



Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Ms A Gonzalez v Thames Water Utilities Limited

This is the final determination of a complaint referred by Ms Gonzalez (the **Complainant**) to the Water Services Regulation Authority for determination under section 45(6A) of the Water Industry Act, as amended (**WIA 1991**).

The dispute is between the Complainant and Thames Water Utilities Limited (**Thames**), and concerns the expenses reasonably incurred by Thames in connecting one new water supply at 16 Elm Road, Sidcup, Kent DA14 6AD (the **Connection**).

Before reaching this final determination, we shared with the parties a report setting out the facts on which we have based this determination. The parties were given the opportunity to make representations to us on that report.

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1 Introduction and background

- 1.1 This is the final determination of a dispute referred to Ofwat by the Complainant under section 45 of the WIA 1991. The dispute is between the Complainant and Thames in respect of the amount recovered by Thames for the Connection.
- 1.2 The Complainant submitted an application for the Connection to Thames and received a quotation for the Connection from Thames on 11 September 2008 for a total sum of £2,170 (exclusive of VAT and infrastructure charges) (the Quotation).
- 1.3 The Complainant accepted the Quotation and the work on the Connection was completed on 8 February 2009. The Complainant contacted Thames by telephone, to request that Thames undertake a review of its expenses incurred in making the Connection. Thames carried out a review as requested, and on 27 March 2009 Thames informed the Complainant that its actual costs incurred in making the Connection were £1,750.40 (the Actual Costs) and that a refund of £419.60 (the Refund) was due to the Complainant, being the difference between the Quotation and the Actual Costs.
- 1.4 Thames informed the Complainant that the Refund would be offset against infrastructure charges of £576 (exclusive of VAT) which the Complainant had yet to pay to Thames leaving a net payment of £156.40 (exclusive of VAT) due to Thames. The Complainant was not satisfied with this offer and referred the dispute to Ofwat on 8 February 2010. Ofwat investigated this matter in accordance with its powers under section 45 of the WIA 1991 and on 18 February 2010 Ofwat requested a detailed breakdown from Thames of the expenses it had incurred as a result of the Connection.
- 1.5 The Complainant has informed Ofwat that she does not consider that the charge for the Connection reflects expenses reasonably incurred by Thames. In particular the Complainant stated that, as her local council had carried out the resurfacing of the area where the Connection had been made, Thames should not have charged for the full costs associated with the reinstatement.
- 1.6 On 4 March 2010 Thames provided Ofwat with the detailed breakdown of expenses as requested. In an email dated 23 July 2010 Thames confirmed that the Complainant had paid the outstanding balance of £156.40 (exclusive of VAT), being the difference between the Refund and the infrastructure charges.

- 1.7 Following a period of further correspondence between Ofwat and Thames, on 6 October 2010 Ofwat issued a draft determination (the Draft Determination) which was sent to the Complainant and to Thames for comment.
- 1.8 The Draft Determination set out the factual background to the dispute. Section 7 of the Draft Determination contained a summary of the expenses breakdown provided by Thames (as set out below) and a consideration of the various elements of those expenses. The Draft Determination did not draw any conclusions on the reasonableness of those expenses.

(a) Connection Work	£1,270.93
(b) Reinstatement work	£176.15
(c) Materials	£80.20
(d) Overheads	£223.11
Total	<hr/> £1,750.40 <hr/>

2 Legal framework

- 2.1 Section 45(1) of the WIA 1991 imposes a duty (subject to certain conditions) on a water undertaker to make a connection, where the owner or occupier of any premises serves notice on the water undertaker requiring it, for the purposes of supplying water for domestic purposes, to connect a service pipe to those premises with one of the water undertaker's mains.
- 2.2 Section 45(6) of the WIA 1991 provides that the water undertaker may recover from the person who has required it to make a connection the expenses reasonably incurred by it in making the connection.
- 2.3 Section 45(6A) of the WIA 1991 provides that any dispute between such person and the water undertaker about whether the expenses were incurred reasonably may be referred by either party for determination by Ofwat.
- 2.4 Ofwat's decision is binding on the parties to the dispute. By virtue of section 45(6A) read in conjunction with section 30A (5) of the WIA 1991, this determination is enforceable as if it were a county court judgment.

3 Complainant's comments on the Draft Determination

- 3.1 The Complainant provided her comments to Ofwat on the Draft Determination on 8 November 2010. The Complainant stated that she had arranged for the reinstatement of the pavement to be completed by Bexley Council (which was carrying out resurfacing works to Elm Road at that time) and this had happened. Accordingly, Thames had only carried out a partial reinstatement and therefore should not have charged her for the full expenses associated with the reinstatement.

4 Thames' comments on the Draft Determination

- 4.1 Thames provided its comments on the Draft Determination in an email to Ofwat dated 21 October 2010. Thames confirmed that it believed the Draft Determination to be factually correct and also said that its contractor had only carried out a partial reinstatement and that this had been taken into account when Thames had calculated the Refund. As the Complainant has received the benefit of the Refund (which we understand was offset towards the infrastructure charges payable and is therefore not being considered as part of this Determination), Ofwat accepts that the figure of £176.15 charged by Thames (see 1.8 above) was towards partial re-reinstatement.

5 Content of the Draft Determination

- 5.1 Having reviewed the comments provided by Thames and the Complainant, Ofwat is satisfied that the content of the Draft Determination is factually correct and accurately reflects the detail of the complaint.

6 Jurisdiction to determine the dispute

- 6.1 Ofwat is satisfied that the dispute between the Complainant and Thames is a dispute about whether the expenses incurred by Thames in making a connection under section 45 of the WIA 1991 were reasonably incurred, and therefore that Ofwat has jurisdiction to determine this dispute under section 45(6A) of the WIA 1991. This is because:
- (a) the Complainant required Thames to make the Connection at her property;
 - (b) Thames treated this as a request for a connection, made a connection and presented the Complainant with the actual invoice; and

- (c) the charge which Thames requested the Complainant to pay is disputed by the Complainant as being excessive.

7 Determination and reasons

- 7.1 Following Ofwat's investigation of this matter in accordance with section 45 of the WIA 1991, Ofwat's final determination in respect of this matter is that the charges do not reflect expenses reasonably incurred in as much that the expenses for overheads charged by Thames were not reasonable. In the breakdown of costs provided by Thames the sum recovered for overheads is stated as £223.11 (see paragraph 1.8 above).
- 7.2 Having regard to the Hyder Report (see 7.4(c) below) (and also in this case, Ofwat's previous experience in dealing with disputes such as this) Ofwat considers that, for a standard single connection, overhead expenses would not generally exceed £80.00. The administrative arrangements for carrying out the Connection should have been straightforward, and so Ofwat can see no reason to justify additional overheads in excess of the levels set out above. Ofwat therefore considers that recoverable overheads should not have exceeded £80. Ofwat concludes that Thames should refund the Complainant in the sum of £143.11, being the difference between the expenses recovered by Thames in respect of overheads (£223.11) and that which Ofwat determines to be reasonable (£80) (see Table 1 below).

Table 1

(a) Thames stated Actual Cost of the Connection	(b) Thames stated cost of overheads	(c) Ofwat's stated reasonable cost of overheads	(c) Amount due to the refunded to the Complainant (b) minus (a)
£1,750.40	£223.11	£80	£143.11

- 7.3 Ofwat has also considered whether other elements of Thames's charges reflect expenses reasonably incurred and has concluded that the expenses for the Connection are not inconsistent with the range of expenses assessed as reasonable within the Hyder Report. Accordingly Ofwat determines that, subject to the points made above in respect of the overheads, Thames's expenses were reasonably incurred.
- 7.4 The reasons for Ofwat's determination are as follows:

- (d) Section 45(6) of the WIA 1991 entitles a water undertaker to recover expenses reasonably incurred in carrying out work necessary to make a connection.
- (e) In considering whether the expenses incurred by Thames in making the Connection were or were not reasonable, Ofwat has had regard to: (1) the nature of the work necessary to make the Connection; (2) the financial information provided by Thames; (3) comments made by Thames and the Complainant on the Draft Determination; and (4) information contained within the Hyder Report (as to which, see (c) below)¹.
- (f) The Hyder Report is an independent report commissioned by Ofwat which involved the surveying of a number of water companies to understand further the breakdown of charges made by those undertakers for work undertaken in connecting new water supplies, and:
 - (i) to obtain an understanding and explanation of the variance in charges between water companies;
 - (ii) to compare water undertaker contractor rates for new water connections; and
 - (iii) thereby, to obtain an understanding of what are reasonable expenses/charges for materials (e.g. pipework, meters, etc) and for labour.

7.5 Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.

7.6 Under section 48 of the Act, interest must be paid on any sums that have been deposited with a water undertaker as security in relation to domestic water main connection works (pursuant to s47(2)(a) of the Act). Security is money that a customer may be required to pay in advance of work being done. Section 48 provides that the undertaker shall pay interest “on every sum of 50p so

¹ The Hyder Report - A Comparative Study: Cost of new water supply connections work (24 March 2010)
(http://www.ofwat.gov.uk/publications/commissioned/rpt_com_20100928s45hyder.pdf)

deposited for every three months during which it remains in the hands of the undertaker” at rates approved or determined by Ofwat.

- 7.7 On the facts of this determination, Ofwat’s view is that interest is payable on the Complainant’s security deposit, calculated in accordance with section 48 of the Act. In calculating any interest due to the Complainant, the parties should apply interest rate(s) in accordance with the attached Ofwat “Information Notice 11/05” and it’s Appendix 1. The amount of any interest payable is for the Courts to determine, if the Complainant and Thames are unable to agree this amount. With a view to helping the parties to agree the amount of any interest payable without involving a Court, Appendix A sets out guidance. This anticipates the approach we think a Court is likely to take in determining the amount of interest payable in this case.
- 7.8 This final determination is binding on both parties and is enforceable as if it were a county court judgment.

Appendix A

Guidance regarding section 48 of the Water Industry Act 1991 (“the Act”)

The table below sets out Ofwat’s view regarding the amounts and time periods on which a Court is likely to award interest in this case.

Amounts on which interest is payable	Time periods during which interest is payable on this amount
£1607 i.e. the reasonable cost of connection works as determined by Ofwat, rounded down to the nearest 50p in accordance with section 48 of the Act	From: the date on which the company received the customer’s security deposit To: the date on which £1607 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) but in terms of whole 3 month periods in accordance with section 48 of the Act
£143 i.e. the amount of the security deposit less the reasonable cost of works as determined by Ofwat, rounded down to the nearest 50p in accordance with section 48 of the Act	From: the date on which the company received the customer’s security deposit To: The date on which £143 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act