



**Dispute under Section 64(2A) of the Water Industry Act 1991 (“WIA91”)**

**Mr Danby v Yorkshire Water**

**Final Determination**

**April 2013**

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## 1. Introduction

- 1.1 This Final Determination concerns a dispute referred to the Water Services Regulation Authority (“**Ofwat**”) by Mr Danby, under section 64(2A) of the Water Industry Act 1991 (“**WIA91**”) on 6 September 2012.
- 1.2 Mr Danby, of Pundles Farm, Bradshaw, Yorkshire (“**the property**”) wrote to Ofwat on 5 September 2012 seeking a determination under section 64(2A) of the WIA91 in relation to a requirement by Yorkshire Water for a separate service pipe to the Granny Annexe (as such term is defined below) on his land.
- 1.3 We issued a draft determination on 1 February 2013 in which we concluded that Yorkshire Water does not have the right to require a separate service pipe to the Granny Annexe. We have considered the representations we received from both parties in arriving at this final determination.
- 1.4 In summary, this Final Determination concludes that Yorkshire Water does not have the right to require a separate service pipe to the Granny Annexe.

## 2. Key factual background

- 2.1 In 2009, Mr Danby undertook building work at the property which involved the replacement and redevelopment of farm outbuildings with a ‘granny annexe’ (“**Granny Annexe**”), a garage and a workshop.
- 2.2 In early 2009, Mr Danby asked Yorkshire Water for a quote for a water supply to the Granny Annexe. On 3 June 2009, Yorkshire Water provided a quote, but Mr Danby chose not to pursue it.
- 2.3 On 8 March 2012, Yorkshire Water served a notice under section 64(3) (‘the notice’) of the WIA91 on Mr Danby, requiring a separate service pipe to the

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Granny Annexe. The farm outbuildings (that were subsequently redeveloped in to a Granny Annexe) were served by the existing supply pipe. Yorkshire Water served the notice because it considered the Granny Annexe to be a new house that was not previously used for domestic purposes and that a new domestic supply was required to the Granny Annexe.

- 2.4 On 1 April 2012, Mr Danby wrote to Yorkshire Water to say he disagreed that a separate service pipe was required and therefore that section 64 did not apply in these circumstances, and stated his intention to refer the matter to Ofwat under section 64(2A) of the WIA91.
- 2.5 On 5 September 2012, Mr Danby submitted a determination request to Ofwat under section 64(2A) of the WIA91.

### 3. Key legal background

#### Section 30A

- 3.1 Section 30A of the WIA91 sets out the practice and procedure to be followed by Ofwat in dealing with determinations, including a determination under section 64(2A) of the WIA91. Amongst other things, it provides that a determination by Ofwat is final and enforceable as if it were a judgment of a county court. Section 30A of the WIA91 does not apply to appeals lodged under section 105 of the WIA91.

#### Section 64

- 3.2 Section 64 of the WIA91 deals with the circumstances in which **"a water undertaker may require the provision of a separate service pipe to any premises."** The full text of section 64 of the WIA91 is in Annex 1 of this determination.
- 3.3 Under section 64(2) of the WIA91, where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of a separate service pipe to those houses until one of the five conditions as set out in sections 64(2)(a) to

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64(2)(e) of the WIA91 are satisfied. The five conditions can be summarised as follows:

- (a) the service pipe becomes defective and is no longer sufficient;
- (b) a payment in respect of the supply of water remains unpaid;
- (c) the houses are converted into a larger number of houses;
- (d) the existing service pipe has been interfered with; and
- (e) the water company believes such interference is likely to take place.

- 3.4 The five conditions as listed and summarised above are set out in full at Annex 1 of this Final Determination.
- 3.5 Under section 64(2A) of the WIA91, disputes as to whether one of these five conditions has been complied with may be referred to Ofwat by either party for determination in accordance with section 30A of the WIA91.
- 3.6 Under section 64(3) of the WIA91, a water company can serve notice requiring the provision of a separate service pipe.
- 3.7 In this determination, we also assess whether section 45 of the WIA91 should apply in the consideration of this dispute. We have included section 45 in this determination, because Yorkshire Water considers that in this case it is the correct provision of the WIA91, rather than section 64(2).

## **Section 45**

- 3.8 Section 45(1) of the WIA91 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. Such premises can consist of a "whole or as part of a building or can include premises upon which the owner is proposing to erect any building or part of a building".
- 3.9 Section 45(6) of the WIA91 provides that the water company may recover from the person, who has requested the connection, the expenses reasonably incurred by it in making the connection.

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3.10 Under section 45(6A) of the WIA91, any dispute between a water undertaker and any other person as to whether the expenses were reasonably incurred may be referred to Ofwat for determination under section 30A.

## **4. Views of the parties**

4.1 Mr Danby provided a written response to Ofwat following our draft determination on 13 February 2013, stating he agreed with it.

4.2 Yorkshire Water provided its written response on 20 February 2013 asking Ofwat to review its position on this matter, as set out in the draft determination issued on 1 February 2012, as Yorkshire Water considered that:

- section 64(2) of the WIA91 does not apply in this case, because prior to the redevelopment of farm outbuildings there was not “a supply of water to two or more houses”;
- the Granny Annexe has been separately registered for council tax as a separate dwelling. It is self-contained and could be rented out commercially at a later date;
- as Mr Danby requested a new water supply, the correct statutory provision in this case is section 45 of the WIA91; and
- if section 45 of the WIA91 applies, then under section 47(2)(e) of the WIA91, Yorkshire Water can require a separate service pipe.

## **5. Ofwat’s final determination**

5.1 In this section we first consider the applicability of section 64, and then section 45 (as Yorkshire Water considers this to be the relevant provision). In our analysis in relation to section 64, we have taken a two-step approach to determining this case:

- i. We first consider whether there is a supply of water to two or more houses (“Criteria A”).

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- ii. Second, we consider whether at least one of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 applies in this case (“Criteria B”).

## Section 64

- 5.2 Ofwat considers that, under section 64(2) of the WIA91, a water company can only require a separate service pipe, where the facts of the case, meet two criteria: namely, (A) a supply of water to two or more houses is provided wholly or partly by the same service pipe, and (B) if at least one out of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 applies.

### Criteria A: supply of water to two or more houses.

- 5.3 Having reviewed both sections 64(1) and 64(2) in conjunction with the definition of "house" as set out in section 219 of the WIA91 ("**house" means any building or part of a building which is occupied as a dwelling-house, whether or not a private dwelling-house, or which, if unoccupied, is likely to be so occupied**") Ofwat considers that the Granny Annexe and Pundles Farm each fall within the definition of house under the WIA91. We therefore agree with Yorkshire Water that there are two houses.
- 5.4 However, in this case, the supply of water to two or more dwellings (being (1) Pundles Farm and (2) the Granny Annexe), is provided by the same supply pipe, and has been since 2009. Whilst the Granny Annexe was formerly farm outbuildings, it still exists as a separate building to Pundles Farm, with both premises having been, and continuing to be serviced by the same supply pipe.
- 5.5 Ofwat has therefore concluded that, the provisions of section 64(2) of the WIA91 apply in these circumstances, because the "**supply of water to two or more houses is provided wholly or partly by the same service pipe**".

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**Criteria B: Does at least one out of the five conditions set out in section 64(2)(a) to 64(2)(e) of the WIA91 apply in this case?**

5.6 As noted in section 4 of this final determination, Yorkshire Water does not consider that section 64(2) applies in this case because, prior to the redevelopment of the farm outbuildings, there was not “a supply of water to two or more houses”. Yorkshire Water considered the property to consist of one house and farm buildings. As such, Yorkshire Water did not make any points in relation to one of the five conditions (s64(2)(a) to (e)) applying in this case. However, given that we consider that section 64(2) does apply (as noted above), we have considered whether any of the five conditions are satisfied.

5.7 The only condition that is potentially of relevance in this case is condition (c):

**(2)(c) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until –**

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**the houses are, by structural alterations to one or more of them, converted into a larger number of houses”.**

5.8 Ofwat considers that as a single service pipe was already being used to supply the two properties, a separate service pipe cannot be required until these two properties are converted into a larger number of houses. Therefore, Ofwat has determined that the condition set out at section 64(2)(c) is not applicable in this case. Further, Ofwat determines that the remaining conditions at section 64(2) are also not applicable to this case. Therefore, Ofwat is satisfied that section 64(2) of the WIA91 does apply.

## **Section 45**

5.9 As noted in section 4 of this final determination, Yorkshire Water considers section 45 to be the relevant legislation in this case. Ofwat is satisfied that section 45 of the WIA91 is not applicable in this instance. While Mr Danby did enquire with Yorkshire Water as to the cost of a new water supply to the



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Granny Annexe, Mr Danby did not proceed with a confirmed request for a new supply of water. We are of the view therefore that Mr Danby cannot be said to have served a notice under section 45(1) of the WIA91. We believe it would be unreasonable to interpret section 45(1) of the WIA91 as catching all enquiries in respect of a new water connection and thereby imposing, in respect of such enquiries, the provisions of section 45 to 47 of the WIA91. As such, Ofwat has determined that Yorkshire Water is not permitted to require a separate service pipe in accordance with section 47(2)(e) of the WIA91.

## **Conclusion**

- 5.10 In conclusion, Ofwat has therefore determined under section 64(2A) and 30A of the WIA91 that the conditions in subsection (2) of section 64 of the WIA91 do not apply. Ofwat has also determined that section 45 of the WIA91 is not applicable in this instance.

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## Annex 1 – the relevant legal provisions

### 64 Supply by means of separate service pipes

(1) Subject to the following provisions of this section, a water undertaker may require the provision of a separate service pipe to any premises . . . which—

(a) consist in a house or any other building or part of a building, being, in the case of a part of a building, a part which is separately occupied; and

(b) are already supplied with water by the undertaker but do not have a separate service pipe.

(2) Where the supply of water to two or more houses is provided wholly or partly by the same service pipe, the water undertaker shall not require the provision of separate service pipes to those houses until—

(a) the service pipe, in so far as it belongs to a person other than the undertaker, becomes so defective as to require renewal or is no longer sufficient to meet the requirements of those houses;

(b) a payment in respect of the supply of water to any of those houses remains unpaid after the end of the period for which it is due;

(c) the houses are, by structural alterations to one or more of them, converted into a larger number of houses;

(d) the owner or occupier of any of those houses has interfered with, or allowed another person to interfere with, the existing service pipe and thereby caused the supply of water to any house to be interfered with; or

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(e) the undertaker has reasonable grounds for believing that such interference as is mentioned in paragraph (d) above is likely to take place.

(2A) Any dispute between a water undertaker and any other person as to whether any condition of a kind mentioned in subsection (2) above has been complied with may be referred to the Director for determination under section 30A above by either party to the dispute.

(3) If, in the case of any such premises as are described in subsection (1) above, the water undertaker which provides a supply of water to those premises serves notice on the consumer requiring the provision of a separate service pipe and setting out the power of the undertaker under subsection (4) below—

(a) that consumer shall, within three months after the service of the notice, lay so much of the required pipe as the undertaker is not under a duty to lay by virtue of paragraph (b) below;

(b) sections 45 to 51 above shall apply as if that consumer had by a connection notice required the undertaker to connect the separate service pipe to those premises with the undertaker's water main;

(c) that consumer shall be presumed, without prejudice to his power to make further demands and requests—

(i) in so far as those premises were provided before the service of the notice with a supply of water for domestic purposes, to have made a demand for the purposes of section 52 above that such a supply is provided by means of the separate service pipe; and

(ii) in so far as those premises were provided before the service of the notice with a supply of water for other purposes, to have requested the undertaker to provide the same supply by means of that pipe as was provided before the service of the notice;

and

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(d) on providing a supply of water to those premises by means of the separate service pipe, the undertaker may cut off any supply replaced by that supply and may make such disconnections of pipes by which the replaced supply was provided as it thinks fit.

(4) If a person upon whom a notice has been served for the purposes of subsection (3) above fails to comply with the notice, the water undertaker may—

(a) itself carry out the works which that person was required to carry out; and

(b) recover the expenses reasonably incurred by the undertaker in doing so from that person.

(5) Without prejudice—

(a) to the power of a water undertaker by virtue of paragraph (b) of subsection (3) above to impose conditions under section 47 above; or

(b) to the power conferred by virtue of paragraph (d) of that subsection,

any works carried out by a water undertaker by virtue of the provisions of the said paragraph (b) or of subsection (4) above shall be necessary works for the purposes of this Chapter.