

Enforcement and prosecution policy



Introduction

1. United Utilities Water Limited is the statutory water and sewerage undertaker for the Northwest of England. The Company's statutory duties are extensive, the main duties being in relation to the collection, treatment and disposal of wastewater, and the provision of essential water supplies. In order to comply with these duties the Company has been given certain regulatory powers. This includes powers of enforcement and prosecution that are essentially for:

- ensuring the health and safety of employees and the public
- the protection of Company assets
- conservation of water supplies
- protection of drinking water quality
- public health
- ensuring the Company complies with its own statutory and regulatory obligations
- protection of the environment

Primarily the Company does this by working with customers and duty holders but with the option of enforcement/prosecution under various provisions of the Water Industry Act 1991 and the Water Supply (Water Fittings) Regulations 1999.

2. The Company regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation. It encourages individuals and businesses to incorporate best practice into normal working methods.

3. This policy sets out the general principles which the Company intends to follow in relation to enforcement and prosecution. It is to be used in conjunction with more detailed specific guidance for staff in respect of the Company's functions. Implementation and effectiveness of the policy will be monitored by the Company.

Purpose and methods of Enforcement

4. The purpose of enforcement is to ensure that preventative or remedial action is taken to secure compliance with the law. The need for enforcement may stem from any unconsented activity, breach of Consent conditions or from some other illegal activity. The Company expects full compliance with relevant legislative requirements and consents; it will not hesitate to use its enforcement powers where necessary to ensure that those who fail to comply are held to account.

Powers include works notices and the carrying out of works in default in which case the full costs will be recovered.

5. Where a criminal offence has been committed, the Company will consider instituting a prosecution, administering a caution, or issuing a warning to secure compliance with the law and to ensure a proportionate response to a criminal offence that is committed. These mechanisms are distinct from other legal remedies that may be available to the Company, such as a civil action for damages and/or an injunction.

Principles of Enforcement

6. The Company has a policy of firm but fair regulation. The underlying principles of this policy are:

- proportionality in the application of the law and in securing compliance
- consistency of approach
- transparency about how the Company operates
- accountability
- targeting of enforcement action

Proportionality

7. The concept of proportionality seeks to achieve a balance of action to protect Company assets and preserve essential services against risks and costs.

8. Some incidents or breaches of regulatory requirements cause or have the potential to cause serious damage to the Company's assets and/or serious interruption in the Company's activities e.g. an illegal discharge to a sewer that interrupts the operation of the sewer or the sewerage treatment works and/or injury or risk to health. The Company's first response is to prevent such consequences occurring or continuing. The enforcement action taken by the Company will be proportionate to the risks posed, to the seriousness of any breach of the law and includes actual or potential harm arising from a breach of law.

Consistency

9. This means taking a similar approach in similar circumstances to achieve similar ends. The Company seeks to achieve consistency in advice tendered, the response to incidents, the use of powers and decisions on whether to prosecute.

10. The Company recognises that this does not mean simple uniformity. The Company needs to take account of many issues, the scale of the consequences, the attitude and actions of management and the history of previous incidents and breaches. Decisions on enforcement action are a matter of professional judgment and the Company, through management, will exercise discretion and appropriate methods to secure compliance with

the law and to ensure a proportionate response to criminal offences.

The Company will continue to develop arrangements to promote consistency, liaising with other enforcement authorities as appropriate.

Transparency

11. Transparency is important so that those being regulated understand what is expected of them and what they should expect from the Company. It also means making clear why the Company intends to take, or has taken, enforcement action.

12. The Company continues to train its staff and to develop its procedures to ensure that:

- Where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a clear distinction must be made between best practice advice and legal requirements
- Opportunity is provided to discuss what is required to comply with the law
- Where urgent action is required, a written explanation of the reasons is provided as soon as practicable

Accountability

13. Regulators are accountable to the public for their actions and therefore must have policies and standards against which they can be judged.

Targeting

14. This means that the Company makes sure that regulatory effort is directed primarily towards those whose activities give rise to serious consequences, where the risks and/or hazards are least well controlled or against deliberate or organised crime. Action will be primarily focused on duty holders or those directly responsible for the risk and who are best placed to control it.

15. Regulatory and enforcement effort will be applied according to a prioritising system.

16. In the case of regulated industries, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements; the actions of the operator and additional investment. A relatively low hazard site where the operations are poorly managed may have potential for greater risk than a higher hazard site or activity where proper control measures are in place. There are, however, high hazard sites which will receive regular visits from the control officers to ensure that risks are being effectively managed.

Prosecution

Purpose

17. The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other remedies available to the Company e.g. civil remedies where an incident has caused damage, or a serious interruption in the carrying out of the Company's statutory functions. Prosecution without previous warnings may be pursued where the circumstances warrant it provided the criteria below are met.

18. The Company recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors.

Sufficiency of Evidence

19. A prosecution will not be commenced or continued by the Company unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction.

Public Interest Factors

20. In addition to the evidential test, the Company will consider the following factors in deciding whether or not to prosecute:

- Effect of the offence
- Foreseeability of the offence or the circumstances leading to it
- Intent of the offender, individually and/or corporately. Offences that are deliberate or reckless are more likely to result in prosecution
- History of offending and/or non-compliance
- Attitude of the offender
- Deterrent effect of a prosecution, on the offender and others
- Financial implications i.e. where profits are made or costs awarded
- Personal circumstances of the offender
- Where the Company has been obstructed in its duties

21. The above factors will be considered in making an overall assessment. There may be additional factors taken into consideration depending on the circumstance.

Companies and Individuals

22. Criminal proceedings will be taken against those persons responsible for the offence.

Choice of Court

23. In cases of sufficient gravity, where circumstances allow, consideration will be given in relation to recommending that the Magistrate refers the case to the Crown Court. The same factors as listed in paragraph 20 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

Penalties

24. The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Company will continue to raise the awareness of the courts to the gravity of some offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain offences are:

- **Magistrates' Courts:** a fine subject to the statutory maximum
- **Crown Court:** up to 2 years imprisonment and/or an unlimited fine

25. The Company will always seek to recover the costs of investigation and Court proceedings

Presumption of Prosecution

26. Where there is sufficient evidence the Company will normally prosecute in any of the following circumstances:

- Incidents or breaches which have significant consequences or which have the potential for such consequences. The Company takes seriously such incidents or breaches.
- Carrying out operations without a relevant Consent. It is a pre-requisite to successful regulation that those required to be regulated obtain the necessary prior authorisation.
- Continued breaches of regulatory requirements in relation to the same Consent or site.
- Failure to comply, or to comply adequately, with formal remedial requirements. It is unacceptable to ignore remedial requirements and unfair to those who do take action to comply.
- Reckless disregard for management or quality standards. It is in the interests of all that irresponsible operators are brought into compliance.
- Failure to supply information without reasonable excuse or knowingly or recklessly supplying false or misleading information. It is essential that lawful requests for information by the Company

are complied with promptly and that accurate information is always supplied to enable informed regulation to be exercised

- Obstruction of the Company staff in carrying out their duties. The Company regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter
- Impersonating Company staff. The Company regards impersonation of staff, for example in order to gain access to premises wrongfully, as a serious matter

Alternatives to Prosecution

27. In cases where a prosecution is not the most appropriate course of action, the alternatives of a caution or warning will be considered, the choice depending on the factors referred to above.

28. A caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence

29. A warning is a written notification that the Company believes that an offence has been committed. It will be recorded and may be referred to in subsequent enforcement proceedings.

30. Additional or alternative remedies e.g. civil actions may be pursued for loss/damage which has occurred as a result of the illegal activity/incident after careful consideration.

Working with other Regulators

31. Where the Company and another enforcement body both have the power to prosecute, the Company will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings instituted are for the most appropriate offence(s).

About us

United Utilities is the North West's water company. We keep the taps flowing and toilets flushing for seven million customers every day. From Crewe to Carlisle, we work hard behind the scenes to help your life flow smoothly.