



Final Determination of dispute under section 45(6A) of the Water Industry Act 1991, as amended: Croudace Homes in Partnership Limited v Veolia Water Central Limited

This is a determination of a dispute referred by Croudace Homes in Partnership Limited (the **Complainant**) to the Water Services Regulation Authority (**Ofwat**) for determination under section 45(6A) of the Water Industry Act 1991, as amended (**WIA 1991**).

The dispute is between the Complainant and Veolia Water Central Limited (**Veolia**) in respect of the amount recovered by Veolia for a connection of 15 new water supplies (the **Connection**) and the disconnection of 3 existing water supplies (the **Disconnection**) at 221 - 215 Staines Road West, Sunbury-on-Thames, Middlesex TW16 7BH.

Before reaching this final determination, we shared with the parties a draft determination (**Draft Determination**) setting out the facts on which we have based this determination. The parties were given the opportunity to make representations to us on that document.

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1 Introduction and background

1.1 This is the final determination of a dispute referred to Ofwat by the Complainant under section 45 of the WIA 1991.

1.2 The dispute is between the Complainant and Veolia in respect of the amount recovered by Veolia for a connection of 15 new water supplies (the **Connection**) and the disconnection of 3 existing water supplies (the **Disconnection**) at 221 - 215 Staines Road West, Sunbury-on-Thames, Middlesex TW16 7BH.

1.3 In February 2009 the Complainant submitted an application to Veolia for the Connection and associated works and received a quotation from Veolia on 13 August 2009 for a total sum of **£15,987.67**, broken down as follows:

(a) Cost of the Connection/Disconnection	£9,051.17
(b) Infrastructure charges	£6,534.00
(c) Building water charge	£350.00
(d) VAT	£52.50
Total	<u>£15,987.67</u>

(the First Quotation).

1.4 For the purposes of this determination, as per Section 45 of WIA 1991, we will only be considering the reasonableness of the connection costs and will not take be taking into account the infrastructure charge, building water charge and VAT applied. On 1 September 2009 the Complainant accepted the First Quotation and paid Veolia the sum of £15,987.67.

1.5 On 9 February 2010, prior to the Connection being made, the Complainant wrote to Veolia requesting amendments to the design of the Connection, following which Veolia arranged for a site survey. Following the site survey Veolia issued a revised quotation (the **Second Quotation**), dated 15 March 2010, for a total sum of **£24,147.50**, broken down as follows:

(a) Cost of the Connection	£16,633.74
(b) Cost of the Disconnection	£568.44
(c) Infrastructure charges	£6,534.00
(d) Building water charge	£350.00

(e) VAT	£61.32
Total	<u>£24,147.50</u>

- 1.6 The Disconnection was originally scheduled to take place at the same time as the Connection. However at the time of the Connection the Complainant was still using the relevant water supplies concerned and therefore the Disconnection was deferred to be undertaken at a later date.
- 1.7 On 15 March 2010 the Complainant accepted the Second Quotation and paid to Veolia the additional sum of £8,159.83, being the difference between the First Quotation and the Second Quotation. At the same time the Complainant raised concerns with Veolia about the increase in the Second Quotation. Veolia's response was that, due to the proximity of the Connection to a busy main thoroughfare, its contractor had estimated that the work would need to be undertaken during two weekends to avoid disruption.
- 1.8 The Connection was completed on 21 March 2010. Following completion of the Connection the Complainant again raised concerns with Veolia regarding costs. Veolia reviewed its costs for the Connection and on 7 April 2010 Veolia stated that the actual cost of the Connection was £16,530.70, instead of the £16,633.74 quoted in the Second Quotation. Therefore the Complainant was due a refund in the sum of £103.04 (the **First Refund**).
- 1.9 Notwithstanding the First Refund, the Complainant did not consider that the charge for the Connection in the sum of £16,530.70 reflected costs reasonably incurred by Veolia, and the Complainant referred the dispute to Ofwat on 22 July 2010.
- 1.10 Ofwat investigated this matter in accordance with its powers under section 45 of the WIA 1991. Ofwat identified the scope of this dispute to be the connection charge of £16,530.70 and on 5 August 2010 Ofwat requested a detailed breakdown of costs from Veolia. On 26 August 2010 Veolia provided the information requested and confirmed (it having undertaken a further review of its costs arising out of the Connection) the cost of the Connection (excluding additional charges) was £14,287.28. The total costs that Veolia was now proposing to charge the complainant now stood at **£21,232.60**, broken down as follows:
- | | |
|-----------------------------------|------------|
| (a) Actual cost of the Connection | £14,287.28 |
| (b) Infrastructure charges | £6,534.00 |
| (c) Building water charge | £350.00 |

(d) VAT	£61.32
Total	<u>£21,232.60</u> (the Actual Cost)

Veolia said that the Complainant was entitled to a refund of £2,346.46 (being the difference between the Second Quotation and the Actual Cost) (the **Second Refund**). Veolia stated that the Second Refund had not yet been paid because Veolia was awaiting Ofwat's final determination of the dispute.

2 Legal framework

- 2.1 Section 45(1) of the WIA 1991 imposes a duty (subject to certain conditions) on a water undertaker to make a connection, where the owner or occupier of any premises serves notice on a water undertaker 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 undertaker may recover from the person who has required it to make a connection the expenses reasonably incurred by it in making the connection. Section 45(6A) of the WIA 1991 provides that any dispute between such person and the water undertaker about whether the expenses were incurred reasonably may be referred by either party for determination by Ofwat.
- 2.3 Ofwat's decision is binding on the parties to the dispute and this determination is enforceable as if it were a county court judgement.

3 Complainant's assertions

- 3.1 The Complainant asserts that the charges made by Veolia for the Connection are unreasonable in that: (1) there were only four men and one machine involved in making the Connection and that the high costs reflect the use of greater manpower; and (2) given that the water main was in the footpath (rather than the road), it should not have been necessary to partially close the road and carry out the work at the weekend.

4 Veolia's assertions

- 4.1 Veolia asserts that the local Highways Department demanded a single lane closure for the work and that as Staines Road West is a busy thoroughfare between Staines and Sunbury. Veolia explained that the Local Authority would not allow such a lane closure during the week. Therefore the Connection had to

be carried out at the weekend (Veolia subsequently confirmed that the Connection had been completed over one weekend).

- 4.2 Veolia has stated that included in the Actual Cost for the Connection are Veolia's overheads in the sum of £1,720.95. These are made up as a standard overhead charge of £114.73 multiplied by the number of individual supplies or connections - i.e. £114.73 x 15 = £1,720.95.
- 4.3 In an email to Ofwat dated 8 April 2011 Veolia said that it had identified an additional sum of £332.48 which should also be refunded to the Complainant, because part of the pipe used on the Connection was laid in unmade ground rather than in the footpath (the cost of laying pipe in unmade ground is cheaper than that laid in footpaths, and Veolia has calculated the difference in this case as being £332.48) (the **Third Refund**).
- 4.4 Veolia has stated that, as the Disconnection is still to be undertaken, it is retaining the sum of £568.44 which is the cost of the Disconnection (as set out in paragraph 1.5 above). Veolia has also stated that the soil report provided by the developer gave cause for concern about the levels of contaminants as it referenced a decommissioned petrol station. Further, that the developer failed to provide more information, lab results or a plan to remediate the contaminated land and that it accepted the decision to use a barrier pipe.

5 Expenses to be assessed

- 5.1 The Complainant has paid to Veolia the sum of £16,633.74 included in the Second Quotation for the Connection but exclusive of infrastructure charges, building water charges, VAT and the Disconnection costs. Veolia confirms that the Complainant is entitled to a refund of £2,678.94, being the Second Refund of £2,346.46 (discussed at paragraph 1.11 above) plus the Third Refund (£332.48 discussed at paragraph 4.3 above). Veolia therefore accepts (but has yet to pay) a refund to the Complainant of £2781.98.
- 5.2 It follows that the total costs recovered by Veolia for the Connection is £13,851.76, being the amount paid by the Complainant (£16,633.74) minus the total of the First, Second and Third refunds paid by Veolia to the Complainant (£2781.98). Therefore Ofwat must determine whether the reduced sum of £13,851.76 relating only to the cost of the connection was reasonably incurred. The infrastructure charges, building water charges, VAT and the disconnection costs are outside of the scope of this determination.

6 Request for further information

- 6.1 On 16 December 2011 Ofwat sent a request for further information to both parties and this request included information in respect of whether it was reasonable for Veolia to use barrier pipe rather than standard pipe. Included in the First and the Second Quotation was the cost of a barrier pipe rather than standard pipe (standard pipe being the less expensive of the two). Veolia explained that at the time of the Connection it was Veolia's policy to use barrier pipes for any new connection unless an assessment of ground contamination had been undertaken with the results being within acceptable contaminant levels.

7 Complainant's response to Ofwat's request for further information

- 7.1 The Complainant submitted its response to Ofwat's request for further information on 18 January 2012. This response included a report on a geological investigation carried out at the site of the Connection in July 2008 prepared by Albury S.I. Limited (the **Geological Report**). According to the Geological Report, no potential sources of contamination were likely to be present within the site. The Complainant asserts that as no contamination was likely to be present there was no need for barrier pipe to be used and standard pipe could have been used instead, which would have reduced the cost of the Connection.

8 Veolia's response to Ofwat's request for further information

- 8.1 Veolia submitted its response to Ofwat's request for further information on 20 February 2012. Veolia's response included the comments that a copy of the Geological Report had already been provided to Veolia's own geological advisor, who had concluded that there was insufficient detail within the Geological Report to confirm the absence of contamination and therefore it was reasonable in the circumstances for Veolia to use barrier pipe for the Connection rather than standard pipe.

9 Parties' Comments on the Draft Determination

- 9.1 The Draft Determination was sent out to both parties on 26 June 2012. The Complainant did not comment on the Draft Determination and Veolia provided its comments on 10 July 2012. Veolia accepts that the Complainant is due the first, second, and third refunds as stated in the Draft Determination. A cheque

to value of £2,679.94 was sent to the Claimant on 20th April 2011 in respect of second and third Refunds. Veolia also stated that the outstanding amount of the First Refund will be paid immediately. We have had no confirmation from the Complainant in respect of having received the aforementioned refund. We expect that if such refund has been received that the amount refunded is deducted from the total refund due as per paragraph 11.7. Veolia also referred to overheads costs in its response to the Draft Determination. Please see 11.2 for Veolia's view on and Ofwat's response to the question of overheads.

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

10 Jurisdiction to determine the dispute

10.1 Ofwat is satisfied that the dispute between the Complainant and Veolia is a dispute about whether the expenses incurred by Veolia 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:

- (a) the Complainant required Veolia to make the Connection;
- (b) Veolia treated this as a request for a connection under section 45 of the WIA 1991; and
- (c) On completion of the work, the subsequent actual costs which Veolia requested the Complainant to pay in respect of the Connection are disputed by the Complainant as being excessive.

11 Determination and reasons

11.1 Following Ofwat's investigation of this matter in accordance with section 45 of the WIA 1991, Ofwat's final determination in respect of this matter is that the charges do not reflect expenses reasonably incurred in as much that the costs for overheads charged by Veolia of £1,720.95 were excessive and unreasonable. Ofwat believes £430 to be a reasonable sum for Veolia to recover in respect of its overheads based upon a basic overhead charge of £80 plus £25 for each of the 14 additional included connections (see paragraph 10.3 below). Therefore Ofwat concludes that Veolia should refund the Complainant in the sum of £1,290.95 (the **Fourth Refund**), being the difference between the costs which Ofwat determines to be reasonable (£430) and Veolia's stated cost of its overheads (£1,720.95) (see Table 1 below).

Overhead costs

- 11.2 In its response to the **Draft Determination**, Veolia asserted that it does not agree that the overheads applied by it are excessive. However, it also stated that the method of charging overheads is under review. Veolia will look to make a decision in November 2012 and consider a sliding scale where more connections per application may result in a lower charge per connection. With reference to the allowance for overheads set by Ofwat at £80, we have received representations that it needs to be reviewed and we plan to do so. However, in the meantime, the current allowance of £80 applies.
- 11.3 Having regard to the Hyder Report (see 10.9(c) below) (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 £80.00. However, Ofwat recognises that additional costs may be incurred where more than one connection is made. Ofwat considers that £25.00 for each additional connection would be reasonable and should cover such costs. Where companies make representations Ofwat will consider their evidence regarding overhead costs actually incurred. At the request of Ofwat, Veolia 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.
- 11.4 Whilst the Complainant requested that the design of the Connection be amended, the administrative arrangements for carrying out the Connection should have been straightforward, and so Ofwat can see no reason to justify additional overheads in excess of the levels set out in paragraph 10.2 above. Ofwat therefore considers that the overhead costs of £1,720.95 claimed by Veolia (see paragraph 4.4 above) were not reasonably incurred, and that recoverable overheads should not exceed £430 - that is, the basic £80, plus £25 for each of the 14 additional individual connections. It follows that the actual cost of the Connection should not have exceeded £12,560.81 (see Table 1 below).

Table 1

(a) Veolia stated cost of the Connection (the amount paid by the Complainant minus any previous refunds from Veolia to the Complainant)	(b) Veolia stated cost of overheads	(c) Ofwat's stated reasonable cost of overheads	(d) Actual costs of the Connection (a) minus (b) plus (c)	(e) Further refund due to the Complainant (a) minus (d)
£13,851.76 (see paragraph 5.1 above for further details)	£1,720.95	£80 + (£25 x 14)= £430	£12560.81	£1,290.95

The Disconnection

- 11.5 It is not clear when or if the Disconnection is to be carried out and Ofwat does not consider it reasonable for Veolia to retain indefinitely the charge for the Disconnection in the sum of £568.44. Accordingly Veolia should also consider refunding to the Complainant the charge of £568.44 in respect of the Disconnection assuming that both parties do not wish the disconnection to take place, in the near future, within a specified period of time (the **Disconnection Refund**).

Other costs

- 11.6 Ofwat is satisfied that it was reasonable in the circumstances for Veolia to conclude that there was insufficient detail in the Geological Report to allow the use of standard pipe. Therefore, the use of barrier pipes was reasonable in the circumstances.
- 11.7 Ofwat has also considered whether other elements of Veolia'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.

Total Refund

- 11.8 Ofwat determines that the Complainant is due the Total Refund in the sum of £4, 641.37, broken down as follows:

(a) the First Refund	(b) £103.04
(b) the Second Refund	(d) £2,346.46
(c) the Third Refund	(f) £332.48
(d) the Fourth Refund	(h) £1,290.95
(e) the Disconnection Refund	(j) £568.44
the Total Refund	(l) £4,641.37

11.9 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 Veolia in making the Connection were or were not reasonable, Ofwat has had regard to: (1) the nature of the work necessary to make the Connection; (2) the financial information provided by Veolia; (3) assertions made by Veolia and the Complainant; and (4) information contained within the Hyder Report (as to which, see (c) below).
- (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.

- 11.10 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.
- 11.11 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 it’s Appendix 1. The amount of any interest payable is for the Courts to determine, if the Complainant and Veolia 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.
- 11.12 As stated above 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
£12561.50 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: 1 September 2009 ¹ (the date on which the company received the customer’s security deposit) To: 7 April 2010 ² i.e. the date on which £12561 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) <u>but</u> in terms of whole 3 month periods in accordance with section 48 of the Act
£4641 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: 1 September 2009 (the date on which the company received the customer’s security deposit) To: The date on which £ 4641 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act

¹ The date on which Veolia was paid the first amount: £15,987.67.

² On 7 April 2010, after a review of costs, Veolia stated that the actual cost of the Connection was £16,530.70, instead of the £16,633.74 quoted in the Second Quotation.