

Mandy Banks  
Office of the Sentencing Council  
Room EB16  
Royal Courts of Justice  
London  
WC2A 2LL

24<sup>th</sup> June 2014

Dear Mandy,

### **Theft Offences Guideline Consultation**

Thank you for this opportunity to respond to the Sentencing Council Theft Offences Guideline consultation. The United Kingdom Revenue Protection Association's (UKRPA) response focuses on Section 5 (abstracting electricity).

The UKRPA is a trade association made up from a range of organisations (see Appendix B for a list of our members). Working across the electricity and gas markets of Great Britain, Northern Ireland, the Isle of Man and Jersey, our members cover supply, networks, metering and data organisations. The UKRPA oversees best practice in detecting and dealing with meter tampering and the illegal abstraction of supplies and services by utilities, particularly electricity and gas. We work closely with a range of other organisations including, but not limited to, the energy regulator (Ofgem), the Home Office, representative bodies and regional services for police and fire, and social landlords. Our members therefore have a deep interest in how sentencing is carried through.

We welcome and indeed support the inclusion of a sentencing guideline for the illegal abstraction of electricity. However, we note there are no similar guidelines relating to gas. Whilst we understand why, i.e. not included within the definition of theft as per the Theft Act 1968, there is nonetheless a serious gap that needs to be addressed. The impacts of the theft of gas can be devastating; an explosion caused by tampering with the gas supply can cause damage to entire streets. We would welcome a conversation with the Sentencing Council to explore how best to move forward on this particular matter.

Dishonestly using electricity (and indeed gas) is a very complex matter. There are some key points we would therefore like to draw to your attention that will help you to contextualise energy theft and the unique implications it has for the wellbeing and safety of citizens more generally.

- The dishonest use of electricity (illegal abstraction) is associated with organised crime and drugs (e.g. cannabis farms) - approximately 33% of illegal abstraction has been associated with the cultivation of cannabis.<sup>1</sup>
- Illegal abstraction poses serious risks to not just the person committing the offence (through electrocution), but also to the occupants of the property, as well as potentially neighbours (e.g. electrical fires) and of course those having to investigate dangerous situations (police and fire service and energy company employees).
- Offences are committed not just by a single householder, but also involve those that offer illegal business services to individuals, plying their services from street to street. Moreover, as mentioned above, offences also stretch to organised crime syndicates with respect to cannabis production.
- Illegal abstraction may go undetected for some time: months and even years. The passage of time increases the safety risk, especially as occupants come and go from a particular property and may be unaware their supply has been compromised.
- It has been estimated that as much as £200m worth of electricity is illegally abstracted every year.<sup>1</sup> The number of cases brought before the courts is therefore an extremely small percentage of those actually undertaking these offences.
- The costs associated with the illegal abstraction of electricity is socialised amongst all consumers. Consequently their electricity bills are greater than they should be. As such, each consumer is in effect a victim of the crime.

Electricity theft is not a low volume offence. So how is it that so few offenders (480 offenders in 2012) have been before the courts? This is where the unique nature of the energy industry comes into play. The energy market is a highly regulated environment. Electricity Distributors and Electricity Suppliers are governed by primary and secondary legislation and various codes of practice, with a particular emphasis on consumer protection.

Not surprisingly, these organisations have many different filters in place to put the consumer first, even when illegal abstraction has been discovered. For example, in vulnerable consumer cases, the company is less likely to go to court and may well reconnect supplies up to three times before more drastic action is taken. It can also be extremely difficult to gather the evidence required against a particular individual when that individual may well argue it was not them that compromised the supply of electricity (even though they may well be the only occupant). It is also difficult to have these offences reported when the 'victims' themselves are so remote from the crime being committed (e.g. consumers). It can also be challenging for energy companies to have the illegal abstraction on the charge sheet when other crimes have been committed and which the prosecution services may believe have a greater chance of prosecution success. Furthermore, Ofgem's recent electricity supply licence changes have further reinforced the consumer protection angle.

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<sup>1</sup> <https://www.ofgem.gov.uk/ofgem-publications/76213/electheft-2july.pdf>

Consequently, this means that those cases making it to court represent the thin edge of a much bigger wedge of offences being committed.

To conclude, we appreciate the decision by the Sentencing Council to engage with parties on the drafting of new guidelines for theft offences. We agree that a separate guideline for abstracting electricity is appropriate, and we hope that our comments (see Appendix A) will help inform on its development and look forward to a further conversation in relation to gas theft.

Please do not hesitate to contact us if we can provide further assistance.

Yours sincerely



Tony Thornton – Chairman, UKRPA

## **APPENDIX A – UKRPA RESPONSE TO SPECIFIC QUESTIONS**

### **UKRPA Response to Theft Offences Guideline Consultation Questions**

**Question 21: Do you agree that the new theft definitive guidelines should include guidance for this low volume offence? If not, please tell us why.**

Electricity theft is not a low volume offence; the unique highly regulated nature of the electricity market means that there is a particular emphasis on consumer protection driven by primary and secondary legislation and codes of practice.

Consequently, energy companies have many different filters in place to put the consumer first, even when illegal abstraction has been discovered. For example, in vulnerable consumer cases, the company is less likely to go to court and may well reconnect supplies up to three times before more drastic action is taken. It can also be extremely difficult to gather the evidence required against a particular individual when that individual may well argue it was not them that compromised the supply of electricity (even though they may well be the only occupant). It is also difficult to have these offences reported when the ‘victims’ themselves are so remote from the crime being committed (e.g. consumers). It can also be challenging for energy companies to have the illegal abstraction on the charge sheet when other crimes have been committed and which the prosecution services may believe have a greater chance of prosecution success. Furthermore, Ofgem’s recent electricity supply licence changes have further reinforced the consumer protection angle

Ofgem, the energy regulator, has estimated that electricity theft costs the UK industry approximately £200 million pa<sup>2</sup>. Notwithstanding that citizens are reluctant to report these offences, there is nonetheless an upward trend of reports being made (the UKRPA provides a confidential helpline for members of the public to report energy theft; we have experienced a 400% increase in reports between 2012 and 2013).

In conclusion, we strongly support the inclusion of a sentencing guideline for this type of theft offence and believe that with the advent of increasing regulatory obligations (e.g. revised licence obligations) to investigate and take action, the level of incidents being taken to court will most certainly rise.

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<sup>2</sup> <https://www.ofgem.gov.uk/ofgem-publications/76213/electheft-2july.pdf>

**Question 22: If you agree that this offence should be included, should it be within a single guideline?**

Illegal electricity abstraction is a unique case with particular associated complexities. There are many victims (some more remote than others). In our cover letter we explain why, the key points are repeated below:

- The dishonest use of electricity (illegal abstraction) is associated with organised crime and drugs (e.g. cannabis farms) - approximately 33% of illegal abstraction has been associated with the cultivation of cannabis.<sup>3</sup>
- Illegal abstraction poses serious risks to not just the person committing the offence (electrocution), but also to the occupants of the property, as well as potentially neighbours too (e.g. electrical fires), and of course those having to investigate dangerous situations (police and fire service and energy company employees).
- Offences are committed not just by a single householder, but also involve those that offer illegal business services to individuals, plying their services from street to street. Moreover, as mentioned above, offences also stretch to organised crime syndicates with respect to cannabis production.
- The illegal abstraction may go undetected for some time: months and even years. The passage of time increases the safety risk, especially as occupants come and go from a particular property and may be unaware their supply has been compromised.
- It has been estimated that as much as £200m worth of electricity is illegally abstracted every year.<sup>3</sup> The number of cases brought before the courts is therefore an extremely small percentage of those actually undertaking these offences.

The costs associated with the illegal abstraction of electricity is socialised amongst all consumers. Consequently their electricity bills are greater than they should be. As such, each consumer is in effect a victim of the crime.

We therefore agree that it is wholly proper and indeed essential for this offence to be included within a single guideline.

**Question 23: If not, should it be contained within one of the other five guidelines, with a separate sentencing table? If so, please state which other guideline it should be contained in and why?**

Please see our response to question 22.

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<sup>3</sup> <https://www.ofgem.gov.uk/ofgem-publications/76213/electheft-2july.pdf>

**Question 24: Do you agree with the culpability factors?**

We have considered which of the culpability factors might apply under a range of scenarios. For example, it seems clear to us that those involved with cannabis farms (illegal drug production) where they are part of a group (e.g. organised crime) would likely fall under category A (high culpability). Whereas, medium culpability could apply for example to repeat offenders.

However, we do have some concerns with respect to category C (lesser culpability), and more specifically, with respect to the criterion 'limited awareness or understanding of offence'. This seems to us too vague with respect to illegal electricity abstraction, especially when you consider it requires a deliberate act, i.e. interference with either the meter or the supply. That said, we recognise there will need to be a culpability factor that deals with those individuals that are in some way not the main cause (e.g. where someone else offers to compromise the supply for them for a fee), even though they have made a deliberate decision to act and take this service. In other words, there could be mitigating circumstances (e.g. severe mental health issues).

We therefore recommend that the factor 'limited awareness or understanding of offence' be removed altogether, and replaced with a new one covering vulnerable people. This would fit better with the electricity licence obligations with respect to consumer protection measures and also recognise that there are many steps involved before deciding to prosecute a consumer for illegal electricity abstraction – i.e. energy companies already have significant filters in place to avoid such cases coming to court and in all cases of theft are only presented as an absolute last resort.

**Question 25: Do you agree with the proposed one stage approach to the assessment of harm? If not, please tell us why.**

The UKRPA has been working with the Home Office with respect to cannabis farms and the role of illegal abstraction. As part of that discussion, we have been developing better ways to present evidence including how best to assess loss. Whilst we note that the Sentencing Council observes the lack of precise financial values for electricity abstraction, we believe that this position will improve. We therefore recommend that a first stage regarding financial value be used (where this information is available). If not then the second stage only would apply.

To guide your thoughts, our members believe the following values could be considered:

Harm A		
Loss caused or intended		
Category 1	£5,001 or more	Starting point based on £10,000
Category 2	£2,501 - £5,000	Starting point based on £2,500
Category 3	£501 to £2,500	Starting point based on £1,250
Category 4	Up to £500	Starting point based on £250

On a more trivial point, you may wish to consider the financial ranges defined within each of your tables throughout the guidelines. We have noted there some overlap between categories, e.g. Up to £500 (does this really mean £500 or £499?).

**Question 26: Do you agree with the factors included in greater and lesser harm? Are there any other factors which you think should be included?**

Despite the complex nature of illegal electricity abstraction, we broadly concur with the harm factors. Nonetheless, we would like to make a few observations which we trust will provide greater clarity and meaning when courts are making their assessments.

With regard to the factor: *'A significant risk of, or actual injury to persons or damage to property'*. On a minor point, we would insert a comma after the word 'actual'. However, we have two main points to make.

The first is with respect to the definition of 'property' where harm is being assessed. At one level, it could mean the meter, service pipe and associated fittings. At another, it could also mean the physical damage caused to a property (as in the case of cannabis farms). We would appreciate some clarification on this before we comment further.

The second point is regarding the test for 'significance'. It is our view that there will always be a significant risk of injury to persons whenever an electricity supply is interfered with. It is therefore not clear to us how a court would determine 'significance' - by what yard stick would it measure this?

If helpful, we would be happy to provide further input on these aspects to support your guidance.

**Question 27: Do you agree with the proposed aggravating and mitigating factors? If not please specify which you would add or remove and why.**

Broadly we agree with the aggravating and mitigating factors. However, we make the following observations that the Sentencing Council might like to consider further.

The first is with regard to the matter of prevalence. We believe that prevalence is likely to apply to the illegal abstraction of electricity. For example, we are aware of unscrupulous individuals targeting particular streets in particular areas associated with high rates of poverty. Their motive is to target those that are most vulnerable and therefore likely to avail of their illegal trade: offering to compromise electricity meters.

Second, the factor 'offender motivated by intention to cause harm...' may apply in cases of organised crime and the production of illicit drugs. Consequently, its omission may need further thought.

Our final point is with regard to repeat offenders. As mentioned above, energy companies apply to the court as an absolute last resort. There will be cases whereby individuals have illegally taken a supply on more than one occasion, even though these previous events were not taken to court. We recommend therefore that where evidence is provided of multiple illegal abstraction events, that this be recognised as an aggravating factor.

**Question 28: Please give your views on the proposed sentence levels for this offence in Scenario E.**

The proposed sentence levels for the range of offences appear too lenient and certainly not well balanced with regard to other offences e.g. theft from a shop or stall. We believe the reason for this may be down to the relatively low volume of cases that are actually presented to the courts, noting that energy companies take this action only as a last resort. We also suspect that the nature of energy theft is not well understood by magistrates/the courts, and that this may lead to sentencing erring on the side of leniency.

The UKRPA recognises it could do more to help educate and make those making decision more aware of the nature of electricity theft. However, it is important for the guidelines to properly reflect the nature of the crime especially when balanced against other crimes. For example, we believe that those involved with others in the illegal abstraction of significant amounts of electricity to support drug production should be attracting the maximum tariff of up to 5 years.

With regard to Scenario E within the consultation; there is a deliberate act by 'R' to interfere with a meter over a sustained period. It is most fortunate that this did not result in a fire affecting the other residents, however the risks were significant. Moreover, the illegal abstraction would have affected all consumers' bills to some extent – energy theft is socialised as a cost across all consumers' bills. There is no suggestion that R was in anyway vulnerable; in other words R knew exactly what to do and the consequences of doing so.

So, whilst we agree with the Culpability assessment, we disagree that this should attract a 26 week custody order. By way of comparison, a shoplifter would arguably receive 36 weeks. We ask that the Sentencing Council reconsider the tariff ranges.

## APPENDIX B – UKRPA MEMBERS

- **Meterplus (npower)**
- **ScottishPower Dataserve UK**
- **Western Power Distribution**
- **Northern Ireland Electricity Revenue Protection Unit**
- **Electricity North West**
- **EDF Energy**
- **Centrica**
- **Secure Meters Ltd (PRI)**
- **The Jersey Electricity Company**
- **Manx Utilities**
- **RWE npower**
- **Phoenix Natural Gas**
- **UK Power Networks Ltd**
- **Lowri Beck Services Ltd**