



**Ofwat final decision on appeal made by Mr Cockette
against Severn Trent Water under section 105b of the
Water Industry Act 1991**

1. Introduction

- 1.1. On 1 July 2011, the Water Industry (Scheme for Adoption of Private Sewers) Regulations 2011 (“**the Regulations**”) came into force, as did the Secretary of State’s scheme for the compulsory adoption of all private sewers, lateral drains and pumping stations in “the area of every sewerage undertaker whose area is wholly or mainly in England” (“**the Scheme**”).
- 1.2. The Regulations and the Scheme give effect to Government policy by placing a duty on sewerage companies to adopt all private sewers, lateral drains and pumping stations (other than those that are expressly exempt). Regulation 3(8) specified 1 October 2011 as the date for the compulsory transfer of all private sewers and lateral drains. Pumping stations must be transferred by 1 October 2016.
- 1.3. The Water Industry Act 1991 (“**the Act**”) provides for an appeal against a company’s compulsory transfer of private sewers and lateral drains. Such an appeal must be lodged under section 105B of the Act which allows an appeal on two grounds, namely:
 - i. that the sewerage company is not under a duty to transfer (for example, because a private sewer is on Crown land and is therefore exempt); or
 - ii. that the adoption would result in serious detriment to the appellant.
- 1.4. On 13 July 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr R C Cockette (“**the Appellant**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by Severn Trent Water Limited (“**Severn Trent Water**”) to adopt the private lateral drain which serves the Property and which runs from the curtilage of the Property and under [REDACTED] to the junction of [REDACTED] and [REDACTED] (“**the Lateral Drain**”) where it connects to a public sewer.
- 1.5. This appeal is on the ground that the adoption would result in serious detriment to the Appellant. This is for the Appellant to demonstrate.
- 1.6. This document sets out Ofwat’s final appeal decision (following a draft decision issued 29 October 2012). This document adopts the following structure:
 - (i) The factual background (at part 2),
 - (ii) Ofwat’s procedure (at part 3),

- (iii) The issues to be decided (at part 4), and
- (iv) Ofwat's decision (at part 5).

2. 2. Factual Background

The parties

2.1 We understand that the Appellant owns the Property and the Lateral Drain.

2.2 Severn Trent Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in the area of the Lateral Drain.

The site

2.3 The plan attached at Annex A ("**the Plan**") shows the Property, the approximate location of the Lateral Drain, and four properties that connect to a public sewerage system which runs through the rear of the Property.

2.4 The pipework shown in red on the Plan includes, within the curtilage of the Property, a section of private drain (which is not a lateral drain) which is also owned by the Appellant. Such private drain is not the subject of this appeal (see paragraphs 5.1, 5.2 and 5.7 below). In this draft decision, we refer to the Lateral Drain (which is the subject of this appeal) and such private drain (which is not a lateral drain) collectively as "**the Pipework**".

Chronology of key events

2.5 When the building on the Property was constructed approximately 26 years ago, Severn Trent Water refused a request to connect the Property to the existing public sewerage system which runs through the rear of the Property, owing to the poor state of that pipework.

2.6 As a consequence, the Appellant was required to construct the Pipework, to connect the Property to the public sewer at the junction of [REDACTED] and [REDACTED]. The construction of the Pipework significantly increased the overall costs of constructing the Property.

2.7 In 2010, the Appellant paid for repairs relating to the cover of a manhole which serves the Lateral Drain.

2.8 On 13 July 2011, the Appellant submitted an appeal under section 105B of the Act against Severn Trent Water's proposal to adopt the Lateral Drain

compulsorily.

The Appellant's submissions

2.9 The Appellant considers that the compulsory transfer of the Lateral Drain would cause serious detriment because the Appellant considers that the transfer would constitute the loss to the Appellant of a valuable asset.

3. 3. Ofwat's Procedure

3.1 On 29 October 2012 Ofwat issued draft decision to the Appellant and Severn Trent Water for their consideration. We received a response from the Appellant in a letter dated 15 November 2012. In response to the draft decision the Appellant states that they do not consider that the future costs of maintaining the drain outweigh the construction costs. The Appellant also states that in the future neighbouring properties could be connected to the Lateral Drain, as the current connection is in poor repair and that if the Appellant retained ownership of the Lateral Drain he could charge for future connections. However the Appellant has provided no further evidence in support of his representations. Severn Trent replied in a letter dated 27 November and stated that it has no comments on Ofwat's draft decision.

3.2 Ofwat has not sought to respond to every point made by the Appellant in his submissions and correspondence in advance of making this final decision. However, where Ofwat has needed clarification or additional information from the Appellant, it has been obtained. Ofwat is satisfied that it now has sufficient information to issue a final decision.

4. 4. The issues to be decided

4.1 Ofwat is satisfied that the Lateral Drain in question is not exempt from the Scheme and that Severn Trent Water therefore has a duty to adopt it.

4.2 The issue to be decided is whether the proposed transfer would result in serious detriment to the Appellant.

5. 5. Ofwat's draft decision

The Pipework

5.1 Section 219 of the Act sets out statutory definitions of the terms 'drain', 'lateral drain' and 'sewer' which are applicable to the Regulations and the Scheme. In terms of those definitions, the Pipework currently comprises:

- i. a lateral drain from the curtilage of the Property to the public sewer located at the junction of [REDACTED] and [REDACTED]; and
- ii. a private drain which is not a lateral drain within the curtilage of the Property.

Duty to adopt (section 105(B)(3)(a) of the Act)

5.2 As set out at paragraph 1 above, the Regulations and the Scheme apply to private sewers and lateral drains. However, the Regulations and the Scheme do **not** apply to any private drain which is not a lateral drain. Accordingly, Severn Trent Water's proposal specified in paragraph 1.4 above does not relate to the drain which forms part of the Pipework which is not a lateral drain. To confirm, that drain (i.e. the part of the Pipework which is located within the curtilage of the Property) does not transfer to Severn Trent Water by virtue of the Regulations and the Scheme. See also paragraph 5.7 below.

Serious detriment (section 105B(3)(a) of the Act)

5.3 The Appellant considers that the transfer of the Lateral Drain would be seriously detrimental for the reason set out in section 2.9 above.

5.3 The Appellant incurred considerable costs to construct the Pipework, and has since incurred costs to maintain it, and considers that a transfer of the Lateral Drain to Severn Trent Water would constitute a loss to the Appellant of a valuable asset, which would represent serious detriment. However, we note that this appeal only relates to the length of the Lateral Drain, and not to the drain (which is not a lateral drain) within the curtilage of the Property. Moreover, if the Lateral Drain were not to transfer, the Appellant would be liable for all the future costs of maintaining it. We note that the Appellant has been responsible for these costs for around 26 years and has incurred maintenance costs in the past. The liability for these costs would come to an end upon the transfer of the Lateral Drain. We do not consider that the Appellant's loss of ownership of the Lateral Drain, when weighed against the substantial benefit of no longer being liable for the costs of maintaining it, constitutes serious detriment.

5.4 The Appellant also considers that in the future he could charge for connections to the Lateral Drain, given that the drain that serves his neighbours is in poor repair. However the Appellant has provided no evidence that such connections are likely to take place (other than to cite the poor state of the current drainage). We consider that in order for there to be serious detriment there has to be actual effect. We consider that there is no actual effect if a future connection is merely proposed or envisaged and no firm proposals are in place regarding a

possible connection to the Lateral Drain. The Appellant has provided no evidence to show that he had an alternative to building the Pipework to connect his property to the Public Sewer at his own expense. Furthermore, there is no evidence that the Lateral Drain will actually be used in future to facilitate drainage of the neighbouring properties as he has hoped. We therefore consider any potential case of detriment to be speculative and insufficient to support a case for serious detriment.

- 5.5 We also note that we have considered separately the Appellant's appeal by reference to the Appellant's rights under the European Convention on Human Rights, notably Article 1 of the First Protocol to the Convention. We have concluded that a payment of compensation to the Appellant would not be needed on the transfer of the Lateral Drain to Severn Trent Water in order to ensure a fair balance between the Appellant's interests and the public interest in a more integrated sewerage system. Furthermore, we do not consider that the Appellant would suffer serious detriment if compensation were not paid to the Appellant on a transfer of the Lateral Drain to Severn Trent Water.
- 5.6 Therefore, we consider that the Appellant would not suffer serious detriment as a result of the adoption of the Lateral Drain.
- 5.7 The extent to which part of the Pipework is a lateral drain (i.e. the Lateral Drain) and part a drain which is not a lateral drain, depends on the issue of the extent of the curtilage of the Property. Notices issued by sewerage companies under the Regulations and the Scheme do not address such issues and it is not necessary for Ofwat to address this issue as part of this draft decision. The issue will fall to be determined by interested parties in the future, as and when necessary.

Conclusion

- 5.8 Ofwat concludes that Severn Trent Water's proposal to adopt the Lateral Drain should be allowed and that the Lateral Drain should transfer to Severn Trent Water with effect from 2 April 2013.
- 5.9 In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by Severn Trent Water. Ofwat has concluded that in this case it would not be appropriate to specify any conditions, including any condition directing the payment of compensation.