

Officer Decision Record

Title of Report: West Cumbria community water fluoridation scheme variation

Report of: [REDACTED]

Decision of: [REDACTED]

Cabinet Members: [REDACTED] (Lead Member for Public Health and Community Services).

1) What is the decision about? (Brief Summary)

The decision concerns whether to request the Secretary of State for Health and Social Care to vary water fluoridation arrangements in Cumbria to allow fluoridation to continue once a new water supply from Williamsgate Water Treatment Works is commissioned.

The decision concerns a two-stage process:

1. To consult the Secretary of State for Health as to whether the addition of Fluoride to the domestic water supply at Williamsgate water treatment works (the Proposed Variation) is operable and efficient, and
2. To delegate to the Director of Public Health the authority to make any further decisions in relation to the Proposed Variation including requesting the Secretary of State for Health to lodge a formal request with the water company (United Utilities) to make the Proposed Variation.

In December 2020, Public Health England carried out preliminary scoping and deemed the proposed transfer of the domestic water supply source to be a variation of an existing scheme and to affect less than 10% of households in Cumbria.

Without the proposed variation in fluoridation arrangements, some households that previously received fluoridated water will stop receiving it because of the change in reservoirs and water treatment works.

The Director of Public Health previously met and discussed this issue with [REDACTED] who all agreed with that to not agree to this would effectively be terminating the scheme without following due process as outlined in the toolkit for Local Authorities.

NB This decision is not required to consider the evidence in relation to the efficacy or efficiency of water fluoridation

Recommendations to the Executive Director - People

It is recommended that the Executive Director – People agrees to formally consult the Secretary of State as to whether the proposed addition of fluoride at the Williamsgate Water Treatment works is operable and efficient and delegates to the Director of Public Health authority to make any further decisions in relation to the Proposed Variation including requesting the Secretary of State to lodge a formal request with the water company.

2) Background to the proposals

a) Summary

Water fluoridation schemes were established under agreements made between previous administrations of Cumberland County Council and the West Cumberland Water Board to fluoridate the water supplied from the Cornhow plant of Crummock water in 1968 and with South Cumberland Water Board to fluoridate the water supply from Ennerdale water in 1971. Those agreements have been consolidated into the current legal framework and are now between the secretary of State for Health and United Utilities. Public Health England are in possession of the original copies of these agreements. The schemes serve the communities of Wigton, Aspatria, Maryport, Workington, Whitehaven, Egremont and Ravenglass.

During 2011 The Environment Agency informed United Utilities that they would withdraw the abstraction licence for Ennerdale in 2022. This was due to the identification of a protected species within the reservoir tributaries.

The alternative domestic water supply will be supplied from Thirlmere and transported to the Williamsgate water treatment works. The infrastructure and capital costs for Williamsgate and the pipeline are provided by United Utilities with the exception of the Fluoride plant. This has been added to the Williamsgate site and capital costs have / are being met by Public Health England.

The population and boundary area currently supplied from the Ennerdale and Crummock water treatment works will be the same population as supplied from the Williamsgate water treatment works except for some properties within Buttermere.

Public Health England (PHE) have advised that the change of water works from Cornhow, Ennerdale and Buttermere to Williamsgate requires a technical variation to the written fluoridation agreements to reflect this.

b) Legislative aspects of variation and key agencies

The Health and Social Care Act 2012 transferred responsibility for provision of oral health improvement programmes from the NHS to local authorities with public health responsibilities. The same Act amended the Water Industry Act 1991¹ to return responsibility for fluoridation decisions to local authorities and allowed the Secretary of State to meet the costs.

Local authorities must exercise their responsibilities in accordance with legislation governing the way in which a new scheme can be introduced, varied or terminated.² ³PHE has produced a toolkit to guide local authorities through the process.

Water companies advise on the technical feasibility of schemes and, when requested to do so, implement and operate them in accordance with the Act and regulations.

The Secretary of State for Health and Social Care confirms that the necessary procedural steps have been taken by the proposing local authority, and, if so, requests a water undertaker to enter into, vary or terminate arrangements with him as requested by the local authority.

PHE, as an executive agency of the Department of Health, does not appear by name in the legislation. However, most fluoridation functions of the Secretary of State for Health and Social Care are exercised on his or her behalf by PHE.

c) Cost

The Secretary of State is required to meet the reasonable capital and operating costs incurred by water undertakers operating water fluoridation schemes in England. The secretary of state has the power to require local authorities whose populations are served by those schemes to make payments to the Secretary of State to meet these costs. At present PHE meets the capital cost of schemes and recovers the operating costs from local authorities.

The actual cost of water fluoridation to Cumbria County Council (CCC) in 2019-2020 was £137,847. Under this variation, capital costs have been met by PHE, but CCC will continue to be re-charged for the raw materials.

d) Technical process for variation

There are two procedural steps for this variation should the council decide to commence the process:

- i. The Council must obtain a formal note from United Utilities that fluoridation arrangements from Williamsgate would be operable and efficient. United Utilities have informally indicated to both PHE and the Director of Public Health that they would rapidly be able to provide such an opinion upon request. Once in receipt

¹ <https://www.legislation.gov.uk/ukpga/1991/56/part/III/chapter/IV>

² [Improving oral health: a community water fluoridation toolkit for local authorities \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671111/improving-oral-health-a-community-water-fluoridation-toolkit-for-local-authorities.pdf)

³ [The Water Fluoridation \(Proposals and Consultation\) \(England\) Regulations 2013 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2013/1222/pdfs/uksi20131222.pdf)

of this the council must share this with the Secretary of State and seek their views on the same question. PHE has informally indicated to the Director of Public Health that such requests are normally answered within days where the opinion of the water company is positive.

- ii. Upon receipt of the Secretary of State's opinion, assuming it is in agreement with that of United Utilities, the Council would then formally request the Secretary of State to vary the fluoridation arrangements in Cumbria to reflect the new water source at Williamsgate, bringing the area formerly served by Cornhow, Ennderdale and Buttermere Water Treatment Works within the area to be fluoridated from Williamsgate,

Since the fluoridation arrangements do not affect other local authorities there is no requirement for the Council to form joint decision making arrangements with other authorities and the scale of the change does not require public consultation (Regulation 15 of the 2013 Regulations) since the number of houses area served by the former Buttermere Water Treatment Works prior to 2019 represents less than 20% of the number of houses in the fluoridation arrangements overall.

e) Current Cabinet fluoride position

As a result of requests to elected members by members of the public opposed to the addition of fluoride in the domestic water supply the issue was brought before cabinet in December 2016. Cabinet agreed that the issue would be held off formal discussion until the results of the CATFISH longitudinal study being carried out by Manchester University were known. Pre COVID-19 pandemic the preliminary results were due in 2021. These have been delayed but some early results should be available Autumn 2021.

However, the issue has been raised again and in March 2021 the Scrutiny Management Board agreed to hold a task and finish group in Summer 2021 to decide if the process of consultation should be instigated.

There is prescribed formal process to adhere to the legislation for the termination of a community water fluoridation scheme. This would take approximately 12 months to complete and would require similar steps to a variation plus full public consultation.

3) What options have been considered?

Option 1: Do nothing

Option 2: Commence a variation process

4) What risks have been identified?

Option 1: Doing nothing would lead to a termination of an existing and longstanding community fluoridation scheme, which would require a public consultation process. This would also not be a reliable process to terminate arrangements since the arrangements would technically be frustrated and not terminated. This option presents a risk of bringing the council into disrepute for not following appropriate procedures for termination of water fluoridation scheme, for not consulting on this with members of the public and for potentially removing a positive dental preventative intervention.

Option 2: As noted, continuing with the process for this fluoridation arrangement will ensure that there is not material change to which households in Cumbria receive fluoridated water, while cabinet carries out investigations to form a joint opinion on water fluoridation for Cumbria. There is risk of Dissatisfaction from members of the community who oppose fluoridation, as this is a decision to actively continue to fluoridate water to households by adding fluoride to the water supply. The variation process would, however, not prejudice a later decision to terminate the arrangements should the Council decide to follow that course.

5) What resources will be needed/how will the proposal be funded?

No further costs to Cumbria County Council. It is not anticipated that the raw material cost will differ from the current water sources.

6) What Legal considerations are relevant to the decision?

The legal process for varying an existing fluoridation arrangement is set out above. As part of this process the County Council must consult with the Secretary of State as to whether the arrangements as varied in accordance with the proposal would be operable and efficient.

Under 10.3 of the Scheme of Delegation set out in Part 3A of the constitution the Executive Director – People has the full range of powers necessary to discharge the Council's functions including decisions which are not specified in the Constitution or in law as having to be taken by elected members in the functional areas set out which include public health (except the statutory functions of the Director of Public Health). Under 3.1 of the Schedule of Delegation the Executive Director can further delegate authority to another officer, orally or in writing. Accordingly, the Executive Director has power to make the decision set out in this Officer Decision Record. [LM 17.8.21]

Executive member Consultation

Name: [REDACTED] – Public Health and Communities

Details of any registrable interest relevant to the decision: None

Details of any dispensation granted:

Key Decisions

Notice on Forward Plan? N/A

Rule 15 Notice? N/A

Rule 16 Approval by Chair of Scrutiny Board? N/A

Exempt from Call in? No

Decision

Signature of the decision record authorises the implementation (following expiry of the Call In period where applicable) of the recommendations in Section 2.

Signature of decision maker:

Name: [REDACTED]

Post title: Executive Director - People

Date:

Delegated authority to make the decision:

Part 3 Section 10.3(d) of the Council's Constitution