

Helping our Clients avoid the Potholes

Eversheds Sutherlands'
street works service



Why is getting it right important?

Each year statutory undertakers are engaged in hundreds of thousands of street works activities across the country to keep our key utilities and infrastructure running.

They must all comply with the New Roads and Street Works Act 1991, Traffic Management Act 2004 and associated legislation and Codes of Practice, which set out a strict legal framework.

For the most part statutory undertakers get it right, but on those occasions when they do not, they can face intense scrutiny of their systems by authorities and multiple criminal prosecutions.

We are seeing an **increased appetite from authorities to prosecute** 'streetworks' offences and the Courts are taking a stricter approach to these cases than they have in the past. Since 2012, Courts have had **unlimited sentencing powers** when setting fine levels for some street works offences.

This has resulted in significant fines for a number of statutory undertakers for single offences extending into the tens of thousands of pounds.

We have seen the largest fines imposed when there is a safety risk posed to road users and other members of the public. Poorly laid out and executed street works can be a **risk to health and safety** which can also be separately prosecuted by the health and safety regulators with the potential for an unlimited fine.

As well as a criminal conviction and sizable fine, statutory undertakers also facing significant **reputational damage** when they fail to get it right and come before the Courts.

Why Eversheds Sutherland?

We have an experienced team, which supports a number of energy and utility companies and recognises the importance of getting to know your business and providing practical, commercial advice whether to proactively review and improve systems or in the course of a prosecution.

We routinely advise on:

- challenging s.74 NRSWA overrun charges
- the scope of s.60 NRSWA on cooperation
- compliance with s.65 NRSWA on signing, lighting and guarding
- authority coring programmes and s.71 prosecutions for materials, workmanship and standard of reinstatement
- reg 19 and Reg 20 permitting issues

Our services include:

- providing compliance and risk management advice to improve your system and defensibility against the issue of fixed penalty notices and prosecution
- providing support with any aspect of an investigation or prosecution by a street authority
- if prosecuted we negotiate with authorities to encourage a proportionate approach to enforcement, including avoiding prosecutions altogether in some cases
- being honest about shortcomings where that evidence is incontrovertible, but vigorously defending issues that are of importance
- identifying and assisting with the implementation of lessons learned, changes and best practice following an event or prosecution
- providing advice and support on how to better work with your contractors to encourage compliance and best practice

“The attention paid to understanding our business practices and the potential impact of any adverse Court rulings or judgements, demonstrates genuine care and skill as well as an understanding of what will best serve us as a client.”

For more information, please contact



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