

Warwickshire Trading Standards Service

Enforcement Policy

1.0 Introduction

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

We carry out our duties in various ways including: inspection, 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/ourperformanceandstandards

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

(The Legislative and Regulatory Reform Act 2006)

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

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 (October 2015)

Human Rights Act 1998

Equality Act 2010

2.0 Our approach to dealing with non-compliance

2.1 Our Principles of Enforcement

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.

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.

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.

2.2 Provision of Advice & Guidance

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

In responding to identified areas of minor 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.

Section 2.2 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.

2.3 Conducting Investigations

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.

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
- Criminal Justice & Police Act 2001
- Data Protection Act 2018
- Enterprise Act 2002
- Code of Practice: Powers of Entry (December 2014)

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 on at www.warwickshire.gov.uk

2.4 Our commitment to victims of crime

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

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.

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

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

Trading Standards Investigation

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.

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>.

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 at a later time, provided this is before court proceedings are completed.

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 & whether you are required to attend

- the outcome of the case.

3.0 Decisions as to Enforcement Action

3.1 General Principles

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 conducting an investigation into 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.

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.

In considering enforcement action against businesses that have registered a Primary Authority Partnership with another 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.

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 the political views. Such decisions will not be affected by improper or undue pressure from any source.

3.2 Overview of Potential Enforcement Actions

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.

Caution

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

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

Refusal, review or revocation of licences

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

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

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.

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

Statutory Notices

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

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.

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 on how we determine and apply financial penalties for relevant letting agents.

Prosecution

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.

In deciding whether or not to prosecute we apply the Full Code Test laid down in the Code for Crown Prosecutors. This requires the decision-maker to give careful consideration to:

- 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 a number of factors to help us conclude whether or not the serious consequences of prosecution are in the public interest, including those listed in the next section.

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

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

Proceeds of Crime

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

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

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.

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.

3.3 Deciding what Level of Action is Appropriate

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

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.

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

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

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

These are not exhaustive lists.

4.0 Having your say

4.1 Dialogue with those we regulate

We seek the views of businesses on the development of this enforcement policy.

We also carry out regular consumer and business satisfaction surveys, across the range of interactions that have taken place with the Trading Standards Service.

Outcomes of satisfaction surveys and complaints against our service are published on our website: www.warwickshire.gov.uk/tsservicestandards.

4.2 How to comment, complain or challenge a regulatory decision

We welcome comments, compliments and complaints about our services as they are seen as an opportunity to develop and improve the way we work.

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, Old Budbrooke Road, Warwick, CV35 7DP

Tel: 01926 414040

Email: tradingstandards@warwickshire.gov.uk

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.

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.

4.3 Equality Statement

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. Should you require this policy in an alternative format and / or language please contact *insert email*.

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.

4.4 Review

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 Assistant Director Environment Services or Nominated person.

8th February 2020