



## **Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Mr J Sawyer v Thames Water Utilities Limited**

This is the final determination of a complaint referred by Mr J Sawyer under section 45 of the Water Industry Act 1991 (**WIA 1991**) to the Water Services Regulation Authority (**Ofwat**).

This dispute is between the Complainant and Thames Water Utilities Limited in respect of the amount recovered by Thames for a connection of one new water supply connection at 157-159 Rushey Green, London SE6 4BJ.

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

- 1.1 This is the final determination of a complaint referred by Mr J Sawyer (the **Complainant**) under section 45 of the Water Industry Act 1991 as amended (**WIA 1991**) to the Water Services Regulation Authority (**Ofwat**).

## 2 Legal framework

- 2.1 Section 45(1) of the WIA 1991 imposes a duty on water companies (subject to certain conditions) to make a connection, where the owner or occupier of any premises serves notice on the company requiring it, for the purposes of supplying water for domestic purposes, to connect a service pipe to those premises with one of the water company's mains.
- 2.2 Section 45(6) of the WIA 1991 provides that the water company 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 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 Background

- 3.1 The dispute is between the Complainant and Thames Water Utilities Limited (Thames) in respect of the amount recovered by Thames for a connection of one new water supply at 157 - 159 Rushey Green, London SE6 4BJ (the Connection).
- 3.2 The Complainant submitted an application for the Connection to Thames and received a quotation for the Connection from Thames on 11 January 2007 in the sum of £2,657.85 (inclusive of VAT and infrastructure charges) (the First Quotation). On 1 May 2007 a further quotation was sent by Thames to the Complainant which included a request for a security deposit for the Connection in the sum of £1,974 which the Complainant duly paid.
- 3.3 The Connection was completed on 22 July 2008. Following completion of the Connection Thames confirmed that the cost of the Connection was £1,393.44

and arranged for a refund of £683.34 (including VAT) to be made to the Complainant. For the purposes of this determination, we have assumed that this refund has been made to the complainant by Thames.

- 3.4 It is understood that prior to the Connection a leak was discovered by the Complainant. Thames visited the site to carry out an inspection and confirmed to the Complainant that it was Thames' responsibility to repair the leak. At the request of the Complainant arrangements were made for the leak repair to be carried out at the same time as the Connection.
- 3.5 Because the Connection was made using the same excavation as for the leak the Complainant asserts that the cost of the Connection should be reduced because the excavation (used when making the Connection) would have been required to repair the leak, and therefore the cost of such should be borne by Thames (see section 6.3 of the Second Draft Determination).
- 3.6 The Complainant does not consider that the charge for the Connection reflects costs reasonably incurred by Thames, and the Complainant referred the dispute to Ofwat on 22 September 2008.
- 3.7 Ofwat investigated this matter and on 20 August 2009 issued a draft determination (the **First Draft Determination**) which was sent to the Complainant and to Thames on 20 August 2009. A further draft determination (the **Second Draft Determination**) in an amended format but factually the same as the First Draft Determination was sent by Ofwat to Thames and the Complainant on 16 September 2010.

## 4 Complainant's comments

- 4.1 On 7 September 2009 the Complainant provided his comments on the First Draft Determination. He refers to the basis of his complaint being his assumption that he had agreed a fixed price for the Connection with Thames. On 26 September 2010 the Complainant provided his comments on the Second Draft Determination and reiterated his assumption of an original fixed price contract with Thames. Please see paragraph 8.2 (g) for our view on this issue.

## 5 Thames' comments

- 5.1 On 12 November 2009 Thames provided its comments on the First Draft Determination. It clarified which elements comprised the total cost claimed by the contractor and stated that the actual costs of the job will not necessarily reflect the standard charges that are used when producing the original quote. Thames also confirmed that the leak relating to 155 Rushey Green (not the site

of the Connection) was corrected at the same time as the Connection was made. Thames did not comment on the Second Draft Determination.

## **6 Content of the Draft Determinations**

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

## **7 Jurisdiction to determine the complaint**

- 7.1 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:

- (i) the Complainant required Thames to connect one new water supply connection at his property;
- (ii) Thames treated this as a request for a connection under section 45 of the WIA 1991, and arranged for an inspector to conduct a site visit; and
- (iii) the charge raised by Thames on 22 July 2008 is disputed as being excessive by the Complainant.

## **8 Determination and reasons**

- 8.1 Ofwat's final determination in respect of this matter is that the charges do not reflect expenses reasonably incurred in that the costs for overheads charged by Thames were excessive and unreasonable. Ofwat concludes that Thames should refund to the Complainant the sum of £335.82 being the difference between:

- (a) the stated costs of the work to make the Connection and Ofwat's assessment of the costs reasonably incurred in making the Connection;
- (b) overheads costs charged by Thames and overheads which Ofwat believes to be reasonable; and

- (c) the sum previously refunded to the Complainant and that which remains outstanding (see Tables 1 and 2 below for a detailed breakdown of the above).

8.2 The reasons for Ofwat's determination are as follows:

- (a) Section 45(6) of the WIA 1991 entitles a company to recover expenses reasonably incurred in carrying out work necessary to make a connection.
- (b) In considering whether the costs 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 First and Second Draft Determinations; and (4) information contained within the Hyder Report (as to which, see (c) below)<sup>1</sup>.
- (c) 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 companies 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 company contractor rates for new water connection; and
  - (iii) thereby, to obtain an understanding of what are reasonable costs/charges for materials (e.g. pipework, meters, etc) and for labour.

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

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<sup>1</sup> 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](http://www.ofwat.gov.uk/publications/commissioned/rpt_com_20100928s45hyder.pdf))

- 8.4 Having regard to the Hyder Report and to Ofwat's previous experience in dealing with disputes such as this, Ofwat considers that, for a standard single connection, overhead costs would not generally exceed £80. Where companies make representations Ofwat will consider their evidence regarding overhead costs actually incurred. In this case Thames has provided some further information and Ofwat, in coming to this final determination, has considered this further information.
- 8.5 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 in paragraph 8.2(d) above. Ofwat therefore considers that overheads should not have exceeded £80.
- 8.6 Ofwat has considered whether some of the work required to make the Connection can also be attributed as being necessary to repair the leak. Ofwat determines that some of the costs can be partially attributable to repairing the leak. Such costs include the need to excavate the footway to lay additional pipe.
- 8.7 In the absence of detailed evidence as to the nature of the work carried out by Thames it is difficult to accurately assess what proportion of the Connection can be attributed to the leak repair. The excavation of the footway would have been necessary either to make the Connection or to repair the leak. Therefore Ofwat considers it appropriate to allocate the costs of excavating the footway to lay additional pipe equally between the Connection and the repair of the leak. Details of such allocation are set out in Table 1, below.

**Table 1**

<b>Works</b>	<b>Total costs incurred by Thames</b>	<b>Percentage incurred in making the Connection</b>	<b>Costs incurred by Thames in making the Connection</b>
Making Connection in footway	£567.08	100%	£567.08
Overheads	£80.00	100%	£80.00
Excavating the footway and laying additional pipe	£615.52	50%	£307.76
<b>Total</b>			<b>£954.84</b>

8.8 It follows that the Complainant should be refunded £335.82, being the difference between the sum due to be refunded to the Complainant and that previously refunded, as set out in Table 2 below.

**Table 2**

(a) Ofwat's stated reasonable cost of the connection	(b) Amount Thames has recovered from the Complainant	(c) Amount due to be refunded to the Complainant  (b) minus (a)	(d) Amount refunded by Thames to the Complainant	(e) Refund still due to the Complainant  (c) minus (d)
£954.84	£1,974.00	£1,019.16	£683.34	£335.82

8.9 Accordingly, Ofwat determines that Thames should refund the Complainant in the sum of £335.82.

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

8.11 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.

8.12 This final determination is binding on both parties and is enforceable as if it were a county court judgment.



## Annex 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
<b>£954.50</b> 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	<b>From:</b> the date on which the company received the customer’s security deposit <b>To:</b> the date on which £954.50 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) <b>but</b> in terms of whole 3 month periods in accordance with section 48 of the Act
<b>£335.50</b> 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	<b>From:</b> the date on which the company received the customer’s security deposit <b>To:</b> The date on which £335.50 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act