



**Ofwat final decision on appeal made by Mr & Mrs Chant against
South West 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 9 August 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal by Mr. Stuart Chant and Mrs. Carol Chant (jointly referred to as “**the Appellant**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by South West Water Limited (“**South West Water**”) to adopt the private sewer at the Property (“**the 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. This document adopts the following structure:
- i. The factual background (at part 2),
 - ii. Ofwat’s procedure (at part 3),
 - iii. The Appellants submissions (at part 4)

- iv. The issues to be decided (at part 5), and
- v. Ofwat's final decision (at part 6).

2. Factual background

The parties

2.1. The Appellant owns the Property.

2.2. South West Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers (“**the Public Network**”) in Exeter.

Chronology of key events

2.3. The Property, which consists of a residential dwelling, was built in 1963 when the Sewer was laid to the rear of the property. Subsequently, a living room extension was added to the Property, over part of the Sewer. The plan attached at Annex A shows the Property and the location of the Sewer.

2.4. On 9 August 2011 the Appellant submitted an appeal under section 105B of the Act against South West Water’s proposal to adopt the Sewer.

3. Ofwat’s Procedure

3.1. Since receiving the appeal, Ofwat has gathered and considered the information necessary to make a decision. In particular Ofwat:

- i. wrote to the Appellant on 16 December 2011 asking for confirmation of the age of the Sewer;
- ii. discussed with the Appellant (Mrs Chant) on 18 January 2012 the services she could expect to receive from South West Water in the event of sewer flooding and its statutory powers to work in private land; and
- iii. asked South West Water on 22 December 2011 to confirm its policy on easements in relation to the Scheme and on 19 January 2012 to confirm the services it provides to customers who experience sewer flooding.

3.2. On 24 May 2012, Ofwat issued a draft decision to the Appellant and South West Water for their consideration. In the Draft Decision, Ofwat set out that it did not think the proposed transfer of the Sewer would result in serious detriment and that the Sewer should transfer to South West Water. We received a response

from the Appellant, by email on 15 June 2012 which reiterated the main points of its appeal which are outlined in section 4. South West Water replied by email sent 31 May 2012 which stated that it had no further written representations to make.

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

4. The Appellant's submissions

4.1. The Appellant has set out in its appeal and response to the draft decision that it considers that the compulsory transfer of the Sewer would cause serious detriment because:

- i. The transfer would create an easement in favour of South West Water in relation to the Sewer and that as a result (i) provisions in the Appellant's mortgage agreement in respect of the Property forbidding the granting of rights over the Property to third parties and disposing of any part of the Property would be breached; and (ii) the value of the Property may be diminished ("**the Easement Issue**");
- ii. The Appellant is concerned that they would not receive the same level of service with regard to the Sewer from South West Water following the transfer as that available under his current private home insurance cover ("**the Insurance Issue**"); and
- iii. The Appellant considers that their privacy within their home at the Property would be infringed ("**the Privacy Issue**").

5. The issues to be decided

5.1. The issues to be decided are:

- i. Whether the sewer in question is exempt from the Scheme; and
- ii. Whether the proposed transfer would result in serious detriment to the Appellant.

5.2. Ofwat is satisfied that the Sewer in question is not exempt from the Scheme and that South West Water therefore has a duty to adopt it.

5.3. We address the issue of whether the proposed transfer would result in serious detriment to the Appellant in section 6 below.

6. Ofwat's Final Decision

6.1. Ofwat is grateful for the representations that it has received from the Appellant. We set out each of the main issues below and our response to them.

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

The Easement Issue

6.2. As a matter of law, the transfer of the Sewer to South West Water would not create an easement in favour of South West Water in relation to the Sewer. Neither would a compulsory transfer, in line with the Regulations, amount to a grant of any property rights to South West Water by the appellant/mortgagee. As set out at 6.4 below, following a transfer, South West Water would have duties under the Act in relation to the Sewer, and statutory powers under the Act to enter the Property to carry out any necessary works on the Sewer.

6.3. Accordingly, we consider that the Appellant would not suffer serious detriment as a result of the transfer of the Sewer to South West Water in connection with the Easement Issue.

The Insurance Issue and the Privacy Issue

6.4. As set out above, the transfer of the Sewer to South West Water would not create an easement in favour of South West Water in relation to the Sewer. However, following a transfer, South West Water would have duties under the Act in relation to the Sewer, and under section 159 of the Act, South West Water would have powers to enter into the Property and within the Appellant's home in order to carry out necessary works in relation to the Sewer. South West Water's exercise of those powers must be consistent with its code of practice which is required under section 182 of the Act.

6.5. The extent to which and how South West Water might be required to exercise its powers under section 159 of the Act in connection with the Sewer is uncertain, and would depend on the nature of any issues which arise regarding the Sewer at any particular time. As noted at 6.4 the Appellant has the protection that South West Water must exercise its powers under section 159 of the Act in accordance with its statutory code of practice. And if the Appellant is unhappy about the way South West Water has exercised its section 159 powers its can complain to Ofwat under section 181 of the Act to investigate that complaint. Ofwat may in certain circumstances direct the company to pay up to £5,000 compensation for

failure, loss, damage or inconvenience.

6.6. However, we consider that in order to make out serious detriment there has to be actual effect. Ofwat does not consider that the issues raised by the Appellant in relation to the Insurance Issue and the Privacy Issue give rise to actual effect in that there is no evidence that the following would necessarily arise:

- i. That South West Water would be required to carry out extensive works at the Property;
- ii. That in relation to such works, South West Water's services would be less favourable to the Appellant than remedies that would otherwise be available to the Appellant under current (or future) insurance arrangements; or
- iii. That any rights of privacy (or similar) of the Appellant at the Property would be infringed by such works carried out by or on behalf of South West Water.

6.7. We do not consider that the mere possibility that any of the above might arise is sufficient to make out a case of 'serious detriment' to the Appellant, particularly given the protections available to the Appellant noted at 6.5.

6.8. Accordingly, we consider that the Appellant would not suffer serious detriment as a result of the transfer of the Sewer to South West Water in connection with the Insurance Issue or the Privacy Issue.

6.9. We also note that we have considered separately the Appellant's appeal by reference to Article 1 of the First Protocol of the European Convention on Human Rights and we have concluded that a payment of compensation to the Appellant would not be needed on the transfer of the Sewer to South West 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 Sewer to South West Water.

Conclusion

6.10. Ofwat concludes that South West Water's proposal to adopt the Sewer should be allowed and that the Sewer should transfer to South West Water with effect from 16 May 2013.

6.11. In making its decision under section 105B(9)(a) of the Act, Ofwat is able to specify conditions including payment of compensation by South West 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.