



Final determination of dispute under section 45(6A) of the Water Industry Act 1991: Mr. M Day v Thames Water Utilities Limited

This is the final determination of a dispute referred by Mr M Day (**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 Thames Water Utilities Limited (**Thames Water**) and is about the expenses reasonably incurred by Thames Water in connecting one new water supply at 23 Fairfax Road, Teddington, TW11 9DJ.

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.

1 Introduction

- 1.1 This is a determination of a dispute referred by the Complainant to Ofwat, on 20 August 2013, for determination under section 45(6A) of the Act.
- 1.2 The dispute is between the Complainant and Thames Water and is about the expenses reasonably incurred by Thames Water in connecting one new water supply at 23 Fairfax Road, Teddington, TW11 9DJ (**the Connection**).

2 Background

- 2.1 On 5 November 2012, the Complainant submitted an application for the Connection to Thames Water and, on 16 November 2012, received a quotation for £2,110.20 (**the Quotation**). The quotation includes VAT which was charged at 20% rate.
- 2.2 On 16 January 2013, the Complainant paid £2,110.20 to Thames Water to complete the connection on his property. On 3 May 2013, the work on the Connection was completed by Thames Water. The quotation below sets out a breakdown of the payments requested and paid:

Table 1

Description	Cost
Connection in road	£801.00
Excavation charge per m in footpath (2m)	£182.00
Excavation charge per m in road (6m)	£768.00
Chapter 8 signs (750mm)	£7.50
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VAT rate @ 20%	£351.70
HcHJ'	œ%%"&\$'

- 2.3 On 19 June 2013, the Complainant raised a complaint with Thames Water stating that he thought the estimate was unreasonable. On 20 August 2013, Thames Water provided the Complainant with a breakdown of the actual connection costs. Thames Water has also since provided Ofwat with a breakdown of the connection costs and it provided the same breakdown as it provided to Mr Day except for the addition of a permit charge which at the time it provided the breakdown to Mr Day it did not have an invoice for so it did not include. See Table 2 below for a complete breakdown of the actual costs that Thames Water incurred.

Table 2

Description	Cost
Labour	£305.57
Materials	£145.80
Reinstatements	£251.21
Overheads	£171.35
Plant	£186.39
Traffic management	£869.74
Permit	£75.00
HcHJ	£2,000.00

2.4 Thames Water has argued to the Complainant, and to Ofwat, that as the actual cost it incurred exceeds the amount that the Complainant paid (minus VAT) no refund is due.

2.5 The Complainant, however, does not consider that the charge for the Connection (both the initial quotation and the actual costs) reflects costs reasonably incurred by Thames Water, and, on 20 August 2013, the dispute was referred to Ofwat.

2.6 On 31 January 2014, Ofwat issued a draft determination to the Complainant and Thames Water.

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 a 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 Thames Water is a dispute about whether the expenses incurred by Thames 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 Thames Water to connect one new water supply connection at his property;
- (ii) Thames Water treated this as a request for a connection, installed a connection and raised a charge for costs (which did not differ from the original quote) incurred; and
- (iii) the charge raised by Thames Water is disputed as being excessive by the Complainant.

5 Requests for further Information

5.1 Ofwat has investigated this matter in accordance with its powers under section 45 of the Act and, on 5 September 2013, 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 Thames 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.

(i) Response from Thames Water

5.2 On 18 September 2013, Ofwat received a response from Thames Water and it provided a breakdown of the costs associated with the Connection excluding the permit charge which it had not received an invoice for at the time.

5.3 On 10 October 2013, Thames Water provided a breakdown of the actual costs including the permit charge. This breakdown is reproduced in Table 2.

5.4 Thames Water also set out the details of the work which included:

- two excavations: (1) 2.3m length and 0.6m width and (2) 1.5m length and 0.7m width;
- 9.2m of pipe (5.4m of this was moled); and
- Footway restored (2.3m length and 0.6m width) and Carriageway restored (1.5m length and 0.7m width)

(ii) Response from the Complainant

5.5 On 10 September 2013, Ofwat received a response from the Complainant stating that:

- Two small trenches were dug on each side of the road, of approximately 1m width and 1.5m length;
- The length of the pipe laid was 8m;
- 0.5m of the road and the paving stones pavement that were dug up were reinstated;
- Basic traffic signs were in place and a trench was not dug across the road as traffic was still able to flow as normal; and
- The new pipe was moled across the road.

5.6 On 27 February 2014, Ofwat sent a further information request to Thames Water to seek clarification on a number of issues and Thames Water responded on 13 March 2014.

6 Draft determination

6.1 On 31 January 2014, Ofwat issued the draft determination to which both parties provided comments.

(i) Response from Thames Water

6.2 On 13 February 2014, Thames Water responded to the draft determination accepting the conclusions reached. Thames Water noted the remarks on overhead costs but said it would respond to this separately.

(ii) Response from the Complainant

6.3 On 19 February 2014, the Complainant responded to the draft determination disagreeing with the conclusion that no refund is due. The Complainant set out that he thinks a refund is due and, in support of this, he noted that the actual connection cost included less excavation than the Quotation.

6.4 The Complainant also disagrees with the methodology for determining the reasonableness of the connection costs in that he does not think Ofwat should use the maximum charges set out in the Hyder report¹ and, for the purposes of this determination; he believes the charges set out in the Hyder report should be pro-rata to the work carried out.

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

(iii) Ofwat's comments

- 6.5 Ofwat considers using the maximum charges in the Hyder report to be the correct methodology for assessing the reasonableness of connection costs. As set out in the Hyder report, connection costs incurred by companies vary and Ofwat considers that using the maximum charges is the most appropriate, and consistent, way to take account of the range of connection costs. As such, Ofwat will maintain its methodology of using the maximum connection costs as set out in the Hyder report.
- 6.6 Ofwat does, however, acknowledge the Complainant's comments regarding the charges set out in the Hyder report being pro-rata to the work carried out and this is now reflected in the final determination.
- 6.7 Ofwat would also emphasise that connection costs include a range of costs. As such, whilst Ofwat acknowledges the actual excavation work for the Connection was less than what was quoted, there were additional costs in the actual connection cost which account for the variation in cost between the quotation and the actual cost of the connection.

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) **7 cbbYWjcb`Wt`ghg** – This includes the total cost of the connection including labour, materials and reinstatement; and
 - (ii) **5 Xa Jb]ghf Uhjcb`ZYg`UbX`cj Yf\ YUX`Wt`ghg** – This includes the administration fees and overheads for a single new connection.
- (i) Connection costs**
- 7.2 Ofwat has considered whether the actual costs incurred by Thames Water minus the overhead cost (£1833.71) reflect expenses reasonably incurred. To do this, Ofwat uses the Hyder Report as guidance.
- 7.3 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 costs/charges for materials (e.g. pipework, meters, etc.) and for labour.

7.4 Ofwat considers that the actual cost of £1,833.71 for the Connection is not inconsistent with the range of costs assessed as reasonable for making one connection as set out in Table 3 below.

Table 3: Reasonable connection costs

	Minimum charge	Median charge	Maximum charge
2.3m in footway	£234.51	£454.01	£1,064.65
1.5m in carriageway	£184.97	£337.42	£1,102.01
HcHJ	£419.47	£791.43	£1,833.71

7.5 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 maximum allowed estimate, no refund to the Complainant is due.

(ii) Overhead costs

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

² Please note the costs are pro-rata to the connection work

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

- Arrive at an average figure for overheads and administration fees and 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.

7.7 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.

7.8 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.

7.9 Given this, Ofwat concludes that the overhead costs for the Connection should be reduced by £66.05, this being the overhead charged by Thames Water minus the charges which Ofwat considers reasonable.

(iii) Conclusion

7.10 Ofwat concludes that the connection costs incurred by Thames Water in respect of the Connection are within the expected range and no refund is due. However, the overhead cost incurred by Thames Water is not within the expected range and, as such, Ofwat concludes an overhead cost of £105.30 instead of £171.35 is more appropriate.

7.11 What this means is that the Connection should have cost £1939.01 (that is the connection charge of £1833.71 plus an overhead charge of £105.30) instead of £2005.60 and based on the information provided by Thames Water, the actual cost the Complainant should have paid (including VAT at 20%) is £2326.01. However, as this is more than the £2,110.20 (including VAT at 20%) the Complainant paid to Thames Water in January 2013 Ofwat determines that no refund is due.

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