

August 2016

Trust in water

Final Determination

Final determination of dispute determined under sections 45(6A) and 30A of the Water Industry Act 1991: [redacted] and Southern Water

Complaint against Southern Water about the reasonableness of connection costs

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1. Introduction

Purpose of this document

- 1.1 This is the final determination of a dispute referred by [REDACTED] (“**the Complainant**”) to Ofwat, on 5 August 2015, for determination under sections 45(6A) and 30A of the Water Industry Act 1991 (“**the Act**”). The dispute is between the Complainant and Southern Water Services Ltd (“**Southern Water**”) and is about whether the expenses incurred by Southern Water in connecting one new water supply at [REDACTED] (“**the Property**”) were reasonable.
- 1.2 Before reaching this final determination we issued a draft determination on 7 April 2016, and we provided both parties with the opportunity to make representations to us on that draft determination.

2. Background

A. The parties

Complainant

2.1 The Complainant is the owner of the Property.

Company

2.2 Southern Water is appointed under the Act to provide water and sewerage services to customers in the counties of Kent, East and West Sussex and Hampshire where the Property is located.

B. The Property

2.3 The Property is located at [REDACTED]
[REDACTED]. The water supply connection that is the subject of this dispute (“**the Connection**”) is to the Property.

C. Particulars of the complaint

2.4 The Complainant purchased the Property in the summer of 2012. Not long after he had moved in, the resident at a neighbouring property (at [REDACTED]
[REDACTED]) advised the Complainant that their properties were on a shared water supply.

2.5 The Complainant contacted Southern Water who advised him that that he could request a separate supply to the Property. Southern Water advised that the cost of a quote for the Connection would be £336 – which the

Complainant paid for – and received a quote of £1,460.80 on 13 March 2015 to carry out the works for the Connection.

- 2.6 On 18 March 2015, the Complainant signed a customer acceptance form from Southern Water and enclosed a remittance of £1,460.80 as security deposit. Subsequently, the works were carried out by Southern Water’s contractor, Clancy Docwra, on 1 May 2015.
- 2.7 The Complainant states that he complained to Southern Water that the Connection cost was excessive during various telephone calls which he had with them.
- 2.8 On 5 August 2015, he emailed Ofwat to complain about the charges made by Southern Water for the Connection.

The Complainant’s case

- 2.9 The Complainant states that although two excavations were made, one in the roadway and one in the footpath, that the hole in the roadway was dug in error. He states that the incorrect excavation (which took about 30 minutes to dig) was approximately 400mm x 400mm x 400mm but that it was then back-filled and made good.
- 2.10 The Complainant also states that the excavation in the footpath, which was approximately 900mm x 400mm x 600mm was the only one required. Further, he adds that no pipe was laid by Southern Water – and that in fact, he had laid a 22mm diameter pipe himself, such that all that Southern Water’s contractor was required to do was to add a screw-on joint which was 100mm in diameter.
- 2.11 The Complainant further states that the reinstatement comprised of 100mm bitmac surfacing with gravelly clay strata underneath and that bitmac surfacing was also provided to reinstate the incorrect hole dug on the roadway.

The Company's case

- 2.12 Southern Water states that two trenches were excavated in order to complete this work and that due to the nature of the work, the trench had to be opened in the highway and footpath. It states that the pipe was moled-in approximately 500mm under the kerb line and that the connection was made from the main to the boundary point of the Property, in trenches of the following measurements:
- trench in highway 1m x 09m x 1.4m deep; and
 - trench in footpath 1.1m x .6m x 1.2m deep
- 2.13 Further, Southern Water states that the type of ground it excavated was made to a tarmac highway and footpath.
- 2.14 Southern Water also states that the nearest point in which it could have taken the nearest available connection was from the 3 inch Distribution Main, shown on the plan to be situated in the roadway and refer to special conditions on its customer acceptance form which state that its pipework will terminate at the back edge of the public footpath, and that "Connection is to be taken from 3" CI main in [REDACTED]".

D. The request for a water supply connection

- 2.15 Following the payment of an application fee of £336, on 13 March 2015 the Complainant received a quotation ("**the Quotation**") from Southern Water for the Connection which amounted to £1,460.80. This amount included a VAT of £243.47.
- 2.16 The Complainant paid the Quotation in full on 18 March 2015, and Southern Water subsequently made the Connection on 1 May 2015.
- 2.17 Making the Connection involved excavating and reinstating a single trench of 1.1m x 0.6m x 1.2m in the footway. Southern Water states that an additional trench of 1m x 0.9m x 1.4m deep was also required in the carriageway, to connect to the 3" CI (distribution) main pipe in [REDACTED].

- 2.18 The Complainant considers the charges for the connection to be unreasonable, particularly because he alleges that one of the trenches for which he was charged, was dug by mistake. Consequently, on 5 August 2015 he referred the dispute to Ofwat.
- 2.19 Upon receipt of the complaint, we asked Southern Water to provide us with a detailed breakdown of the works set out in the Quotation:

Table 1: Southern Water's detailed breakdown of the quotation

Description	Cost
Clancy Docwra's fee to cover the cost of laying the service pipe from the main in the road to the Property boundary	£802.85
Southern Water's fee for handling the application. This is a standard fee that represents a 23.87% uplift on the Clancy Docwra fee	£191.64
Southern Water's trench inspection fee	£82.00
Southern Water's standard post construction admin fee to cover the administration to update asset records, post construction liaison and query management with the customer	£48.84
Re-estimate charge ¹	£92.00
VAT	£243.47
Total	£1,460.80

¹ The charge of £92 was the charge for a second quote as the Complainant had originally requested two new meters when only one was actually required. Clancy Docwra subsequently agreed to waive this amount and Southern Water proposes to reimburse this fee to the Complainant.

3. Legal framework

- 3.1 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.
- 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 under section 30A of the Act.
- 3.4 Ofwat's decision is binding on the parties to the dispute. By virtue of section 45(6A) of the Act read with section 30A (5) of the Act, this determination is enforceable as if it were a county court judgment.

4. Jurisdiction to determine the complaint

4.1 Ofwat is satisfied that the dispute between the Complainant and Southern Water is a dispute about whether the expenses incurred by Southern 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:

- the Complainant required Southern Water to connect one new water supply at his property;
- Southern Water treated this as a request for a connection under section 45 of the Act; and
- the charge raised by Southern Water is disputed as being excessive by the Complainant.

5. Draft determination and representations

5.1 On 7 April 2016, Ofwat issued a draft determination to both parties. The determination considered:

- a) the reasonableness of the total amount the Complainant was required to pay to Southern Water for the works involved in making the Connection; and
- b) the reasonableness of the amount the Complainant was required to pay to Southern Water as an 'application management fee'.

5.2 After considering the evidence provided to us by both parties and the conclusions from the Hyder report² and the Review of Section 45 costs report³, we provisionally determined that:

- The total expenses Southern Water can recover from the Complainant for the Connection are £1,128.32 and that Southern Water must therefore refund £337.18 to the Complainant;
- A reasonable charge for the application management fee is £105.30 and that therefore Southern Water must refund £4.70 to the Complainant; and
- In line with our guidance on interest rates set out in [Ofwat's Information Notice 11/05](#), Southern Water must calculate the interest due to the Complainant, and reissue a final invoice to the Complainant within 20 working days of our final determination.

² 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

³ [Review of section 45 costs - Independent review of section 45 administration and overhead costs on behalf of the Water Services Regulation Authority \(Ofwat\) April 2014](#)

5.3 In the draft determination, we separated Southern Water's costs into the following specific categories:

- a) the works;
- b) application handling fee;
- c) post-construction administration fee;
- d) trench inspection fee;
- e) re-estimate fee; and
- f) application management fee.

5.4 We then considered these costs against the benchmark costs set out in the Hyder report and 'the Review of Section 45 costs' report to assess their reasonableness.

A. Complainant's representations

5.5 The Complainant responded to our draft determination on 29 April 2016, and made the following point:

Location of 3" distribution main pipe for connection

5.6 The Complainant agrees that the Connection was made to the 3" distribution main, but states that this pipe is situated under the footpath and not in the roadway. He states that the trench dug in the roadway was dug in error and no connection was made in [REDACTED].

5.7 To evidence his point, the Complainant states that he would like to offer to arrange a trial hole excavation across the footpath to expose the water main connection, which will show that the PPE pipe he laid connects to the water main and that there is no extra pipe crossing into the road.

B. Southern Water's representations

5.8 On 28 April 2016, we received Southern Water's representations. It made comments about the specific costs set out in our draft determination, notably, the application handling fee and the application management fee.

Application management fee and application handling fee

5.9 Southern Water considers its application management fee of £110 was reasonable given that it is only £4.70 higher than the benchmark figure of £105.30 set out in the Review of Section 45 costs report. It considers the difference is accounted for by the difference in wage levels in the south east of England compared to the rest of the country. Further, Southern Water considers that ONS data suggest average wages in the south east of England are circa 105% above the national average, but that this does not appear to be reflected in Ofwat's average figure of £105.30.

5.10 Southern Water does not accept that the application handling fee of £191.64 represents a double counting of the initial application management fee. It states that the application management process involves all of the relevant initial back office activities required to load the work onto the system, produce an acknowledgement letter, produce a reference number for the job and produce an estimation letter. Further, it states that the application handling fee is levied to cover the costs incurred in undertaking post-construction activities such as charge reconciliations, as required by the Act. It does not consider that a fee of £105.30 is feasible to cover all of the necessary pre and post-construction activities.

C. Ofwat's response to representations

Application management fee and Application handling fee

5.11 We consider that a fee for processing an application is a legitimate charge which forms part of the overall administration and overhead charge for making a water supply connection. The Review of Section 45 costs report suggests a

reasonable charge for administration and overhead costs of £105.30, and this is based on information provided by ten water companies across England and Wales. Where we are presented with compelling evidence, we would consider that evidence in our assessment. It is for companies to provide this evidence and, on this occasion, we consider that Southern Water did not. Southern Water argued that because staff costs in the south east of England are greater than elsewhere in the country, we should allow more than the benchmark cost of £105.30 as suggested by the Review of Section 45 costs report. However, the report was based on information from ten companies, which provided broadly equal representation of water and sewerage companies (WaSCs) and water only companies (WoCs). Therefore, we consider that the range of costs provided in the report already accounts for this discrepancy and we do not consider that Southern Water can reasonably charge the customer an amount which exceeds £105.30.

- 5.12 We do not find it reasonable for companies to charge multiple management and administration fees, beyond that charged in the initial application fee. We expect water companies to be transparent with their customers, and fully explain what the administration fee they charge constitutes.
- 5.13 Where we are presented with compelling evidence, we would consider that evidence in our assessment. It is for companies to provide that evidence and, again on this occasion, Southern Water did not. Therefore, we do not consider that Southern Water can reasonably charge an additional amount of £191.64 as an application handling fee.

6. Final determination

- 6.1 Following further review of the information provided by the parties, we have concluded that the GIS map supplied by Southern Water should not be considered an “as laid” record of the exact location of each of the mains, and because this map formed the evidence base for the draft determination, we have considered further the actual location of the 3” distribution main pipe.
- 6.2 We consider that the GIS map shows the distribution main crossing over the left-hand trunk main. Although this is feasible, we believe that in practice it is more likely that the distribution main and the left-hand trunk main have become interchanged, such that the GIS identification of the three mains outside the Property may potentially be incorrect.
- 6.3 Given this, we sent a further request for information to Southern Water asking it to set out its understanding of the trunk main and distribution mains, and to confirm the accuracy of the GIS map which it used. In its response, Southern Water stated that the trunk main is the larger main which carries a large volume of water and supplies catchments, as opposed to the distribution main which has a lower flow rate and therefore supplies nearby customers. Further, Southern Water also stated that whilst it believes its plans are correct, that actual positions [of pipes] are determined on site, which is why when it provides estimates for new water connections, its contractor will always complete a survey prior to the connection being taken (from the distribution main) to the boundary point of a customer’s property.
- 6.4 However, we consider that although the pre-dig survey would have detected the three metallic mains, it would have given no indication of their relative sizes. Subsequently, we asked Southern Water to establish exactly where the connection was made. In its email response of 27 July 2016, Southern Water indicated that, having clarified with its contractor, the Connection had in fact been made in the footpath rather than in the roadway.
- 6.5 Therefore, we determine that Southern Water refunds the additional £408.06 – this being the amount charged for the additional hole dug in the road, which it should not have charged the Complainant for.

Conclusion

- 6.6 Having considered the representations from the Complainant and Southern Water we have made some changes to our provisional conclusions. For convenience, we have set out these changes at Appendix A.
- 6.7 We have not considered VAT. Ofwat only has legal powers to determine the expenses reasonably incurred by a water company for providing a new connection and does not have any role in relation to taxation. The Complainant will need to liaise with Southern Water, and where necessary HMRC, to reconcile any excess VAT payments which have been paid but in respect of which a refund may be due as a result of our determination.
- 6.8 We do not find it reasonable for companies to charge multiple management and administration fees, beyond that charged in the initial application fee.
- 6.9 **Consequently, we conclude that Southern Water should refund the Complainant the sum of £745.24 (plus interest).**
- 6.10 If the Complainant and Southern Water are unable to agree the amount of interest payable, the matter can be referred to the Courts for a determination.
- 6.11 With a view to helping the parties to agree this amount without involving a Court, the table in Appendix B sets out guidance to be read in conjunction with [Ofwat's Information Notice 11/05](#) on interest rates. This anticipates the approach we think a Court is likely to take in making such a determination for this particular dispute.

Appendix A: Changes in costs between draft and final determination

Description	Draft Determination			Final Determination		
	Actual Cost Charged	Reasonable Cost	Refund	Actual Cost Charged	Reasonable Cost	Refund
The works	£802.85	£802.85	£0	£802.85	£394.79	£408.06
Application handling fee (including 23.87% uplift fee)	£191.64	£0	£191.64	£191.64	0	£191.64
Post construction administration fee	£48.84	£0	£48.84	£48.84	£0	£48.84
Trench inspection fee	£82.00	£82.00	£0	£82.00	£82.00	£0
Re-estimate fee ⁴	£92.00	£0	£92.00	£92.00	£0	£92.00

⁴ Southern Water have already agreed to reimburse this fee to the Complainant

VAT	£243.47	£243.47	£0	N/A	N/A	N/A
Total (inc. VAT)	£1460.80	£1128.32	N/A	N/A	N/A	N/A
Total (exc. VAT)	N/A	N/A	N/A	£1,217.33	£476.79	N/A
Application management fee (included in the quotation fee)	£110.00	£105.30	£4.70	£110.00	£105.30	£4.70
Refund	N/A	N/A	£337.18	N/A	N/A	£745.24

Appendix B: Guidance regarding section 48 of the Water Industry Act 1991

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
<p>£476.50</p> <p>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</p>	<p>From: 18 March 2015</p> <p>i.e. the date on which the company received the customer's security deposit</p> <p>To: the date on which the supply was considered provided and money held by the company became payment rather than security but in terms of whole 3 month periods in accordance with section 48 of the Act</p>
<p>£745.00</p> <p>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</p>	<p>From: 18 March 2015</p> <p>i.e. the date on which the company received the customer's security deposit</p> <p>To: the date on which £745 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act</p>