



## Final Determination of dispute under section 45(6A) of the Water Industry Act 1991: Ms Ahmad v Veolia Water Central

### Purpose of this document

This is the final determination of a dispute referred by Ms Ahmad (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 (**Veolia**)<sup>1</sup> and is in relation to the amount recovered by Veolia for making one new water supply connection at Old Avenue House (**OAH**), Old Avenue, Weybridge, Surrey, KT12 0PS (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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<sup>1</sup> As of 1 October 2012 Affinity Water became the new name for the combined Veolia companies, previously Veolia Water Central, Veolia Water East and Veolia Water South East. For the purposes of this determination we refer to the company's name at the time of the dispute's referral: Veolia Water Central.

## 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 (together **the Parties**) in respect of the amount recovered by Veolia for a new water supply connection at Old Avenue House (**OAH**), Old Avenue, Weybridge, Surrey, KT12 0PS (the **Connection**). The Complainant is acting on behalf of the residents of the four properties in OAH in receipt of the new connection.
- 1.3 On 27 June 2011, the water supply to the Complainant's property failed. On investigation the cause of the failure was found to be a burst supply pipe below an adjacent property, Redwoods. This adjacent property had been built on land that had originally been part of the OAH property boundary, but had been subdivided and sold off around 40 years earlier. It appears that at the point of sale the owners of the original plot of land failed to ensure adequate protection for services to OAH which had been laid through the portion of the plot that was sold. In addition to laying a new water supply for the new property, provision should have been made to ensure that the existing water pipe to OAH could be accessed for repair and maintenance.
- 1.4 In the absence of such provision, it was not possible to repair the pipe that burst on 27 June 2011 as it was inaccessible. The Complainant was therefore advised by Veolia that it was necessary for a new connection to be made to OAH. On 30 June 2011 the Complainant was given a quotation for the Connection for a total of £3,453.64 (inclusive of VAT) (the **Quotation**).
- 1.5 The Complainant was also informed by Veolia (in a letter dated 28 June 2011) that she would need to arrange for a new supply pipe to be run from OAH to the Connection point at the property's boundary. The Complainant did this and the Complainant was sent a quotation from Kenny H Plant for the sum of £2,353.20 (the **Supply Pipe Costs**). In the interim the Complainant also had to incur costs of £420 to secure a temporary water connection from a nearby property (the **Temporary Connection**) until the Connection could be installed.
- 1.6 On 1 July 2011 the Complainant contacted Veolia and stated that it was her opinion that as the burst pipe was below Redwoods, and hence outside the property boundary of OAH, it was not her responsibility to pay for the Connection or the costs of the temporary connection. The Complainant stated that Veolia had responsibility for providing a water supply up to the boundary of OAH. The Complainant accepted the Quotation and on 6 July 2011 paid the sum of £3,453.64 to Veolia as a security deposit. However when accepting the

Quotation the Complainant again informed Veolia that she believed that she was liable for the costs of maintaining only the water pipes within the boundary of OAH and that she strongly objected to having to pay the cost of the Connection but did so to expedite the Connection. Veolia responded to this email on 12 July 2011 explaining that they are responsible for the water main and supply pipe up to a property's boundary, but that pipework on the property-side of the boundary stop tap is private pipework belonging to the property owner.

- 1.7 The work on the Connection was completed on 20 July 2011. On 21 July 2011 the Complainant again contacted Veolia stating that Veolia should pay the cost of the Connection as they are responsible for water supply up to the boundary of OAH. The Complainant also set out her belief that the water company should have secured an easement to enable access to the water supply running through Redwoods' land when it was separated from the original OAH plot. On 29 July 2011 Veolia responded to the Complainant's latest contact stating that while water undertakers have a statutory duty to lay water mains, house holders/developers are responsible for bringing their supply pipes to the water main where the connection is made with a stop tap. Veolia's response explained that their responsibility for the maintenance of pipes ends at the stop tap usually located at the property's boundary; that pipework beyond the stop tap is privately owned; and that this legal position is fixed at the time of connection and unaltered by any subsequent redevelopment of the plot.
- 1.8 Following a period of further correspondence between the Parties, the Complainant said that the dispute was still not resolved to her satisfaction and on 17 August 2011 the Complainant referred the matter to Ofwat. The Complainant has informed Ofwat that as the burst pipe was below Redwoods and not within the boundary of OAH, Veolia should pay the total costs incurred for the new water supply: £6,226.84, comprising the Connection, Supply Pipe costs to the property boundary and the Temporary Connection costs.
- 1.9 On 5 September 2011 Ofwat wrote to the Complainant stating that Ofwat could determine the reasonableness of the costs of the Connection but that, because a water undertaker's responsibility for burst pipes ends at the property boundary, the Complainant was responsible for the Supply Pipe Costs. Ofwat said that accordingly, unless there was any further evidence which would bring into question the responsibility of the Parties in respect of maintaining the supply pipe, Ofwat would only determine the reasonableness of the costs associated with the Connection i.e. £3,453.64.
- 1.10 Ofwat investigated this matter and on 13 August 2011 issued a draft determination (the **Draft Determination**) which was sent to the Complainant and Veolia for their 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.

## 3 Requests for further information

- 3.1 Ofwat investigated this matter in accordance with its powers under section 45 of the WIA 1991 and on 5 January 2012 sent a request for further information to the Complainant asking her to confirm whether the Connection had been completed and to provide a full breakdown of the costs incurred by the Complainant in respect of the Connection. On 12 January 2012 Ofwat sent a request to Veolia for details of the actual costs of the works to provide the Connection and the cost advice provided to the Complainant.

### Complainant's response to the request for further information

- 3.2 The Complainant responded to Ofwat's request for further information on 31 January 2012. In her response, the Complainant confirmed that the Connection had been completed but stated that the burst pipe was outside the boundaries of OAH and, therefore, that she should not be liable for the costs incurred in securing a new connection as it was Veolia's responsibility to provide a water supply up to the boundary of OAH. The Complainant also provided a breakdown of costs incurred set out as follows:

(a) Temporary connection	£420.00
(b) Supply Pipe Costs to the property boundary	£2,353.20
(c) Veolia's demand for cost of the Connection	<u>£3,453.64</u>

<b>Total</b> (inclusive of VAT)	<u>£6,226.84</u>
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## Veolia's response to the request for further information

3.3 Veolia responded to Ofwat's request for further information on 17 February 2012. In its response, Veolia provided a full breakdown of its costs as set out below. Veolia also said that it had undertaken a detailed review of its costs associated with the Connection and as a result could confirm that its actual costs were £3,215.54 (including VAT) (the **Actual Costs**) and therefore the Complainant was due a refund of the sum of £238.10 (including VAT) plus interest.

(a) Cost of site survey	£65.13
(b) Connection	£2,153.81
(c) Disconnection of existing supply	£200.85
(d) Overheads	£259.82
(e) VAT	<u>£535.93</u>
<b>Total</b>	<u>£3,215.54</u>

## 4 The Draft Determination

### Complainant's comments on the Draft Determination

- 4.1 With reference to the last sentence in paragraph 1.3 above, the Complainant points out that it is the duty of the water company (Veolia) and other authorities, controlling the supply of utilities to consumers, to ensure that this supply is protected. The Complainant notes that individual householders cannot be expected to monitor, or implement such planning and control requirements.
- 4.2 The Complainant also notes that Veolia was negligent at the time of the development of Redwoods when a new connection was given to Redwoods and no protection or access to the water supply pipe for OAH was provided.
- 4.3 With reference to paragraph 2.1 above, the Complainant notes that most customers would not know if construction had been allowed by a water company over their pipeline. Therefore, the Complainant believes that when Redwoods was constructed, before giving a new connection to Redwoods, Veolia should have either:
- (a) taken an easement for the supply pipe to OAH to preserve the integrity of the OAH supply; or

- (b) provided a new separate connection for OAH from Old Avenue at the expense of the builder/developer of Redwoods at that time.

4.4 The Complainant concludes that Veolia must be held responsible for the total cost of the reconnection of the water supply to OAH.

### **Veolia's comments on the Draft Determination**

4.5 Veolia did not agree that the overhead charges applied within the costs of the Connection were excessive but highlighted that its method of charging overheads is under review. Veolia anticipated that this review will be concluded in November 2012.

### **Review of Draft Determination and responses**

4.6 Having reviewed the comments received from the Complainant and Veolia, Ofwat is satisfied that the content of the Draft Determination is factually correct and reflects the detail of the complaint. Ofwat has amended the figures in Table 1 and Appendix A of the Draft Determination to reflect the inclusion of VAT in Veolia's stated overhead costs.

## **5 Conclusion**

### **Jurisdiction to determine the dispute**

5.1 Ofwat is satisfied that the dispute between the Complainant and Veolia is, in respect of Veolia's demand for the cost of the Connection, 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 Connection was a new connection in that the break in the old connection could not be repaired;
- (b) Veolia treated this as a request for a connection and have presented the costs incurred on completion of the work; and
- (c) the charge which Veolia requested the Complainant to pay is disputed by the Complainant as being excessive.

5.2 Section 46 of the WIA91 sets out an undertaker's obligation to lay pipes. Its obligation is to provide a water main and so much of a service pipe as is

necessary to connect the water main to the end of the street that abuts the property of the person requesting the connection. The undertaker must fit a stopcock at the point of connection. An undertaker may lay a pipe that extends onto the requester's property so that the stopcock is situated on the requester's property. In both these instances, the undertaker's liability to maintain the pipes is only in respect of the pipe that links the water main to the stopcock. The pipe that runs from the stopcock to the requester's building is a private supply pipe and responsibility for maintaining that pipe lies with the customer.

- 5.3 In this case we are satisfied that OAH was supplied by a private supply pipe that ran under the Redwoods property. As a private supply pipe, Veolia did not have a responsibility to maintain that pipe and accordingly, this determination only concerns the Connection costs.

## **Determination and reasons**

- 5.4 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 for the Connection do not reflect expenses reasonably incurred since the expenses for overheads charged by Veolia were unreasonable. Veolia has recovered £311.78 (£259.82+VAT) in respect of its overheads. Having regard to the Hyder Report (see paragraph 5.7(c) below) and Ofwat's previous experience in dealing with disputes such as this, Ofwat considers that, for a standard single connection, overhead expenses would not generally exceed £80.00.
- 5.5 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 level set out above. Ofwat therefore considers that recoverable overheads should not have exceeded £80. Ofwat concludes that Veolia should refund the Complainant in the sum of £213.78 (in addition to the refund of £238.10 identified by Veolia (see paragraph 3.3 above)), being the difference between the expenses for overheads recovered by Veolia from the Complainant (311.78) and that which Ofwat determines to be reasonable (£80) (see Table 1 below).

**Table 1**

<b>(a) Veolia's stated cost of the Connection</b>	<b>(b) Veolia's stated cost of overheads</b>	<b>(c) Ofwat's stated reasonable cost of overheads</b>	<b>(d) Amount due to be refunded to the Complainant (b) minus (c), plus interest</b>
£3,215.54	£311.78	£80	£231.78

- 5.6 Ofwat has also considered whether other elements of Veolia's charges reflect expenses reasonably incurred and has concluded that the expenses for the Connection are not inconsistent with the range of expenses assessed as reasonable within the Hyder Report. Accordingly Ofwat determines that, apart from the points made above in respect of the overheads, Veolia's expenses were otherwise reasonably incurred.
- 5.7 The reasons for Ofwat's determination are as follows:
- 5.8 Section 45(6) of the WIA 1991 entitles a company to recover expenses reasonably incurred in carrying out work necessary to make a connection.
- 5.9 In considering whether the expenses 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) comments made by Veolia and the Complainant on the Draft Determination; and (4) information contained within the Hyder Report (see (c) below).
- 5.10 The Hyder Report<sup>2</sup> is an independent report commissioned by Ofwat which involved the surveying of a number of water companies to understand further the

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<sup>2</sup> 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](http://www.ofwat.gov.uk/publications/commissioned/rpt_com_20100928s45hyder.pdf))

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 connection; and
- (c) thereby, to obtain an understanding of what are reasonable expenses/charges for materials (e.g. pipework, meters, etc.) and for labour.

- 5.11 Ofwat uses the Hyder Report as guidance during determinations involving disputes as to charges made by water companies for connections.
- 5.12 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 section 47(2)(a) of the WIA 1991). 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.
- 5.13 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 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.

## 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.

<b>Amounts on which interest is payable</b>	<b>Time periods during which interest is payable on this amount</b>
<b>£2983.50</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:</b> 6 July 2011 <sup>3</sup> i.e. the date on which the company received the customer’s security deposit <b>To:</b> 17 February 2012 <sup>4</sup> i.e. the date on which £2983.50 ceased to be held as security and instead became payment (i.e. the date on which the company issued its invoice for its works) <b>but</b> in terms of whole 3 month periods in accordance with section 48 of the Act
<b>£469.50</b> i.e. the amount of the security deposit less the reasonable cost of connections as determined by Ofwat (£231.78) (including VAT) in addition to the original refund (£238.10) offered by Veolia rounded down to the nearest 50p in accordance with section 48 of the Act	<b>From:</b> 6 July 2011 <sup>5</sup> i.e. the date on which the company received the customer’s security deposit <b>To:</b> The date on which £469.50 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act

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<sup>3</sup> The date on which Veolia was paid £3453.64 (including VAT) by the Complainant

<sup>4</sup> On 17 February 2012, after a further review of costs, Veolia stated that the actual cost of the Connection was £ 3,215.54 (including VAT)

<sup>5</sup> The date on which Veolia was paid £3453.64 (including VAT) by the Complainant