United Utilities response to the CMA consultation:

Draft revised CMA guidance on the appropriate amount of a penalty

Response

United Utilities welcomes this opportunity to comment on the consultation "Draft revised CMA guidance on the appropriate amount of a penalty". We have focussed our response on the proposed additions to what constitutes adequate steps in relation to mitigating factors.

Consultation questions

Q6.1 Do you agree with the proposed changes set out in chapter 5? Please give reasons for your views.

We have no issues with the majority of the proposed changes to this guidance. We did however find one section we felt was unclear. On page 13, footnote 34, of the proposed guidance it states that in order to be considered to have adequate steps a compliance programme undertakings:

"will be expected to include appropriate steps relating to competition law risk identification, risk assessment, risk mitigation and review activities, including making a public statement regarding a commitment to compliance on the undertaking's relevant website(s) and conducting periodic review of its compliance activities, and reporting that to the CMA."

We believe that including a requirement to make a public commitment to compliance and conduct periodic reviews of compliance activities is appropriate and proportionate. However the requirement to report the completion of periodic review of compliance activities would we believe benefit from further clarification. We continuously review our compliance activities depending on changing internal and external factors. Where there is a potentially significant change we consider the risks relating to that factor and implement compliance activities as appropriate. We do not always need to undertake a full review of our risks in relation to competition law each time. It is not clear to us when an undertaking should report having reviewed its compliance activities to the CMA. As written the proposed guidance could lead to reports from undertakings each time they consider a new risk. Reviewing compliance activities is a continuous process, there is also the consideration for us that Ofwat as concurrent regulators get assurance of our activities. In addition to this we have, for non-household retail market reform recently, been required to demonstrate and assure that we have in place appropriate level playing field controls. I think this concurrent activity and continuous nature of compliance programmes could make this step impractical.

This guidance states that without this reporting the mitigating steps taken should be disregarded when considering penalties relating to competition law offenses, we believe this would be unfair. We suggest that this requirement to report to the CMA that compliance activities have been reviewed be replaced. Further details should be provided as to when a review of compliance activities should be notified to the CMA. Alternatively this requirement could be removed.

Q6.2 Are there any other areas of the Current Guidance which you consider could be usefully clarified? Please explain which areas and why.

There are no areas of current guidance that we think require clarification.