

6 December 2016

Trust in water

# Paradise and Affinity Water

Final determination of dispute determined under sections 45(6A) and 30A of the Water Industry Act 1991

Complaint against Affinity Water about the reasonableness of connection costs

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## 1. Introduction

- 1.1 This is a final determination of a dispute referred by Mr. Paradise (**the Complainant**) to Ofwat, on 25 August 2016, for determination under sections 45(6A) and 30A of the Water Industry Act 1991 (**the Act**). The dispute is between the Complainant and Affinity Water Limited (**Affinity Water**) and is about whether the expenses incurred by Affinity Water in connecting a new water supply connection to two new flats at 10 Bishop's Rise, Hatfield, Hertfordshire, AL10 9HB (**the Site**) were reasonable.
- 1.2 This final determination was preceded by a draft determination which we issued on 19 October 2016 to both parties and invited them to make representations to us.

## **2. Background**

### **A. The parties**

#### **Complainant**

2.1 Mr. Paradise is the owner of the Site.

#### **Company**

2.2 Affinity Water is appointed under the Act to provide water services to customers in parts of the south of England.

### **B. The Site**

2.3 The Site is located at 10 Bishop's Rise, Hatfield, Hertfordshire, AL10 9HB. The Complainant redeveloped the Site into two new flats.

### **C. The request for water supply connections**

2.4 The Complainant submitted an application for the Connections to Affinity Water with a £201.48 application fee. Affinity Water requested a payment of £1,461.01 for the Connections, although it did not provide a breakdown of this cost to the Complainant because it considered a detailed breakdown was commercially sensitive.

2.6 On 23 December 2015, the Complainant paid Affinity Water £1,461.01, and Affinity Water subsequently made the Connections on 13 April 2016.

2.7 Making the Connections involved laying 13m of 25mm pipe in an existing trench and installing a two-way manifold meter. No trench excavation or re-instatement was required – this was carried out by the Complainant's gas provider.

2.8 The Complainant considers that the cost quoted by Affinity Water was excessive, especially in comparison with costs quoted by other utility providers. Affinity Water has not offered a refund to the Complainant, and as he considered the expenses incurred by Affinity Water to be unreasonable, he referred the dispute to Ofwat on 25 August 2016.

2.10 Upon receipt of the complaint, we asked Affinity Water to provide us with a detailed breakdown of the cost of the works. This breakdown is as follows:

**Table 1 – Affinity Water breakdown of the cost of the works**

<b>Description</b>	<b>Cost</b>
1. The works	£891.93
2. Construction overheads	£290.18
3. Affinity Water overheads	£229.46
4. Site survey for design	£49.44
<b>Total (excluding VAT)</b>	<b>£1,461.01</b>

### **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.
- 3.4 Ofwat's decision is binding on the parties to the dispute. By virtue of section 45(6A) of the Act read in conjunction 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 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 therefore that Ofwat has jurisdiction to determine this dispute under section 45(6A) of the Act. This is because:
- a. the Complainant required Affinity Water to connect new water supply connections at his property;
  - b. Affinity Water treated this as a request for a connection under section 45 of the Act; and
  - c. the charge raised by Affinity Water is disputed as being excessive by the Complainant.

## 5. Draft determination

- 5.1 On 19 October 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 Affinity Water for the works involved in making the Connection;
  - b. The reasonableness of the amount the Complainant was required to pay to Affinity Water for overheads; and
  - c. The reasonableness of the amount the Complainant was required to pay to Affinity Water for application fees.
- 5.2 We considered these costs against the benchmark costs in the [Hyder report](#)<sup>1</sup> and [the Review of Section 45 Costs Report](#)<sup>2</sup> to assess their reasonableness.
- 5.3 After considering the evidence provided to us by both parties and the conclusions from the two benchmarking reports, we provisionally determined that:
- the connection costs of £891.93 were reasonable as these were under the median charge we would expect for this type of work according to the Hyder report;
  - the construction overhead charged by Affinity Water of £290.18 was excessive. The Review of Section 45 Costs Report suggests that generally overheads should not exceed £105.30, so we provisionally concluded that Affinity Water should provide a refund of £184.88;
  - the Review of Section 45 Costs Report recommends that we should not allow a water company to charge for overheads as part of its claim for expenses reasonably incurred under section 45 of the WIA91. Therefore, the Affinity Water overhead of £229.46 should be refunded;
  - it was not appropriate for Affinity Water to charge the Complainant a site survey fee of £49.44 in addition to an application fee, and this amount

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<sup>1</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)

<sup>2</sup>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): [http://www.ofwat.gov.uk/wp-content/uploads/2015/10/rpt\\_com201404s45costs.pdf](http://www.ofwat.gov.uk/wp-content/uploads/2015/10/rpt_com201404s45costs.pdf)

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should be refunded.

## **A. Complainant's representations**

5.3 The Complainant responded on 19 October, and made the following points:

a. As his gas provider excavated, backfilled and reinstated the trench, he would expect Affinity Water's charge for the works (£891.93) to be less than it was.

b. He was not sure if the provisional refund is inclusive of VAT.

## **B. Affinity Water's representations**

5.4 Affinity Water responded on 11 November 2016, saying it accepted the conclusions set out in the draft decision.

## 6. Final determination

- 6.1 Affinity Water acknowledged that it did not carry out trench excavation, backfill or reinstatement and accordingly it charged the Complainant what it termed its "no excavation rate". This amounted to £891.93 for laying 13m of pipe in an existing trench. Although we normally compare costs against the median level in the Hyder report, in this instance, and having considered the representations of the Complainant to the draft determination, we have instead compared Affinity Water's costs to the minimum level of costs in the Hyder report to reflect the fact that no excavation was carried out. The minimum costs in the Hyder report for 13m (9m in the carriageway and 4m in the footway) is £535.10. Therefore, we determine that Affinity Water should refund the Complainant £356.83.
- 6.2 In line with our provisional conclusions, having had regard to the Review of Section 45 Costs report, which considers that overheads for a standard connection should not generally exceed £105.30, Ofwat considers Affinity Water's construction overhead charge of £290.18 to be excessive. Accordingly, we direct Affinity Water to refund the Complainant the sum of £184.88.
- 6.3 The Review of Section 45 Costs report also recommends that we should not allow a water company to include overheads within its claim for expenses reasonably incurred under section 45 of the WIA91. Therefore, in line with our provisional conclusions, we direct Affinity Water to refund the Complainant the sum of £229.46 which it classed as "Affinity Water overheads".
- 6.4 In line with our provisional conclusions, we do not consider it is appropriate for Affinity Water to charge the Complainant a site survey fee of £49.44, and this amount should be refunded. Affinity Water has already levied an application fee, which it said covered design activities. We consider there was an element of double-counting.
- 6.5 The Review of Section 45 Costs report recommends that an application fee of £72.14 should be included as part of the overall overhead charge of £105.30. In addition to charging an overhead fee, Affinity Water charged the Complainant an application fee of £201.48. We determine that this was not reasonably incurred and that the sum of £201.48 must be refunded to the Complainant.

- 6.6 In response to the Complainant’s question whether the refund would be inclusive of VAT, Ofwat only has legal powers to determine the expenses reasonably incurred by a water company for providing a new connection. We do not have any role or powers in relation to taxation. We consider that it is for the company to liaise with HMRC about any VAT refund that may be due as a result of this determination and to pass on any refund received to the Complainant.
- 6.7 Therefore, in total Affinity Water should refund the Complainant the sum of £1,022.09 (plus interest), as detailed in Table 2 below.

**Table 1 - Amount to be refunded to the Complainant by Affinity Water**

Description	Charge	Reasonable charge	Refund
1. The works	£891.93	£535.10	£356.83
2. Construction overhead	£290.18	£105.30	£184.88
3. Affinity Water overhead	£229.46	0	£229.46
4. Site survey for design	£49.44	0	£49.44
Subtotal	£1,461.01	£640.40	£820.61
5. Application fee	£201.48	0	£201.48
Total	£1,662.49	£640.40	N/A
<b>Refund</b>	<b>N/A</b>	<b>N/A</b>	<b>£1,022.09</b>

## Appendix A: 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.

<b>Amounts on which interest is payable</b>	<b>Time periods during which interest is payable on this amount</b>
<p><b>£640</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</p>	<p><b>From: 23 December 2015</b> 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><b>£1,022</b> 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><b>From: 23 December 2015</b> i.e. the date on which the company received the customer's security deposit</p> <p>To: the date on which £1,022 is returned to the customer, in terms of whole 3 month periods in accordance with section 48 of the Act</p>