



## PRIVATE WATER SUPPLIES – CASE STUDY 2018/06

### Section 80 Notice appeal

In March 2018, a rural community in south west England, which is supplied by a Regulation 9 private water supply, experienced a loss of water and periods of insufficiency. The source of the supply is a spring supply that passes through an Ultra Violet (UV) disinfection unit before serving approximately 14 properties. The supply was originally utilised by a trading company set up by the farm owners in the 1980s for both their own domestic purposes and for watering cattle. When they purchased the farm an obligation came with it to maintain the part of the supply on their land and pay for a third of any costs in maintenance of the upstream part of the supply. They recovered these cost by charging the downstream users.

Following the episode of insufficiency in 2018 the local authority did not carry out a site investigation to determine the cause or extent of the issue. The local authority did however, serve a Section 80 Notice under the Water Industry Act 1991 for insufficiency on both the consumers and the trading company. The grounds for serving the Notice was described in the Notice as *'a total loss of pressure leading to a complete failure of the water supply'*.

In an effort to restore the supply as quickly as possible, some of the consumers conducted their own investigation into the cause of the insufficiency. The period of insufficiency had been caused initially by a burst on an unoccupied property following the freeze-thaw event (known as 'The Beast from the East' that occurred between February and March 2018). The increased flow-demand during the burst caused rapid drainage of the upstream storage reservoirs. This caused a decrease in pressure to an upstream property, situated on a branch of the distribution network. Consequently, the property owners operated a valve (that had not been identified as critical in the council's risk assessment) overnight to increase the pressure to their own property and by doing so, reduced the flow to the downstream network. The initial burst was addressed and the valve opened, restoring the supply to normal. Nevertheless its quality remained unwholesome, and in the subsequent view of the Inspectorate, a potential danger to human health. DWI based this on a previous 2016 asset condition report and the local authorities own risk assessment, which had been carried out in 2011.

**Figure 24: Unmaintained Spring**



**Figure 25: Tights being used as filters in a collection chamber**



**Figure 26: Sediment in pipework**



**Figure 27: Poorly constructed headworks on source**



Following an earlier episode of insufficiency of the village supply in 2015, the trading company had ceased to accept any responsibility to provide or maintain the supply upstream of their farm and had stopped charging the villagers for the provision of water. This decision was a direct result of them being served a previous Section 80 Notice in 2015 to effect a solution. In this instance the Notice was also served on the basis that the water supplied was unwholesome by virtue of test results which exceeded the regulatory standards. The trading company appealed this Notice, which in turn was confirmed with modifications by the incumbent DWI Chief Inspector in 2015. These modifications required that an asset condition survey be undertaken on the supply by the trading company. This survey concluded that the supply had a number of deficiencies.

In response to this, the trading company informed users to seek an alternative supply. Representatives of the trading company, with other users, established a new company and constructed an alternative and entirely new supply, which was offered villagers in return for a connection fee, becoming a stakeholder in the company and ongoing liability for supply and maintenance costs. Although some villagers did connect to the new supply, many chose not to, partly through lack of confidence in the management of the supply and lack of funds, but largely because it believed the trading

company was legally obliged to continue to provide and manage the old supply under the terms of their property deeds. The consumers consequently continued to make regular payments into an account for the supply, despite the trading company no longer accepting the money on the basis that its responsibilities had ceased; a responsibility which they claimed was always undertaken entirely voluntarily. Those consumers still on this supply however, continued to use it, although being concerned for their safety in its consumption they first boiled it before drinking, cooking or cleaning teeth. Without any further maintenance and ongoing management the supply regularly lost pressure through leaks and burst pipes. Indeed such was the case at the time that DWI Inspectors subsequently visited the village in 2018.

**Figure 28: Leak on the old supply**



A number of representations and objections were made to the council by those served with the 2018 Notice, which was submitted to the Chief Inspector (as the appointed representative for the Secretary of State) for confirmation in April 2018. Under Section 81 of the Act, the Chief Inspector must consider whether the Section 80 Notice served by the Council should be confirmed (with or without modifications) or not. If the Notice is confirmed, the Chief Inspector may modify who the Notice is served upon or any other aspect of the Notice (e.g. time frames, remedial steps etc.). In this instance the villagers refused to accept any responsibility as relevant persons to mitigate the risks on the basis that they felt the trading company had legal obligations under the terms of their property deeds to provide them with a supply of water.

They further objected on the grounds that the alternative means of securing a safe supply of water as specified in the Notice were not feasible for various reasons, lack of funding being one of them. The options were (1) connecting to a public supply (2) sourcing wholesome water privately by any other means or (3) connecting to the new village supply. The trading company claimed that since 2016 they no longer had any responsibility to provide, maintain or manage the old supply and that they had met the terms of the 2015 Notice by offering an alternative supply to the consumers.

It should be noted that the 'relevant person' in relation to a private supply, is

defined in Section 80(7) of the Water Industry Act 1991 as; *The owners and occupiers of the premises supplied; and, the owners and occupiers of the premises where that source is situated (even if the source lies outside the local authority's area); and, any other person who exercises powers of management or control in relation to that source.*

Under Section 80(1) Notices can be served on one or more relevant persons as the local authority sees fit on a case-by-case basis. It is current understanding that where a dispute exists between relevant persons over the responsibilities to supply and maintain a supply, that the parties concerned must pursue the matter separately as a civil case by legal representation if necessary.

Between 19 June and 21 June 2018, all persons who made an appeal, as well as the council, were afforded an opportunity of meeting with DWI Inspectors, as appointed representatives for the Secretary of State, for this purpose. Other relevant persons were visited or given the opportunity to be visited to help inform the Chief Inspector's confirmation decision. As some of the representations and objections were sent directly to the Secretary of State, the Chief Inspector consulted the Secretary of State and Ministers prior to making/issuing his decision.

The Chief Inspector reviewed the 2018 Notice and concluded that it should be confirmed with modifications as summarised below:

The confirmed Notice (with modifications) was to be served upon more relevant persons than the original Notice (including those upstream of the storage tank who were previously excluded from the Notice).

The supply was a potential and actual danger to human health. As such, the requirement for wholesomeness was to be added to the confirmed Notice (with modifications), which had been originally served only on the grounds of insufficiency). Consequently the confirmed Notice would include the formalisation of boil water advice.

The Notice (with modifications) was amended to ensure that any new connections to the more recently constructed supply under the Notice only be made once the supply had been confirmed as wholesome by the local authority.

The confirmed Notice was modified to clarify that the existing older supply can continued to be used, provided it is made wholesome and sufficient through improvements.

The immediate timescale of the confirmed Notice was to be amended to a more practicable approach of a short, medium and long-term timescale.

The Chief Inspector also concluded that there was no decisive evidence to suggest that there was one specific appropriate relevant person and

therefore all the relevant persons should be included in the Notice and that this included the trading company.

The Chief Inspector and his representatives met with the local authority in February 2019 to relay his confirmation decision and the confirmed Notice (with modifications), was served on the relevant persons the next day.

This case study highlights the complexities involving a large private supply which becomes insufficient and/or unwholesome due to ambiguities around who is a relevant person and the wide differences in deeds and easements. Those consumers that were served the Notice appealed for reasons that amounted to a civil dispute over the terms of their property deeds. While it is reasonable to consider all deeds, where there are wide differences, relevant persons in the context of the Act's definition, are likely to be included if there is any control exerted on the supply system. The Inspectorate has interpreted the Act's definition of relevant person to include all person relevant to a private supply under the wording '*in relation to the source*' (as per the regulations) and within the spirit of the Act, i.e. including those that control treatment or any other part of the supply regardless of proximity to the borehole or well. This decision to retain the trading company as a relevant person was taken in the interest of human health protection.

This case study illustrates how the quality of a private supplies can deteriorate over time, in this case decades, where they are not properly maintained. Without sufficient maintenance a danger to human health and wholesomeness is presented. It is essential that all relevant persons agree unambiguously and in advance, who is responsible. This should include agreeing ongoing management and maintenance of the system, (according to written procedures and instructions), covering treatment, and distribution arrangements (including valve configurations), as well as ensuring that sources are robustly protected and treatment processes suitable and effective. It is the duty of local authorities to ensure such measures are put in place where this is not the case, by virtue of risk assessments using appropriate enforcement where necessary. Local authorities should not rely on testing alone to measure whether a supply is compliant with the regulations or not, which the Inspectorate has found to often be the case.

As this case study shows, where deficiencies exist, consumers can become at risk unless suitable action is taken proactively and, where necessary, reactively when supplies fail. It is unfortunate that the particular legal complexities surrounding this case has resulted in a divided community, many of which have lost all confidence in those that they consider accountable for the protection of their health.

It is anticipated that this case will help inform future confirmation decisions.