



**Final decision in respect of an appeal made by Mr and Mrs Martin
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 8 September 2011, the Water Services Regulation Authority (“**Ofwat**”) received an appeal submitted by Mr. B Martin on behalf of his parents Mr. & Mrs. D Martin (“**the Appellants**”) of [REDACTED] (“**the Property**”) under section 105B of the Act against a proposal by South West Water Limited (“**South West Water**”) to adopt the lateral drain that runs between the Property and the public sewer in the vicinity of [REDACTED] [REDACTED] as specified at paragraph 2.5 below (“**the Lateral Drain**”).
- 1.5. This appeal is on both grounds set out at paragraph 1.3 above. These are for the Appellants to demonstrate.
- 1.6. This document sets out Ofwat’s final appeal decision. It 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).
- v. Ofwat's final decision (at part 6).

2. The Factual Background

The parties

- 2.1. The Appellants own the Property.
- 2.2. South West Water is a water and sewerage undertaker appointed under the Act. It owns the public sewers in [REDACTED]

Chronology of key events

- 2.3. The plan attached at Annex A ("**the Plan**") is a copy of a plan provided by the Appellant showing the Property and its surroundings. The location of the Lateral Drain is highlighted in blue. The Appellant also provided a copy of the Property deed dated 8 April 1974, which includes rights of easement attached to the Property in relation to the use and maintenance of a sewer or drain which was then to be laid through adjoining land between the Property and an existing sewer in the vicinity of [REDACTED]. For the purposes of this decision, we assume that the rights set out in the deed in relation to such sewer or drain relate to the whole of the Lateral Drain and that such rights remain in full force and effect.
- 2.4. The Appellants state that the Lateral Drain was purchased as part of the Property and that one quarter of the cost of the Property was for the easement and Lateral Drain.

3. Ofwat's procedure

- 3.1. Since receiving the appeal, Ofwat has considered the appeal and has obtained from the Appellants the additional information necessary to make a decision. In particular, Ofwat spoke to the Appellants on 3 May 2012 to confirm that Mr. B Martin had made the appeal on behalf of the Appellants and to confirm the location of the Lateral Drain. Ofwat is satisfied that it now has sufficient information to issue a final decision.

- 3.2. On 1 June 2012, Ofwat issued a draft decision to the Appellants and South West Water for their consideration. We received a response from the Appellants, in a letter dated 21 June 2012 which is outlined in section 4. South West Water replied by email sent 6 June 2012 which stated that it had no further written representations to make.
- 3.3. Ofwat has not sought to respond to 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, it has been obtained. Ofwat is satisfied that it now has sufficient information to issue a final decision.

4. The Appellants' submissions

- 4.1. The Appellants do not accept that there is a duty on South West Water under the Regulations and the Scheme to adopt the Lateral Drain on the grounds that the Lateral Drain serves only one property.
- 4.2. The Appellants also consider that compulsory transfer of the Lateral Drain would cause serious detriment because the Appellants maintain that the Lateral Drain and its associated easements are a benefit to the Property with a current value of approximately £55,000, which would be lost if the Lateral Drain were adopted by South West Water. The Appellants have not provided evidence to substantiate their claim regarding the value of the Lateral Drain and associated easements (**the Asset Value Issue**).
- 4.3. In response to the draft decision, the Appellants state:
- i. that the Lateral Drain was laid under the terms of a deed of 8 April 1974 in consideration of the sum of £1,000. The Appellants claim that the Property would not have had residential use if this cost had not been paid. In the Appellants estimation the £1,000 consideration paid in 1974 is worth £55,000 or one quarter of the current value of the property;
 - ii. that they are planning an additional new dwelling at the Property which they would drain using the Lateral Drain; and
 - iii. that the adjoining neighboring property has planning permission to building an additional new dwelling and that the permission was granted on condition that the dwelling at the neighboring property and the proposed new dwelling will be connected to the public sewer network. The Appellant argues that South West Water will benefit financially if the Lateral Drain is transferred as it will be able to charge for sewer connections (**the**

Development Issue).

5. The issues to be decided

- 5.1. The issues to be decided are whether:
- i. South West Water has a duty under the Regulations and the Scheme to adopt the Lateral Drain; and
 - ii. the proposed transfer would result in serious detriment to the Appellant.

6. Ofwat's decision

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

- 6.1. Pursuant to definitions set out in the Act, a 'lateral drain' by definition serves only one building or group of buildings or yards within the same curtilage. Accordingly, Ofwat is satisfied that the fact that the Lateral Drain serves only one property (i.e. the Property) is not a valid ground on which the Lateral Drain might be exempt from the Scheme.
- 6.2. Regulations 5(1) and 5(2) (Exempt private sewers and exempt private lateral drains) set out that a private sewer or private lateral drain is exempt for the purposes of the Scheme if the sewer or lateral drain:
- i. is owned by a railway undertaker; or
 - ii. is situated on or under "Crown land" (as defined in Regulation 5(4)) (and Regulation 5(2)(b) also applies).
- 6.3. Ofwat is satisfied that neither paragraph 6.2(i) nor paragraph 6.2(ii) above applies in relation to the Lateral Drain and that therefore:
- i. the Lateral Drain is not exempt from the Scheme; and
 - ii. South West Water has a duty under the Regulations and the Scheme to adopt the Lateral Drain.

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

The Asset Value Issue

- 6.4. The Appellants consider that the transfer of the Lateral Drain would be seriously detrimental as it would result in a loss of benefit to the Property, namely the Lateral Drain and its associated easements, which the Appellants estimate have a value of approximately £55,000.
- 6.5. If the Lateral Drain **were not** to transfer to South West Water, the current position regarding the use of the Lateral Drain and associated costs would continue: i.e. in accordance with the terms set out in the Property Details, the Appellants, as freehold owners of the Property, would remain entitled to use the Lateral Drain and the Appellants would remain liable for costs of repairing and maintaining the Lateral Drain.
- 6.6. If the Lateral Drain **were** to transfer to South West Water, the current position regarding the use of the Lateral Drain and associated costs would change: i.e. the Appellants, as freehold owners of the Property, would remain entitled to use the Lateral Drain **but** the Appellants' liability for costs of repairing and maintaining the Lateral Drain would come to an end upon transfer of the Lateral Drain.
- 6.7. Ofwat considers that a transfer of the Lateral Drain to South West Water would constitute an interference with the Appellants' rights under the Deed. The Appellant has not provided evidence to support its view that the Lateral Drain has an approximate value of £55,000 and Ofwat is not persuaded that any diminution in the value of the Property would result if the Lateral Drain were to transfer. This is because the Property and its owners would continue to benefit from the use of the Lateral Drain, but without obligations to maintain and repair it, which could be substantial.
- 6.8. Furthermore if the Lateral Drain were to transfer it would become the responsibility of South West Water which is a well-resourced company with expertise in maintaining sewers and drains. We do not consider that the interference with the Appellants' rights under the Deed which would arise from a transfer of the Lateral Drain to South West Water, when weighed against the benefit of the Appellants no longer being liable for costs of maintaining and repairing the Lateral Drain, constitutes serious detriment.

The Development Issue

- 6.9. The Appellant also considers that in the future he could use the Lateral Drain

to drain a proposed new dwelling at the Property and charge his neighbours for connections to the Lateral Drain, given their plans to build two new dwellings at their property. We consider that in order to make out serious detriment that there has to be actual effect. We consider that there is no actual effect if development is merely proposed. In this case, the Appellant has provided no evidence to support the claim that they plan to build an additional new dwelling at the Property. And even though the neighbouring property owner has planning permission for new dwellings, there are no firm arrangements in place with regard to any connection to be made to the public sewers. Such arrangements might not utilise the Lateral Drain or might not be needed at all if the planned new dwellings are not constructed.

- 6.10. 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 Lateral Drain was built in or around 1974 to connect the Property to the public sewer and the Appellant has provided no evidence to show that it was built for any other purpose than to drain the Property nor that the cost of construction could be re-couped through future connections to it. We therefore consider any potential case of detriment to be entirely speculative at this stage.
- 6.11. Accordingly, we consider that the Appellant would not suffer serious detriment as a result of the transfer of the Lateral Drain to South West Water.
- 6.12. 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 Appellants would not be needed on the transfer of the Lateral Drain to South West Water in order to ensure a fair balance between the Appellants' interests and the public interest in a more integrated sewerage system. Furthermore, we do not consider that the Appellants would suffer serious detriment if compensation were not paid to the Appellants on a transfer of the Lateral Drain to South West Water.

Conclusion

- 6.13. Ofwat concludes that South West Water's proposal to adopt the Lateral Drain should be allowed and that the Lateral Drain should transfer to South West Water with effect from 2 April 2013.
- 6.14. 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.