

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.<sup>1</sup>
- 1.2 The dispute is between the Complainant and South East Water Limited ("**South East Water**").
- 1.3 On 7 February 2024 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.

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<sup>1</sup> 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 This dispute relates to a period of a supply interruption in December 2022. The Complainant states that he was without supply for a period of 84 hours starting from the evening of 19 December 2022 to 23 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 South East Water stated that the Complainant is within a District Metering Area ("**DMA**") called [REDACTED] supplied by [REDACTED] reservoir. It advised that its customers within this DMA experienced supply interruptions during this period lasting between 53:45 and 80:00 hours. Based on the elevation of the Premises, it estimates that the Premises' supply would have been interrupted for a duration of between 65:00 and 74:00 hours. South East Water states that it is aware that customers within this DMA would have experienced water supply interruptions because the service reservoir serving it had emptied.
- 2.7 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.

- 2.8 The Complainant believes that he is entitled to a further payment of £175 in line with South East Water's Customer Code of Practice. Ofwat has informed the Complainant that its remit is limited to determining payments under the GSS Regulations.
- 2.9 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 4 September 2023 to request that we make a formal determination on the dispute. This followed the dispute having been considered, and not resolved directly with South East Water, Consumer Council for Water and the Water Redress Scheme.
- 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 26 October 2023, we decided to open a case in order to make a determination and informed the parties accordingly. This determination only considers 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.<sup>2</sup> 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 affected property is a "domestic premises" or not. A domestic premises means a premises used wholly or partly as a dwelling or intended for that use.<sup>3</sup>
- 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.<sup>4</sup>
- 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.

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<sup>2</sup> Regulation 17A of the GSS Regulations.

<sup>3</sup> Regulation 4(1) of the GSS Regulations.

<sup>4</sup> Regulation 17E(4).

- 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 water supply for necessary works under section 60(1) of the Act and requires that the provider restore 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 water undertaker 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.
- 5.2. The Complainant considers that the South East Water's interpretation of the GSS Regulations in its Customer Code of Practice does not match the interpretation set out in Ofwat's published GSS guidance, the guaranteed scheme standards (GSS): summary of standard and conditions. He explains that the South East Water's Customer Code of Practice refers to the cause of the supply interruption being severe weather, whereas Ofwat's guidance refers to exemptions to payments if severe weather prevented the supply from being restored.
- 5.3. The Complainant is keen for Ofwat to make a determination on this dispute as he notes that this complaint does not only affect him, but also impacts other South East Water customers who were affected by the supply interruption.
- 5.4. The Complainant also stresses that he considers that South East Water's handling of this supply interruption demonstrated that it has not actioned the learnings from the last major freeze/thaw incident "Beast from the East" in 2018. In 2018, Ofwat reviewed the water sector's handling of the freeze/thaw interruption and identified the following areas as common failings across several water companies: poor planning and preparation, a lack of coordination, limited or inaccurate data, poor support to customers in vulnerable circumstances and poor communication with customers and stakeholders. Following the sector wide review, South East Water was one of four companies required to submit a detailed, externally audited action plan setting out how it is addressing the issues identified. The Complainant does not consider that this plan has been actioned sufficiently.
- 5.5. We have explained to the Complainant that any determination Ofwat makes will be limited to determining if any payment is due under the GSS Regulations and we are unable to make a determination on any of the wider points raised above.

### B. The Company's position

- 5.6. 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.

- 5.7. 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.
- 5.8. South East Water considered this supply interruption was caused by external circumstances that 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.
- 5.9. 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.
- 5.10. 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. South East Water shared data that indicates that the service reservoir serving the Premises went empty, resulting in no supply reaching the Premises. 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).
- 5.11. We requested 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 [REDACTED] reservoir (that serves the Premises) emptied on 19 December 2022 and started to fill up again on 21 December 2022. Water continued to enter the storage reservoir between 19 and 21 December 2022, however, the demand from customers was greater than the flows coming in, therefore, the storage levels did not increase during this period.
- 5.12. Based on the data provided to us by South East Water, we note that during the period of the supply interruption at the Premises the reservoir serving it ran empty, meaning that it was not possible for supply to reach the Premises. While South East Water did not take action to drain the reservoir we understand from South East Water that the reservoir running empty may have increased the time taken to restore the supply to the Premises. This is due to sediment on the floor

of any dewatered reservoir needing to be cleaned and the water sampled before supply is restored.

- 5.13. 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**

- 5.14. 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 as 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.
- 5.15. 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**

- 5.16. The Complainant understands that Ofwat's determination can only be in accordance with our remit as set out in regulation 170 of the GSS Regulations and the legal framework relating to this dispute. The Complainant interprets our draft determination as finding that regulations 17E and 17F of the GSS Regulations 'relate to the planned interruption of supply', while he accepts that the circumstances of his interruption were unplanned.
- 5.17. The Complainant considers that South East Water's Customer Code of Practice does not clearly set out the position relating to payments under the GSS Regulations, as set out in this determination. The Complainant also considers that Ofwat should set the standard for 'unplanned interruptions' or request that South East Water update its Customer Code of Practice to provide further clarity, to prevent customers from being misled as to payments they may be due, when they experience unplanned interruptions due to severe weather.
- 5.18. The Complainant stated that he continues to experience difficulty in understanding how following the 'Beast from the East' incident in 2018, companies are still exempt from making GSS payments for supply interruptions due to severe weather.
- 5.19. The Complainant was pleased to read about our current enforcement case against South East Water as set out below.

## **E. Response from South East Water to our draft determination**

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

## 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. We note that the Complainant's response to our draft determination has mischaracterised the GSS Regulations as only applying to 'planned interruptions'. We want to clarify that section 60(1) of the Act and the GSS Regulations may apply to both planned or unplanned interruptions (i.e. in an emergency) but only in circumstances where a company has disconnected or cut off supply for the purpose of carrying out any necessary works.
- 6.3. We find 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 the supply at 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 payment is due to the Complainant under the 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 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.
- 6.5. 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 water supply resilience](#).

**Ofwat (The Water Services Regulation Authority)  
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