

Warwickshire County Council Trading Standards Service

Enforcement Policy 2024 - 2027

1.0 Introduction

1.1 The primary function of the Trading Standards Service is to create a fair and safe trading environment, supporting the growth of legitimate businesses and protecting consumers.

1.2 We carry out our duties in various ways including through inspections, sampling, test purchasing, testing, investigation, and prosecution, but also by informing, advising, and educating businesses and consumers. Further information can be found in our Service Standards set out on our website www.warwickshire.gov.uk/service-standards-performance.

1.3 Whilst our ambition is to work with businesses to achieve compliance, we also recognise the important role of enforcement action to protect consumers. This policy sets out our approach to enforcement based on the principles of Good Regulation, including being: -

- Transparent
- Accountable
- Proportionate
- Consistent and
- Targeted to situations which need action based on an intelligence led approach.

1.4 We fully support these principles as part of our commitment to good enforcement practice.

1.5 This policy has been prepared having regard to:

- Legislative & Regulatory Reform Act 2006
- Regulators' Code (April 2014)
- Regulatory Enforcement & Sanctions Act 2008
- Code for Crown Prosecutors (October 2018)
- Code of Practice for Victims of Crime (January 2024)
- Human Rights Act 1998
- Equality Act 2010
- Data Protection Act 1998 & 2018
- Legislative and Regulatory Reform (Regulatory Functions) Order 2007

2.0 Our approach to dealing with non-compliance

Our Principles of Enforcement

2.1 Our enforcement policy is based on our approach in providing a Trading Standards service that supports businesses, achieves compliance, and protects consumers. We focus our resources using an intelligence led approach based on the issues and challenges at a national, regional, and local level.

2.2 The principles of inspection and enforcement are: -

- **Targeting**

We aim to prioritise and direct our regulatory effort effectively using intelligence and relevant risk assessment schemes.

Such risk assessments will have regard to all available, relevant, and good-quality data. We will give due consideration of the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

- **Proportionality**

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

- **Accountability**

We will be accountable for the efficiency and effectiveness of our activities as outlined in the Regulators' Compliance Code.

- **Fairness and Consistency**

We will treat all consumers and businesses fairly.

We aim to give positive feedback to businesses where it is due. We will ensure that our enforcement practices are consistent – this means that we will aim to adopt a similar approach in similar circumstances to achieve similar ends.

- **Openness and Transparency**

We are committed to the open provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice, but which are not compulsory. Where businesses have acted against the law, we may use publicity to raise awareness, to increase compliance and to improve monitoring of trade practices.

- **Supporting the local economy**

One of our key roles is to encourage economic progress against a background of protection. Wherever possible, we will work in partnership with businesses to assist them in meeting their legal obligations.

2.3 Importantly, we will strive to be fair, impartial, independent, and objective. Enforcement will be applied in a fair and proportionate manner irrespective of age, disability, gender, marital status, ethnicity or national origin, religion or

belief, sexual orientation, socio-economic status or political views. Decisions will not be influenced by improper or undue pressure from any source.

Provision of Advice & Guidance

2.4 We believe that prevention is better than cure and that our role involves actively working with business to achieve compliance (see 2.6 below). Enforcement action will not normally be triggered because of businesses approaching us for advice, where they show a willingness to resolve the non-compliance.

2.5 In responding to identified areas of non-compliance our officers will clearly explain:

- the nature of the non-compliance
- the advice being given, differentiating between legal requirements and suggested good practice
- actions required or decisions taken, with reasons

giving an opportunity for dialogue and feedback to ensure advice given and/or decisions taken are proportionate and consistent.

2.6 [Paragraph 2.4](#) above does not apply where immediate enforcement action is required to prevent or respond to a serious breach or where providing opportunity for dialogue would be likely to defeat the purpose of the proposed enforcement action.

Conducting Investigations

2.7 We use an intelligence-led approach to target our resources to the areas that most require our attention, based on the resources available. This includes working with other partners at a local, regional and national level. Where we are legally permitted to do so, we share information with other organisations to help us assess risks, prioritise our work and minimise duplication.

2.8 When investigating potential non-compliances our officers will comply with all relevant legal requirements and associated best practice guidance, including (as applicable):

- Police & Criminal Evidence Act 1984
- Criminal Procedure & Investigations Act 1996
- Regulation of Investigatory Powers Act 2000
- Investigatory Powers Act 2016
- Criminal Justice & Police Act 2001
- Data Protection Act 2018
- Enterprise Act 2002
- Code of Practice: Powers of Entry (*December 2014*)

2.9 This policy complies with the requirement for the effective management of data as set out in the Warwickshire County Council General Data Protection Policy. This can be found at www.warwickshire.gov.uk/dataprotection.

Our commitment to victims of crime

2.10 This section outlines the standard of service that can be expected by those who have suffered harm which was directly caused by a criminal offence. “Harm” includes physical, mental or emotional harm or economic loss.

Reporting matters to Trading Standards

2.11 It is government policy that Citizens Advice Consumer Service handle all initial complaints on behalf of Trading Standards. The complainant can expect a response and advice from Citizens Advice Consumer Services. Trading Standards will only contact the complainant if the matter has been referred to the service, by Citizens Advice Consumer Service, with a commitment to contact the complainant.

2.12 Consumers and businesses reporting matters in this way can expect to receive a clear explanation as to:

- whether the case has been referred to Warwickshire Trading Standards and when a response can be expected if applicable as set out above.
- what steps you can take to resolve the matter yourself (if applicable).

Trading Standards Investigation

2.13 We recognise that some individuals who have been a victim of crime may be vulnerable, intimidated, or unfit to give evidence in Court for health reasons. If this applies to you, our officers will explain the options available to help you give your account of what has happened in a way that will be accepted by the Courts.

2.14 If you are making a witness statement, our officers will explain that your evidence may be used in Court if the case goes to trial. In some circumstances you may be required to attend Court to give evidence. You may also be provided with a witness information sheet containing additional information and further information is available on the Gov.UK website: <https://www.gov.uk/going-to-court-victim-witness>.

2.15 You may wish to make a Victim Personal Statement at the same time as giving a witness statement. This gives you an opportunity to explain in your own words how a crime has affected you, whether physically, emotionally, financially, or in any other way. You can choose to make a Victim Personal Statement later, provided this is before court proceedings are completed.

2.16 You will receive appropriate updates as to the progress of the case. As a minimum you will be notified of:

- any decision not to pursue the investigation, with reasons
- if the matter is to be brought before the Court, information as to when the case will be heard and whether you are required to attend
- the outcome of the case

3.0 Decisions as to Enforcement Action

General Principles

- 3.1 When formal enforcement action is taken, we will provide an opportunity to discuss the circumstances of the case and take these into account when deciding on the best approach. However, this will not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action. Where the Trading Standards Service is investigating possible criminal offences, any discussion of the case may need to be by way of formal interview in accordance with the Police and Criminal Evidence Act 1984.
- 3.2 We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision to take formal action. This may include the actual harm or loss or the impact on the well-being of the individual or potential or actual harm to the environment.
- 3.3 In considering enforcement action against businesses that have registered a Primary Authority Partnership with any local authority we will, in accordance with the requirements of the Regulatory Enforcement & Sanctions Act 2008, notify the Primary Authority of the action we propose to take.
- 3.4 The criteria applied in enforcement decisions will be fair, independent, and objective, irrespective of age, disability, gender, marital status, ethnicity or national origin, religion or belief, sexual orientation, socio-economic status or political views. Such decisions will not be affected by improper or undue pressure from any source.

Overview of Potential Enforcement Actions

- 3.5 A variety of enforcement options are available to help us secure compliance, from advice through to proceedings in Court. Examples of the main types of action that may be considered are summarised below.

Simple Caution

3.6 The issue of a simple caution is subject to the offender's admission of the offence. Simple Cautions are usually issued with advice as to how compliance can be achieved and/or maintained in the future.

3.7 Where there is no admission of the offence all other options may be considered.

Refusal, review or revocation of licences

3.8 Businesses require licences for certain trading activities. For example, off-licence shops are licensed to sell alcohol subject to proper controls to prevent sales to underage children. Breaches or inappropriate trading activity will be reported to the licensing body, which ultimately can result in the licence being refused, revoked or amended.

Injunctions & other civil actions

3.9 We can apply to the Courts to regulate certain types of behaviour that may not necessarily amount to criminal conduct.

3.10 Examples of the civil enforcement methods available to us include Undertakings, Court Orders, Civil Injunctions and Criminal Behaviour Orders. These may be used to impose obligations or prohibitions on traders. For example, the Court may order a rogue trader to stop breaking consumer protection laws or prohibit him from cold calling at consumers' homes.

3.11 Failure to comply with a Court Order can lead to further legal proceedings being brought, which can lead to a fine or imprisonment.

Test Purchasing

3.12 Trading Standards Officers use young people to conduct test purchases both online and at bricks and mortar premises to ensure retailers comply with the law in respect to age-restricted products. These tests are usually undertaken

where intelligence indicates that the retailer has either sold age-restricted products to a minor, where minors are known to have acquired age-restricted products through a variety of online sources, where the retailer has previously sold when tested by us, where a retailer has declined the opportunity of attending training, or, where it is considered that the town or locality as a whole is a 'hotspot' area. The intelligence we use comes from a variety of sources such as consumer complaints, local police and other partners.

- 3.13 The Annex to this policy contains the overall [Underage Sales Test Purchasing policy](#) approach taken by this authority.

Improvement Notices

- 3.14 An improvement notice may be issued to deal with a breach where legislation permits this course of action. This provides an opportunity for a non-compliant business to bring itself into compliance having received clear advice on the breach. This can be an alternative to taking formal action.

Statutory Notices

- 3.15 The Service may serve statutory notices requiring the receiver to undertake specific actions. A notice could be served after a non-compliance has been identified that requires immediate action to rectify it. For example, requiring a business to recall a dangerous product it has distributed.

Fixed and Variable Financial Penalties

- 3.16 In some cases, Trading Standards can issue a penalty notice, imposing a fine directly on a business without the need for court proceedings. For example, a fixed penalty can be imposed on an Estate Agent who is in breach of the legal requirement to join a Redress Scheme.
- 3.17 Where the procedure for imposing a financial penalty is set by law, we will follow that procedure. In some cases, we have discretion as to the financial

penalty imposed. For example, a letting agent who fails to join a client money protection scheme can be penalised up to £30,000. We have adopted the [National Trading Standards Estate and Letting Team policy](#) (Bristol City Council) on how we determine and apply financial penalties for relevant letting agents.

File link URL:

www.bristol.gov.uk/files/documents/4145-tenant-fees-act-penalty-notice-policy/file

Prosecution

- 3.18 Prosecution may have serious consequences for a business or individual, a criminal record, adverse publicity, an adverse effect on a business's trading position and in some cases even loss of liberty.
- 3.19 Prosecution may also lead in some circumstances to the disqualification of individuals from acting as company directors.
- 3.20 In deciding whether to prosecute we apply the Full Code Test laid down in the Code for Crown Prosecutors. This requires the decision-maker to consider:
- i. Whether there is sufficient evidence to provide a realistic prospect of conviction against each suspect. We consider whether the evidence is reliable, credible, and capable of being used in Court.
 - ii. Whether a prosecution is required in the public interest. We consider several factors to help us conclude whether the serious consequences of prosecution are in the public interest, including those listed in the next section.
- 3.21 We will review every case on an ongoing basis where any material change in circumstances, including what becomes known of the defence case, requires reconsideration of the decision to prosecute.

Forfeiture

3.22 This procedure allows us to ask the Court to decide what will happen to goods seized as evidence during an investigation. For example, the Court may order destruction of unsafe counterfeit goods to prevent them re-entering the marketplace.

Proceeds of Crime

3.23 Following a criminal conviction, we may apply for an order under the Proceeds of Crime Act 2002. This allows the benefits of an offender's wrongdoing to be confiscated in cases where it can be shown that the offender has profited from his/her crime.

Shared Enforcement

3.24 We will work alongside other agencies, such as Department for Environment, Food and Rural Affairs (Animal Health), Food Standards Agency (Food and Animal Feed standards), Environmental Health Officers, the Police, Fire and Rescue Service, or HMRC, to share our collective enforcement powers, co-ordinated across agencies to ensure that we minimise unnecessary overlaps or time delays, and to maximise our overall effectiveness.

Publicity

3.25 We publicise undertakings, court orders and prosecutions to protect the legitimate interests of consumers and businesses and to help us ensure any restrictions or obligations that have been imposed are complied with. Cautions are not publicised.

3.26 Details of enforcement actions published on Warwickshire Trading Standards' website are reviewed every 12 months. Enforcement outcomes will be removed from our website if continued publication is no longer considered to be in the public interest.

Deciding what Level of Action is Appropriate

3.27 Officers taking enforcement decisions will use this Policy as a guide, but every case must be decided on its own facts.

3.28 When considering sanctions or penalties available for non-compliance our aim(s) are:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance.
- to be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction.
- to be proportionate to the nature of the offence and the harm caused
- to restore the harm caused by regulatory non-compliance, where appropriate
- to deter future non-compliance.

3.29 Consideration will be given to the risks associated with the identified non-compliance to ensure our proposed enforcement action represents a proportionate response.

3.30 The presence of any of the following factors* is likely increase the severity of enforcement action taken:

- Deliberate, pre-meditated or fraudulent acts for gain, including those calculated to provide a commercial advantage.
- Negligence or carelessness that caused, or has the potential to cause, significant and/or widespread detriment to others.
- Persistent breaches, particularly where previous advice or enforcement actions have been disregarded.
- Breaches that caused, or have the potential to cause, physical harm or suffering to people, animals or the environment.
- Practices targeted at, or significantly affecting, vulnerable individuals/groups such as children, the disabled or elderly.
- Offences that are likely to be repeated

3.31 The following factors* may reduce the severity of enforcement action taken:

- The offence was the result of a genuine mistake or misunderstanding or occurred due to factors outside the trader's control.
- A good compliance record, effective management systems and/or recognised external accreditation.
- Previous advice has been sought and acted upon (including advice given by others)
- Prompt action is taken to ensure compliance with the law in future.
- Prompt action is taken to remedy any problems experienced by consumers, for example by carrying out remedial work or offering compensation.

* *Lists are non-exhaustive.*

3.32 A prosecution may follow without warning or recourse to alternative sanctions where the circumstances warrant it and the evidence to support the case is available.

4.0 Having your say

Dialogue with those we regulate.

- 4.1 We seek the views of businesses on the development of this enforcement policy.
- 4.2 We also carry out regular consumer and business satisfaction surveys, across the range of interactions that have taken place with the Trading Standards Service.
- 4.3 Outcomes of satisfaction surveys and complaints against our service are published on our website www.warwickshire.gov.uk/service-standards-performance/trading-standards-performance.

How to comment, complain or challenge a regulatory decision

- 4.4 We welcome comments, compliments, and complaints about our services as they are seen as an opportunity to develop and improve the way we work.
- 4.5 If you would like to make a comment, complaint, or challenge a regulatory decision, in the first instance please contact the Duty Manager using one of the following methods:

Post:

Trading Standards Service,
Warwickshire County Council,
Shire Hall Post Room,
Northgate Street,
Warwick,
CV34 4RL.

Telephone:

01926 414040

Email:

tradingstandards@warwickshire.gov.uk

- 4.6 Any decision will be reviewed by an independent manager. If you continue to be dissatisfied following this decision, then you may follow Warwickshire County Councils Corporate Complaints Procedure.
- 4.7 Further details of Warwickshire County Council's complaints procedure can be found at www.warwickshire.gov.uk/complaints. You are advised to read the "[Exclusions](#)" section of that procedure. For example, the complaints procedure cannot be used if Warwickshire County Council is taking, or considering, legal action relating to the issue.

5.0 Equality Statement

- 5.1 Warwickshire County Council's Equality and Diversity Policy Statement applies to the Trading Standards service and can be found on our website at www.warwickshire.gov.uk/performance/equality-diversity-warwickshire-county-council. Should you require this policy in an alternative format and / or language please contact our Equality, Diversity & Inclusion (EDI) team by emailing equalities@warwickshire.gov.uk.
- 5.2 Targeted enforcement protects the most vulnerable in our communities whilst supporting legitimate businesses to help promote a fair, honest and equitable trading environment. By having regard to legislation, we ensure that everyone is treated fairly, equally and proportionately.

6.0 Policy Review

- 6.1 This policy will be reviewed every 3 years or where major changes in legislation or policy requires it. Minor amendments to the policy can be authorised by the Director of Environment, Planning & Transport or Nominated person.
- 6.2 Date of Last Policy Review: **19 February 2024**
- 6.3 Date of Next Policy Review: **31 December 2027**

ANNEX A – Underage Sales Test Purchasing Policy

A.1.0 About this Policy

A.1.1 This policy applies to the test purchase of any age-restricted product including knives, alcohol, vapes, tobacco products, solvents, spray paints and fireworks. It sets out the approach we will adopt when dealing with retailers of age restricted products and addresses the application of the Regulation of Investigatory Powers Act 2000 (RIPA) to test purchasing operations.

A.2.0 Test Purchasing

A.2.1 This policy applies when Trading Standards Officers use young people to conduct test purchases both online and at bricks and mortar premises to ensure retailers comply with the law in respect of age-restricted products. These tests are usually undertaken where intelligence indicates that the retailer has either sold age-restricted products to a minor, where minors are known to have acquired age-restricted products through a variety of online sources, where the retailer has previously sold when tested by us or where it is considered that the town or locality as a whole is a ‘hotspot’ area. The intelligence we use comes from a variety of sources such as consumer complaints, local police and other partners.

A.3.0 Trader advice regarding the sale of age restricted products to minors

A.3.1 Business advice is available on the County Council’s website at www.warwickshire.gov.uk/underagesales. One key focus of this advice is to recommend traders require ‘proof of age’ before making a sale rather than simply asking how old someone is or judging their age by appearance. This step will form part of the retailers “due diligence & reasonable precautions” defence if a genuine mistake is made. We also encourage the implementation of voluntary policies such as the ‘Challenge 25’ initiative whereby if a customer wishing to buy an age-restricted product does not appear to be over 25 then ID must be requested by the cashier.

For online due diligence businesses will be directed to the CTSI Business Companion website where the current best practice can be found. This can currently be found at ['Online sales of age-restricted products'](#)

A.4.0 Trading Standards Operational Procedure

A.4.1 Guidance is given in respect of undertaking test purchasing operations:

- Code of Practice: Age Restricted Products (April 2014)

A.4.2 Here at Warwickshire County Council the young test purchaser is generally instructed to be honest if asked for their age when attempting to purchase age-restricted products at a bricks and mortar store. In relation only to an online sale, where necessary we will instruct the test purchaser to state they are older (i.e. to give the legal minimum age for the age-restricted product in question) in the following circumstances:

- Where we have information that a trader is selling age-restricted products and to enable us to check that adequate steps are in place to prevent a sale to a person under the age of 18; and
- The young person's parent or guardian has given consent for the young person to say they are the legal minimum age for purchasing the product(s) in question; and
- The young person consents to stating that they are the legal minimum age for purchasing the product(s) in question, if required.

A.4.3 If these criteria are met then when testing the premises, the young person is instructed to say, if asked, that they are the legal minimum age for purchasing the product in question by either ticking a box to state that they are the legal minimum age and or by manually entering a date of birth consistent with the legal minimum age for the age restricted product in question.

A.4.4 This has become necessary because there are a number of online traders who are taking insufficient or no proactive steps to avoid selling an age-restricted product to a child and rely on a purchaser to tell the truth when making a

purchase. We feel that in order to reflect 'real life' purchasing attempts it is appropriate under these controlled conditions to allow a purchaser to state that they are older than they actually are. It would be impossible to test online traders if we did not adopt this policy.

A.5.0 Other considerations taken

A.5.1 We do consider whether the statutory requirements for authorization under RIPA is applicable for each operation we may undertake.

A.5.2 In relation to any online test purchases of age-restricted products, we will inform a retailer in advance that a test purchase may be made from their site within the next 90 days.

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