A PERILOUS GAP

Government Regulatory Enforcement in the United Kingdom vs the United States

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A Perilous Gap: Government Regulatory Enforcement in the United Kingdom vs the United States

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Executive Summary

Using our two unique databases on corporate misconduct, Violation Tracker and Violation Tracker UK, we find that total penalties issued by US regulators since 2010 are substantially higher than those issued by their UK counterparts.

These differences are especially salient:

- In the UK, there are far fewer cases against large companies, particularly when it comes to price-fixing.
- In areas like government contracting, the US has a far more robust system of safeguards against procurement fraud.
- Private litigation in all areas is more prevalent in the US than in the UK, mainly due to the widespread use of "class action" lawsuits.
- When it comes to worker protection, the UK is missing the central enforcing body that exists in the US, the Department of Labor. UK individuals are by and large left to take on rogue employers themselves.

Introduction

It is election year in the United Kingdom, and many are hoping that a change of government will bring about a better deal for workers, the environment, and the general public. When it comes to protections and enforcement of regulations, the party that forms the next government will set funding levels for UK government agencies and local government, appoint agency leads, and decide whether new legislation will be enacted to protect the public from corporate misconduct.

This year, we at Good Jobs First will be working with other organisations to use Violation Tracker UK to take stock of enforcement in the UK since 2010. In this, our first UK report, we compare UK enforcement with that in the US.

With our two comprehensive databases tracking corporate regulatory infringements, one on each side of the pond, Good Jobs First is uniquely placed to compare the enforcement of regulations between the two countries. For this report, we focus on four areas of regulation – labour market, government contracting, price-fixing and anti-competitive practices, and the environment.

A History of 'Cutting Red Tape'

Regulation in the UK has been highly influenced by the idea of responsive regulation. That is, regulation based on the assumption that most corporations are effective at self-regulation. When non-compliance is suspected, in the first instance advice should be issued. This should escalate to more punitive measures only when a company remains unwilling to change its behaviour.

These ideas influenced the Hampton Review, a report commissioned by the then Chancellor of the Exchequer Gordon Brown into the scope for reducing administrative burdens. This review recommended that inspections should be reduced in favour of compliance advice, that regulatory resources should be allocated based on risk assessment, and that the concept of 'self-enforcement' should provide the basis from which regulations should be devised; in other words, the regulator should make it as easy as possible for a company to comply. Subsequent legislation implemented these recommendations, which removed a considerable number of regulatory requirements from businesses.

The Regulatory Enforcement and Sanctions Act 2008 further integrated ideas that favoured light-touch regulation. Drawing from both the Hampton Review and the Macrory Report of 2006 as well as a paper intitled Next Steps on Regulatory Reform from that year, it introduced new civil sanctioning powers, to reduce the reliance on criminal prosecutions and a duty for regulators to reduce the regulatory burden on companies.

Conservative governments since 2010 have continued to deregulate, alongside large-scale cuts in real terms to agency budgets.

One result of these changes is the high number of enforcement actions with small monetary penalties or none at all. In Violation Tracker UK, 57% of the entries have no monetary penalties and another 24% have amounts below £5,000. In the US, enforcement actions without monetary penalties are so uncommon that the database does not include them. Fines below $5,000 are also excluded.

Labour Market Enforcement

In the UK it is largely the responsibility of individual workers to seek redress from an employer when their rights have been violated. Violation Tracker UK has recorded £243 million in compensation paid to workers via employment tribunals since 2017.

In the US, the federal Fair Labor Standards Act of 1938 gave the federal government primary responsibility for enforcing rules regarding minimum wages, overtime pay, and child labour. The Labor Department's Wage and Hour Division (WHD) is the main enforcement agency for most of the labour force. US total penalties in relation to wage and hour offences, when adjusted for population difference, amounts to £897 million.

Unlawful Deductions from Wages or Wage Theft. When it comes to unlawful deductions from wages, UK workers must take employers to tribunal - a lengthy process that involves first engaging with dispute resolution through the Advisory, Conciliation and Arbitration Service (ACAS). Only in cases where workers have not been paid the minimum wage will the government take enforcement action via HM Revenue and Customs (HMRC). HMRC can order companies to pay what they owe to workers and additionally penalise a company up to 200% of arrears capped at £20,000 per worker. The Department for Business and Trade 'names and shames' these companies via a list published annually; 3178 such cases are recorded on Violation Tracker UK, that represent £41.4 million in arrears returned to workers by HMRC

orders since 2014.[1] In a report published last year, the Resolution Foundation found that non-compliance with labour laws was widespread; almost one-third of the lowest paid workers were underpaid the minimum wage.

There are more than 83,000 entries on wage and hour cases on our US tracker dating back to 2010, with over $12 billion in penalties. Sixty percent of the cases were handled at the federal level by the WHD. Many of these cases are related to wage disputes, including minimum wage, overtime pay, record keeping, and youth employment standards. The agency also focuses on misclassification (when workers are improperly designated as independent contractors), retaliation, and the Family and Medical Leave Act.

Nearly all the remaining wage and hour cases come from state labor departments and attorneys general and local regulatory agencies, such as the Denver Labor or Seattle Office of Labor Standards, which have been set up to focus on wage theft. Local cases are sometimes brought by district or city attorneys.

Discrimination. Most discrimination cases in the UK are taken to tribunal by individual workers. However, a small number of cases make it to the Equality and Human Rights Commission and its equivalent in Northern Ireland. In the US, three-quarters of cases of workplace discrimination are handled by the Equal Employment Opportunity Commission (EEOC); 1768 EEOC cases are recorded from 2010 on the Violation Tracker database. 55 EHRC cases are recorded on Violation Tracker UK, meaning the UK body is enforcing less than its US counterpart even with population adjustments.

Human Trafficking and Forced Labour. Both countries have enforcement gaps when it comes to human trafficking and forced labour.

In the UK agencies with responsibility for protecting the most marginalised workers rarely prosecute. The Gangmasters and Labour Abuse Authority run a licensing scheme designed to prevent the bad actors from operating in industries vulnerable to exploitative practices, they also investigate reports of modern slavery. Since 2008 however this authority has only undertaken 193

[1] Penalties for not paying minimum wage are not reported. HMRC reported recovering £13.7 million in arrears in their 2022-2023 Annual Report, suggesting that not all cases are published and therefore do not show up as entries on Violation Tracker UK.

convictions; only six of this total was for modern slavery. To date it has revoked 347 licences, far fewer in recent years.

Similarly the Employment Agency Standards Inspectorate has successfully prosecuted only 23 cases since 2010, with cases taken against individuals rather than companies.

In the US, the WHD does not tend to use the terms human trafficking or forced labor, although some of the cases it handles are dealing with these abuses. This leaves major gaps in enforcement outside supply chain monitoring.

Group Claims or Collective Action Lawsuits. In the UK, some law firms bring workers together to make group claims at employment tribunals. These cases can take years before workers see any compensation. The first stage of a landmark equal pay case against Asda brought in 2014 was won at a 2016 employment tribunal, the judgment was appealed but was eventually upheld at the Supreme Court in 2021. It will likely take years still before it reaches a conclusion. These are opt-in cases, meaning only workers who have joined the claim are eligible to benefit from any compensation orders.

Our US Tracker contains over 1,400 entries on significant wage and hour collective action lawsuits, with total settlements and awards of $8 billion since 2010. While most cases brought by the WHD and state and local agencies involve smaller companies, the private litigation typically targets larger employers. Major companies such as Walmart and FedEx have paid hundreds of millions of dollars to settle such cases.

As the system of labour market enforcement differs so significantly between the US and UK, a direct comparison is difficult. Excluding employment tribunals, £1.87 billion in penalties is recorded on Violation Tracker UK as employment-related enforcement. Most of this total is in compensation orders and penalties issued for pension offences by the Pensions Regulator and Pensions Ombudsman. HMRC do not publish fines issued in relation to wage arrears, which if included would likely increase the total.

While it is difficult to compare figures, the US system of a central enforcement body helped by state and local agencies for wage and hour violations reduces pressure on individual workers to navigate the system when it comes to unlawful deductions from wages.

Government Contracting Offences

The prosecution of companies that have committed procurement fraud is largely non-existent in the UK. In contrast, US government agencies have recovered over $39 billion since 2010 for government contracting related offences. Adjusted to match the UK for population size, this is equivalent to £9.8 billion.

UK. In March 2023, the National Audit Office published a report into tackling fraud and corruption against the government. This report found significant failings in the monitoring of procurement and commercial fraud. According to their investigation, in four out of five government departments examined, measurement of the amount lost to fraud in the supply of goods and services to central government was 'non-existent', 'clearly unreliable', or did not cover a sufficient area of spend.

The weaknesses in the regulatory system in the area of procurement fraud became especially apparent when it came to contracts issued during the covid pandemic. Media outlets have already exposed alleged instances of corruption and fraud, with particular focus on the case of PPE Medpro - a newly formed company with connections to a conservative peer that benefitted from the government's 'VIP lane' for covid contracts.

The Department of Health and Social Care (DHSC) is currently suing PPE Medpro, seeking to recover the £122 million it paid for 25 million pieces of alleged sub-standard personal protection equipment (PPE) that were never used by the National Health Service (NHS), as well as the costs of storing and disposing of them. Meanwhile the National Crime Agency is investigating the beneficiaries of these contracts, Baroness Michelle Mone and her husband Doug Barrowman, for alleged conspiracy to defraud, fraud by false representation and bribery. Other high-risk areas identified were in eye care contracts taken out by the DHSC, procurement by the Ministry of Defence, and in the purchasing of goods and services by the Ministry of Justice.

Despite sharing in an estimated £33.2 to £58 .8 billion worth of combined fraud and error loss to the government in 2020-2021, procurement fraud is rarely prosecuted. The vast majority of prosecutions by the Serious Fraud Office are international bribery cases, with only two companies successfully charged for UK-based fraud. These were two deferred prosecution agreements (DPA) made with Serco and G4S in which the companies accepted responsibility for fraud offences against the Ministry of Justice, but whose prosecutions were suspended with the proviso that they met certain conditions.

Other high-profile cases of government contracting failures have not resulted in prosecutions or DPAs. In some cases, money was instead withheld by the contracting authority. Those include G4S, for failing to provide the required number of security guards for the 2012 Olympic Games; Capita's failure to provide translators for which it had more than £46,000 deducted from the contract; and deductions from various Department for Work and Pensions contracts with companies failing to meet targets in disability assessments.

At the pre-contract stage, bid-rigging – where companies organise together to submit false bids to inflate prices – can face enforcement action from the Competition and Markets Authority (CMA) under competition law, though it rarely does. This year the CMA fined 10 construction firms for engaging in this activity. This is not specific to government contracting, although in this case some of the bid-rigging occurred on public tenders.

Post-contract, the most common types of fraud are overcharging by the supplier, substandard goods or services, or failure to complete the contracted work. A 2014 report by the National Audit Office found that of 60 central government contracts examined, 34 contained billing issues. In a 2020 review into local government fraud and corruption risk, the vast majority of case studies cited were against individuals for corruption. In cases where a supplier was implicated, the penalty appears to be simply paying back the money that was fraudulently obtained. The report also identified that there was no central repository for these cases, and so the scale of fraud is hard to determine. A 2017 estimate by the National Fraud Authority put the number lost to local government procurement fraud between 2013 and 2016 at £4.4 billion.

Failures to effectively monitor government contracts, and related failures to take enforcement action against procurement fraud, is no doubt costing the government billions in spending on contracts where suppliers may be overcharging or providing poor quality goods and services.

US. Most procurement enforcement actions in the US are handled through the False Claims Act (FCA), which was enacted in 1863 as a way to hold dishonest contractors accountable during the Civil War. The FCA made it illegal for individuals or companies to submit false or fraudulent claims for payment to the government and included a provision on whistleblowing. Today, a large portion of FCA cases result from whistleblower revelations.

Of the few thousand government contracting violations contained in Violation Tracker, not quite half (42%) of cases are attributed to large companies linked to a parent. This group, however, accounts for 85% of the total penalty amount, and has an average penalty eight times that of smaller companies.

The FCA is enforced heavily in the healthcare industry in regard to Medicare and Medicaid services. Eight out of the top 10 penalized companies for FCA violations are healthcare or pharmaceutical companies. Many of these cases cover allegations of kickbacks (a form of bribery) to physicians to promote the use of their products. Biogen Inc., based in Cambridge, Massachusetts, settled one such case in 2022 and will pay $900 million in penalties.

The Justice Department (DOJ) is the primary federal prosecutor for the FCA. It has prosecuted over 800 cases of government fraud since 2010, with nearly $26 billion in penalties. The largest settlement to date of $1.2 billion occurred in 2016 against Wells Fargo for mortgage fraud claims when the company misrepresented insurance eligibility for residential home mortgage loans, resulting in the government having to pay those insurance claims on defaulted loans. In total, federal prosecutors have resolved 2,100 government contracting cases totalling $32 billion in penalties.

State Attorneys General (AG) do the brunt of enforcement at the state level. Many of the largest cases are overseen by multiple state AGs working in concert against nationwide companies that may be defrauding multiple levels of government. For Medicare and Medicaid fraud, it is common for a company to violate both federal and state statutes since the two programs are regulated

at different government levels. In 2017, Mylan Inc. agreed to pay $465 million to both the DOJ and multistate AGs for knowingly underpaying rebates owed to Medicaid for EpiPens dispersed to patients. State and local prosecutors across the country have penalized offenders nearly $6 billion in total.

Government contracting offenses can also be resolved through private litigation, usually in cases filed by whistleblowers. In most instances the Justice Department will intervene in the matter. When those cases are successful, they are announced by the DOJ and are included in the False Claims Act statistics above. Occasionally, DOJ will decline to intervene and the whistleblower pursues the cases independently. In 2022, for example, Massachusetts General Hospital settled for $14.6 million to resolve a whistleblower lawsuit alleging its orthopaedic surgeons engaged in overlapping surgeries in violation of Medicare and Medicaid rules.

The new Procurement Act in the UK has been brought in on the promise of further transparency and better management of public contracts, but it remains to be seen whether this will be enough to guard against procurement fraud, with some arguing that key opportunities to include anti-fraud measures were missed. The vast sums clawed back in the US as a result of government contracting offences suggests that the UK public is missing out on millions if not billions that has been fraudulently obtained from the public sector.

Price-Fixing and Anti-Competitive Practices

When companies collude with each other to limit competition, especially if these companies enjoy a significant share of the market, they are in breach of competition law. In the UK, companies are subject to the Competition Act 1998.

In the US, the Sherman Antitrust Act of 1890 outlawed practices impeding competition, including the formation of monopolies and conspiring to constrain trade. Price-fixing cases were rare until a major scandal in the 1960s involving electrical equipment companies, which was the first time big-business executives were jailed for antitrust violations. Over the following decades, the Antitrust Division of the U.S. Justice Department ramped up its

activities, and in turn drove follow-on private litigation in which plaintiffs were able to use the evidence brought to light in the federal cases to get companies to pay substantial monetary settlements.

A population-adjusted comparison of penalties issued by US vs UK regulators for price-fixing and anti-competitive practices since 2010 reveals that the US total is five times higher than the UK.

UK. Since 2010, the UK government has received around £1 billion in fines for price-fixing and anti-competitive practices. The great majority of this total comes from investigations led by the primary competition regulator – the Competition and Markets Authority (CMA), and before them the Office of Fair Trading (OFT). Markets dominated by fewer, larger companies are also regulated by sectoral agencies which have powers concurrent with the CMA. There are eight such agencies: The Office of Communications (Ofcom), The Office of Gas and Electricity Markets (OFGEM) and the Northern Ireland Authority for Utility Regulation (NIAUR), The Payment Systems Regulator (PSR), the Civil Aviation Authority (CAA), the Financial Conduct Authority (FCA), the Office of Rail and Road (ORR), and the Water Services Regulation Authority (Ofwat).

While fines issued by the CMA have increased over this period, there are still a significant number of cases where companies engaged in anti-competitive practices face only small penalties, or none at all.

The CMA and OFT have concluded almost 100 cases under the Competition Act 1998 since 2010, and issued approximately 126 monetary penalties. Total penalties issued by the CMA have increased from between £1 - £36 million recovered each year between 2015 and 2019; £71 million - £186 million between 2020 and 2022; and the highest total penalties yet of £196 million in 2023. This is in large part due to record fines levied against suppliers of medicines to the NHS, including £130 million paid by Auden Mckenzie and Actavis UK for the abuse of a dominant market position to overcharge for hydrocortisone tablets in 2023, £70 million for Pfizer and Flynn for excessive pricing of a life-saving epilepsy drug in 2022, and over £100 million paid by Advanz, Cinven and HgCapital for the overpricing of liothyronine tablets in 2021.

Whilst total penalties issued by the CMA are rising, there are still a great number of cases that end in no penalty and no liability. This means an investigation into suspected anti-competitive practices is closed after the regulator accepts 'commitments' from the parties involved; in other words, the company suspected of anti-competitive practices makes assurances to the agency that it will abide by regulations.

This is particularly the case when it comes to enforcement action undertaken by industry-specific regulators. The Payment Systems Regulator for instance has only issued seven monetary penalties since it was established in 2015. Ofgem has only issued penalties in one competition case: an anti-competitive agreement between Economy Energy, E (Gas and Electricity) Limited and Dyball Associates resulting in fines of £870,000. The Financial Conduct Authority has also imposed fines in only one competition case for which it issued £150,000 in penalties.

These two cases were against smaller companies and the penalties were low. Penalties are usually calculated as up to 30% of the annual turnover in the relevant market in the year preceding the conclusion of the offence, multiplied by the number of years the offence took place, and then are subject to a number of adjustments both up and down for aggravated and mitigating circumstances.

Whilst 30% of annual turnover seems high, the fine can be miniscule in comparison to the worldwide turnover of the companies involved. The Payment Systems Regulator's biggest case, an investigation into a cartel in the prepaid card services sector, was concluded in 2022 and resulted in fines of £33 million. The bulk of this was paid by Mastercard, calculated as 23% of its turnover in the relative market, multiplied by the six years the anti-competitive agreement was in place and then subject to adjustments. The final fine to Mastercard was roughly equivalent to its turnover in that market in one year; however it only represented a fraction of what the company took home in its worldwide turnover.

Some regulators have only used their powers to enforce prohibitions specified in the Competitions Act 1998 to accept commitments. The CAA, ORR, and Ofwat have not issued any penalties in the period since 2010. Ofwat has required commitments from Thames Water, Bristol Water, and Severn Trent

in relation to allegations that the firms were abusing their dominant market positions. Similarly the ORR has had one case involving a company since 2010, accepting commitments from Freightliner, after an investigation into allegations that the firm had also abused its position in the provision of deep sea container rail transport services.

Leniency agreements also allow for companies to pay no penalties at all. In 2019 Ofcom found that the Royal Mail and The Salegroup Limited had entered into a cartel agreement but the Royal Mail paid no penalty for its involvement, having been granted immunity for its cooperation with the investigation. In December 2016 the CAA found that Manchester Airport Group and Prestige Parking Ltd had been engaged in price-fixing by setting minimum prices for airport parking. Despite calculating the penalty at £12 million and £974,000 respectively (starting point 30% of annual turnover multiplied by period of the offence), these were both reduced to £0 after a leniency discount was applied.

Whilst the CMA has increased the size of fines it is handing to companies for breaking competition law, there are still many instances where breaches of the Competition Act have gone largely unpunished. Fines are often low, and in roughly a third of cases no financial penalty is issued. Only 38% of the sanctions for price-fixing and anti-competitive practices were tied to a parent company on Violation Tracker UK, suggesting that larger corporations are less likely to face enforcement action.

US. Since 2010, US companies have paid $70 billion in fines and settlements to resolve allegations of price-fixing and related anti-competitive practices in violation of antitrust laws. Banks, credit card companies, and investment firms are the worst violators, but nearly every company in the financial services and pharmaceutical industries has been a defendant in at least one case. Nearly three-quarters of companies with anti-competitive penalties belong to a parent, which is substantially higher than Violation Tracker's rate of 20% across all industries.

The primary enforcer is the Antitrust Division. The Federal Trade Commission is responsible for enforcing other antitrust laws such as the Clayton Act.

Federal regulators and prosecutors have brought over 160 successful price-fixing cases against companies since 2010, with $9 billion in penalties.

States are also vigilant in enforcement. Attorneys general, acting either individually or jointly in multistate actions, brought cases against a variety of companies and industries. In some instances, state AGs have worked together with federal prosecutors. Bank of America, for example, resolved both multistate and federal litigation concerning bid rigging, price fixing, and other anti-competitive municipal bond practices that defrauded state agencies, local government, and non-profits. The settlement totalled nearly $140 million at both levels of government. State regulators alone have handed out nearly $7 billion in penalties.

Price-fixing lawsuits may also be brought by private parties. Violation Tracker US contains nearly 1,200 class action lawsuits totalling $41 billion in penalties. In 2019, Visa and Mastercard agreed to a $6.2 billion combined settlement for allegations of collusion to raise the swipe fees paid by merchants. Another settlement reached in 2024 will reduce those fees by an estimated $30 billion over the next five years.

The Consumer Rights Act 2015 made it possible in the UK to bring collective legal actions under the Competition Act on an opt-out basis, meaning we may soon see companies who break competition law paying out substantial figures to customers at Competition Appeal Tribunals.

Even with the removal of private litigation cases and adjusted by population size to compare directly with the UK, US regulators have issued £5.8 billion in fines since 2010. This is more than five times the total penalty amount of UK regulators.

Given sanctions are tied to turnover, this could in part be explained by the fact that around two-thirds of enforcement action has been taken against smaller companies in the UK, as opposed to around a quarter in the US.

Environment

There are four key agencies responsible for environmental regulation and protection throughout the devolved nations of the UK. These are the

Environment Agency (EA), Natural Resources Wales (NRW), the Scottish Environment Protection Agency (SEPA), and the Northern Ireland Environment Agency (NIEA). Collectively, these agencies have issued £361 million in published fines since 2010. Councils are responsible for regulating some environmental offences such as fly-tipping.

In the US, environmental enforcement is shared between the federal Environmental Protection Agency (EPA) and state regulatory agencies. With state-level and private litigation figures included, $100 billion in penalties has been issued since 2010 for environmental offences.

Weighted by population size and with private litigation cases excluded, the amount issued in fines by US regulators for environmental offences totals £16.9 billion compared to the UK's £361 million. The US additionally enforces against a broader range of environmental offences. Both countries are more likely to fine smaller companies than larger ones.

UK. The highest fines for environmental offences in the UK are issued by the EA. Since 2010, the EA have concluded almost 7,000 cases totalling £353 million in fines. Far fewer fines have been handed out by NRW, NIEA, and SEPA. Our Freedom of Information requests reveal that out of NRW's 803 enforcement cases between 2020 and 2023, only 2.6% have resulted in a monetary fine. Meanwhile since 2010, Violation Tracker UK data reveals that NIEA have issued total fines of only £627,000.

Whilst the EA issues far higher fines than its regional counterparts, its enforcement cases have been in a constant and steady decline year on year since 2010, with an 88% decrease in overall enforcement actions between 2010 and 2023. Like the EA, SEPA has seen overall enforcement actions decrease by almost a third since 2010. Warnings and enforcement notices issued by the agency have seen a 70% decline from 177 in 2010 to 47 in 2022. Declines have also been seen in cases referred to the Procurator Fiscal (PF), the body in Scotland to whom SEPA refers cases for prosecution. In 2010, there were 37 cases referred to the PF. In 2022 this had declined to one.

A 50% cut in funding to the Environment Agency is likely to be a major contributing factor to this decline. It may in part also be attributable to the

legacy of the Hampton Review; ideas that rested on the notion that companies could be trusted to be compliant. Subsequent policy that followed the EA's '21st Century Approach to Regulation' report of 2006 enshrined negotiated agreements and self-assessment ideas into practice. The operator self-monitoring system, for instance, which was extended to the water industry in 2010, requires that polluting industries self-report their volume of discharge. A Guardian investigation last year found that since 2010 36% of Environment Agency audits that should have taken place to monitor whether self-reporting systems were accurate were missing.

Smaller fines are linked to the size of company facing enforcement action. All four environment agencies are more likely to bring cases against small- and medium-sized enterprises. Only 26% of entries tagged as environmental offences on Violation Tracker UK are tied to a parent company.

The water industry is more likely than any other to receive high penalties from the Environment Agency. This includes its biggest fine of £90m, which was handed to Southern Water in 2021 for deliberate and repeated dumping of raw sewage into the seas off North Kent and Hampshire between 2010 and 2015. Almost a quarter of the concluded enforcement actions by NRW recorded by Violation Tracker UK have been against Dwr Cymru, the main water services provider in Wales. Since 2018 not-for-profit Dwr Cyrmu has received over 200 warnings, but only two fines. Meanwhile 22% of NIEA penalties have been issued against Northern Ireland Water Limited since 2010 and 28 cases have been concluded by SEPA against Scottish Water, adding up to £584,000 in total penalties for both companies combined.

US. Environmental enforcement in the United States grew out of the conservation movement of the early 20th century. The initial expectation was that state governments would take the lead, but when they failed to take an aggressive approach there were growing calls for the federal government to step in.

That is what happened in the 1960s with the passage of several laws dealing with water and air quality. Federal involvement was firmly established with the creation of the Environmental Protection Agency in 1970 followed by the passage of the Clean Air Act, the Clean Water Act, and the Toxic Substances

Control Act. These laws gave the EPA primary responsibility for meeting anti-pollution goals but allowed it to delegate enforcement authority to state agencies. When states were enthusiastic about the task this arrangement worked well; when they weren't it led to wide disparities in enforcement in different parts of the country.

Violation Tracker contains nearly 50,000 entries on environmental cases dating back to 2010. About one-quarter were handled by the EPA. Violation Tracker draws data from EPA's Enforcement and Compliance History Online (ECHO) database as well as agency press releases and several other sources. A smaller number of federal environmental cases are obtained from the Bureau of Safety and Environmental Enforcement, which covers offshore oil and gas drilling, and the Pipeline and Hazardous Materials Safety Administration.

Two-thirds of the environmental entries come from state regulatory agencies, which share responsibility with the EPA for enforcement of federal laws such as the Clean Air Act while also bringing cases under state laws.

In some states, environmental enforcement is also handled through state attorneys general or local prosecutors. A multistate attorneys general case against BP resulted in a $4.9 billion penalty to resolve claims due to the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. There are also some local regulatory agencies, such as the Louisville Metro Air Pollution Control District in Kentucky or the South Coast Air Quality Management District in California, which has resolved over 1,000 cases.

Violation Tracker also contains selected private litigation since 2010, including over 80 major environmental class action and multi-district lawsuits with total settlements and awards of $16 billion.

Thirty percent of cases tagged as environmental offences are linked to a parent company, meaning roughly a third of penalties are issued to large corporations.

With parent companies tagged by industry it is possible to determine that oil and gas parent companies received the highest and the most numerous fines for environmental offences, with utilities and power generation companies, which include water companies, accounting for five times fewer cases and only $5 billion in fines as opposed to $43 billion.

Environmental enforcement in the US results in vastly higher fines than the UK, where total penalties are 2% of the US total. US environmental enforcement also covers a greater range of offences. Oil and gas companies rarely face enforcement action for environmental offences in the UK, whilst they represent the highest number of parent companies fined for environment violations in the US.

Conclusion

Across all four areas of corporate misconduct examined, the US has a stronger record of enforcement.

With a central federal agency handling most wage and hour violations, and state/local agencies handling many others, many workers subjected to wage theft by an employer can benefit from a government investigation. In the UK, the regulator only deals in cases of non-payment of minimum wage, with individual workers required to take an employer to tribunal if their wages have been unfairly deducted. Plans to create a single-enforcement body for employment rights has been shelved, leaving the regulation of labour rights highly fragmented. Collective action lawsuits are more advanced in the US, for both workers seeking redress and consumers claiming compensation.

When it comes to government contracting, thousands of cases of corporate fraud are prosecuted under the US' False Claims Act. In the UK, there is a lack of monitoring, meaning that procurement fraud is going largely undetected and unprosecuted.

Fines are increasing for companies who break competition law in the UK, but they still lag behind the US. Smaller companies are more likely to be targeted for enforcement action, and many cases still end with no monetary penalty issued.

The same pattern of small companies and small penalties can be observed with environmental enforcement, which shows signs of decline across the four devolved nations. In the UK, enforcement bodies are highly focused on water

pollution and waste offences, whilst the US additionally prosecutes companies for a wide variety of environmental offences.

Across different industries, the US surpasses the UK in enforcement for several reasons. While US states tend to have fractured operations, US federal agencies create a standard that is applied broadly across the country which every local, state, or federal jurisdiction should adhere to. When it comes to labour market enforcement the adoption of a cohesive regulatory body in the UK would help to address widespread non-compliance and remove pressure from individual workers who take this responsibility on instead.

The US has also been successful in targeting larger companies and imposing higher fines, both in agency enforcement actions and private litigation. The UK should consider raising the floor for penalty amounts to further ensure compliance and lessen recidivism. Going after bigger companies with large money reserves takes more governmental resources, but these cases serve as deterrents for others that are flying under the radar.

As we continue to see the same companies commit offences repeatedly with minimal consequences, it is becoming more and more difficult to defend responsive regulation. While the US approach to enforcement is far from perfect, the UK's regulatory laws and culture need to catch up with corporations that have learned to exploit a mismanaged system.