

Date:	13th April 2015
Classification:	Main Report - General Release Appendices 2 & 3 – Not for Publication
Title:	Water Pressures
Report of:	The Chief Executive, CityWest Homes
Wards Involved:	All
Policy Context:	Thames Water has a duty to provide a water supply to the City Council's residents.
Financial Summary:	There are no financial implications as a result of this report.
Report Author and Contact Details:	David Wickersham – Technical Adviser, Technical Services, CityWest Homes Limited dwickersham@cwh.org.uk Tel no: 020 7245 2018

1 Introduction

- 1.1 Before the Millennium, water supply failures were unusual and, when they did occur, a local burst or leak would provide sufficient explanation.
- 1.2 However, in 2003 Thames Water announced its intention to reduce water pressures across London. At the time many saw this strategy as a response to substantial fines imposed on Thames Water by Ofwat for failing to meet water-loss targets. But despite widespread replacement of Victorian water mains and significant reduction of water losses, Thames Water has continued to reduce water pressures claiming that reduced pressures lower infrastructure costs and are more sustainable.
- 1.3 Between 2004 and 2006 the Association of London Government and London Councils campaigned on behalf of the London Boroughs, winning some concessions from Thames Water over the implementation of its pressure reduction programme. Since then, impact of Thames Water's pressure

reductions has been confined to local issues affecting individual blocks.

- 1.4 The continuing effect of reducing water pressures in London is that many properties risk supply failure because of their height or altitude, particularly at times of peak demand.
- 1.5 In tower blocks the pattern of failure is counter-intuitive. Tall towers have always relied on pumps to get water to the top flats with only the first eight or nine floors receiving supplies directly from the street. The result is that with reducing pressure, failure of supply in tall towers is first experienced on the eighth or ninth floors.
- 1.6 Over the years episodes of supply failure have affected many properties in the City Council's housing stock. Parsons House, Queens Park Court, Hallfield Estate, Edgson House, Westbourne Terrace and, most recently, Wandle and Tollgate Houses have all suffered supply failures. For residents, incidents are very distressing especially if homes are affected for a prolonged period.

2 Supply Obligations

- 2.1 Faced with episodes of supply failure in its housing stock, a major problem the City Council and CityWest Homes encounters is Thames Water's complacency and readiness to blame the landlord. Deeply ingrained in the culture of Thames Water and its staff is the idea that it has no obligation to supply water at any pressure higher than 1 bar. This is a pressure that will raise water to a height of 10.2 metres and will only supply taps up to a third floor.
- 2.2 Even with Thames Water's pressure reduction strategies it is unusual for the mains to have a pressure as low as this. But when a resident above the third floor does suffer water supply failure through low pressure, Thames Water often advises the resident that it is the landlord's fault for not fitting a water pump. In such circumstances Thames Water offers no compensation.
- 2.3 Many London boroughs have responded with widespread fitting of pumps incurring enormous capital costs as well as future maintenance liabilities, replacement costs and the cost of electricity for pumping.
- 2.4 Westminster City Council has incurred no such costs. In contrast to Thames Water's claims, the City Council's legal advisers, including Counsel, insist that Thames Water is under an absolute duty to maintain water supplies to all the City Council's housing stock. To understand these polarised views, four issues need to be considered.

DG2

- 2.5 To monitor and compare performance of water companies across the UK, the Director General of Ofwat has issued key measures, requiring companies to report incidence of shortfall against wide-ranging performance standards.

- 2.6 DG2 sets the benchmark against which water companies must report their performance on maintaining pressure. It states "...companies are required to report against a reference level of ten metres head of pressure...". In 2004 Ofwat justified its pressure standards stating that they were "...tough enough because they are based on current levels of service that independent research shows most customers in all regions consider to be fairly good, good or excellent."
- 2.7 Thames Water considers that its pressure obligations are entirely discharged if it meets the reference level of DG2. The City Council, meanwhile, considers that Thames Water's legal obligations cannot be settled by reference to monitoring standards based on views of "most customers". To identify Thames Water's duties the City Council looks to private law and statute.

S52 Water Industry Act 1991

- 2.8 Whilst the City Council will maintain its position that a supply obligation arises from private law, a clear statutory obligation is in place by virtue of S52 of the Water Industry Act 1991 (WIA).
- 2.9 S52 states:
- "The domestic supply duty of a water undertaker in relation to any premises is a duty...to provide to those premises such a supply of water as ... is sufficient for domestic purposes." and
- "...a water undertaker shall owe a domestic supply duty ... if those premises are premises to which this section applies by reason of a supply of water provided before 1st September 1989."
- 2.10 Whilst the origins of the domestic supply duty are in the Waterworks Clauses Act 1847, the subsection that includes the date of 1st September 1989 was added by the Government that privatised the water industry. The Government's intentions are quite clear. It would have been totally unacceptable to find that private water companies could cut costs by reducing services. So an anchor was put into the consolidating WIA requiring that where domestic premises were supplied with water since before privatisation the private companies would be bound to maintain those domestic supplies.
- 2.11 Virtually all of the City Council's current housing stock was receiving a domestic supply at the date of privatisation, including all stock that has since suffered supply failures.
- 2.12 It is remarkable that, 25 years on, Thames Water sets aside the clear S52 requirement pointing instead to the DG2 standard as its minimum obligation. It does so claiming that S52 is qualified by S65 of the WIA. It is for this reason that S65 needs to be understood to get the full picture.

S65 Water Industry Act 1991

- 2.13 S65 subsection (1) states "...it shall be the duty of a water undertaker to cause the water in such of its water mains and other pipes as are used for providing supplies of water for domestic purposes ... 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."
- 2.14 However, this requirement is qualified in S65 subsection (2): "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."
- 2.15 Thames Water claims that altitude of reservoirs, resistive losses in pipes at high demand and need to pump horizontally mean that the substantive requirement of S65 is curtailed as a result of the "flow by gravitation" limitation.
- 2.16 The City Council's position is that whilst this is interesting, it has no relevance to its cases of supply failure. The origin of S65 is also in the Waterworks Clauses Act 1847 which contemplated supply to the tops of *houses*. If S52 stood alone without the additional requirement of S65, Thames Water could comply with its domestic supply duty to those occupying houses by delivering sufficient water to the ground floors only.
- 2.17 Thames Water has never managed to explain how it claims that S65 impacts on its S52 obligations when they are clearly separate, standalone requirements. S52 engages civil law enforceable by the consumer whilst S65 engages criminal law enforceable by Ofwat.
- 2.18 It should be noted that S65 subsection (2) does not begin with "Nothing in S52 shall require..." or "Nothing in this Act shall require...". The relief offered by subsection (2) is expressly confined to the obligation under subsection (1). Nowhere in S52 is Thames Water's civil duty made subject to S65.
- 2.19 S52 clearly protects all premises including flats receiving domestic supplies since before privatisation irrespective of height or altitude whilst the additional S65 requirement addresses supplies to upper floors of premises in single occupation such as a house.

3 Way forward

- 3.1 Notwithstanding Thames Water's 1-bar claim, it has offered to pay the full cost of installing pumps at a number of properties where reducing pressures put supplies at risk. However, accepting Thames Water's offer at these premises will incur future maintenance, running and replacement costs to the HRA and leaseholders.
- 3.2 Meanwhile, it is obvious that after more than 10 years of supply failures through reducing pressures, Thames Water remains in denial of its domestic supply obligations and is ready to blame the City Council and CityWest Homes

for not installing pumps to safeguard properties requiring a street pressure of more than 1 bar.

- 3.3 A way forward would be to seek agreement of Thames Water to a protocol requiring that, in the event of supply failure, Thames Water investigates the problem. If attributable to insufficiency of mains pressure Thames Water either reinstates sufficient pressure or installs pumps, retaining responsibility for maintenance, replacement and running costs.
- 3.4 Under such a protocol Thames Water would also be required, in the event of supply failure though insufficiency of pressure, to pay compensation to the consumer and to refrain from blaming the City Council or CityWest Homes.
- 3.5 If Thames Water refuses to agree to such a protocol, the City Council will be in a position to seek a Court Declaration.
- 3.6 The protocol is at Item 11 Appendix 2. A further briefing note is at Item 11 Appendix 1. These are not in the public domain.

Appendix 1



Figure 1. Under S52 of the Water Industry Act 1991 water undertakers are required to maintain the supply of water where domestic premises have been supplied since before 1st September 1989 – the date of water privatisation. This applies irrespective of altitude or height. So flats on the 10th floor of this block, which has no water pumps, have a continuing right to receive water under S52.



Figure 2: TW claims that S65 of the Water Industry Act 1991 qualifies S52. It does not. They are separate, standalone requirements addressing very different situations. S65 survives from the Waterworks Clauses Act 1847 when Cubitt and others were building tall houses. Each house was a single premises. With a domestic supply obligation on its own, a water undertaker could simply deliver all water at minimal pressure to the basement kitchen. An additional requirement, now set out in S65, made it imperative that undertakers should supply at as much pressure as the reservoir and pipework would allow to reach higher floors. On the other hand, a separate flat on the top floor receiving its own supply since before privatisation on 1st September 1989 would now be entitled to receive a supply under S52 irrespective of S65.