



Final Determination of dispute under section 45(6A) of the Water Industry Act 1991: [REDACTED] v Affinity Water Limited

Purpose of this document

This is the final determination of a dispute referred by [REDACTED] (“**the Complainant**”) on 16 October 2014 to the Water Services Regulation Authority (“**Ofwat**”) for determination under section 45(6A) and section 30A of the Water Industry Act 1991 (“**the Act**”).

The dispute is between the Complainant and Affinity Water Limited (“**Affinity Water**”) and relates to what expenses have been reasonably incurred by Affinity Water in connecting a new water supply (“**the Connection**”) at the redeveloped property at [REDACTED] (“**the Property**”) for the first time (“**the Dispute**”).

Before reaching this final determination, we issued a draft determination on 22 December 2014, setting out the facts on which we have based this determination and we provided the parties with the opportunity to make representations.

1. Background

- 1.1. The Complainant was carrying out a redevelopment of the Property, converting it from an office building into a mixed use property of 12 flats, an office and retail space around August 2012, when he sought a quotation for connecting the Property to the water supply.
- 1.2. Affinity Water provided the Complainant with a quotation on 28 August 2012, amounting to £11,414.42. We understand that the Complainant contacted Affinity Water to complain about the quotation, after which Affinity Water revised it to £9,446.42 on 30 October 2012. This reflected previous water usage of the Property and allowed for infrastructure credits.
- 1.3. The information¹ we have received from Affinity Water indicates that the Complainant wanted to have a single bulk meter supply installed to service the flats. Affinity Water did not agree to this and told the Complainant that they do not allow single bulk meters to supply multiple dwellings, as in their experience this can cause issues in future that result in additional costs to them.
- 1.4. Subsequently, Affinity Water proposed to install a 63mm plastic pipe in place of the existing 40mm metal pipe to accommodate the change of the Property's use (from commercial to mostly residential). The Complainant considered that the change in the Property's use would result in less consumption of water, and suggested that Affinity Water should instead activate the three existing supplies to the Property; 2x25mm and 1x40mm pipes. Of these connections, only one was still active.
- 1.5. Around March 2013, Affinity Water were carrying out mains renewal works in Pembroke Road to replace the iron water mains with plastic ones. They wrote to the residents of the street, including the Complainant, to inform them that they would be replacing a section of the pipe to their properties, between the water main and, up to and including, the existing stopcock for each property. There was to be no cost to customers for this work. At that time, the Complainant was still in dispute with Affinity Water over which size of water supply pipe to install.
- 1.6. In a letter to the Complainant on 3 April 2013, Affinity Water informed him that the existing supplies to the Property would not be sufficient to adequately supply the Property in its new form, and that they had concerns about reinstating water supply pipes that had been out of use for some time, both in terms of their potability and condition, which was why the new 63mm supply pipe was required.

¹ Correspondence between Affinity Water and the Complainant between 28/08/12 to 13/03/13.

- 1.7. The Complainant subsequently agreed to Affinity Water installing the new 63mm supply pipe to the Property, and asked Affinity Water to carry out the works, proposing to pay them £3,037 on the basis that he considered excavation works had already been undertaken (because of the mains renewal scheme).
- 1.8. On 15 April 2013, Affinity Water provided the Complainant with an updated Quotation (“**the Quotation**”). This amounted to £7,898.44 and included the water and sewerage infrastructure charges for the connection of the 12 flats at the Property, the cost of the excavation required at the Property boundary, and VAT. It excluded some of the original costs that it confirmed would no longer be incurred due to the mains renewal scheme, such as:
- traffic management;
 - a premium rate for out of hours work; and
 - the disconnection cost for the existing supply (Affinity Water did not transfer an existing fire supply to the new main, so no disconnection work was required).
- 1.9. The Complainant did not consider that the charge for the Connection would reflect the costs reasonably incurred by Affinity Water and referred the dispute to Ofwat on the same day.
- 1.10. On 19 April 2013, we advised the Complainant that we were considering his complaint, and we issued a request for information (“**RFIs**”) to the Complainant and Affinity Water on 22 April 2013. After reviewing the responses to the RFIs, we concluded that the Connection works had not been completed and therefore we did not have the jurisdiction to determine a dispute under section 45(6A) of the Act. We sent a letter to Affinity Water and the Complainant on 25 June 2013 to inform them that we were closing the case, but that we would review the situation, if necessary, once all the Connection works had been completed and expenses incurred.
- 1.11. Around September 2013, the Complainant changed the layout of the Property, which meant that an additional flat could be included in the redevelopment on the first floor. The Complainant proposed forgoing the connection to the retail unit on the ground floor of the Property, seeking the connection of this flat instead. Affinity Water advised the Complainant that the connection of this new flat would incur an additional infrastructure charge and the cost of an internal meter (totaling £762.28).
- 1.12. The Complainant made a payment of £80 towards the additional meter, and agreed with Affinity Water to defer the infrastructure charge payment until Ofwat had determined the Dispute. Therefore, currently £594 remains outstanding.

- 1.13. On 16 October 2014, the Complainant emailed Ofwat to complain about the charges associated with the Connection at the Property. He stated that:
- Affinity Water was undertaking mains renewal works at the side of the Property and was doing so at their own cost, but would not carry out any connection works to his Property unless he paid them £7,898;
 - His company had had to undertake unnecessary works to ensure that the Property's internal pipework, including manifold valves and water meter glands, could be connected to the new 63mm plastic pipe, and that therefore, Affinity Water should reimburse him £5,000.
- 1.14. On 22 October 2014, we emailed both Affinity Water and the Complainant to establish if all the Connection works at the Property had been completed. The Complainant confirmed that all of the works have been completed. Affinity Water has now finalised the account associated with the Dispute. We note that the Complainant is now considering converting the ground floor of the Property into five flats, rather than a retail unit. Contrary to what Affinity Water has told him, the Complainant does not believe that the ground floor flats require new connections, but this does not form part of the Dispute currently being considered by Ofwat.
- 1.15. We wrote to the Complainant and Affinity Water on 4 November 2014 to advise the parties that we will be investigating the Dispute. In our letter to the Complainant, we advised him that we would not be considering the infrastructure charges as part of our investigation, as we have no jurisdiction to do so.

2. Legal Framework

- 2.1. Section 45(1) of the Act imposes a duty (subject to certain conditions) on a water company to make a connection, where the owner or occupier of any premises serves notice on the water 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 by it in making the connection
- 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 to Ofwat for determination under section 30A of the Act.

3. Jurisdiction to determine the Complaint

- 3.1. Ofwat is satisfied that the Dispute between the Complainant and Affinity Water is a dispute about whether the expenses incurred by Affinity Water in making a connection under section 45 of the Act were reasonably incurred, and, that Ofwat, therefore, has the jurisdiction to determine this dispute in accordance with section 45(6A) of the Act. This is because:
- (a) the Complainant required Affinity Water to connect one new supply at his property and paid Affinity Water the full amount as per the Quotation received;
 - (b) Affinity Water treated this as a request for a connection and, has finalised² the account on completion of the work; and
 - (c) the Complainant disputes the charge raised by Affinity Water and has referred the Dispute to Ofwat for determination.

4. Requests for further Information

- 4.1. Ofwat initially sent an RFI to the Complainant on 1 May 2013 when he first complained to us. In this request we sought:
- his understanding of the works involved in making the Connection; and
 - copies of his correspondence with Affinity Water regarding his complaint.

An RFI was sent to Affinity Water at the same time 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 Quotation provided to the Complainant.
- 4.2. We received a response to our RFIs from the Complainant and Affinity Water on 11 June 2013. The responses highlighted that not all of the works had been completed and as a result we were unable to progress our investigation at that time.
- 4.3. On receiving the second complaint, we sent a further RFI to the Complainant and Affinity Water on 4 November 2014, which sought new information about the actual works that were carried out at the Property, with details of any associated invoices.

² We note that Affinity Water and the Complainant agreed to defer an infrastructure charge payment (associated with the connection of an additional flat) until Ofwat has determined the Dispute

(i) Response from the Complainant

- 4.4. We received a response from the Complainant on 20 November 2014, in which he stated that he had not received a breakdown of the costs for the works from Affinity Water.
- 4.5. The Complainant also stated that he did not believe that infrastructure charges should be applied to the Property. As previously explained to the Complainant we consider that infrastructure charges are applicable in this case, and we are satisfied that they have been appropriately applied, and therefore we will not be considering these as part of this determination.
- 4.6. We set out the information³ we received from the Complainant in relation to the cost of the Connection in Table 1, below:

Table 1

| Description of works | Costs |
|--|------------------|
| Connection of bulk supply and installation of 13 internal meters | £2,208.70 |
| VAT at 20% | £441.74 |
| Total | £2,650.44 |

(ii) Response from the Company

- 4.7. On 11 November 2014 we received a response from Affinity Water, in which they provided a breakdown of the costs associated with the Connection. They also clarified the information which they had submitted in response to our first RFI (See paragraph 4.1 above). A full cost breakdown of the works associated with the Connection is set out in Annex A. In Table 2 below, we set out a summary of these costs which we will be considering in determining this Dispute:

Table 2

| Description of works | Costs |
|----------------------------------|---------------|
| Total Overheads | £286.27 |
| <i>Of which:</i> | |
| <i>Survey for adhoc services</i> | <i>£26.45</i> |

³ As we are not considering infrastructure charges, we have excluded these costs from the information

| | |
|--|------------------|
| <i>Standard Charge management & Supervision Construction</i> | £145.09 |
| <i>Affinity Water Overhead</i> | £114.73 |
| Bulk Supply | £852.15 |
| One off internal 15mm screw in internal meters (13x) | £1,070.29 |
| VAT | £441.74 |
| Total Cost | £2,650.44 |

4.8. Affinity Water stated that the costs they have recovered excludes:

- Traffic Management - due to the planned mains renewal work on the main in the highway and the proportional cost of traffic management outside the Property being negligible;
- A premium rate for out of hours work; and
- The disconnection cost for the existing supply. Affinity Water did not transfer the existing fire supply to the new main and so there was no disconnection work required.

4.9. These exclusions have also meant that there is a reduction in the VAT due, and Affinity Water have indicated that there was therefore a total saving to the Complainant, by incorporating his connection as part of the mains renewal work, of £1,547.98.

5. Draft Determination

5.1. On 22 December 2014, Ofwat issued the draft determination to the parties.

(i) Response from the Complainant

5.2. On 22 December 2014, the Complainant provided an initial response to our draft determination, which was followed by two additional responses; one on the 23 December 2014 and another on 8 January 2015.

5.3. In his representation, the Complainant pointed out that Ofwat should treat the two aspects of his complaint separately; notably infrastructure charges and the cost of the new connection.

Infrastructure Charges

- 5.4. The Complainant considers that the Property was built during 1970s when appropriate infrastructures were installed and paid for, and at the time, the designed infrastructure was to provide office accommodation to less than 250 staff. The Complainant states that at the time, the property was provided with adequate electric, gas and water supplies, and the mains water supply was by means of 2x25mm and 1x40mm connections. He also states that a reservoir was installed at roof level to ensure constant supply of water.
- 5.5. The Complainant explains that, at present, the Property has been converted into 19 residential flats which provide accommodation to around 40 residents, but that there is no indication to suggest that the original infrastructure was inadequate, nor have there been any indication of additional infrastructure having been installed recently by any public utility company.

The cost of the Connection

- 5.6. On the cost of the Connection, the Complainant states that the water main on Pembroke road (near the Property) was renewed in March 2013 by Affinity Water, after the latter considered that it was essential for all water metal pipe connections along the road to be replaced with plastic ones. Affinity Water was to bear the costs of replacing these metal pipes.
- 5.7. The Complainant states that 2x 25mm original metal pipe connections to the Property were replaced with plastic pipe connections and that a 40mm metal pipe was replaced with a 63mm plastic pipe – a decision taken entirely by Affinity Water – but that the latter decided to charge the Complainant for this new 63mm plastic connection. The Complainant considers that Affinity Water chose to disconnect an existing 25mm water supply, to justify its [Affinity Water's] decision to provide a new 63mm plastic pipe, against replacing an existing 40mm metal pipe with a plastic one. The Complainant believes that the original infrastructure of the Property was adequate to sustain the current 19 residential units, and that Affinity Water should bear the cost of the Connection or at most, can only charge the Complainant the difference in price between the plastic 40mm pipe and the 63mm pipe.

(ii) Response from Affinity Water

- 5.8. On 16 January 2015, we received a letter from Affinity Water in which they stated that they do not wish to make any representations and that they accept Ofwat's draft determination.

(ii) Ofwat's comments

- 5.9. We have not considered infrastructure charges in this determination for the reason given at paragraph 1.5 above and, therefore, Ofwat will not comment on the representations provided by the Complainant about infrastructure charges. However, Ofwat notes the Complainant's arguments that the Property is not "new" in that it has not just been built, but rather is an existing property that has been redeveloped. However, Ofwat does not consider that whether the Property is a new building or an existing one that has been converted is the issue in point. Instead, what needs to be considered is that the conversion of the building in question has resulted in what was one premises becoming 13 premises, and the additional premises have therefore been connected to the water supply for the first time.
- 5.10. Ofwat has considered the reasons provided by Affinity Water as to why the latter replaced the 40mm metal pipe with a 63mm plastic pipe. It also considered Affinity Water's reason for disconnecting the 25mm metal pipe. Ofwat is satisfied that Affinity Water had concerns about the water quality of the existing 25mm supply pipe as it had been out of use for some time. Additionally, Ofwat notes that Affinity Water did not consider the 40mm pipe would be adequate to service the Property in its new form, having been converted from a commercial to a largely domestic property.
- 5.11. Ofwat notes that Affinity Water has followed the guidance which the latter sets out on its website for developer services, specifically where developers are altering or extending their property. This states that an upsize or replacement may be required if the existing supply is no longer adequate to serve the existing water demand. Therefore, Ofwat considers that the use of a 63mm pipe was justified.

6. Final Determination

- 6.1. In determining the reasonableness of the costs associated with the Connection we have separated the costs into two categories:
- (i) **Connection costs** – this is the actual cost of the works associated with the Connection including labour, materials and reinstatement; and
 - (ii) **Administration fees and overhead costs** – this includes the administration fees and overheads for a single new connection.

(i) Connection costs

- 6.2. Ofwat has considered whether the actual costs of the works incurred by Affinity Water, which amount to £2,364.18⁴ are expenses reasonably incurred. In considering this, Ofwat uses the Hyder Report⁵ as guidance.
- 6.3. The Hyder Report is an independent report commissioned by Ofwat and involved surveying a number of water companies to understand the breakdown of charges made by those companies for work undertaken to connect 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.
- 6.4. Ofwat considers that the actual costs of £2,364.18 for the Connection is consistent with the range of costs assessed as reasonable for making one connection as set out in Table 3 below.

Table 3 - Benchmark costs from Hyder Report

| | Minimum charge | Median charge | Maximum charge |
|---------------------|----------------|---------------|------------------|
| 2.2m in footway | £203.92 | £394.79 | £925.78 |
| 1.5m in carriageway | £246.62 | £449.89 | £1,469.35 |
| Total | £450.54 | £844.68 | £2,395.13 |

- 6.5. Ofwat notes that Affinity water revised its quotations downwards, four times, to:
- (a) reflect additional information provided by the Complainant in relation to previous loading units;
 - (b) incorporate mains renewal work being done near the Property; and
 - (c) reflect the change in application put forward by the Complainant.

⁴ 2,650.44 minus overheads of £286.27

⁵ 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)

Due to these revisions, there was no difference between the Quotation and the actual costs of the works.

- 6.6. Given the maximum charge of £2,395.13 that the Hyder Report suggests for this type of connection (see Table 3 above) and the work done by Affinity Water to reduce the Connection costs (see paragraphs 4.8 and 4.9), particularly in accommodating the changes to the scoping of the work instructed by the Complainant, Ofwat considers that the Connection costs were reasonably incurred.

(ii) Administrative Fees and Overhead Costs

- 6.7. Ofwat has considered the reasonableness of the overhead costs (£286.27) incurred by Affinity Water. To assist with this, Ofwat uses the 'Review of Section 45 costs' report⁶ as guidance.
- 6.8. 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 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, in order to obtain an understanding of what are reasonable costs for pipework, meters etc. and for reinstatement;
 - Arrive at an average figure for overheads and administration fees and establish whether the survey fees should be considered by Ofwat under section 45, 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.

⁶ Review of Section 45 Costs – Independent Review on behalf of the Water Services Regulation Authority (Ofwat) by MW Barber Associates

- 6.9. The report recommends that an application fee is charged as part of the overhead costs, which will cover the administration and technical tasks associated with a single new connection under section 45 of the Act, and a survey fee prior to the development of a quotation.
- 6.10. Having regard to the Review of Section 45 Costs report, Ofwat considers that, for a standard single connection, overhead costs would not generally exceed £105.30⁷. Where companies make representations on overhead costs actually incurred, Ofwat needs to be presented with clear documentary evidence to support those representations.

Assessment of Reasonable Costs

- 6.11. Ofwat considers that the total costs reasonably recovered by Affinity Water for the Connection should comprise the reasonable costs actually incurred and a reasonable charge for overheads. Ofwat considers that the total amount for the Connection should not exceed the sum of £2,469.48, which, in this case, would comprise of the actual costs of the works of £2,364.18 and overheads of £105.30. The amount recovered by Affinity Water was £2,650.44 – which amounts to a difference of £180.96 between the costs that Ofwat considers reasonable and the costs charged by Affinity Water. However, Ofwat notes that there is currently a balance of £674⁸ which the Complainant is yet to pay Affinity Water. Therefore, Ofwat considers that the £180.96 should be deducted from the outstanding balance, and that therefore no refund is due to the Complainant. A summary of how Ofwat has arrived at the costs are set out in Table 4 below:

Table 4

| Description | Benchmark Costs | Affinity Water's assessment | Difference |
|--------------------|------------------|-----------------------------|----------------|
| Connection Charges | £2,364.18 | £2,364.18 | - |
| Overheads | £105.30 | £286.27 | £180.96 |
| Total | £2,469.48 | £2,650.44 | £180.96 |

⁷ This includes for the application fee, and the administrative and technical activities carried out after acceptance of a quotation.

⁸ £674 in infrastructure charges owed in relation to the 13th flat added to the Property by the Complainant at a later date, which Affinity Water agreed to defer until Ofwat's determination.

Conclusion

- 6.12. Ofwat concludes that whilst the Connection charges is within the range which it would consider reasonable, the administrative fees and overheads in this case are higher than what it considers reasonable, by £180.96. However, because the Complainant currently has an outstanding balance with Affinity Water with regard to the Property, no refund is due to the Complainant, but instead this amount should be deducted from the amount owed to Affinity Water by the Complainant.

Annex A – Detailed Costs of Connection Works

| Description of works | Costs |
|---|------------------|
| Survey for adhoc services | £26.45 |
| VAT at 20% | £441.74 |
| Tap in to parent main (1m) | £92.67 |
| Pipe Laying (footway) (2.2m) | £114.93 |
| Pipe Laying (Carriageway) (1.5m) | £83.81 |
| 1x service Connection to customer's property | £428.24 |
| Third Party cost – road closure, lane closure etc. | £132.50 |
| Standard Charge management & Supervision Construction | £145.09 |
| Bulk Supply | £1,023.69 |
| One off internal 15mm screw in internal meters (13x) | £1,070.29 |
| Affinity Water Overhead | £114.73 |
| VAT | £441.74 |
| Infrastructure Charges (2012/13) | £5,248 |
| Total (Cost advice of 4 April 2013) | £7,898.44 |
| Additional Cost advice (4 September 2013) Of which Infrastructure Charges (2013/14) @ £674 | £762.28 |
| Omission of retail Unit | -£88.28 |
| TOTAL | £8,572.44 |