)**

Ofwat

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1. Introduction

- 1.1 This is a final determination of a complaint submitted by [REDACTED] ("**the Complainant**") to Ofwat for a determination under regulation 170 of The Water Supply and Sewerage Services (Customer Service Standards) Regulations 2008 (as amended in 2017) (otherwise known as "**the GSS Regulations**"), to determine if a payment should be made under the GSS Regulations.¹
- 1.2 The dispute is between the Complainant and South East Water Limited ("**South East Water**").
- 1.3 On 7 February we issued a draft determination to the parties to this dispute to provide opportunity for them to make representations on it. We have carefully considered the representations we received.

Purpose of this document

- 1.4 This is our final determination of the dispute referred to above. It sets out the determination we have made following our consideration of the legal framework for disputes under the GSS Regulations, and the information we have gathered from both parties to the dispute.
- 1.5 The only route of challenge of this final decision is via judicial review proceedings.

¹ The GSS Regulations were made under section 38 of the Water Industry Act 1991.

2. Background

A. The parties

- 2.1 The Complainant is a household customer who resides at [REDACTED] [REDACTED] ("the **Premises**") and he experienced a water supply interruption at the Premises.
- 2.2 South East Water is appointed under the Water Industry Act 1991 ("the **Act**") to provide water services to the Premises.

B. The dispute

- 2.3 The dispute relates to a period of supply interruption in December 2022. The Complainant states that he was without supply from the evening of Monday 19 December 2022 to the night of Thursday 22 December 2022. The Complainant received no prior notice of the supply interruption from South East Water. The supply interruption took place following a period of bad weather.
- 2.4 Under the GSS Regulations, a customer is entitled to a payment from a water company in certain circumstances for a water supply interruption.
- 2.5 The dispute arose when the Complainant contacted South East Water to claim a GSS payment for the supply interruption, but South East Water stated that it was not required to make a payment under the GSS Regulations where "water supplies have been affected by circumstances out of our control, such as extreme weather or when the impact on water supply has resulted from the activity of a third party."
- 2.6 On 10 February 2023, the Complainant was notified by South East Water that it did not consider that it was required to make a compensation payment under its Customer Code of Practice or the GSS Regulations. Nonetheless, given how "severely" impacted it considered the Complainant was by the supply interruption, South East Water credited the Complainant's account with £75 as a gesture of goodwill.
- 2.7 The Complainant believes that he is entitled to a £400 payment in line with South East Water's Customer Code of Practice. Ofwat informed the Complainant that its remit is limited to determining payments under the GSS Regulations.
- 2.8 This dispute has arisen as South East Water does not consider that a payment under the GSS Regulations needs to be made to the Complainant for this supply interruption. South East Water considers the £75 credited to the Complainant's account to be an 'interruption goodwill credit' payment rather than compensation under its Customer Code of Practice or the GSS Regulations.

3. Request for a determination

- 3.1 The Complainant contacted Ofwat on 5 July 2023 having been unable to resolve the dispute directly with South East Water. On 18 July 2023, the Complainant submitted the dispute to Ofwat for a formal determination.
- 3.2 Following this request, we carried out a preliminary assessment to confirm if we had jurisdiction to consider the matter.
- 3.3 Under regulation 170 of the GSS Regulations, Ofwat has a duty to make a determination when there is a dispute between a customer and a water company as to the right of a customer to a payment or credit under the GSS Regulations. Both parties have the right to refer the dispute to us.
- 3.4 As there is a dispute between the parties that the parties have been unable to resolve, we consider that we have jurisdiction to make a determination under regulation 170 of the GSS Regulations. On 31 July 2023, we decided to open a case in order to make a determination and informed the parties accordingly. This determination will only consider payments under the GSS Regulations, not South East Water's own Customer Code of Practice.
- 3.5 This determination sets out our view on whether the Complainant is entitled to a GSS payment from South East Water following a supply interruption in December 2022.

4. Legal Framework

- 4.1 Regulation 170 of the GSS Regulations allows Ofwat to determine a dispute referred to us by either an English service provider or a customer as to the right of the customer to a payment or a credit to the customer's account.
- 4.2 The GSS Regulations define an English service provider as a water undertaker whose area is wholly or mainly in England who supplies water or provides sewerage services to the customer.² In this case the English service provider is the water undertaker, South East Water.
- 4.3 The GSS Regulations set out different levels of compensation dependent on whether the premises is a "domestic premises" or not. A domestic premises means a premises used wholly or partly as a dwelling or intended for that use.³
- 4.4 The GSS Regulations entitle customers to a payment or credit where supply is not restored as promised under regulation 17F. Regulation 17F applies when an English service provider interrupts or cuts off the supply of water to premises as described in regulation 17E.
- 4.5 Regulation 17E concerns the notice an English service provider must give of an interruption to their water supply. Regulation 17E applies where an English service provider exercises its power under section 60(1) of the Act. Section 60(1) of the Act provides that a provider may cut off a supply of water to any premises if it is reasonable for the purposes of carrying out any necessary works. Under section 60(3) of the Act, the provider must provide the customer with reasonable notice of the proposed disconnection, except in the case of an emergency. Regulation 17E(2)(b) sets out that if the water supply is to be cut off for more than four hours the provider must give at least 48 hours' notice of the planned interruption but is excused from this requirement if the supply is cut because of an emergency. In providing notice, amongst other details, the provider must notify the customer of the time by which it is proposed that the supply should be restored. In emergency situations, the provider must, as soon as reasonably practicable, notify the affected customer of certain information.⁴
- 4.6 If a provider has exercised its powers to cut off a water supply for necessary works under section 60 of the Act, regulation 17E provides that for domestic premises a compensation payment of £20 must be paid to the customer if the provider does not comply with the requirement to give notice as set out in section 60(3) of the Act and in regulation 17E.
- 4.7 Regulation 17F concerns the restoration of a water supply following it being cut off. Regulation 17F applies where a provider has exercised its powers to cut off a

² Regulation 17A of the GSS Regulations.

³ Regulation 4(1) of the GSS Regulations

⁴ Regulation 17E(4).

- water supply for necessary works under section 60(1) of the Act and requires that the provider restores the supply by the time indicated in the notice it has provided to the customer. If no notice was given because the water supply was cut off in an emergency, the provider must restore the supply within 48 hours of it first becoming aware that the supply was cut off, if the supply was cut off in an emergency because of a leak or burst in a strategic main, or within 12 hours if cut off in an emergency but not because of a leak or burst in a strategic main.
- 4.8 Where a provider fails to restore the water supply by the times set out above, regulation 17F provides that for domestic premises a compensation payment of £20 must be paid to the customer, and a further £10 for each subsequent full period of 24 hours during which the supply has not been restored.
- 4.9 Regulation 17F(6) sets out a number of specific circumstances in which the provider need not pay this compensation, including if it is prevented from restoring the supply by severe weather (regulation 17F(6)(a)(i)); if it is prevented from restoring the supply by the act of third party (regulations 17F(6)(a)(iii) and (iv)); and if the circumstances are so exceptional that it is unreasonable to expect the supply to be restored within the relevant period (regulation 17F(6)(b)).
- 4.10 Importantly, both regulation 17E and 17F apply only when a provider is exercising its powers under section 60 of the Act, that is, when the provider has cut off the supply to any premises for the purpose of carrying out necessary works. These can either be planned works or in an emergency.
- 4.11** Regulation 17J sets out the timings of the payments and regulation 17J(4) sets out if the provider fails to make the payment in accordance with regulation 17J(3) in the case of a payment under regulations 17E(5)(a)(i), 17F(4)(a)(i) or 17F(4)(iii)(aa) in relation to the supply of water domestic premises, a further £20 payment is to be made.

5. Our draft determination

A. The Complainant's position

- 5.1 The Complainant considers that South East Water should make a GSS payment for restoration of supply, inclusive of late payment penalties. He questions whether the severe weather exemption that South East Water stated as its reason for not making a GSS payment applies as, whilst severe weather may have caused the supply interruption, he considers that it did not prevent South East Water from restoring the supply.

B. The Company's position

- 5.2 We wrote to South East Water to ask it to explain its basis for saying that it was exempt from making a GSS payment to the Complainant.
- 5.3 In South East Water's response to Ofwat it outlined that it does not consider regulations 17F and 17E apply in this instance as this was not a situation where it exercised its power under section 60(1) of the Act in relation to the disconnection of supply for the purpose of carrying out necessary works.
- 5.4 South East Water considered this supply interruption was caused by external circumstances rather than the result of an exercise of its powers under section 60(1) to interrupt or cut off supply for the purpose of necessary works. It considers that it was the result of an external circumstance, a severe freeze/thaw weather event which resulted in leakage across South East Water's network. The same freeze/thaw event also caused a power interruption in the area.
- 5.5 South East Water provided Met Office data which confirms that during the period 8 December to 18 December 2022, the South East region of England experienced a prolonged period of low temperatures and snowfall followed by a rapid thaw. South East Water said that this resulted in sudden and widespread leakage and loss of storage in its water supply system.
- 5.6 South East Water maintains that the supply interruption experienced by the Complainant was a result of this freeze/thaw event and not the result of an exercise of its power under section 60(1) of the Act. As an alternative argument, South East Water considers that, even if it were exercising its powers under section 60(1), there are two exemptions in the GSS Regulations that may apply to the requirement for it to make a payment for this supply incident: regulation 17F(6)(a)(i) (severe weather) and regulation 17F(6)(b) exceptional circumstances).
- 5.7 We requested further information from South East Water to confirm whether it took steps to disconnect, interrupt or cut off water supply to the Premises in

December 2022. We requested service reservoir level graphs for the area in which the Premises is located. The data does not indicate that South East Water took any steps to actively interrupt, cut off or reduce supply to the Premises. The reservoir serving the Premises did not run empty.

- 5.8 As such we have no evidence to suggest that South East Water took steps to actively interrupt, cut off or reduce supply to the Premises.

C. Our draft determination

- 5.9 On 7 February 2024, Ofwat issued a draft determination to both parties, finding that section 60(1) of the Act was not applicable to this dispute there was no evidence to suggest that South East Water had taken any action to interrupt or cut off supply to the Premises. As such, regulations 17E and 17F of the GSS Regulations are not applicable because they only apply where a water company exercises its powers under section 60(1) of the Act. Therefore, we provisionally concluded that no GSS payment was due to the Complainant under the GSS Regulations.
- 5.10 We noted that the Complainant has otherwise received a payment of £75 from South East Water in response to the incident.

D. Response from the Complainant to our draft determination

- 5.11 The Complainant has expressed his disappointment regarding the draft determination and noted that other companies made GSS payments for supply interruptions that were also a result of the freeze/thaw and the Complainant would like to understand why these companies paid and South East Water has not been required to.
- 5.12 The Complainant believes that South East Water is using technicalities in the law rather than the spirit in which the law was written to avoid compensating customers.
- 5.13 In response to our draft determination citing information provided to the Drinking Water Inspectorate by South East Water that, in addition to the freeze/thaw, a power outage was a potential cause of supply interruptions [REDACTED] [REDACTED] District Metering Area ("**DMA**") that serves the Premises, the Complainant noted that his local area did not experience a power outage during the time of the supply interruption.
- 5.14 The Complainant also has concerns that other requirements have not been considered in the determination for example the lack of access or provision of sufficient quantity of alternative water.
- 5.15 The Complainant noted that he is also concerned about the lack of support for customers on the Priority Services Register ("**PSR**").

- 5.16 The Complainant has highlighted that the regulations set out that affected customers are entitled to 10 litres of water per person per day within the first 24 hours if piped supply fails. This requirement comes from the Security and Emergency Measures (Water and Sewerage Undertakers and Water Supply Licensees) Direction 2022 (“SEMD”). The SEMD also makes provisions for how the needs of vulnerable customers (including PSR customers) should be met including identifying and prioritising them. The Drinking Water Inspectorate, on behalf of the Secretary of State and Welsh Ministers, are responsible for the regulation of the SEMD for companies who are wholly or mainly in England and Wales. The SEMD does not fall within the scope of Ofwat's jurisdiction in making this determination, however, we note Ofwat requires all water companies to submit vulnerability strategies by the end of June 2024 and we will be carefully assessing companies' plans and performance in this area.
- 5.17 The Complainant requested to see copies of the information that the company had provided to us to inform our determination and having reviewed provided some additional comments that we have also considered in reaching our final decision.

E. Response from South East Water to our draft determination

- 5.18 South East Water did not make any representation to our draft determination.

F. Further Information from South East Water

- 5.19 Following the representations we received from the Complainant regarding the power outage, Ofwat sought further information from South East Water regarding how it may have affected the boosters that facilitate supply to the Premises. South East Water clarified that the boosters transfer water between two treated water storage systems but do not run all of the time and when the boosters are not running the [REDACTED] DMA is supported by gravity flow. Whilst Ofwat understands that UK Power Networks cut off power supplies to the boosters at Chillies during the supply interruption, South East Water has clarified us that the power interruption would not have resulted in the Complainant experiencing a supply interruption. It confirmed that the interruption of supply to the Premises was attributable to the loss of storage in the water supply system caused by the sudden and widespread leakage that resulted from the freeze/thaw event. As such, the leakage, which resulted in loss of storage, was not related to an exercise of South East Water's powers under section 60(1) of the Act.

6. Our final determination

- 6.1 Having considered all the above, we have determined that South East Water is not required to make a payment to the Complainant under the GSS Regulations.
- 6.2 In our draft determination, we provisionally concluded that "both the leakage and the power interruption resulted in the Complainant's Premises being without supply from 19 – 22 December 2022." Based on the additional information provided to us by South East Water, we no longer consider that a power interruption was a cause for the supply interruption and conclude that the reason for the supply interruption was the loss of storage in the system caused by the sudden and widespread leakage that resulted from the freeze/thaw event.
- 6.3 However, whether or not the cause of the interruption was solely leakage or was also caused by a power outage, does not impact our draft conclusion that section 60(1) of the Act is not applicable to this dispute as we have not seen any evidence to suggest that South East Water took any action to interrupt or cut off supply to the Premises. As such, regulations 17E and 17F of the GSS Regulations are not applicable because they only apply where a water company exercises its powers under section 60(1) of the Act. Therefore, we conclude that no GSS payments are due to the Complainant under those GSS Regulations. We note that the Complainant has received a goodwill payment of £75 from South East Water in response to the incident.
- 6.4 We have considered the Complainant's response to our draft determination and note that other water companies may have made goodwill payments to customers for supply interruptions in line with their own customer codes of practice. Companies can choose to exceed the value of the payments made under the GSS Regulations in their own codes of practice. Under regulation 170, Ofwat's role is limited to determining individual customer disputes that are referred to us in relation to GSS payments. Therefore, we are unable to provide comment on the payments that customers of other water companies have received and we have no role in relation to non-GSS payments.
- 6.5 We note the Complainant also has concerns about other failures during the incident which include provisions for vulnerable customers and providing the amount of water for customers as outlined in the SEMD guidance. Under regulation 170, Ofwat's role is limited to determining disputes within the scope of the GSS. Ofwat are working to ensure vulnerable customers are considered at all times, and especially during incidents, through our vulnerability strategies.

- 6.6 We note that South East Water made further alternative arguments that it is not required to make a payment under the GSS Regulations as a result of the severe weather exemption in regulation 17F(6)(a)(i) or the exceptional circumstances exemption in regulation 17F(6)(b). Given our assessment regarding section 60(1) of the Act outlined above, we have made no determination as to whether any exemption in regulation 17F(6) applies in this case.
- 6.7 While there is no evidence that any action by South East Water caused this supply interruption it is possible that its overall management of its supply network may have made it more susceptible to supply interruptions. We note that we are considering such concerns in our current [enforcement case into South East Water's supply resilience](#).

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