



Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Mr Sahota v Veolia Water Central (formerly Three Valleys Water Plc)

This is a determination of a dispute referred by Mr Sahota to the Water Services Regulation Authority (Ofwat) for determination under section 45(6A) of the Water Industry Act 1991, as amended (the Act).

The dispute is between Mr Sahota and Veolia Water Central (referred to as Three Valleys in this determination) and is about the expenses reasonably incurred by Three Valleys in connecting four new water supplies at 53 and 55 Common Rise, Hitchin, Hertfordshire SG4 0HN (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

- 1.1 This is the final determination of a complaint referred by Mr G S Sahota (the Complainant) under section 45 of the Water Industry Act 1991 (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 judgement.

3 Background

- 3.1 The dispute is between the Complainant and Veolia Water Central Limited (formerly Three Valleys Water PLC) (**Three Valleys**¹) in respect of the amount recovered by Three Valleys for a connection of four new water supplies at 53 and 55 Common Rise, Hitchin, Hertfordshire SG4 0HN (the **Connection**).
- 3.2 The Complainant submitted an application for the Connection to Three Valleys and received a quotation from them on 2 February 2007 in the sum of £3750.50 (inclusive of VAT and infrastructure charges) (the **Quotation**).

¹ Three Valleys Water PLC changed to Veolia Water Central Limited in July 2009

- 3.3 Three Valleys has since recovered £3750.50 from the Complainant. For the purposes of this determination, we have not considered the infrastructure charges paid (£1064). We have only considered the connection charges and VAT amounting in total to £2686.50.
- 3.4 The Complainant does not consider that the charge for the Connection reflects costs reasonably incurred by Three Valleys, and the Complainant referred the dispute to Ofwat on 7 August 2007.
- 3.5 Ofwat investigated this matter and on 24 October 2007 issued a draft determination (the **Draft Determination**) which was sent to the Complainant and to Three Valleys on 24 October 2007.

4 Complainant's comments

- 4.1 On 13 November 2007 the Complainant provided his comments on the Draft Determination. Mr Sahota stated that he had originally informed Three Valleys that he would only require two new water supply connections. He also stated that he would have preferred for the two ground floor flats at the property to use the existing supplies (with the installation of water meters if necessary) but that Three Valleys insisted on four new connections as the existing supplies were shared.

5 Three Valleys' comments

- 5.1 On 8 November 2007 Three Valleys confirmed in a letter to Ofwat that it had no comments to make in respect of the Draft Determination.

6 Content of the Draft Determination

- 6.1 Having reviewed the comments provided by Three Valleys and the Complainant, Ofwat is satisfied that the content of the Draft Determination is factually correct and accurately reflects the detail of the complaint. We understand that, as clarified by Three Valleys, there since was previously joint supply to the property, four new connections needed to be installed.

7 Jurisdiction to determine the complaint

- 7.1 Ofwat is satisfied that the dispute between the Complainant and Three Valleys is a dispute about whether the expenses incurred by Three Valleys 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 Three Valleys to connect four new water supply connections at his property;
- (ii) Three Valleys informed the Complainant of the costs incurred in making such connection; and
- (iii) Three Valleys completed the work relating to the connection and the charge raised by Three Valleys 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 Three Valleys were excessive and unreasonable. Ofwat concludes that Three Valleys should refund to the Complainant the sum of £1,236, being the difference between the overheads charged by Three Valleys and those which Ofwat considers reasonable.

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 Three Valleys in making the Connection were reasonable, Ofwat has had regard to: (1) the nature of the work necessary to make the Connection; (2) the financial information provided by Three Valleys; (3) comments made by Three Valleys and the Complainant on the Draft Determination; and (4) information contained within the Hyder Report (as to which, see (c) below)².
- (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:

² 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)

- (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.

8.4 Having regard to the Hyder Report (and in this case, 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 £80.00. However, Ofwat recognises that additional costs may be incurred where more than one connection is made. Ofwat considers that £25.00 for each additional connection would be reasonable and should cover such costs. Where companies make representations Ofwat will consider their evidence regarding overhead costs actually incurred. At the request of Ofwat, Three Valleys has provided further information in respect of how it calculated its overheads in this case. Ofwat, in coming to this final determination, has considered this further information.

8.5 The administrative arrangements for carrying out a single visit (as was the case in this matter) should have been straightforward, and so Ofwat can see no reason to justify additional overheads in excess of the levels set out in paragraph 9.2(d) above. Ofwat therefore considers that recoverable overheads should not have exceeded £180.00 (see breakdown in Table 1 on the next page).

Table 1

Ofwat's overheads for a single connection	Ofwat's overheads for multiple connections (per additional connection)	Ofwat's total for this matter	Three Valleys' quoted overheads
£80	£25	$£80 + (4 \times £25) = £180$	£1416

8.6 It follows that the Complainant should be refunded £1,236, being the difference between the quoted price for overheads and the cost Ofwat considers to be reasonable.

Table 2

(a) Three Valleys stated cost of the Connection	(b) Three Valleys stated cost of overheads	(c) Ofwat's stated cost of overheads	(d) Actual costs of the Connection: (a) minus (b) plus (c)
£3,750.50	£1,416	£180	£2,514.50

8.7 Ofwat has also considered whether other elements of Three Valley's charges reflect expenses reasonably incurred and has concluded that the costs for the Connections are not inconsistent with the range of costs assessed as reasonable within the Hyder Report. Accordingly, Ofwat determines that the total costs reasonably incurred by Three Valleys for the Connection that the Complainant should be refunded £1,236.

8.8 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.

8.9 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 Three Valleys 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.

8.10 As stated above 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
£2,514.50 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 £2514.50 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) <u>but</u> in terms of whole 3 month periods in accordance with section 48 of the Act
£1,236 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 £1236 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act