



Enforcement and Sanctions Policy

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1 Introduction

1.1 About Affinity Water

- 1.1.1 We are Affinity Water. We supply drinking water to the highest standards to maintain and promote public health. Acting to provide a safe and reliable water supply is at the heart of all that we do. We cannot do this alone. We work with the Water Regulations Advisory Scheme (WRAS), WaterUK and the communities we supply.
- 1.1.2 As a water undertaker, Affinity Water Limited has a number of responsibilities under legislation. These include ensuring that the water it supplies supply to any premises for domestic or food production purposes is wholesome at the time of supply.
- 1.1.3 We are required by law to enforce the provisions of the Water Supply (Water Fittings) Regulations 1999. The purposes of these Regulations include:
- securing that water in our water mains and other pipes is not contaminated by the return of any substance from premises connected directly or indirectly to our water mains; and
 - securing that water in any pipe connected to our water mains and other pipes is not contaminated;
 - preventing the waste, undue consumption and misuse of water after it has left our water mains and pipes for the purpose of being supplied to any premises; and
 - securing that water fittings installed and used by persons to whom water is supplied are safe and do not cause or contribute to the erroneous measurement of any water or the reverberation of any pipes.
- 1.1.4 We also enforce provisions of other legislation, including offences under the Water Industry Act 1991 relating to non-compliance with temporary water use bans, unauthorised connections to our water supply network and the erroneous measurement of water and offences under the Fire and Rescue Services Act 2004 relating to unauthorised use of fire hydrants.
- 1.1.5 This Policy sets out the enforcement and sanctioning tools we have available to us and how we make enforcement decisions.
- 1.1.6 We will use the full range of enforcement and sanctioning tools that are available to us, in combination if necessary, to achieve the best outcomes to safeguard public water supplies and / or protect public health. This may range, for example, from providing advice and guidance, through to serving notices to require certain works to be undertaken, to prosecution.
- 1.1.7 Within this overall approach, where an offence has been committed, we will consider the appropriate sanction as well as any other preventative or remedial action needed to safeguard public water supplies and / or protect public health.

- 1.1.8 For the purposes of this Policy, anything beyond the provision of advice and guidance or giving a warning is considered to be a sanction. As such, a sanction includes issuing a formal notice requiring certain matters to be addressed, issuing a caution or commencing a prosecution (see 2.5-2.8 below).

1.2 Aims of this Policy

- 1.2.1 This Policy has been prepared for the following purposes:

- to ensure we take a proportionate, consistent and transparent approach in our role in securing compliance by others with the legal requirements which concern us, so as to be able effectively to safeguard public water supplies and / or protect public health; and
- to inform the public about the principles we follow in securing compliance with those legal requirements so that the public knows what to expect from us.

1.3 Principles of Enforcement

- 1.3.1 We aim to take a firm but fair approach to enforcement. As such we will carry out our enforcement role in accordance with the following principles.

Principle 1: Proportionality

- 1.3.2 Our objective is to prevent and deter any activities affecting our water supply system which causes or is likely to cause harm to people and / or public water supplies. Any enforcement action we take will be proportionate to the risks posed to people and / or public water supplies by the breach, the impact of the breach on legitimate businesses and other water users and the overall seriousness of the breach. We will look at each situation on a case by case basis and take account of the degree of risk posed so that our enforcement response is proportionate and measured.

Principle 2: Transparency

- 1.3.3 In enforcing the legislation that concerns us we will work with you to ensure that you understand what is expected and required of you and what you can expect from us. Accordingly:
- 1.3.4 When we consider that you have contravened a legal requirement we will provide clear and concise information describing the contravention.
- 1.3.5 We will provide you with a written Enforcement Notice of the steps needed to comply with legal obligations.
- 1.3.6 When we require remedial action, we will explain why it is necessary and by when it must be carried out.
- 1.3.7 We will also ensure that this Policy is made accessible on our website and in paper form from our teams on request.

Principle 3: Consistency

- 1.3.8 We aim to be consistent in how we exercise our powers and duties, including in the advice and guidance that we give, how we respond to breaches and incidents, and how we decide whether to prosecute and what sanction might be appropriate. We aim to take a similar approach to similar cases so as to achieve similar outcomes. However, no two situations are exactly the same. The decisions we make on enforcement are a matter of professional judgment which will take into account various factors when choosing the appropriate response (section 3 of this Policy explains how we choose the appropriate response).

Principle 4: Targeting our enforcement action

- 1.3.9 As explained above, we are under a legal duty to enforce some legislation. Beyond that we target our enforcement action to cases where action is most needed in the public interest. These include:

- cases where the activities pose a serious risk to public health and / or maintaining public water supplies;
- situations where risks are least controlled;
- cases where there is deliberate or organised crime;
- cases where the perpetrator has benefited from substantial profit; and
- where there are other aggravating factors such as threats of violence.

- 1.3.10 We will focus our enforcement action on those directly responsible and / or those best placed to exercise relevant control over the circumstances leading to the offence.

Principle 5: Accountability for our enforcement action

- 1.3.11 We take responsibility for our enforcement decisions and will justify them where appropriate. We are accountable to our regulators, customers and other stakeholders. Our stakeholders include:

- Department for Environment, Food and Rural Affairs (Defra)
- The Drinking Water Inspectorate for England (DWI)
- The Water Regulations Advisory Scheme Ltd (WRAS)
- Public Health England (PHE)
- OFWAT
- Consumer Council for Water (CC Water)
- Local Authorities across our supply region
- Other water companies and water supply licensees with whom we have supply agreements

1.4 Costs

- 1.4.1 Where the law allows, we will always seek to recover the costs we have incurred in investigating and in bringing enforcement proceedings and in other specific situations envisaged in legislation, such as where water has been wasted, misused or improperly consumed.
- 1.4.2 In addition, where we have carried out remedial works (such as to prevent water contamination or water wastage), we will seek to recover any expenses reasonably incurred from those responsible for the necessary works.
- 1.4.3 It is also our Company policy to charge for any unauthorised abstraction of water from a hydrant.

2 Enforcement Responses

We have available to us a wide range of enforcement responses, the use of which we will fully consider in any case. This section 2 provides details of the responses we most regularly use. Section 3 provides details as to how we go about choosing the appropriate response in any one case.

2.1 Advice and Guidance

- 2.1.1 We recognise that most customers want to comply with the legal requirements that concern us and we make significant efforts to work pro-actively with customers and the public, both individuals and businesses, to advise and educate them so as to encourage compliance and avoid unnecessary enforcement action. We recognise that prevention is better than cure and that simple, clear and timely guidance and advice is often the greatest contribution that can be made to supporting compliance. It also helps to avoid bureaucracy and excessive cost.
- 2.1.2 In addition to providing advice and guidance, we take other steps, as set out below, to improve the public's general understanding of the legislation that we enforce.

Guidance

- 2.1.3 Our Network Regulations Team is available to answer questions on legal requirements relating to water supply, including but not limited to the Water Supply (Water Fittings) Regulations 1999, so as to ensure that customers, the public and their water systems comply with the relevant requirements. Wherever possible we will give timely, simple and clear advice. Examples of the advice we give regularly are:

- advice on proposed plumbing work notifications under the Water Supply (Water Fittings) Regulations 1999 for new or existing water systems in household and non-household premises;
- advice to property owners with private water supplies to avoid cross or misconnections with the public water supply;
- guidance on water supply compliance for public events like fairs, shows, concerts or carnivals; and
- guidance for businesses on licence requirements for drawing water from hydrants.

Contractors and trade groups

- 2.1.4 We promote the use of 'Approved Contractors' registered by an 'Approved Contractors Scheme' to install water fittings in premises and we encourage customers to use WaterSafe to find one. WaterSafe is a water industry funded online search facility bringing together thousands of qualified contractors from the approved contractor schemes. We provide the opportunity for plumbing businesses or sole traders to become recognised as an 'Approved Contractor' by offering training and accreditation

for Approved Contractor status and we carry out audit inspections to ensure they meet the required standards.

- 2.1.5 We are also members of plumber system designer forums and work with other trade and professional bodies to ensure that we are kept up-to-date with water system design and products.

Pro-active inspections

- 2.1.6 Non-household premises pose a greater risk of contaminating the public water supply. We pro-actively inspect business premises and public buildings for compliance, so as to ensure that owners and operators continue to conserve water and protect public water supplies from harm.
- 2.1.7 We may also carry out measurements or undertake tests or take water samples from those premises. We visit new and existing premises being built or converted and advise on the ways we can best supply water to them. We also investigate and inspect unregistered premises to check for any unauthorised connection work to premises. We may also carry out measurements or undertake tests or take water samples from those premises.
- 2.1.8 We have statutory powers to enter premises to for these purposes.

2.2 Compliance Assistance

- 2.2.1 Sometimes we become aware of a breach or potential breach of the legislation we enforce in circumstances where we have not had any prior opportunity to provide guidance or advice to the relevant individual or business.
- 2.2.2 In these situations, we are again mindful of the fact that clear and timely guidance can help individuals and businesses to remedy the non-compliance. We will normally provide assistance initially to the persons or businesses in breach or in potential breach so as to allow them to secure compliance without further sanctions.

2.3 Inspections where we Suspect an Offence

- 2.3.1 Where we have reason to suspect that an offence may have been or is being committed, we may also choose conduct inspections of relevant premises with a view to securing compliance. Here we may also carry out measurements or undertake tests or take water samples from those premises.
- 2.3.2 We have statutory powers to enter premises to for these purposes.

2.4 Warning Letters

- 2.4.1 Where we believe an offence is being or has been committed, we may issue a verbal warning at the relevant premises (following which a warning letter may be sent) or we may simply issue a warning letter. In either case the warning will detail the relevant breach that we believe has been or is being committed and what should be done to remedy it.
- 2.4.2 All warnings issued by us are recorded in our files and may, in the event of further non-compliance, influence a subsequent choice of sanction (see 3 below). A warning letter may also in certain circumstances reserve the right to take further enforcement action.

2.5 Notices

- 2.5.1 We have the legal power in certain cases to serve a notice on a person requiring them to take steps as specified in the notice. Where such a notice is served, we will specify a timeframe in the notice within which steps must be taken to restore or remediate a contravention, failing which we have the power to undertake those steps ourselves and recover our reasonable expenses from you.

2.6 Disconnection of Supply

- 2.6.1 In certain circumstances, we have the power to take immediate action to disconnect a service pipe or otherwise disconnect the water supply to the premises. A notice will then be served as soon as practicable following disconnection, specifying the necessary steps to be taken before the supply will be restored. Failure to comply allows us to undertake those steps ourselves and recover our reasonable expenses.

2.7 Criminal Sanction – Formal Caution

- 2.7.1 A formal caution may be given to a person (aged 18 or over) who admits in writing to committing an offence. This sanction may only be used where a prosecution could have been brought. It therefore differs from a warning described above, as a warning is a record that we believe an offence has been or may have been committed and does not require any acceptance of an offence from the relevant person.
- 2.7.2 A formal caution is a formal recorded criminal sanction that will be produced in court if there is further offending. Where a formal caution is not accepted, we will normally prosecute for the original offence.
- 2.7.3 We will consider offering a formal caution where we have sufficient evidence to charge for an offence, but where we consider a caution to be in the public interest (see section 3 below).
- 2.7.4 Formal cautions are intended to be a specific deterrent. A caution is however not a form of a sentence or a criminal conviction.
- 2.7.5 A formal caution will form part of an offender's criminal record.

2.8 Criminal Sanction - Prosecution

- 2.8.1 Prosecution is available for all the criminal offences we enforce. The offences that we enforce are heard either in the Magistrates' Court or (in some cases) may be heard in the Crown Court. The penalties for offences heard in the Magistrates' Court are a fine, although the amount imposed can vary depending on the specific offence committed. Offences which can be heard in the Crown Court have more serious penalties, including unlimited fines and/or imprisonment (Crown Court).
- 2.8.2 We recognise that prosecution is a serious matter which should only be embarked upon after full consideration of the implications and consequences.
- 2.8.3 Before commencing any prosecution, we assess a case in accordance with the Full Code Test set out in the Code for Crown Prosecutors dated January 2013. The Full Code Test has two parts: i) the evidential stage, followed by ii) the public interest stage.

Stage 1: Evidential stage

- 2.8.4 Under the first stage of our assessment, we must be satisfied that there is sufficient evidence to provide a 'realistic prospect of conviction' against a defendant in relation to each charge so as to progress to the second stage. This initial assessment is based on a review of the evidence available to determine whether an objective, impartial and reasonable jury or bench of magistrates or judge hearing the case alone, when properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge alleged. In making this assessment, we will consider:
- whether the evidence can be used in court;
 - whether the evidence from our investigation is reliable, taking into account any reasons to question the reliability of the evidence (including any accuracy or integrity);
 - whether the evidence is credible;
 - the impact of a potential defence case and how this may affect our prosecution case; and
 - any information put forward by the suspect or on which the suspect may rely.
- 2.8.5 The above test is a separate test to the 'beyond reasonable doubt' test applied by the criminal courts in deciding whether to convict a defendant (i.e. a criminal court may only convict if it is sure that the defendant is guilty). In some circumstances, further investigations may be required following which we will reconsider the evidential test.
- 2.8.6 If the case does not pass the evidential stage, no prosecution shall go ahead, no matter how important or serious it may be.

Stage 2: Public interest stage

- 2.8.7 If the case does pass the evidential stage, we have to go on to decide whether a prosecution is needed in the public interest. We will balance factors for and against prosecution carefully and fairly. The factors we would normally consider are those in the list at 3 below. The weight attached to each will vary according to the facts of the case. In this context we will consider whether an alternative response to prosecution might be more appropriate (such as a warning letter or a formal caution).
- 2.8.8 Even if we decide that a prosecution is appropriate in a particular case we will continue to review the case throughout the prosecution process to take account of any change in circumstances and what becomes known of the defence case.
- 2.8.9 When a person is convicted of an offence, the court will decide the appropriate penalties for the crime during a sentencing hearing. We will assist in this process by applying for the court to make ancillary orders where appropriate. Examples of ancillary orders that we may seek in certain situations are:
- a confiscation order (where an offender has received financial benefit from their criminal conduct); and
 - an order to disqualify individuals from directing a company.
- 2.8.10 A prosecution will not be started or continued if it would be regarded by the Courts as oppressive or unfair and an abuse of the court's process.
- 2.8.11 Where we decide not to prosecute or to stop a prosecution there may occasionally be reasons why we might reverse that decision, such as (i) where a review of the original decision shows that it was wrong; or (ii) where more significant evidence is discovered later; or (iii) where more evidence is available in a case that was stopped so that more evidence which is likely to become available in the fairly near future could be collected and prepared (in these cases, we will tell the defendant that the prosecution may well start again).

3 Choosing the appropriate response

3.1 Overview

- 3.1.1 When we are considering our response to an offence there will be a range of possible responses (as above) available to us.
- 3.1.2 Our starting point will be to consider whether any immediate response is needed so as to protect public health and / or public water supplies, for example in an emergency situation, such as via the service of a notice to require certain works to be undertaken within a certain timeframe or through disconnection of the water supply.
- 3.1.3 Following this, and in other cases where no immediate response is required, we will consider whether advice / guidance or compliance assistance might achieve the necessary outcome to address our concern. If this is considered appropriate, in accordance with the public interest factors below, we will pursue this route initially.
- 3.1.4 Where we consider that advice / guidance or compliance assistance (or that further advice / guidance or compliance assistance) is not likely to achieve the necessary outcome to address our concern, and that some form of sanction is required to secure that outcome, then we will again consider the facts of the case against the public interest factors (as listed below) in order to decide what type of sanction to impose.
- 3.1.5 The weight to be given to each public interest factor may vary on a case by case basis. We will decide how important each factor is in the circumstances of each case and make an overall judgment.
- 3.1.6 For the avoidance of doubt, the public interest factors below are also those which inform the public interest stage of the Full Code Test described at section 2 above, so as to determine whether prosecution is appropriate.
- 3.1.7 We will usually take enforcement action against those persons directly responsible and / or those best placed to exercise relevant control over the circumstances leading to the offence. Where an offence relates to a company's activities, it will be usual practice to enforce against the company.
- 3.1.8 However, in some cases where an offence has been committed by a corporate body and is attributable to the consent, connivance or neglect of any director, manager, secretary or other officer, then that person can be guilty of an offence as well as the corporate body and so may also, or may alternatively, be the subject of enforcement action for that offence. In such circumstances, we will take action against the most appropriate body (corporate and/or individual).
- 3.1.9 In appropriate cases, we will also consider seeking disqualification of directors under the Company Directors Disqualification Act 1986.

3.2 Intent / Culpability

- 3.2.1 A prosecution will be more likely to result when we are dealing with overt criminality, such as when we are dealing with offences committed deliberately, recklessly or with gross negligence; or where acts or omissions are premeditated or planned; or where offending is continuous, repeated or escalated or would be likely to become continued, repeated or escalated.
- 3.2.2 Where an offence was committed as a result of an accident or a genuine mistake this is more likely to result in the use of advice / guidance, compliance assistance or a warning.

3.3 Foreseeability

- 3.3.1 Where the circumstances leading to the offence could reasonably have been foreseen, and no avoiding and/or preventative or control measures were taken, the response will normally be to impose one of the sanctions in 2.5-2.8 above i.e. not merely advice / guidance or the issuing of a warning.

3.4 Impact / Scale of Harm

- 3.4.1 Our response will reflect the extent to which the offence has put the public health and / or the public water supply at risk and the extent to which any victim and/or the community may have been harmed.
- 3.4.2 Where we are dealing with minor breaches where there is only minimal risk to the public water supply (and therefore public health), or where there is no or minimal impact on any victim and/or the community, we will normally choose to provide advice and guidance to help the business / individual back into compliance.
- 3.4.3 We will however normally consider prosecuting where the offence has created serious harm (or has the potential to cause such harm) to public health, the public water supply, any victim and/or the community.
- 3.4.4 Prosecution is also more likely to be pursued where there has been large scale and protracted non-compliance.

3.5 Nature of the Offence

- 3.5.1 We will normally prosecute where the offending impacts on our ability to be efficient and effective in carrying out our enforcement activities. Examples are where our staff have been subjected to harassment, alarm, distress or fear of violence; or where we have otherwise been obstructed in our investigation; or where we are provided with false or misleading information.

3.6 Financial Gain

- 3.6.1 We will normally prosecute where an offence results in legitimate business activities being undercut, or where profits are made or costs are avoided. This will include offences motivated by financial gain.

3.7 Deterrent Effect

- 3.7.1 When choosing a sanction, we will consider the deterrent effect, both on the offender and others. Prosecutions, because of their stigma if a conviction is secured, may be appropriate even for minor non-compliance where they might contribute to a greater level of overall deterrence. Where the use of a sanction is likely to reduce future self-reporting of offences / non-compliance, a different sanction may be appropriate.

3.8 Previous History / Repeat Offending

- 3.8.1 The degree of offending and/or non-compliance (whether site specific or generic failures by the offender) will be taken into account (and for generic failures see “Multiple site operations” below). We will normally escalate our enforcement response where previous sanctions have failed to achieve the desired outcome. For example, where a formal caution has previously been used to deal with offending but has failed to encourage behaviour change and prevent a repeat of the offending, it is likely that the offender will be prosecuted.
- 3.8.2 Where offending has continued or been repeated despite action taken we will normally increase the level of our response.

3.9 Attitude of the Offender

- 3.9.1 Where the offender has a poor attitude towards the offence and/or is uncooperative with the investigation or remedial actions, this will normally result in a prosecution. Conversely, where the offender provides us with the details of an offence voluntarily or has demonstrated remorse through subsequent actions (such as taking steps to remedy a breach or prevent repeat occurrence) we will take this into account when deciding whether advice and guidance will suffice.

3.10 Personal Circumstances

- 3.10.1 We will consider the personal circumstances of the offender (for example if the offender is suffering from a serious illness). A first offence by a juvenile will not normally result in prosecution.
- 3.10.2 A person’s financial situation will not, however, affect any decision to prosecute.

3.11 Multiple Site Operations

3.11.1 We will always have regard to the compliance history of an offender. We will not normally take account of offences committed on another of an operator's sites unless they are of a similar type or demonstrate an overall management failure on the part of the operator.

4 Action Against the Crown

No contravention by the Crown of relevant provisions will make the Crown criminally liable for an offence. We may however apply to the High Court for a declaration that any act or omission (which would have constituted a contravention) of the Crown is unlawful. This is an unusual course to take and whether we do so will depend upon:

- the gravity of the incident or contravention;
- whether liability is admitted; and
- the response of the body concerned.

5 Further Information and Contacts

If you have any question relating to the content or application of this Policy, please contact a member of our Network Regulations Team (via the details below) to discuss the matter. Alternatively, if you have a query or complaint regarding our water supply services, then please refer to our customer complaint procedure via the following link:

<https://www.affinitywater.co.uk/docs/complaints-procedure.pdf>

You may also make a complaint about any of our functions or services to the Consumer Council for Water (see details below).

5.1 Affinity Water Network Regulations Team

Affinity Water Network Regulations Team
Redricks Lane
Sawbridgeworth
Hertfordshire
CM21 0RL

Telephone: 01279 775436
Email: network.regs@affinitywater.co.uk
Website: www.affinitywater.co.uk/fittings

5.2 Consumer Council for Water (CC Water)

Consumer Council for Water
First Floor, Victoria Square House
Victoria Square
Birmingham
B2 4AJ

Telephone: 020 7931 8502
Email: londonandsoutheast@ccwater.org.uk
Website: www.ccwater.org.uk

5.3 Water Regulations Advisory Scheme (WRAS)

WRAS Ltd
Unit 13 Willow Road
Pen-y-Fan Industrial Estate
Crumlin,
Gwent,
NP11 4EG

Telephone: 0333 207 9030
Email: info@wras.co.uk
Website: www.wras.co.uk

6 Policy review

This Policy will be reviewed on an annual basis or more often when necessary following regulatory changes or change in industry-issued or government guidance.