



Water today, water tomorrow

**Dispute under Section 64(2A) of the Water Industry Act
1991 (“WIA91”)**

Mr Jefferson v Yorkshire Water

Final Determination

June 2013

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1. Introduction

- 1.1 This Final Determination concerns a dispute referred to the Water Services Regulation Authority ("**Ofwat**") by Mr Jefferson ("**Complainant**"), under section 64(2A) of the Water Industry Act 1991 ("**WIA91**") on 21 August 2012.
- 1.2 Mr Jefferson, currently of Howden, Yorkshire wrote to Ofwat seeking a determination under section 64(2A) of the WIA91 in relation to a requirement by Yorkshire Water for a separate service pipe to his previous property, 3 Wheldon Cottages in Goole, Yorkshire.
- 1.3 We issued a draft determination on 24 April 2013 in which we concluded that Yorkshire Water did not have the right to require a separate service pipe to 3 Wheldon Cottages. We have considered the representations we received from Yorkshire Water arriving at this Final Determination. Mr Jefferson did not respond.
- 1.4 In summary, this Final Determination concludes that Yorkshire Water did not have the right to require a separate service pipe to 3 Wheldon Cottages.

2. Key factual background

- 2.1 Mr Jefferson purchased 2 Wheldon Cottages in 1980. It consisted of two houses – 2 Wheldon Cottages ("**No. 2**") and 3 Wheldon Cottages ("**No. 3**").
- 2.2 No. 3 was previously an annex to No. 2, but had been converted from a garage and an office to separate residential accommodation, by the previous occupants in 1978.
- 2.3 Around 1988, No. 2 and No. 3 were merged to form one single piece of residential accommodation ("**Single Property**"). Subsequently, on 25 March 2012, the Complainant wrote to Yorkshire Water informing them that the Single Property was re-designated to once again become No.2 and No.3, each being a separate piece of residential accommodation.
- 2.4 The water supply to No. 2 and No. 3 has historically come from the same service pipe.
- 2.5 On 25 March 2012, Mr Jefferson wrote to Yorkshire Water requesting separate water meters be installed at No. 2 and No. 3.
- 2.6 On 17 May 2012, Yorkshire Water served a statutory notice under section 64(3) of the WIA91, requiring a separate service pipe to No. 3 before 17 August 2012.
- 2.7 On 7 August 2012, Yorkshire Water extended its section 64(3) notice period by one month. This required the separate service pipe to be installed at No. 3 by 17 September 2012.
- 2.8 On 15 September 2012, Yorkshire Water's contractors installed a separate service pipe to No. 3 pursuant, in Yorkshire Water's view, to section 64(4) of the WIA91. Mr Jefferson was charged £2,440 for the installation of this service pipe.

3. Key legal framework

Section 30A

- 3.1 Section 30A of the WIA91 sets out the practice and procedure to be followed by Ofwat in dealing with determinations under the WIA91, including a determination under section 64(2A) of the WIA91.

Section 64

- 3.2 Section 64 of the WIA91 deals with the circumstances in which "a water undertaker may require the provision of a separate service pipe to any premises." The full text of section 64 of the WIA91 is in Annex 1 of this determination.
- 3.3 Under section 64(2) of the WIA91, where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of a separate service pipe to those houses until one of the five conditions as set out in sections 64(2)(a) to 64(2)(e) of the WIA91 are satisfied. The five conditions can be summarised as follows:
- (a) the service pipe becomes defective and is no longer sufficient;
 - (b) a payment in respect of the supply of water remains unpaid;
 - (c) the houses are structurally converted into a larger number of houses;
 - (d) the existing service pipe has been interfered with; and
 - (e) the water company believes such interference as referred to in (d) above is likely to take place.
- 3.4 The five conditions as listed and summarised above are set out in full at Annex 1 of this Final Determination.
- 3.5 Under section 64(2A) of the WIA91, disputes as to whether one of these five conditions has been complied with may be referred to Ofwat by either party for determination in accordance with section 30A of the WIA91.
- 3.6 Under section 64(3) of the WIA91, a water company can serve notice requiring the provision of a separate service pipe.

4. 4. Views of the parties

- 4.1 Yorkshire Water provided its written response on 15 May 2013. It considered that section 64(1) was applicable because Mr Jefferson had told it on 25 March 2012 that his property had been divided into two separate houses known as No. 2 and No. 3. Yorkshire Water considered prior to that time, the property owned by Mr Jefferson consisted of one house (i.e. No. 2) and therefore section 64(1) of the WIA91 applied.
- 4.2 Mr Jefferson did not respond.

5. 5. Ofwat's Final Determination

- 5.1 In light of Yorkshire Water's response to the draft determination, we think it is necessary to consider the application of section 64(1) of the WIA91.
- 5.2 For section 64(1) of the WIA91 to apply, "the premises", to which a separate service pipe may be required, need to "consist **in a house** or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied" (emphasis added), which are already supplied with water by the undertaker.
- 5.3 The Single Property existed as one house when No. 2 and No. 3 were merged in 1988. The conversion back to two properties (No. 2 and No. 3), meant that "premises" did come to consist "in a house...", since No. 2 and No. 3 came to consist within the Single Property following the redevelopment. The key issue rests of what "premises" No. 2 and No. 3 were.
- 5.4 Ofwat considers that the "premises" which consisted within the Single Property were "houses". As such, two houses then existed.
- 5.5 The issue then becomes whether section 64(2) of the WIA91 is also applicable. In our analysis, we have taken a two-step approach:
- i. We first consider whether there is a supply of water to two or more houses (as required under the first paragraph of section 64(2)) ("**Criteria A**").
 - ii. Second, we consider whether at least one of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 applies in this case ("**Criteria B**").
- 5.6 Ofwat considers that, under section 64(2) of the WIA91, a water company can only require a separate service pipe, where the facts of the case, meet two criteria: namely, (A) a supply of water to two or more houses is provided wholly or partly by the same service pipe, and (B) if at least one out of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 applies.

Criteria A: supply of water to two or more houses.

- 5.7 Having reviewed both sections 64(1) and 64(2) of the WIA91 in conjunction with the definition of "house" as set out in section 219 of the WIA91 ("house" means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is

likely to be so occupied") Ofwat considers that both No. 2 and No. 3 each fall within the definition of house under the WIA91.

- 5.8 In this case, the supply of water to two or more houses (being No. 2 and No. 3), is provided by the same supply pipe, and has been since 1978. Whilst No. 3 was formerly an annex to No. 2 (and latterly became a single property), it now exists as a separate building to No. 2, with both houses having been, and continuing to be serviced by the same supply pipe.
- 5.9 Ofwat has therefore concluded that, the provisions of section 64(2) of the WIA91 apply in these circumstances, because the "supply of water to two or more houses is provided wholly or partly by the same service pipe".

Criteria B: Does at least one out of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 apply in this case?

- 5.10 We consider that the only condition of section 64(2) that is potentially of relevance in this case is condition (c), as there has been no suggestion by Yorkshire Water that any of the other section 64(2) conditions apply.

Section 64(2) states, "Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until –

...

- (c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses".

- 5.11 Ofwat considers that as a single service pipe was already being used to supply the two houses, a separate service pipe cannot be required until these two houses are converted into a larger number. Therefore, Ofwat has determined that the condition set out at section 64(2)(c) of the WIA91 is not applicable in this case. Further, Ofwat determines that the remaining conditions at section 64(2) of the WIA91 are also not applicable to this case. Therefore, Ofwat considers that section 64(2) of the WIA91 does apply.

Conclusion

- 5.12 In conclusion, Ofwat considers that under section 64(2A) and 30A of the WIA91, the conditions in subsection (2) of section 64 of the WIA91 do not apply.

- 5.13 As Yorkshire Water was not entitled to serve a notice under section 64(3) of the WIA91 Ofwat determines that Yorkshire Water is required to refund the Complainant the costs it charged the Complainant for installing the separate service pipe to No. 3.

Annex 1 – the relevant legal provisions

64 Supply by means of separate service pipes

(1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises . . . which—

(a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and

(b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until—

(a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;

(b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;

(c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;

(d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or

(e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.

(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.

(3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice

on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—

(a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;

(b) sections 45 to 51 above shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;

(c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—

(i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of section 52 above that such a supply is provided by means of the separate service pipe; and

(ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;

and

(d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.

(4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may—

(a) itself carry out the works which that person was required to carry out; and

(b) recover the expenses reasonably incurred by the undertaker in doing so from that person.

(5) Without prejudice—

(a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or

(b) to the power conferred by virtue of paragraph (d) of that subsection,

any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of this Chapter.