

Process for handling disputes and appeals: Requisitioning of water mains and public sewers and/or lateral drains and adoption of self laid water mains

1 Introduction

The provisions of the Water Industry Act 1991 (WIA91), as amended by the Water Act 2003 (WA03), relating to the installation of new water mains, service pipes, sewers and lateral drains, come into effect on 28 May 2004.

The WIA91¹ provides powers to Ofwat to

- determine disputes about the requisitioning of mains, sewers and lateral drains; and
- consider appeals about the adoption of water mains laid by anyone other than water companies² (self-laid mains).

This document sets out the process Ofwat will follow in exercising these powers. Ofwat's decision is final and binding on both parties, subject to judicial review.

Ofwat can only consider disputes relating to requisitioned water mains, self-laid water mains and service pipes, and requisitioned sewers and lateral drains where applications for agreements or requisitions under the WIA91 are made on or after 28 May 2004.

2. Background

2.1 Requisitioning

Under the WIA91 water and sewerage companies have to respond to requests (requisitions) for water mains, sewers and lateral drains where these services are for domestic purposes. Either the owners or occupiers of premises in the locality or the local authority can make a request, although requests are normally made by developers.

The company can require the person asking for the requisition (the requisitioner) to pay a security before commencing work and can recover the reasonable costs of providing the infrastructure from the requisitioner after the work is completed.

¹ References to WIA91 should be read as WIA91 as amended by WA03.

² Water or sewerage companies are companies who hold Instruments of Appointment as water or sewerage undertakers under the Water Industry Act 1991 (WIA91).

The WIA91 provides the requisitioner of water mains or sewers with two options for payment of reasonable costs:

- 'the relevant deficit mechanism' - which requires requisitioners to make yearly payments for up to twelve years; or
- 'the discounted aggregate deficit' payment (or 'statutory commuted sum'). This is a single lump sum payable after the infrastructure has been provided.

Under the WIA91 sewerage companies are entitled to recover the reasonable costs of providing and connecting a lateral drain.

Ofwat has powers under the WIA91 to determine disputes about: -

- undertakings or security required by the water / sewerage company;
- the amount payable for the requisitioned water main or sewer;
- the extension of the period within which time the water main or sewer should be provided (if not provided within 3 and 6 months respectively);
- the route of the water main or sewer and/or lateral drain; and
- the charge made by the sewerage company for the provision of a lateral drain.

2.2 Adoption of self-laid mains

The WIA91 provides that anyone ('the applicant') who is constructing or proposing to construct a water main or service pipe can apply to enter into an agreement with a water company. If the applicant installs the pipe to supply water for domestic purposes in accordance with the terms of the agreement, the water company will have to connect the pipe to the existing network and take over responsibility for it (commonly known as adoption). The water company will also have to make a payment to the applicant for the water main it has installed. The applicant can appeal to Ofwat if the water company:

- refuses to enter into an agreement to adopt the main or service pipe;
- offers terms and conditions to which the applicant objects; or
- does not refuse the application or provide terms and conditions within two months.

In addition, either party may refer disputes to Ofwat about associated financial arrangements (the payments or security that the water company requires under the WIA91).

3. Our approach

3.1 Requisitioning disputes

3.1.1 Security

We will consider the reasonableness of the security requested, both amount and method (for example bond, cash payment), in accordance with the policy set out in our financing guidance³.

3.1.2 Recovery of company's costs

Necessary works

We will need to consider the extent of the necessary work, including the route of the main or sewer, network reinforcement (and the timing of such work) and any infrastructure previously provided.

Reasonable costs of necessary work

Where there is a dispute about the costs incurred (and therefore the charge that is made), we will assess the reasonableness of those costs on the basis on which they were incurred. We expect companies to be able to demonstrate that their costs for the work have been subject to market testing, whether by competitive tendering or appropriate comparisons.

We will also consider the reasonableness of overhead costs incurred by the company in association with the work. We consider that it is usually more appropriate to apply overheads calculated on the basis of actual costs rather than a fixed percentage of the overall cost. Companies will be expected to explain their approach to recovery of overheads where actual costs are not applied.

Income allowance to be taken into account

When requisitioning charges are calculated, the companies make an allowance for the revenue that the water company will receive from customers of the new main (the income allowance). We will consider the amount of income available from charges to be taken into account in accordance with the policy set out in our financing guidance.

3.2 Self-lay disputes

3.2.1 Requirements for the construction of self-laid assets

When considering appeals about requirements for construction of the mains to be adopted, we will have regard to our guidance 'Competition in providing

³ 'Guidance on financial arrangements for self-lay and requisitioning agreements' May 2004

new water mains and service pipes' issued in March 2002, and the UKWIR publication 'Guide for self-laying of water mains'⁴.

3.2.2 Financial terms

Security

We will consider the reasonableness of the security requested, both the amount and the form it is requested in (for example bond, cash payment).

Cost of works

Companies' estimates of payments for self-laid water mains must be based on robust information about the anticipated actual costs of the work. To aid this process, developers must provide timely and accurate information so companies can provide accurate estimates.

We will need to consider the extent of work necessary, the timing of that work and how the reasonable costs of those works should be assessed. Where appropriate we will consider the basis for estimating costs, how often the costs are reviewed, whether they are compared with market rates and if so how.

In our financing guidance, we state that water companies should complete a cost breakdown template. This will list the costs of the work companies insist on carrying out, as well as their estimates for requisitioning charges and asset payments. We will have regard to this cost breakdown template when considering disputes about the level of companies' costs.

Asset payment

The calculation of the asset payment is explained in our financing guidance. Companies must calculate the asset payment in accordance with the policy set out in our financing guidance. When considering disputes about an asset payment, we will have regard to this guidance, in particular:

- the water company's notional costs of installing the new infrastructure;
- the estimated level of revenue per unit that it will receive from the new development; and
- the expected number of properties that will be built in the new development and the dates when the units will be completed and occupied (the build rate).

4. Proposed process

We will not consider the parties to be in dispute until it is clear that both parties (the water/sewerage company and developer) have been unable to resolve a disagreement between themselves. Please note that WaterVoice does not have powers to assist parties in resolving these disputes.

⁴ 'Guide for self-laying of water mains' to be published June 2004

Where there is a dispute with implications for water quality we will seek advice from the Drinking Water Inspectorate (DWI).

It is important to note the appropriate time for us to consider the different types of disputes.

Disputes considered after work completed

- Any disputes about the charge for a requisitioned main or sewer (which will be based on the costs reasonably incurred by the water company or sewerage company) can only be dealt with after the work has been done.
- Any disputes about the charge for work associated with incorporating a main laid under an adoption agreement into the water supply network (which will be based on the costs reasonably incurred by the water company) can only be dealt with after the work has been done.
- Any disputes about the asset payment made for a self-laid main (which the water company only has to pay when it adopts the main) can only be dealt with after the work has been done.

Disputes considered before work commences

- Any disputes about the terms and conditions of an agreement for the adoption of self-laid mains and service pipes (except those disputes relating to the financial conditions set out above) can only be dealt with before work commences. The WIA91 does not provide for the adoption of mains or service pipes that have already been constructed.

4.1 Timescale

We believe it is important to resolve disputes swiftly. We set out below our timetable for dealing with disputes and appeals. However, the timescale will depend on the quality of the submissions by both parties and the speed of their responses to our enquiries. Further stages may be needed if we need to request additional information from either party before the preparation and issue of the draft and/or final decision. Where we need to refer to an external consultant or the DWI for advice, the process will take longer (for example, if there is a particularly technical or new issue to address). Initially the process may take longer where new issues are considered.

Stage	Action	Time (weeks)
1	<p>(For requisitioning disputes) The person making an appeal will be expected to include the following in their appeal submission:-</p> <ul style="list-style-type: none"> • A full copy of their application to the water / water and sewerage company, including all supporting technical details. • A copy of the company's offer of terms and conditions for the agreement. (The company must explain in such an offer its requirements for any network enhancement including provision of network analysis; and detail all charges, payments and security required.) • The terms and/or conditions they disagree with and an explanation of why they do so. • A copy of all correspondence between the parties. <p>(For self-lay) If applicable, a full copy of the water company's decision.</p> <ul style="list-style-type: none"> • In refusing the application, the water company must set out in detail the grounds for its refusal, with reference to its self-lay policy and the guidance issued by Ofwat and UKWIR. • In offering terms and conditions for the agreement, the water company must explain its requirements for the self-lay construction; requirements for any company network enhancement including provision of network analysis with supporting documents; and detail all charges, payments and security required. • The appellant must identify those terms and/or conditions they find unacceptable and explain why. 	
2	We will consider the dispute submission and write to the company for comment and/or further information.	2
3	We will require the company to provide their comments/further information.	2
4	We will advise both parties how we intend to proceed, including whether we intend to seek external advice and what, if any, charges we might make. We will allow two weeks for parties to respond.	4
5	Subject to clarifying facts, or seeking technical advice from a consultant engineer, we will prepare a draft report for determining the dispute within three weeks. This report will set out the facts of the case and the views of both parties and our provisional conclusions. For self-lay disputes where we provisionally conclude that the main and/or service pipe must be constructed for adoption other than on terms already offered by the company, we will also prepare and issue a draft agreement. The agreement will include a	3

	condition requiring the applicant to pay the costs referred to in section 51C(3) of the WIA91 (network reinforcement costs and contributions towards earlier mains).	
6	We will ask both parties to comment on the draft report documentation.	2
7	We will consider comments from both parties and prepare and issue the final decision.	3
8	We will publish determination decisions by placing them in our library three weeks after issue. If the parties wish, their names will be removed from the published decision.	
	Total	16

We will review the arrangements for dealing with cases, particularly the timescales, in the light of our experience in considering disputes and appeals.

5. Charges for handling disputes

The WIA91 allows disputes about the undertakings, security and payments required in relation to requisitioning or the adoption of self-laid mains to be referred to Ofwat for determination under section 30A. Section 30A of WIA91 allows us to require either party to the dispute to pay a sum in respect of the costs or expenses that we incur. We do not have the power to order one party in a dispute to pay some or all of the costs of the other party.

Section 51B of the WIA91 gives Ofwat a similar power in relation to appeals about the refusal or failure of a water company to enter into an agreement to adopt a self-laid main or about the terms and conditions of such an agreement.

We have not previously sought to recover any of our costs from any party involved in a dispute. We have now reviewed our policy. We will consider recovering our costs (or a proportion of our costs) for obtaining external technical advice in **all** disputes referred to us under the WIA91 in which we have powers to do so (see attached annex A).

In deciding what, if any, provision to make as to costs and expenses, we are obliged to have regard to the conduct and means of the parties and any other relevant circumstances in each case. But as a general guide to those who may become parties to disputes, we anticipate that we are likely to recover costs from the losing party. Where there is not a clear 'winner' or 'loser', we are likely to apportion costs between the parties.

In addition, we will:

- not recover costs and expenses in relation to any particular case if they amount to less than £500.

- limit the recovery of costs and expenses from a party in any particular case to £5,000.
- not recover costs and expenses in relation to any particular case where we seek external advice to enable us to consider new issues or develop policy.

We will provide an estimate of the costs we may incur in seeking external advice in a particular case to the parties at an early stage. Where appropriate, we will also on request, or at appropriate stages, provide the parties with an estimate of the total costs that we have incurred to date.

In each case we will set out our provisional decision on the recovery of our costs in the draft determination report. Both parties will have the opportunity to comment and provide any relevant information before we reach a final decision on this point.

Annex A

List of disputes where Ofwat can recover its costs

Charge for the connection of a water supply for domestic purposes.

Terms and conditions of water, sewer and/or lateral drain requisitions.

Reasonableness of conditions made by a water company prior to connection of water supply: security, separate supplies, metering conditions etc.

Requirement for separate supplies to two or more houses with an existing shared supply.

Refusal by water company to fit a free meter because it is not reasonably practicable to do so, or would involve the company incurring unreasonable costs.

Terms and financial arrangements of self-lay agreements for water mains.

Adoption of water mains.

Right to connect to a public sewer.

Cost of connection to a public sewer where a sewerage company insists on making the connection.

Position or adequacy of a drain or sewer that a sewerage company proposes providing to replace the existing drainage system of premises.

Effectiveness of a new sewer provided by a company when restricting or closing a public sewer.

Compensation in respect of sewerage works etc (where the amount claimed does not exceed £5,000).

Annex B

Glossary of terms

Asset payment

The payment made on adoption of the mains to people who self-lay supplies for domestic purposes in recognition of the future revenue that is payable for supplies of water to customers connected to the newly installed main. This is referred to as the discounted offset amount in the WIA91.

Build rate

The rate at which properties on new development sites are built.

Developers

Those who organise the purchase of land, construction of new buildings and their sale.

Discounted aggregate deficit

See statutory commuted sum.

Domestic purposes

In relation to water supplies, domestic purposes includes the use of water for drinking, washing, cooking, central heating and sanitary purposes (with certain exceptions). The term is defined more fully in section 218 of the WIA91.

Income allowance

The revenue that is taken into account when charges for requisitioning and payments for self-lay are calculated. If the revenue is higher than the annual borrowing cost then the income allowance is capped at the level of the annual borrowing cost.

Lateral drains

The part of a drain that runs from the curtilage of a building or premises to a sewer.

Relevant deficit payments

Where developers requisition new mains for domestic purposes under sections 41 to 44 of the WIA91, they may pay for these over 12 years (the "relevant deficit" payments). The payments are calculated under section 43. Similarly where developers requisition new sewers for domestic sewage purposes under sections 98 to 101 of the WIA91 they may pay for them over 12 years.

Requisition

Water companies must (subject to certain conditions) provide water mains that are sufficient for domestic purposes when requested to do so by a notice under section 41 of the WIA91. This is known as a requisition, water

companies must provide the mains once the financial conditions of compliance are satisfied and the places for connecting the new pipes to its existing mains/network have been agreed. Similarly, when sewerage companies are asked to provide new sewers by a notice under section 98 of the WIA91, this is known as the requisition of a sewer.

Revenue

The charges payable to the water or sewerage companies for their services.

Security

A deposit or other guarantee which a water or sewerage company may ask a person requesting a main or sewer to provide against the charges that they will have to pay to the water or sewerage company when the main or sewer is provided.

Self-lay

Where developers, or their contractors, install new water mains and service pipes instead of asking the water company to do the work.

Service pipes

A pipe supplying water from a water main to any premises (whether in the highway or in private land).

Statutory commuted sum

A single payment that is made by a developer to a water or sewerage company for laying new water mains or sewers. This is paid as an alternative to relevant deficit payments (see above). This is referred to as the discounted aggregate deficit in the WIA91.