



Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Mr. N Perrins vs. South East Water

Purpose of this document

This is the final determination of a dispute referred by Mr Neil Perrins (**the Complainant**) to the Water Services Regulation Authority (**Ofwat**) for determination under section 45(6A) of the Water Industry Act 1991, as amended (**the Act**).

The dispute is between the Complainant and South East Water and is about the expenses reasonably incurred by South East Water in connecting one new water supply at land adjacent to 29 Bell Meadow Road, Hook, Hampshire, RG27 9HL.

Before reaching this final determination, we shared with the parties a draft determination setting out the facts on which we have based this determination and we provided the parties with the opportunity to make representations.

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1 Introduction

- 1.1 This is a determination of a dispute referred by the Complainant to Ofwat, on 16 December 2013, for determination under section 45(6A) of the Act.
- 1.2 The dispute is between the Complainant and South East Water and is about the expenses reasonably incurred by South East Water in connecting one new water supply at land adjacent to 29 Bell Meadow Road, Hook, Hampshire, RG27 9HL.

2 Background

- 2.1 The Complainant submitted an application for the Connection to South East Water and, on 28 May 2013, received a quotation for £2930.31 (“**the Quotation**”). The Quotation does not include VAT.
- 2.2 On 17 June 2013, the Complainant paid £2930.31 to South East Water to complete the connection on this property. The quotation below sets out a breakdown of the payments requested and paid:

Table 1

Description	Amount
Excavation of existing main and tapping with new ferrule (includes traffic management, labour, materials and reinstatement)	£1123.70
Excavation of 8 meters of road based upon a cost of £156.39 p/m cost (includes labour, materials and reinstatement)	£1251.12
Excavation of footpath adjacent to the Complainants property, connecting newly laid communication pipe, meter box and meter	£204.44
Traffic sensitive road fee	£130.00
Minus application fee	(-) £117.00
Sub-total	£2592.26
Infrastructure charge	£338.05
Sub-total	£2930.31
Application fee	£117.00
Total amount paid	£3047.31

- 2.3 As Table 1 illustrates, South East Water deducted the application fee from the connection cost. However, the Complainant paid the application fee (£117) prior to paying the remainder of the connection cost and, as such we have included the application fee in the total amount that the Complainant paid South East Water for the Connection.
- 2.4 We have not considered the infrastructure charge as part of the revised

calculations. Water companies are entitled to raise an infrastructure charge, under section 146 of the Water Industry Act 1991, when a property is connected for a water supply (or sewerage) for the first time. The way a company calculates the infrastructure charge is set out in Licence Condition C and we set a maximum limit for standard charges.

- 2.5 What this means is that, for the purposes of this determination, we will only determine whether the total amount the Complainant has paid (£3047.31) minus the infrastructure charge (£338.05), which equals £2709.26, was charged on a reasonable basis.
- 2.6 On 11 October 2013, the work on the Connection was completed by South East Water, with the permanent reinstatement of the road being carried out on 22 October 2013 and the permanent reinstatement of the footpath being carried out on 31 October 2013. South East Water has confirmed the size of each trench excavated and reinstated was:

Table 2

	Metres/Length	Diameter
Footpath (connection point)	1.7	0.7
Road (crossing)	9	0.5
Footpath (meter location)	1.2	0.8
Total	11.9	2

- 2.7 The Complainant subsequently raised a complaint with South East Water stating that he thought the estimate was unreasonable and, on 11 November 2013, South East Water issued a refund to the Complainant of £837.87¹. The Complainant queried this, and, on 27 November 2013, South East Water provided the Complainant with a breakdown of the actual connection costs and an explanation of how the refund was calculated:

Table 3

Description	Amount
Contractors and material costs	£1444.93
Design costs	£121.60
Site supervision	£77.86
Traffic management	£110.00
Total actual job	£1754.39
Estimated cost of connection	£2592.26
Refund	£837.87

¹ To date the Complainant has not accepted this refund.

- 2.8 The Complainant continued to query the cost of the Connection and, on 16 December 2013, the Complainant asked us to determine the reasonableness of the costs of the Connection.
- 2.9 On 14 January 2014, we issued an information request to South East Water to which it responded on 29 January 2014. As part of its response, South East Water set out that mistakenly the actual costs incurred were different to those set out to the Complainant on 27 November 2013. See Table 3 below for a complete breakdown of the actual costs that South East Water incurred.

Table 4

Description	Amount
Labour costs (including excavation and reinstatement)	£1560.13
SEW labour and direct supervision (technician visit)	£46.00
SEW labour and direct supervision (trench inspection number 1, failed)	£46.00
SEW labour and direct supervision (trench inspection number 2)	£46.00
Materials	£73.88
Total actual job	£1772.01

- 2.10 The draft determination set out that the £1560.13 included in Table 4 above was inclusive of traffic management and contractor site supervision. However, South East Water confirmed on 20 May 2014 that it did not include the traffic management costs or the contractor site supervision costs. South East Water confirmed that the £1560.13 was solely for labour for carrying out the connection and meter fit which included excavation and reinstatement.

3 Legal framework

- 3.1 Section 45(1) of the Act 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.
- 3.2 Section 45(6) of the Act 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.
- 3.3 Section 45(6A) of the Act provides that any dispute about whether the expenses were incurred reasonably may be referred by either party to Ofwat for determination.

4 Jurisdiction to determine the complaint

4.1 Ofwat is satisfied that the dispute between the Complainant and South East Water is a dispute about whether the expenses incurred by South East Water in making a connection under section 45 of the Act were reasonably incurred, and therefore that Ofwat has jurisdiction to determine this dispute under section 45(6A) of the Act. This is because:

- (i) the Complainant required South East Water to connect one new water supply connection at his property;
- (ii) South East Water treated this as a request for a connection, installed a connection and raised a charge for costs incurred; and
- (iii) the charge raised by South East Water is disputed as being excessive by the Complainant.

5 Request for further Information

5.1 Ofwat has investigated this matter in accordance with its powers under section 45 of the Act and, on 14 January 2014, sent a request for further information to the Complainant asking for their understanding of the works involved in making the Connection. A request for information was also sent to South East Water, asking for details of the work entailed in making the Connection, a full breakdown of the actual costs incurred in completing these works and details of the cost advice provided to the Complainant.

5.2 The Complainant provided information setting out his understanding of the works involved in the Connection and restated his belief that the actual cost of the connection remains too high. South East Water responded providing details of the work entailed in making the Connection, a full breakdown of the actual costs incurred in completing these works and details of the cost advice provided to the Complainant. South East Water also set out that no further refund is due to the Complainant other than what it already offered as a refund.

5.3 On 27 February 2014, we sent a further request for information to South East Water and, on 13 March 2014, South East Water responded.

5.4 On 14 May 2014, we sent a further request for information to South East Water and, on 20 May 2014, South East Water responded.

6 Draft determination

6.1 On 3 April 2014, Ofwat issued the draft determination to which both parties provided comments.

(i) Response from South East Water

6.2 On 24 April 2014, South East Water responded to the draft determination accepting the conclusions reached.

(ii) Response from the Complainant

6.3 The Complainant responded to the draft determination on 8 April and 23 April 2014 and the main points the Complainant raised were:

- a. The cost of the connection could have been reduced by moleing;
- b. The costs in the Hyder report need to be reassessed for 2013;
- c. The charge for a failed trench inspection should be refunded; and
- d. South East Water refused to enter into any form of meaningful dialogue regarding reducing costs.

(iii) Ofwat's comments

6.4 Our role, as set out in section 45 of the Act, is to assess the reasonableness of connection costs. This will include querying costs where they appear to be substantially higher than expected; however, this will not necessarily extend to questioning the manner in which the connection has been carried out. Furthermore, as noted below, where a company has used a contractor selected following a competitive tender process, we will generally accept that the amount paid to the contractor for the work represents the expenses reasonably incurred. To this end, we note that the Complainant also requested evidence to support the connection cost, however, we can confirm that, through our formal information gathering powers, we are satisfied that the connection cost is accurate.

6.5 In respect of the Hyder report, whilst it was completed in 2010, we consider the report remains a reasonable basis with which to assess connection costs. As such, we will continue to use the Hyder report. Whilst we do not plan to undertake any further work on the Hyder report for the purposes of resolving this dispute we will, however, consider updating this key piece of work in the near future.

6.6 Regarding the failed trench inspection, South East Water has confirmed that the second visit for a trench inspection failed because the Complainant only

laid his pipework 400mm deep whereas South East Water had previously indicated to the Complainant that pipework should be laid at a depth of 750mm.

- 6.7 We also recognise that customers can experience difficulties regarding connection costs and we would to reiterate that where customers question the reasonableness of connection costs there is recourse to Ofwat.

7 Final determination

- 7.1 In determining the reasonableness of the costs associated with the Connection we have separated the costs into two categories:

- (i) *Connection costs* – This includes the total cost of the connection including labour, materials and reinstatement; and
- (ii) *Administration fees and overhead costs* – This includes the administration fees and overheads for a single new connection.

- 7.2 Where a company has used a contractor selected following a competitive tender process, we will generally accept that the amount paid to the contractor for the work represents the expenses reasonably incurred. We will, however, query those costs where they appear to be substantially higher than might be expected having regard to other information available to us.

(i) Connection costs

- 7.3 Ofwat has considered whether the actual costs incurred by South East Water minus the overhead cost (£1772.01) reflect expenses reasonably incurred. To do this, Ofwat uses the Hyder Report² as guidance.

- 7.4 The Hyder Report is an independent report commissioned by Ofwat which involved the surveying of a number of water companies to understand the breakdown of charges made by those companies for work undertaken in connecting new water supplies, and:

- a. to obtain an understanding and explanation of the variance in charges between water companies;
- b. to compare water company contractor rates for new water connections; and
- c. thereby, to obtain an understanding of what are reasonable

² 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

costs/charges for materials (e.g. pipework, meters, etc.) and for labour.

7.5 Ofwat considers that the actual cost of £1772.01 for the Connection is not inconsistent with the range of costs assessed as reasonable for making one connection as set out in Table 5 below.

Table 5

Surface	Verge			Footway			Carriageway		
Service length	2m	4m	9m	2m	4m	9m	2m	4m	9m
Median	£274.50	£312.14	£476.08	£394.79	£531.52	£765.00	£449.89	£587.00	£977.00
Maximum	£765.00	£765.00	£815.33	£925.78	£1229.00	£1987.05	£1469.35	£1885.45	£2925.70
Minimum	£144.04	£144.04	£193.92	£203.92	£203.92	£278.42	£246.62	£246.62	£331.18

7.6 Ofwat has also considered the difference between the Quotation and the revised actual costs and it follows that because the actual cost of the Connection is lower than the quotation, a refund to the Complainant is due.

(ii) Overhead costs

7.7 Ofwat has considered the reasonableness of the overhead costs incurred by South East Water and to do this Ofwat uses ‘the Review of Section 45 costs’ report³ as guidance.

7.8 This independent report was commissioned by Ofwat in 2013 and involved surveying five water only companies and five water and sewerage companies to:

- Obtain an understanding and explanation of the variance in Section 45 of the Act contractor charges between companies;
- Compare contractor rates for new connections using both conventional open cut and moling;
- Set out the appropriate range of expenses which are reasonably incurred when making connections under Section 45 of the Act, in order to obtain an understanding of what are reasonable costs for pipework, meters etc. and for reinstatement;
- Arrive at an average figure for overheads and administration fees and

³ Review of section 45 costs – Independent review on behalf of the Water Services Regulation Authority (Ofwat) by MW Barber Associates (April 2014)

establish whether the survey fees should be considered by Ofwat under Section 45 of the Act, as an expense reasonably incurred in making the connection and to verify that there is no double counting within the overheads charge; and

- Undertake a review of companies' charges in relation to the provision of new connection.

7.9 The report recommends that an application fee is charged as part of the overhead costs, which covers the administration and technical tasks associated with a single new connection under section 45 of the Act.

7.10 Having regard to the Review of Section 45 of the Act Costs 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 £105.30⁴. Where companies make representations on overhead costs actually incurred, Ofwat will need to be presented with clear documentary evidence to support those representations.

7.11 Given this, Ofwat concludes that the overhead costs for the Connection should be no more than £105.30. South East Water charged an overhead of £117.00.

(iii) Conclusion

7.12 Ofwat is minded to conclude that the connection costs incurred by South East Water in respect of the Connection are within the range we would expect but the actual cost is lower than what the complainant paid and, as such, a refund is due. Furthermore, the overhead cost incurred by South East Water should be reduced from £117 to £105.30.

7.13 What this means is that the Connection should have cost £1877.31 (£1772.01 + £105.30) whereas the Complainant actually paid £2709.26 (£2592.26 + £117.00). This means that a refund of £831.95 is due to the complainant⁵. Table 6 below illustrates the calculations behind the proposed refund.

Table 6

Description	Amount
Estimated connection cost	£2592.26
Application fee	£117.00

⁴ £105.30 for the application fee, and the administrative and technical activities carried out after acceptance of a quotation.

⁵ We note that the Complainant has already been offered a refund of £837.87 but we understand the Complainant did not accept the refund.

Total	£2709.26
Actual connection cost	£1772.01
Revised application fee	£105.30
Revised total	£1877.31
Refund due	£831.95

7.14 Our 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 South East Water 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.

Appendix A: Guidance regarding section 48 of the Water Industry Act 1991

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 of which interest is payable	Time periods during which interest is payable on this amount
<p>£1877.31 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</p>	<p>From: the date on which the company received the Complainant's security deposit.</p> <p>To: the date on which £1877.31 ceased to be held as security and instead became a payment (i.e. the date on which the company issued its invoice for its works) but in terms of whole three month periods in accordance with section 48 of the Act</p>
<p>£831.50 i.e. the amount of the security deposit less the reasonable cost of works as determined by Ofwat, rounded down the nearest 50p in accordance with section 48 of the Act</p>	<p>From: the date on which the company received the Complainant's security deposit</p> <p>To: the date on which £831.50 is returned to the Complainant, in terms of whole three month periods in accordance with section 48 of the Act.</p>