



Neutral citation: [2004] CAT 21

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No 1042/2/4/04

Victoria House,  
Bloomsbury Place,  
London WC1A 2EB

23 November 2004

Before:  
SIR CHRISTOPHER BELLAMY  
(The President)  
THE HONOURABLE ANTONY LEWIS  
PROFESSOR JOHN PICKERING

Sitting as a Tribunal in England and Wales

**BETWEEN:**

**ALBION WATER**

Appellant

and

**DIRECTOR GENERAL OF WATER SERVICES**  
**(Re: Thames Water/Bath House)**

Respondent

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Transcribed from the Shorthand notes of  
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**RULING: APPLICATION TO STAY THE APPEAL**

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## APPEARANCES

Mr. Rhodri Thompson QC and Dr. Jeremy Bryan appeared on behalf of the Appellants.

Mr. Rupert Anderson QC and Miss Valentina Sloane (instructed by the Director of Legal Services, OFWAT) appeared on behalf of the Respondent.

Mr. Stephen Tupper (of Messrs. Watson Farley & Williams) appeared on behalf of the Potential Intervener.

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THE PRESIDENT:

1 In this Appeal, which we call for convenience the “Bath House” Appeal, the original Notice of Appeal was introduced by the Appellant, Albion Water Limited (“Albion”), on 12<sup>th</sup> July 2004. Very briefly, at that stage, the Director had made a Decision on 31<sup>st</sup> March 2003 rejecting the Appellant’s complaint against Thames Water. There had then been an application by the Appellant to the Director pursuant to section 47 of the Competition Act 1998 (prior to amendment by the Enterprise Act 2002) to withdraw or vary that decision. It appears that in relation to that application the Director then made a Decision on 11<sup>th</sup> May 2004 but, in the first instance, sent a copy of that Decision only to Peninsular Water (Albion’s former owners) and not in fact to Albion itself. As at the date of the Appeal to the Tribunal (12<sup>th</sup> July 2004) Albion had not, in fact, seen a copy of the Director’s Decision as we understand it.

2 It therefore became necessary, in due course, for that Decision to be served on Albion and Albion came to have a copy of the Decision. It was then, fairly evidently, necessary for Albion to amend its original Notice of Appeal, and on 21<sup>st</sup> September 2004 the Tribunal made an order requiring the Notice of Appeal to be served by 12<sup>th</sup> October 2004. That deadline was subsequently extended to 9<sup>th</sup> November 2004. No revised Notice of Appeal has in fact been served. Instead the Tribunal has had an application to stay the Appeal pending a case study to resolve certain issues which is said to be contemplated as between Albion Water, OFWAT and Thames Water. The stay is requested under paragraph 11 of the application in the expectation:

“...that Albion Water will ask for the Appeal to be formally withdrawn following Agreement on terms of reference or completion of the case study.”

That formulation seems to us to be somewhat ambiguous because there is a marked difference between an agreement on terms of reference, or the completion of the case study.

3 The Director, supported by Thames Water, says that he objects to the Appeal being stayed and submits, at least in his written submissions, that there should be a new Notice of Appeal within seven days failing which the Appeal should be dismissed. It is also said by the Director that the Tribunal has power to strike the Appeal out under Rule 10 of the Tribunal’s Rules. Thames Water also refers to Rule 8(2) of the Tribunal’s Rules which provides for strict time

limits in serving a Notice of Appeal. Both the Director and Thames Water point out that we are now well into November in terms of an Appeal that was originally lodged in July.

- 4 Our view on this matter is that there is a limit to the indulgence that we can accord to Appellants before the Tribunal. Proceedings before the Tribunal have to have a proper procedural shape, whatever the particular difficulties experienced by particular appellants may be from time to time. We feel therefore that there should now be a final Order in this case to the effect that a revised Notice of Appeal, if any, should be served within 14 days of today, failing which this Appeal should be struck out.
- 5 We notice that in a letter from the Appellant to OFWAT dated 15<sup>th</sup> October 2004 most of the points that might form the basis of a revised Notice of Appeal appear to be set out one way or another. The revised Notice of Appeal does not need to be prepared in a complex or legally perfect way but we do have, in our judgment, to have before the Tribunal a revised Notice of Appeal following which the further procedure for the Appeal can unfold according to the timetable envisaged by the Rules.
- 6 Although it is not a matter we have gone into in great detail, we are not, at present, persuaded that the parallel discussions which are apparently going on in the industry about a case study and various other issues that arise, particularly in the context of the new Water Act 2003, are necessarily identical with the issues that we may need to deal with in the Appeal. However, be that as it may, at this stage. all we need direct is that there should be an amended Notice of Appeal within 14 days, failing which the Bath House Appeal will be struck out.

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