



Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Firstway Properties Limited v Thames Water Utilities Limited

This is the final determination of a complaint referred by Firstway Properties Limited under section 45 of the Water Industry Act 1991 (**WIA 1991**) to the Water Services Regulation Authority (**Ofwat**).

This dispute is between the Complainant and Thames Water Utilities Limited in respect of the amount recovered by Thames for a connection of one new water supply at 1-2 Bairney Wood Approach, Broadway Close, Woodford Green IG8 0HL.

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

Contents

Section		Page
1	Introduction	2
2	Legal framework	2
3	Background	2
4	Complainant's comments	3
5	Thames Water's comments	3
6	Content of the Draft Determination	3
7	Jurisdiction to determine the complaint	3
8	Determination and reasons	4
	Appendix A	7

1 Introduction

- 1.1 This is the final determination of a complaint referred by Firstway Properties Limited (the **Complainant**) under section 45 of the Water Industry Act 1991 (**WIA 1991**) to the Water Services Regulation Authority (**Ofwat**).

2 Legal framework

- 2.1 Section 45(1) of the WIA 1991 imposes a duty on water companies (subject to certain conditions) to make a connection, where the owner or occupier of any premises serves notice on the company requiring it, for the purposes of supplying water for domestic purposes, to connect a service pipe to those premises with one of the water company's mains.
- 2.2 Section 45(6) of the WIA 1991 provides that the water company may recover from the person who has required it to make a connection the expenses reasonably incurred by it in making the connection.
- 2.3 Section 45(6A) of the WIA 1991 provides that any dispute about whether the expenses were incurred reasonably may be referred by either party for determination by Ofwat.
- 2.4 Ofwat's decision is binding on the parties to the dispute. By virtue of section 45(6A) read in conjunction with section 30A(5) of the WIA 1991, this determination is enforceable as if it were a county court judgement.

3 Background

- 3.1 The dispute is between the Complainant and Thames Water Utilities Limited (**Thames**) in respect of the amount recovered by Thames for a connection of one new water supply at 1 - 2 Bairney Wood Approach, Broadway Close, Woodford Green IG8 0HL (the **Connection**).
- 3.2 The Complainant submitted an application for the Connection to Thames and received a quotation for the Connection from Thames on 28 January 2009 in the sum of £1,066.00 (exclusive of VAT and infrastructure charges) (the **Quotation**). The work on the Connection was completed on 30 July 2009. Thames subsequently stated that its actual costs incurred in making the Connection were £1,065.08.
- 3.3 Thames has since recovered £1,066.00 from the Complainant.

- 3.4 The Complainant does not consider that the charge for the Connection reflects costs reasonably incurred by Thames, and the Complainant referred the dispute to Ofwat in November 2009.
- 3.5 Ofwat investigated this matter and on 6 October 2010 issued a draft determination (the **Draft Determination**) which was sent to the Complainant and to Thames on 6 October 2010.

4 Complainant's comments

- 4.1 In an email dated 1 November 2010 the Complainant confirmed it had nothing further to add to the Draft Determination.

5 Thames' comments

- 5.1 In an email dated 19 October 2010 Thames confirmed that it believes the Draft Determination to be factually accurate.

6 Content of the Draft Determination

- 6.1 Having reviewed the comments provided by Thames and the Complainant, Ofwat is satisfied that the content of the Draft Determination is factually correct and accurately reflects the detail of the complaint.

7 Jurisdiction to determine the complaint

- 7.1 Ofwat is satisfied that the dispute between the Complainant and Thames is a dispute about whether the expenses incurred by Thames in making a connection under section 45 of the WIA 1991 were reasonably incurred, and therefore that Ofwat has jurisdiction to determine this dispute under section 45(6A) of the WIA 1991. This is because:
- (i) the Complainant required Thames to connect one new water supply connection at its property;
 - (ii) Thames installed the connection and presented the Complainant with an invoice for actual costs incurred; and
 - (iii) the charge raised by Thames is disputed as being excessive by the Complainant.

8 Determination and reasons

8.1 Ofwat's final determination in respect of this matter is that the charges do not reflect expenses reasonably incurred in that the costs for overheads charged by Thames were excessive and unreasonable. Ofwat concludes that Thames should refund the Complainant in the sum of £144.02, that being the difference between the costs which Ofwat determines to be reasonable and that recovered by Thames from the Complainant.

8.2 The reasons for Ofwat's determination are as follows:

(a) Section 45(6) of the WIA 1991 entitles a company to recover expenses reasonably incurred in carrying out work necessary to make a connection.

(b) In considering whether the costs incurred by Thames in making the Connection were reasonable, Ofwat has had regard to: (1) the nature of the work necessary to make the Connection; (2) the financial information provided by Thames; (3) comments made by Thames and the Complainant on the Draft Determination; and (4) information contained within the Hyder Report (as to which, see (c) below)¹.

(c) 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 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.

¹ The Hyder Report - A Comparative Study: Cost of new water supply connections work (24 March 2010) (http://www.ofwat.gov.uk/publications/commissioned/rpt_com_20100928s45hyder.pdf)

- 8.3 Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.
- 8.4 Having regard to the Hyder Report (and in this case, Ofwat's previous experience in dealing with disputes such as this) Ofwat considers that, for a standard single connection, overhead costs would not generally exceed £80. Where companies make representations Ofwat will consider their evidence regarding overhead costs actually incurred. At the request of Ofwat, Thames has provided further information in respect of how it calculated its overheads in this case. Ofwat, in coming to this final determination, has considered this further information.
- 8.5 The administrative arrangements for carrying out a single visit (as was the case in this matter) should have been straightforward, and so Ofwat can see no reason to justify additional overheads in excess of the levels set out in paragraph 9.2(d) above. Ofwat therefore considers that recoverable overheads should not have exceeded £80. It follows that the actual cost of the Connection should not have exceeded £921.98, being the difference between the invoiced price for overheads and the cost Ofwat considers to be reasonable (see Table 1 below).

Table 1

(a) Thames stated cost of the Connection	(b) Thames stated cost of overheads	(c) Ofwat's stated reasonable cost of overheads	(d) Actual costs of the Connection (a) minus (b) plus (c)
£1,065.08	£223.11	£80	£921.98

- 8.6 Ofwat has also considered whether other elements of Thames's charges reflect expenses reasonably incurred and has concluded that the costs for the Connection are not inconsistent with the range of costs assessed as reasonable within the Hyder Report. Accordingly Ofwat determines that, subject to the points made above in respect of overhead costs, Thames's costs were reasonably incurred.
- 8.7 Accordingly, Ofwat determines that Thames should refund the Complainant the sum of £144.02, being the difference between the stated costs for overheads and that which Ofwat believes to be reasonable (see Table 2 below).

Table 2

(a) Ofwat's stated reasonable cost of the connection	(b) Amount Thames has recovered from the Complainant	(c) Amount due to be refunded to the Complainant (b) minus (a)
£921.98	£1,066.00	£144.02

- 8.8 Under section 48 of the Act, interest must be paid on any sums that have been deposited with a water undertaker as security in relation to domestic water main connection works (pursuant to s47(2)(a) of the Act). Security is money that a customer may be required to pay in advance of work being done. Section 48 provides that the undertaker shall pay interest “on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker” at rates approved or determined by Ofwat.
- 8.9 On the facts of this determination, Ofwat’s view is that interest is payable on the Complainant’s security deposit, calculated in accordance with section 48 of the Act. 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. The amount of any interest payable is for the Courts to determine, if the Complainant and Thames are unable to agree this amount. With a view to helping the parties to agree the amount of any interest payable without involving a Court, **Appendix A** sets out guidance. This anticipates the approach we think a Court is likely to take in determining the amount of interest payable in this case.
- 8.10 This final determination is binding on both parties and is enforceable as if it were a county court judgment.

Appendix A

Guidance regarding section 48 of the Water Industry Act 1991 (“the Act”)

The table below sets out Ofwat’s view regarding the amounts and time periods on which a Court is likely to award interest in this case.

Amounts on which interest is payable	Time periods during which interest is payable on this amount
£921.50 i.e. the reasonable cost of connection works as determined by Ofwat, rounded down to the nearest 50p in accordance with section 48 of the Act	From: the date on which the company received the customer’s security deposit To: the date on which £921.50 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) but in terms of whole 3 month periods in accordance with section 48 of the Act
£144 i.e. the amount of the security deposit less the reasonable cost of works as determined by Ofwat, rounded down to the nearest 50p in accordance with section 48 of the Act	From: the date on which the company received the customer’s security deposit To: The date on which £144 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act