



Final Determination of dispute under section 56 of the Water Industry Act 1991: Mrs S Birley v South East Water Limited

Purpose of this document

This is the final determination of a dispute referred by Mrs S Birley (the **Complainant**) to the Water Services Regulation Authority (**Ofwat**) for determination under section 56 of the Water Industry Act 1991, as amended (**WIA 1991**).

This dispute is between the Complainant and South East Water Limited (**South East Water**) regarding the expenses reasonably incurred by South East Water in providing a new water supply connection at The Pet Groomers, 5 Portobello Parade, Fawkham Road, West Kingsdown, Kent, TN15 6JP.

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

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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 56 of the WIA 1991 on 1 September 2011.
- 1.2 The dispute is between the Complainant and South East Water (together the **Parties**) in respect of the amount recovered by South East Water for a new water supply connection (the **Connection**) to enable the non-domestic supply of water at The Pet Groomers, 5 Portobello Parade, Fawkham Road, West Kingsdown, Kent TN15 6JP.
- 1.3 The Complainant submitted to South East Water an application for the Connection and on 23 June 2011 received a quotation for the Connection from South East Water for a total of £1,594.67. South East Water advised the Complainant that whilst the property had previously had a water connection, this supply had been disconnected around 30 years earlier. As such a new, replacement connection would be necessary due to the risk of contamination and/or corrosion in the original connection's pipework if it were to be re-connected.
- 1.4 On 27 June 2011 the Complainant signed the Quotation acceptance slip and sent it to South East Water with a full security deposit of £1,594.67. On the bottom of the acceptance slip the Complainant noted that she felt the Quotation was excessive but she was aware that if she wanted the work to go ahead she had to make the payment at that time. She also stated that she would appeal the cost of the Connection once it had been completed.
- 1.5 After the work had been completed, on 23 July 2011 the Complainant sent an email to South East Water stating that:
 - (a) the work to make the Connection had only taken 2 hours and 30 minutes;
 - (b) accordingly, the Complainant estimated that the Connection should only have cost approximately £600 (based on the Complainant's consultation with the contractors who carried out the work on behalf of South East Water and the works completed by contractors appointed by the Complainant to install the private supply pipe from the property to the highway boundary in preparation for South East Water's work);
 - (c) she believed the amount she had paid was excessive and unreasonable and that she was entitled to a partial refund; and

- (d) she believed she should have been offered the option of having a water meter fitted which would have meant that the Connection would have been made free of charge.
- 1.6 On 26 July 2011 South East Water wrote to the Complainant confirming that, following their receipt of an actual cost report from their contractor, South East Water would be issuing the Complainant with a refund of £448.63.
- 1.7 On 29 July 2011 the Complainant again wrote to South East Water and stated that: (1) the refund which South East Water had offered her was not acceptable; (2) she would like to see a breakdown of South East Water's costs incurred in making the Connection; and (3) that South East Water had not responded on her fourth point in her email dated 23 July 2011 (see paragraph 1.5 above).
- 1.8 On 1 August 2011 the Complainant sent an email to South East Water confirming that she had received a cheque from South East Water for £448.63 (the **First Refund**) but that she would only accept it as part payment and that she expected a further refund from South East Water.
- 1.9 On 9 August 2011 South East Water sent the Complainant the breakdown of costs incurred in making the Connection. On the same date the Complainant sent an email to South East Water querying the costs set out in the breakdown and said that she had been charged twice for some items and that she estimated that South East Water's costs should have been around £650 and therefore she was entitled to a further refund.
- 1.10 The Complainant remained dissatisfied with South East Water's stance and, unable to achieve a satisfactory outcome to the dispute, she contacted Ofwat on 1 September 2011 referring the matter to Ofwat for determination.
- 1.11 On 4 November 2011 South East Water wrote to the Complainant and informed her that it had miscalculated the First Refund and that she was entitled to a further refund of £5.22 and that, because the property had previously had a water supply for domestic purposes, she should not have been charged any infrastructure charge. Therefore she was also entitled to a further refund of £374.63, bringing the total refund to £828.48, made up as set out below.

1.12

(a) the First Refund	£448.63
(b) further refund due to miscalculation of First Refund	£5.22
(c) refund of infrastructure charges	£374.63
Total	£828.48

1.13 Accordingly, the total payment for the Connection was £766.19 (being £1,594.67 less the refund of £828.48).

1.14 Ofwat investigated this matter in accordance with its powers under section 56 of the WIA 1991 and on 4 October 2012 issued a draft determination (the Draft Determination) which was sent to the Complainant and to South East Water for their comments.

2 Legal framework

2.1 Section 55 of the WIA 1991 imposes a duty (subject to certain conditions) on a water undertaker to provide a supply of water to premises, where the owner or occupier of such premises requests the water undertaker to do so, for the purposes of supplying water for **non-domestic purposes**.

2.2 Section 56(5) provides that, if no applicable charges scheme provision is in place, Ofwat may make a determination of the charges for making the non-domestic supply, having regard to the desirability of the undertaker's (i) recovering the expense of complying with its obligations under section 55 and (ii) securing a reasonable return on its capital.

2.3 Section 56(1) provides that any matter that falls to be determined by Ofwat for such non-domestic supply shall, in the absence of agreement between the parties, be determined by Ofwat according to what appears to Ofwat to be reasonable.

2.4 Ofwat's decision is binding on the parties to the dispute.

3 Request for further information

3.1 On 6 January 2012 Ofwat sent a request for further information to South East Water requesting confirmation of the actual costs that South East Water had incurred in providing the Connection.

4 South East Water's response to the request for further information

4.1 South East Water responded to Ofwat's request for further information on 20 January 2012. In its response South East Water stated that the actual costs (the **Actual Costs**) of the Supply were £766.19, made up as follows:

(a) Cost of materials	£643.86
(b) Contractor overheads (set percentage rate agreed in the contract)	£80.48
(c) South East Water overheads (administration charges incurred)	£41.85
Total	£766.19

5 Complainant's comments on the draft determination

5.1 On 7 October 2012 the Complainant provided her comments on the Draft Determination. The Complainant stated her belief that water meters were being fitted free to encourage better water management. Further, that they were being fitted in neighbouring domestic properties at the time the Connection was made to her property. She also stated that the works undertaken were a reconnection of an existing supply which she believed would require less work than a new connection, for which she had been charged.

6 South East Water's comments on the draft determination

6.1 On 17 October 2012 South East Water provided comments on the Draft Determination. South East Water confirmed that it was happy with the proposed determination. It also sought clarification of the source document for Ofwat's estimation of overhead costs for new connections and whether this will be updated to reflect inflation.

7 Draft Determination and Responses

7.1 Having reviewed the comments provided by South East Water and the Complainant, Ofwat is satisfied that the content of the Draft Determination is factually correct and accurately reflects the detail of the complaint. Ofwat has received further clarification from South East Water that the Connection was a new connection as the original connection (not used for over 30 years) could not be turned back on due to potential contamination (see paragraph 1.3 above).

They also confirmed that they are only installing free water meters to existing customers through their Customer Metering Programme. All new services are metered and charged with connection.

- 7.2 With reference to the allowance for overheads set by Ofwat at £80, we have received representations that it needs to be reviewed and we plan to do so. However, in the meantime, the current allowance of £80 applies.

8 Jurisdiction to determine the dispute

- 8.1 Ofwat is satisfied that the dispute between the Complainant and South East Water is a dispute that falls to be determined by Ofwat under section 56 of the WIA 1991. This is because:
- (a) the Complainant required South East Water to provide a new water supply connection at her non-domestic property;
 - (b) the charge which South East Water requested the Complainant to pay is disputed by the Complainant as being excessive; and
 - (c) there is no provision in force by virtue of a charges scheme (section 56(5) read with section 143 WIA 1991; see paragraph 2.2 above) in respect of supplies of the applicable description.

9 Final Determination and reasons

- 9.1 Ofwat's final determination in respect of this matter is that the total overhead charges (contractor overheads and South East Water overheads) do not reflect expenses reasonably incurred. Having regard to the Hyder Report (see paragraph 9.4(d) below) and Ofwat's previous experience in dealing with similar disputes, Ofwat considers that there is in this case no basis for a charge that exceeds the charge normally accepted by Ofwat as being reasonable for a standard single connection (as is the case here), namely £80.00. Ofwat concludes that South East Water should refund to the Complainant the sum of **£42.33** 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 the contractor and South East Water and total overheads which Ofwat believes to be reasonable; and

- (c) the monies previously refunded to the Complainant and that which remains outstanding (see paragraph 1.11 and **Table 1** below for a detailed breakdown of the above).
- 9.2 There is no provision under the WIA 1991 under which the Complainant would have been entitled to have made a request to have a water meter fitted which, in turn, would have led to the Connection being made free of charge. Accordingly it is Ofwat’s determination that South East Water was entitled to recover the Actual Costs incurred in making the Connection.
- 9.3 Ofwat has considered whether the other elements of South East Water’s charges reflect expenses reasonably incurred and has concluded that the costs for the supply are not inconsistent with the range of costs assessed as reasonable within the Hyder Report. On 31 May 2012 the Complainant confirmed to Ofwat that she had received a total refund of £828.48 from South East Water. Ofwat therefore determines that a further refund of £42.33 is now due to the Complainant (see **Table 1** below).

Table 1

(a) Ofwat’s stated reasonable cost of the connection	(b) Amount South East Water has recovered from the Complainant	(c) Amount due to be refunded to the Complainant (b) minus (a)	(d) Amount refunded by South East Water to the Complainant	(e) Refund still due to the Complainant (c) minus (d)
£723.86	£1,594.67	£870.81	£828.48	£42.33

- 9.4 The reasons for Ofwat’s determination are as follows:
- (a) Section 56(5) provides that, if no applicable charges scheme provision is in place, Ofwat may make a determination of the charges for making the non-domestic supply, having regard to the desirability of the undertaker’s (i) recovering the expense of complying with its obligations under section 55 and (ii) securing a reasonable return on its capital.
- (b) Section 56(1) provides that any matter that falls to be determined by Ofwat for such non-domestic supply shall, in the absence of agreement between the parties, be determined by Ofwat according to what appears to Ofwat to be reasonable.

- (c) In considering whether the costs incurred by South East Water 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 South East Water; (3) assertions made by South East Water and the Complainant; and (4) information contained within the Hyder Report.
 - (d) 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 a 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.
 - (iv) Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.
- 9.5 The Complainant paid the amount of £1,594.67 (as per paragraph 1.4 above) upfront as a deposit for work subsequently carried out. We consider it reasonable to require South East Water to pay interest on the refund amount of £42.33 calculated from 27 June 2011 until the date of payment of this refund. 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 its Appendix 1.