



## Final Determination of dispute under section 45(6A) of the Water Industry Act 1991, as amended: Mr S Smith v Thames Water Utilities Limited

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

This dispute is between the Complainant and Thames Water Utilities Limited (**Thames**) regarding the expenses reasonably incurred by Thames in making two new water supply connections at 20 Gainsborough Green, Abingdon, Oxon OX14 5JH (together the **Connection**).

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 draft determination.

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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 Thames (together **the Parties**) in respect of the amount recovered by Thames for the Connection.
- 1.3 The Complainant submitted an application for the Connection to Thames and received a quotation (reference 1400402) for the Connection from Thames on 27 July 2007 for a total of £3,210.50 (exclusive of VAT) (the **First Quotation**).
- 1.4 The Complainant accepted the First Quotation and paid the sum of £3,210.50 to Thames on 29 July 2007.
- 1.5 Following a request from the Complainant for additional work to be carried out by Thames, the Complainant received a further quotation (reference 14190) from Thames on 22 November 2007 for a total of £231.00 (the **Second Quotation**). The Complainant accepted the Second Quotation and paid the sum of £231.00 to Thames.
- 1.6 The total cost of the Connection (not counting infrastructure charges) was £1,903.00 (excluding VAT), being the sum of the First Quotation and the Second Quotation (together the **Quotations**) as set out below:

(a) First Quotation connection charges	£1,672.00
(b) Second Quotation connection charges	£231.00
Total	<hr/> <u>£1,903.00</u>

- 1.7 Following completion of work on the Connection, the Complainant wrote to Thames on 12 November 2009 asking Thames to review its expenses incurred in making the Connection.
- 1.8 On 13 February 2009 Thames wrote to the Complainant stating that its actual costs incurred in making the Connection were £1,742.91 (excluding VAT and infrastructure charges) (the **Actual Cost**). Therefore the Complainant was entitled to a refund of £160.09 (the **First Refund**), being the difference between the Connection charge in the Quotations (£1,903) and the Actual Cost (£1,742.91).

1.9 The Complainant was dissatisfied with Thames's stance and, unable to achieve a satisfactory outcome to the dispute, he referred the matter to Ofwat on 18 January 2011.

1.10 Ofwat investigated this matter in accordance with its powers under section 45 of the WIA 1991 and on 14 April 2011 Ofwat requested from Thames a detailed breakdown of its costs associated with the Connection. On 16 May 2011 Thames provided the information requested and confirmed (after having undertaken a further review of its costs arising out of the Connection) the cost of the Connection (excluding infrastructure charges) was £1,742.91, broken down as follows:

(a)	Labour	£598.81
(b)	Materials	£323.40
(c)	Reinstatement	£163.09
(d)	Overheads	£657.61
<b>Total</b>		<hr/> <b>£1,742.91</b> <hr/>

1.11 On 26 June 2012, Ofwat issued a **Draft Determination** which was sent to the Complainant and Thames for comments.

## 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 the 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 undertaker'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.

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 and this determination is enforceable as if it were a county court judgment.

### 3 Request for further information

- 3.1 On 12 January 2012 Ofwat sent a request for further information to Thames. Ofwat requested further details on how the costs of the Connection had been calculated.

### 4 Thames' response to the request for further information

- 4.1 Thames responded to Ofwat's request for further information on 3 February 2012. In its response Thames stated that it had made an error in calculating the costs of the Connection and that Thames would bear the cost of part of the materials. Therefore the Complainant was now due a refund of £435.78 excluding VAT (the **Second Refund** offered on 3 February 2012) instead of the original First Refund of £160.09.

### 5 Complainant's comments on the Draft Determination

- 5.1 The Complainant did not have any comments on the Draft Determination.

### 6 Thames' comments on the Draft Determination

- 6.1 Thames accepted that it would pay the full figure set out in the Draft Determination, but stated that, as a matter of law, it does not agree that the whole of the advance payment made by the customer attracts interest.

### 7 Content of the Draft Determination

- 7.1 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.

### 8 Jurisdiction to determine the dispute

- 8.1 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 make a new water supply connection at his property;

- (ii) Thames treated this as a request for a connection under section 45 of the WIA 1991; and
- (iii) On completing the work Thames requested the Complainant to pay the actual costs incurred, which amount is disputed by the Complainant as being excessive.

## 9 Determination and reasons

9.1 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 Thames of £657.61 (see paragraph 1.10 above) were excessive and unreasonable. Ofwat believes £105 to be a reasonable sum for Thames to recover in respect of its overheads, based on a basic overhead charge of £80 plus £25 for each additional connection (see paragraph 6.3 below). Therefore Ofwat concludes that Thames should refund the Complainant in the sum of £525.61 (the **Third Refund**), being the difference between the costs which Ofwat determines to be reasonable (£105) and Thames' stated cost of its overheads (£657.61).

### Total Refund

9.2 Ofwat determines that the Complainant is due a total refund in the sum of £961.39 (the **Total Refund**), broken down as follows:

(a) the <b>Second Refund</b> (offered on 3 February 2012 instead of the First Refund)	£435.78
(b) the Third Refund	£525.61
Total Refund	<u>£961.39</u>

### Overhead costs

9.3 Having regard to the Hyder Report (see 6.6(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.

- 9.4 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 6.3 above. Ofwat therefore considers that the overhead costs of £657.61 claimed by Thames were not reasonably incurred, and that recoverable overheads should not exceed £105 - that is, the basic £80, plus £25 for each additional connection.

## Other costs

- 9.5 Ofwat has also considered whether other elements of Thames' charges reflect expenses reasonably incurred and has concluded that these other costs for the Connection are not inconsistent with the range of costs assessed as reasonable within the Hyder Report.
- 9.6 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) assertions made by Thames 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.
    - (iv) Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.

- 9.7 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.
- 9.8 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.
- 9.9 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
<b>£2480</b> 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	<b>From: 29 July 2007</b> i.e. the date on which the company received the customer’s security deposit <b>To: 13 February 2009</b> i.e. the date on which £2480 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
<b>£961</b> 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	<b>From: 29 July 2007</b> i.e. the date on which the company received the customer’s security deposit <b>To:</b> the date on which £961 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act