

Introduction

1. United Utilities Water Plc 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. These powers of enforcement and prosecution are essentially for:

- (1) ensuring the health and safety of employees and the public.
- (2) the protection of Company assets.
- (3) conservation of water supplies.
- (4) protection of drinking water quality.
- (5) public health reasons.
- (6) ensuring the Company complies with its own statutory and regulatory obligations.

Primarily the Company does this by enforcement/prosecution under various provisions of the Water Industry Act 1991 and the Water Fittings Regs 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 a regulatory system. The need for enforcement may stem from an 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.

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 in addition to any other legal remedy 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.
- 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 eg an illegal discharge to a sewer that interrupts the operation of the sewer or the sewage treatment works and/or injury or illness. 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 and to the seriousness of any breach of the 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.

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

Transparency

11. Transparency is important so that the Company can be seen to the general public to be using its enforcement powers appropriately and fairly. This should help those regulated, and others, to 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 before formal enforcement action is taken, unless urgent action is required.
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event.

Targeting

13. 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 are least well controlled or against deliberate or organised crime. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

14. Regulatory & Enforcement effort will be applied according to a prioritising system.

15. 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

16. 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 eg civil remedies where an incident has caused damage, or a serious interruption in the carrying out of the Company's statutory functions. Prosecution without prior warning may be pursued where the circumstances warrant it.

17. 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

18. 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. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be.

Public Interest Factors

19. 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.
- history of offending.
- attitude of the offender.

- deterrent effect of a prosecution, on the offender and others.
- personal circumstances of the offender.
- exposure of the Company to enforcement/prosecution action by other regulators.

20. The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. The Company will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

Companies and Individuals

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

Choice of Court

22. In cases of sufficient gravity, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 19 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

Penalties

23. 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.

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

Presumption of Prosecution

25. 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 come within the appropriate regulatory system.
- excessive or persistent 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 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

26. 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.

27. 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.

28. A warning is a written notification that, in the opinion of the Company, an offence has been committed. It will be recorded and may be referred to in subsequent proceedings.

29. Additional or alternative remedies eg civil actions may be pursued for loss/damage which has occurred as a result of the illegal activity/incident

Working with other Regulators

30. 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.