



Final Determination of dispute under section 45(6A) of the Water Industry Act 1991: Mr I Kilich v Thames Water Utilities Limited

This is a determination of a dispute referred by Mr Kilich 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 Mr Kilich and Thames Water Utilities Limited (Thames) and is about the expenses reasonably incurred by Thames in connecting 5 new water supply connections at 678/682 High Road, Tottenham, London N15 0AZ (the Connection) to Thames' mains.

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

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1 Introduction and background

- 1.1 This is the final determination of a complaint referred by Mr I Kilich (the **Complainant**) under section 45 of the Water Industry Act 1991 as amended (**WIA 1991**) to the Water Services Regulation Authority (**Ofwat**).
- 1.2 The dispute is between the Complainant and Thames (collectively, the **Parties**) in respect of the amount recovered by Thames for a connection of five new water supplies at 678/682 High Road, Tottenham, London N15 0AZ (the **Connection**).
- 1.3 The Complainant submitted an application for the Connection in June 2008 to Thames and received a quotation for the Connection from Thames in October 2008 in the sum of £2,054.00 (exclusive of VAT) (the **Quotation**). The Connection was completed on 16 April 2009.
- 1.4 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 August 2009.
- 1.5 Ofwat investigated this matter in accordance with its powers under section 45 of the WIA 1991 and on 6 August 2010 issued a report (the **Report - see Appendix 1**) which was sent to the Parties on 6 August 2010.

2 Legal framework

- 2.1 Section 45(1) of the Act imposes a duty (subject to certain conditions) on water companies 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 Act provides that the water company may recover from the person who has required it to make a connection the expenses reasonably incurred.
- 2.3 Section 45(6A) of the Act 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. This determination is enforceable as if it were a county court judgement.

3 Jurisdiction to determine the complaint

- 3.1 We are satisfied that the dispute between the Parties is a dispute about whether the expenses incurred by Thames in making the Connection under section 45 of the WIA were reasonably incurred, and therefore that we have jurisdiction to determine this dispute under section 45(6A) of the WIA. This is because:
- (i) The Complainant required Thames to connect 5 new water supply connections at his property;
 - (ii) Thames treated this as a request for a connection under section 45 of the Act, and arranged for an inspector to conduct a site visit; and
 - (iii) The charge raised by Thames on 16 April 2009 is disputed as being excessive by the Complainant.

4 Complainant's comments

- 4.1 On 6 October 2010 the Complainant responded to the Report. The Complainant repeated his view that the charge for the Connection does not reflect the costs reasonably incurred by Thames in making the Connection. In particular, the Complainant states that the charge for labour and overheads is excessive and notes that his contractor incurred a £[REDACTED] penalty for delays to the completion of the work. These comments are attached as Appendix 2.

5 Thames' comments

- 5.1 Thames provided its response in an email dated 20 August 2010 (attached as [Appendix 3](#)). Thames has stated that the Report accurately reflects Thames' information.

6 The Report

- 6.1 Having reviewed the comments provided by both parties, Ofwat is satisfied that the facts set out in the Report are correct and the Report accurately reflects the detail of the complaint.

7 Ofwat's determination and reasons

- 7.1 Following Ofwat's investigation of this matter in accordance with section 45 of the WIA 1991, Ofwat's determination in respect of this matter is that the charges do not reflect expenses reasonably incurred as the costs for overheads charged by Thames were excessive and unreasonable. Ofwat concludes that Thames

should refund to the Complainant the sum of £435.77. This sum is the difference between the overheads costs charged by Thames and those which Ofwat believes to be reasonable.

7.2 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 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 Thames; (3) comments made by Thames and by the Complainant on the Report; 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 connections; and
 - (iii) thereby, to obtain an understanding of what are reasonable costs/charges for materials (e.g. pipework, meters, etc) and for labour.

7.3 Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.

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)

- 7.4 Having regard to the Hyder Report and to 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; in this case, Thames has been given the opportunity to provide further information in support of its stated overhead costs but has not done so.
- 7.5 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 7.2(d) above. Ofwat therefore considers that overheads should not have exceeded £180.00 (see breakdown in table below).

Ofwat's figures for a single connection	Ofwat's figures for multiple connections (per additional connection)	Ofwat's total for this matter	Thames' quoted overheads
£80	£25	$£80 + (4 \times £25) =$ £180	£615.77

- 7.6 It follows that the Complainant should be refunded £435.77, being the difference between the quoted price for overheads and the cost Ofwat considers to be reasonable.
- 7.7 Ofwat has also considered whether other elements of Thames' charges reflect expenses reasonably incurred:
- 7.8 Ofwat notes that both Thames and the Complainant are in dispute about the extent of the excavation work carried out by Thames' contractor on the footpath. The Complainant has asserted that his own contractor excavated approximately one metre of the footpath and therefore that Thames' contractor did less work than is suggested by Thames. However, the Complainant has not provided any evidence in support of this assertion.
- 7.9 Ofwat notes that the Complainant asserts that his contractor incurred a £ [REDACTED] penalty for delays to the completion of the work, such delays being caused by Thames. However, the Complainant has not provided any evidence in support of this assertion. In any event, Ofwat considers that, even if such evidence had

been provided, this issue is not one which can reasonably fall within Ofwat's jurisdiction.

- 7.10 Ofwat's determination in respect of the other elements of Thames' charges is that they were reasonably incurred.
- 7.11 Accordingly, Ofwat determines that Thames should refund the Complainant £435.77 (this figure is exclusive of VAT at the appropriate rate (15 per cent)).
- 7.12 Section 48 of the WIA 1991 provides that interest must be paid on every sum of 50p held by an undertaker as security for every three months during which it remains in the hands of the undertaker.
- 7.13 Thames is also directed to pay the Complainant an equal amount to the interest payable on the security deposit, calculated (in accordance with section 48 of the WIA 1991 and using the applicable interest rates) as follows:

Amount on which interest is payable	Time period during which interest is payable
£435.77 plus VAT = £504.13	16 April 2009 - 15 March 2012

- 7.14 As to the relevant rates of interest to be applied in relation to the above amounts and periods, please see Ofwat "Information Notice 11/05" and its Appendix 1.
- 7.15 Under section 30A(5) of the WIA 1991 this final determination is binding on both parties and is enforceable as if it were a County Court judgment.