

25 January 2017

Trust in water

(Reissued on 17 February 2017)<sup>1</sup>

# Mr S Singh and Affinity Water

Final determination of a 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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<sup>1</sup> The final determination was reissued to correct a factual error (see paragraphs [6.8] and [6.9] and table [4]).

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## 1. Introduction

- 1.1 This is the final determination of a dispute referred to the Water Services Regulation Authority (**Ofwat**) by Mr. Sarjit Singh (**the Complainant**) on 8 November 2015 under sections 45(6A) and 30A of the Water Industry Act 1991 (**the Act**). The dispute relates to the reasonableness of the expenses incurred by Affinity Water Ltd (**Affinity Water**) in connecting two new water supplies (**the Connections**) at [REDACTED] (**the Property**).
- 1.2 This final determination was preceded by a draft determination which we issued to both parties on 9 December 2016 inviting them to make representations to us.

## 2. Background

### A. The parties

#### Complainant

2.1 Mr. Singh is the owner of the Property.

#### 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 Property

2.3 The Property is located at [REDACTED].  
The Complainant paid for two new water supply connections to be made by Affinity Water: one at the Property and the other at a garage next to, but separate from, the Property.

### A. The request for and making of the Connections

2.4 On 23 June 2015, the Complainant submitted an application for the Connections which included paying an application fee of £241.78 to Affinity Water.

2.5 On 16 July 2015, Affinity Water issued a quotation of £1,671.61 for a single water supply connection. On 25 August 2016, following a request from the Complainant for a second connection to the Property, Affinity Water issued a subsequent quotation of £3,293.78, replacing the first quotation. This second quotation was made up of the following elements:

**Table 1: Breakdown of the second quotation for the Connections**

Description	Sub-total
1. New connection charge	£1889.78
2. Water Infrastructure charge	£702.00
3. Sewerage Infrastructure charge	£702.00

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<b>Total (excluding VAT)</b>	<b>£3,293.78</b>
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- 2.6 The Complainant paid the above amount and, on 16 October 2015, Affinity Water made the Connections.
- 2.7 Affinity Water made two connections on the water main for two new individual communication pipes (2m long and 25mm diameter), and the fitting and connection of two meters. The actual cost of the work amounted to £757.14.
- 2.8 The work to make the Connections took less time and was less expensive than originally quoted by Affinity Water primarily because the Complainant undertook the trench excavation and reinstatement work himself. Affinity Water was already aware that the Complainant would excavate the trenches for the new communication pipes but was not aware that the Complainant would excavate over the water main so included the cost of this work in its quote. In order to complete the work Affinity Water had to carry out some excavation work which it has not charged the Complainant for.
- 2.9 The breakdown of the final costs are as follows:

**Table 2: Breakdown of the final cost of the Connections**

<b>Description</b>	<b>Sub-total</b>
1. The works	£757.14
2. Survey	£49.44
3. Construction Overheads	£290.18
4. Affinity Water Overheads	£229.46
<b>Total (excluding VAT)</b>	<b>£1326.22</b>

- 2.10 On 15 December 2015, Affinity Water wrote to the Complainant and provided a refund of £563.56 to reflect the difference in cost between the second quotation and actual cost of the work. The Complainant did not accept this refund as correct but subsequently cashed the cheque for this amount on 21 April 2016<sup>2</sup>.

## **B. The request for a determination**

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<sup>2</sup> Ofwat was notified of this on 8 February 2017.

2.11 On 6 November 2015, the Complainant contacted Ofwat to complain about the cost of the Connections. The Complainant considered that the cost quoted by Affinity Water was excessive given that he had carried out the excavation work and purchased the pipes himself. The Complainant also complained about Affinity Water's failure to provide a final invoice for the work and a breakdown of the activities and corresponding costs, both of which he had requested from Affinity 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.
- 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 9 December 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 Connections;
  - 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>3</sup> and [the Review of Section 45 Costs Report](#)<sup>4</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 total expenses Affinity Water can reasonably recover from the Complainant for making the Connections is £585.22. Affinity Water must therefore return £741.00 to the Complainant;
  - A reasonable charge for the application fee is £115.89. Affinity Water must therefore return a further £125.89 to the Complainant leading to a total refund of £866.89; and
  - In line with our guidance on interest rates set out in [Ofwat's Information Notice 11/05](#), Affinity 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.

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<sup>3</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>4</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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## **A. Complainant's representations**

- 5.4 The Complainant responded on 5 January 2017, and stated that they accepted the conclusions set out in the draft determination.

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

- 5.5 Affinity Water responded on 4 January 2017, and stated that it accepted the conclusions set out in the draft determination.

## 6. Final determination

- 6.1 In line with the Hyder Report, we compared Affinity Water's cost of the works, laying 4m of pipe (in the footway) in an existing trench (£757.14), to the median range (£531.52) of costs assessed as reasonable for making a similar connection. There are scenarios where we will consider comparing the cost of the works to either the minimum range or the maximum range. For example, if the excavation and reinstatement work was carried out entirely by the customer then we would consider comparing the cost of the works to the minimum range. In this case, the Complainant carried out the reinstatement work and Affinity Water and the Complainant carried out the excavation work (although Affinity Water did not charge for its excavation work). Based on this, we compared Affinity Water's costs against the median range and, thus, we determine that Affinity Water should refund the Complainant £225.62.
- 6.2 We have considered the reasonableness of the construction overhead fee charged by Affinity Water, using the 'Review of Section 45 costs' report as guidance. The report recommends that the total acceptable overall cost for a new connection under section 45 of the Act should be £105.30. The report also recommends that companies should generally charge an application fee of £72.14, which is included within the recommended total overall cost of £105.30.
- 6.3 Having regard to the Review of Section 45 Costs report, we consider that, for a single connection, overheads should not generally exceed £33.16 and, for any subsequent connections, overheads should not generally exceed £20.54. When a person makes two or more applications for the same site the review considered that the cost of the second and subsequent applications should attract a lower fee to account for the reductions in time and effort on the part of the water company. Given this, we conclude that Affinity Water's construction overhead fee of £290.18 is too high, and instead that £53.70 is a reasonable charge for two connections. Therefore, we determine that Affinity Water should refund £236.48 to the Complainant.
- 6.4 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 Act. Therefore, in line with our draft determination, we determine that Affinity Water should refund a further £229.46 to the Complainant being an amount for "Affinity Water overheads".

- 6.5 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 also be refunded. Affinity Water has already charged an application fee, which it said covered design activities and we therefore do not agree that a further amount is due for design works.
- 6.6 The Review of Section 45 Costs report recommends that if a single application fee is charged, this must cover the administration and technical tasks associated with a single new connection under section 45 of the Act. Having regard to this report, we consider that, for a single connection, administrative tasks should not generally exceed £72.14. Where there are second and subsequent connections made under the same application, the review recommended that the application fee should be reduced to £43.75, reflecting the likely cost savings of not duplicating technical tasks. We therefore determine that Affinity Water's application fee of £241.78 is too high, and that instead £115.89 is a reasonable charge for an application fee for two connections. As such, we determine that £125.89 should be refunded to the Complainant.
- 6.7 Taking the above into account, Table 3 below summarises the refund amounts Affinity Water should pay to the Complainant under each heading.

**Table 3: Amount to be refunded to the Complainant by Affinity Water**

Description	Actual cost	Determined Reasonable charge	Refund
1. The works	£757.14	£531.52	£225.62
2. Construction overhead	£290.18	£53.70	£236.48
3. Affinity Water overhead	£229.46	£0	£229.46
4. Site survey for design	£49.44	£0	£49.44
Subtotal	£1326.22	£585.22	£741.00
5. Application fee	£241.78	£115.89	£125.89
<b>Total</b>	<b>£1568.00</b>	<b>£701.11</b>	<b>-</b>
<b>Refund</b>	<b>-</b>	<b>-</b>	<b>£866.89</b>

- 6.8 After issuing the final determination on 25 January 2017, Affinity Water wrote to us to advise that the Complainant had cashed the cheque for £563.56<sup>5</sup> on 21 April 2016. The refund (£563.56) was in recognition of the difference between the actual cost of the final works completed and the amount that the Complainant had paid based on the second quotation.
- 6.9 As a result of this additional information, we have updated table 4 to reflect the refund that the Complainant has previously received from Affinity Water. The total refund determined by Ofwat is therefore £634.11 (plus interest).

**Table 4: Total refund to be paid to the Complainant by Affinity Water (not including interest)**

<b>Description</b>	<b>Sub-total</b>
1. Amount paid by Complainant	£1898.78
2. Determined amount	£701.11
3. Refund provided by Affinity Water on 15 December 2015 (and cashed by the Complainant on 21 April 2016) to reflect the difference between actual cost of the works and the amount that the Complainant had paid	£563.56
<b>Total refund (excluding VAT)</b>	<b>£634.11</b>

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<sup>5</sup> Affinity Water wrote to the Complainant on 15 December 2015, providing a cheque for the refund amount of £563.56.

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

Table 5 sets out Ofwat's view regarding the amounts and time periods on which a Court is likely to award interest in this case.

**Table 5: Interest payable to the Complainant**

Amounts on which interest is payable	Time periods during which interest is payable on this amount
<p><b>£701.11</b></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><b>From:</b> the date on which the company received the customer's security deposit</p> <p><b>To:</b> 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>£634.11</b></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><b>From:</b> the date on which the company received the customer's security deposit</p> <p><b>To:</b> the date on which £634.11 is returned to the customer, in terms of whole three month periods in accordance with section 48 of the Act</p>