RETAIL ENERGY CODE

ENERGY THEFT TRAINING

MODULE EIGHT –
POST-INVESTIGATION, EVIDENCE AND CRIMINAL PROCEEDINGS

POST INVESTIGATION

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Once you have completed an investigation, there may be further actions to take depending on the outcome. As well as ensuring all the information and actions to date are recorded, you should continue to record actions taken following the confirmation of the theft.



- Monitor energy usage, smart meter alerts and prepayment activity at the affected property and any linked addresses to identify further illegal use; start a new investigation if theft is suspected.
- If disconnected, continue monitoring and follow up with the consumer to detect illegal reconnection and address any welfare or vulnerability issues, including a welfare visit within 24 hours if a vulnerable consumer is identified.

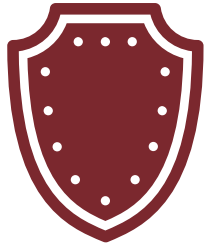


- If access is refused, continue follow-up by other means. Consider referrals to Social Services or your internal Priority Services Register team where appropriate and start a new investigation if an illegal reconnection is suspected.
- For gas theft, the registered Shipper may be able to claim compensation through Xoserve's Reasonable Endeavours scheme.
- You may decide to report the theft to the police.

REPORTING TO THE POLICE

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Your approach to reporting instances of theft to the police should be detailed in your theft or Revenue Protection Policy and Process documents. Factors you should consider include:



- Number or offences/repeat offenders
- Risk of loss or endangerment to life or property
- Perpetrators are individuals or contractors who are qualified to work on gas/electricity installations
- Employees of an organisation involved in energy supply or distribution
- Theft at commercial or business premises
- Linked crimes or organised energy theft
- Large volume of theft

Based on the evidence you have made available to the police, and if they choose to do so, their further investigations, they may decide to submit the case file against the suspect to the Crown Prosecution Service (CPS) in England and Wales or the Crown Office and Procurator Fiscal Service (COPFS) in Scotland. These authorities decide whether the suspect should be charged with a criminal offence and which offence.

REPORTING TO THE POLICE CONT.

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The CPS/COPFS make the decision on if to prosecute – to make this decision they apply a two-stage test.

Stage 1 – The evidence	• Is there enough evidence against the suspect to provide a realistic prospect of conviction? • Is the evidence reliable, credible and is there anything that might undermine the case against the suspect? • If not, is there anymore evidence the police could look for to make the case stronger?
Stage 2 – The public interest	• Is it in the public interest to prosecute? • How serious is the offence, what harm was caused, what is the impact on the community? • Public interest factors in favour of a prosecution must outweigh those against it. • Decided on the circumstances of each case

- Where prosecution isn't pursued, authorities may use out-of-court measures such as warnings, cease and desist letters, cautions, or conditional cautions, which vary between England & Wales and Scotland.
- If the CPS or COPFS decides not to prosecute, organisations can appeal or pursue a private prosecution, but this requires sufficient evidence, meeting the public interest test, and funding the case with no guarantee of cost recovery. The threshold is higher in Scotland, where private prosecutions are rare and require High Court approval in exceptional circumstances.
- To support a successful prosecution, investigations must identify a suspect and provide sufficient evidence to meet the required legal threshold.

COLLECTION AND RETENTION OF EVIDENCE

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In all investigations, you should regard and adhere to the principles of the Police and Criminal Evidence Act 1984 and its associated codes of practice, and in Scotland, the Criminal Procedure (Scotland) Act 1995 and COPFS guidance, as far as they relate to the collection and retention of evidence, including questioning of suspects.

Evidence may be defined as anything that proves or disproves a fact. Types of evidence include, oral, documentary, physical or digital, the last three usually taking the form of **exhibits**. Presentation of evidence, especially oral presentation at court, should be covered by appropriate training of staff. Documentary, physical and digital evidence may include:

Loss assessments and calculations	Photos/videos – including date, location and who took the photo/video
Other equipment or items removed from site e.g. cables, black boxes, switches	Computer generated documents e.g. account information including consumption, billing, smart alerts and account holder information.
Other witness statements made	Meters (where possible remove the meter with evidence intact such as a bypass wire, scorched tails etc)

Evidence must have a **clear chain of custody** to show it has not been altered or substituted. Meter testing is allowed, but all tests must be documented and photographed, with records treated as **exhibits**. Where results may be used in criminal proceedings, consumers may be allowed independent testing or expert attendance. Before removing evidence, the lawful basis (e.g. statutory powers or consent) must be confirmed. Removed evidence must be sealed in a suitable bag or container and labelled as soon as possible, and a receipt or notice left on site. Labels must record location, date, and the person who collected the evidence.

COLLECTION AND RETENTION OF EVIDENCE CONT.

The police may choose to take possession of exhibits and retain them until any court hearing. If the police do not wish to retain the exhibits, you should ensure:

Physical exhibits are always logged and stored in a secure, locked, access-controlled place.	Any movement of exhibits is recorded, both on the exhibit label and central/store log inc. date and time of removal, the reason and by whom.	If an exhibit sealed bag is opened a statement is made and signed by the person responsible and the bag, then resealed.	If requested the exhibit, exhibit label and log records are made available to court.

- **Exhibits must be retained** for an appropriate period, considering prosecutions and appeals.
- **Tampered electricity meters must be kept for at least six months** after police notification, or longer if required by police.
- No meters should be disposed of where **legal proceedings are ongoing** or anticipated.
- Under the Criminal Procedure and Investigations Act 1996, all investigation material (including material which may assist the defence) must be retained.
- **Storage and disposal must comply** with Health & Safety and environmental waste regulations.
- All evidence must be handled in accordance with the Data Protection Act 2018, and the UK General Data Protection Regulation.

Note: Poor evidence handling can lead to inadmissible evidence, failed prosecutions, and regulatory or legal consequences.

WITNESS STATEMENTS

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Witness statements can be used as evidence in criminal proceedings. If they meet section 9 of the Criminal Justice Act 1967, they may be admitted without the witness attending court, subject to defence agreement. The standard format for such statements is often referred to as an MG11. In Scotland, the process differs: the COPFS may require a precognition interview and statement, which is separate from any police statement.



The witness statement should include:

- Name, age (if under 18), and occupation including your job role, employer and relevant experience.
- A declaration that the statement is true to the best of their knowledge and belief.
- Acknowledge liability to prosecution if they wilfully state anything false.
- A detailed chronological account of what the witness saw, heard or knows about the crime.
- All relevant information, without omitting anything that may assist the defence
- The signature of the witness.



Typically, the **investigator or engineer who identified the theft completes a witness statement**. Office staff usually provide a separate statement covering account details, consumption, value stolen, and associated costs. If one person carried out all activities, a single statement can cover both.



WITNESS STATEMENTS

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Engineers statement should focus on:

- **Attendance** – date/time of visit, address, reason for attendance
- **Meter details** – type, serial number and location
- **Observations** – describe what was seen
- **Evidence of tampering** – e.g. broken, missing or dummy seals, bypass wiring, altered connections, damage or burning, altered indexes
- **Actions taken –** meter removed/replaced, supply isolated, photos taken, how installation left and if safe, items collected as evidence
- **Detail exhibits** – reference by exhibit number photos, removed meter, equipment etc.
- **Effect of observations** – e.g. based on my training and experience, the wiring arrangement described would allow electricity to be consumed without being recorded by the meter

Office staff statement should focus on:

- **Access to systems** – what system the person making the statement has access to in the normal course of their duties for the information provided and the purpose of those system
- **Reference to engineer's statement** – reference the engineer's report by date and reference their statement as an exhibit
- **Account details** – name of account holder, date account was opened, address and account number
- **Meter linkage** – provide meter serial number on record and acknowledge any differences to the meter reported onsite by the engineer
- **Historic consumption** - details of recorded consumption if available and relevant
- **Calculation of losses** – may be done as a separate document, referred to as an exhibit in the statement with a summary of the method used, the period assessed and the volume of kWh estimated as unrecorded.
- **Financial loss** – state the value of the unrecorded energy as well as any remedial and investigation costs and provide a total – state that this information is provided to support any application for compensation

WITNESS STATEMENTS – ADDITIONAL INFO

Loss calculation exhibits should include:

- Irregularities in historic consumption (e.g. sudden drops, zero usage)
- The method used, data inputs, assessment period, and how it was determined
- Any assumptions made, with justification
- Reference to industry-recognised methods (e.g. REC Assessment Calculator)
- Copies of REC calculator screens/outputs

Witness statements must be factual, not opinions or conclusions. Staff completing statements should receive training.

Templates for common scenarios are recommended. Completed statements should undergo internal quality checks before legal use. Statement authors may be required to attend court, but this is not always necessary.

Don't state	Do state
The meter was tampered with	The meter terminal seals were missing, and a cable was connected to the incoming supply bypassing the meter
The customer was stealing electricity	This wiring arrangement would allow electricity to be consumed without being recorded
I checked the account and found the usage was unusually low	I'm employed as an Energy Theft Analyst and have access to the company's billing systems. The information provided is taken from systems I use in my duties. The recorded usage between xx date and xx date shows a daily average use of xx kWh which is lower than expected for a property of this type.
The account relates to the property where the theft occurred	The electricity supply at [address] is registered under account number xx in the name of [name]. The meter serial number recorded on the account matches the meter identified by the engineer at the premises
The estimated loss is 3000 kWh	The estimated unrecorded consumption has been calculated using historical consumption data and industry methodology, covering the period [start date] to [end date] as detailed in exhibit [ref]. This results in an estimated consumption of xx kWh

COURT PROCEEDINGS – TYPES OF COURTS

Typically charges for energy theft or theft in conveyance are made under the Theft Act 1968 but may include fraud or related offences. There are different types of court that the case may be heard in.

England & Wales



Magistrates Court – most energy theft cases start here. Less serious/lower value cases will be heard by magistrates or a District Judge; these hearings are quicker and less formal. The maximum sentence this court can give is 12 months. Cases may move to Crown Court if deemed necessary.

Crown Court – heard by a judge and jury for more serious, higher value or complex cases or where the defendant contest it and requests a jury trial. More formal and take longer with stricter evidential scrutiny. The Crown Court also deals with appeals against a magistrates' court conviction/sentence.

Scotland



Justice of the Peace Court – lowest level court, dealing with minor/low value offences. Hearings quicker/less complex. Case is heard by the Justice of the Peace. The maximum fine is £2500 or a prison sentence up to 60 days.

Sheriffs Courts – the most likely option for Energy Theft. There are two types of hearings possible. For less serious cases, summary proceedings are heard only by a Sheriff, the maximum fine is £10,000 or a prison sentence up to 12 months. For more serious or contested case, solemn proceedings are heard by a Sheriff and jury. They can impose a fine of any amount or a prison sentence up to 5 years.

High Court of Justiciary – For the most serious criminal cases and unlikely for energy theft unless there are links to serious injury or fatality or organised crime. Cases are heard by a judge and jury. No limit on fine or length or prison sentence. The High Court also deals with all criminal appeal cases.

Burden of Proof

In **civil cases**, and for confirming energy theft and billing the customer, the standard of proof is the **balance of probabilities**.

For a **criminal conviction** in any court, the standard of proof is higher. The prosecution must prove that the defendant is guilty of the offence **beyond reasonable doubt**. Nowadays courts phrase this to jurors as "satisfied so that they are sure" of a defendant's guilt. This means a case may be sufficient to support civil recovery but not meet the threshold required for criminal prosecution.

COURT PROCEEDINGS – ATTENDING AS A WITNESS

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You may be required to attend court as a **witness of fact** or an **expert witness**. Often it may be a combination of both, in these instances you must clearly distinguish between factual evidence and opinions given within your expertise



- **Witness of fact:**
  - Engineers: what was seen, heard or done onsite
  - Office staff: account data, consumption history, and costs

- **Expert witnesses** may give opinions and explain issues based on expertise:
  - Engineers: impact of tampering on metering
  - Office staff: analysis of consumption data and loss calculations



- Witnesses must remain **impartial, objective, and within their role**, avoiding speculation and not influenced by the interests of their employer.

- What to expect:
  - Required to take an **oath** or make an **affirmation**
  - The prosecutor who called you as a witness will question you and present evidence for the case
  - The opposing side will question you to test your evidence
  - The prosecutor and/or **Judge/Magistrate/Justice of the Peace/Sherif** may ask follow up questions to clarify any points
- When giving evidence:
  - Speak clearly and **honestly**
  - Explain your **role and experience**
  - **Avoid jargon** and explain terms where needed
  - Be familiar with your statement and calculations
  - Say if you do not know—**do not guess**



- Training is recommended for staff who may attend court as witnesses.

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KNOWLEDGE CHECK

KNOWLEDGE CHECK

RETAIL ENERGY CODE

Congratulations, you have completed Module 8!

Please complete the Knowledge Check to ensure you have understood the key messages from this module.

