

# ENFORCEMENT POLICY



## 1.0 Introduction

- 1.1 The purpose of Kent Trading Standards' enforcement activities is to protect the public, legitimate business and the environment. This policy sets out what businesses and others being regulated can expect from Kent County Council Trading Standards officers.
- 1.2 The Trading Standards Service mission is:  
"Working with businesses and developing partnerships to drive Kent's economic growth and protect residents".
- 1.3 In doing this we focus on providing advice and guidance, working with businesses to help them understand and comply with their obligations, to encourage them to develop and grow.
- 1.4 There will be occasions where other action may be necessary to deal with situations where the law (criminal and civil) has been broken (an "offence"). Each case will be considered on its own merits.
- 1.5 This policy is intended to promote effective regulatory inspection and enforcement, improving outcomes without imposing unnecessary burdens on business.

## 2.0 Enforcement policy

- 2.1 Trading Standards follows the principles of the National Intelligence Model (NIM) and the National Trading Standards Intelligence Operating Model (IOM) and operates on an intelligence led approach to enforcement.
- 2.2 Service demand is managed through a regular intelligence based tasking focusing resources effectively on those businesses that cause the greatest harm to consumers and legitimate businesses.
- 2.3 Trading Standards follows the principles and objectives of the statutory Code of Practice for Regulators ('the Code') made under the Legislative and Regulatory Reform Act 2006. We believe that all enforcement should be risk based, transparent and proportionate.
- 2.4 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. Where we depart from the code we will ensure that the decision is reasoned, evidenced and documented.
- 2.5 Where we intervene in a matter, we will always consider the most justified, appropriate and proportionate methods for dealing with the issues raised.
- 2.6 If we exercise any of our enforcement powers such as seizing goods, equipment or documents, we will give written notice to a business explaining the extent of those powers and the nature of any equivalent rights which the business may have.

2.7 A range of sanctions will be considered according to the associated risk and seriousness of the matter which include:

- Securing an undertaking from a business that they will comply with their legal obligations;
- Take action in the civil courts to seek orders;
- Issuing written warnings;
- Issuing simple cautions;
- Prosecuting offenders in the criminal courts;
- Restraint, confiscation and forfeiture of assets under the Proceeds of Crime Act 2002;
- Exercising forfeiture of goods provisions;
- Seizing goods, documents or other items that may be required as evidence, for testing or for other lawful purposes;
- Issuing Suspension Notices, Improvement Notices or other such statutory documents;
- Issuing of Penalty Charge Notices;
- Instituting a license review (e.g. alcohol sales);
- Instituting a product recall.

2.8 The aim of any intervention is to:

- Respond proportionately to the nature of the offence and the harm caused to protect consumers and legitimate businesses;
- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- To secure justice for victims, witnesses, defendants and the public.

2.9 In any intervention we will consider matters which aggravate or mitigate the seriousness of the offence so that the most appropriate and proportionate method of disposal is chosen.

### 3.0 Aggravating Factors

- The impact or potential impact of the offence is so serious that prosecution is the only suitable method for disposal;
- Whether the offence continued over a long period of time or involved a series of offences against the same or different victims;
- Degree of pre-planning;
- Age or vulnerability of the victim(s);
- Amount of gain for the offender or the amount of loss to the victim, relative to the victim's status;
- Impact of the crime on the victim;
- Prevalence of the offence and its impact on the community;
- Where there is any evidence of the crime being motivated by hate (hate crimes);

- Any attempt by the offender to conceal his/her identity, whether directly or indirectly, such that the victim, and or investigating agencies, cannot easily identify or trace the person;
- Lack of remorse;
- The offender's history including previous advice, warnings, cautions and convictions;
- There is evidence of significant and/or continuing consumer or public detriment;
- There is risk to public health and safety or the environment;
- The offender disregards the needs of animal health disease control legislation;
- The offender has acted fraudulently or is reckless or negligent in their activities;
- An officer was deliberately obstructed.

## 4.0 Mitigating Factors

- Prompt acknowledgement of guilt;
- Making timely and appropriate compensation to the victim(s);
- Previous good character;
- Age and/or lack of maturity where it affects the responsibility of the offender;
- Lesser degree of culpability;
- Any other factor which, considered objectively in relation to the offence, tends to diminish the seriousness of the crime even though it does not provide a defence to it.

## 5.0 Action that Can be Taken

### 5.1 Prosecution

5.1.1 The Trading Standards Service recognises that a prosecution has serious implications for all involved and have developed this policy so that we can make fair and consistent decisions in all cases.

5.1.2 We will have regard for this policy and the Code for Crown Prosecutors in particular:

- Is there is sufficient evidence that a criminal offence has been committed and there is a realistic prospect of conviction?
- Is a prosecution in the public interest?

5.1.3 Consideration will also be given to the Code made under the Legislative and Regulatory Reform Act 2006.

5.1.4 In some cases prosecutions may be taken concurrently with civil proceedings.

## 5.2 Simple caution

5.2.1 Where there is sufficient evidence to provide a realistic prospect of conviction (if the offender were to be prosecuted) and the offender admits their guilt consideration may be given to dealing with the case by way of a caution.

5.2.2 If a simple caution is rejected the Service reserves the right to consider instigating prosecution proceedings.

## 5.3 Fixed penalty notice or a penalty notice for disorder

5.3.1 Where there is sufficient evidence to provide a realistic prospect of conviction (if the offender were to be prosecuted) and/or the offender recognises the offence, if available, the offender may be offered a fixed penalty notice or penalty notice for disorder.

5.3.2 If a fixed penalty notice or a penalty notice for disorder is rejected the Service reserves the right to consider instigating prosecution proceedings.

## 5.4 Financial investigations under the Proceeds of Crime Act 2002

5.4.1 We will consider whether it is appropriate to utilise powers under the Proceeds of Crime Act 2002 (POCA), to ensure the defendant is deprived of the proceeds of their criminal conduct. Where investigations identify money laundering offences, we will consider prosecuting for those offences.

5.4.2 The Trading Standards Service will consider using restraint powers under POCA to prevent the dissipation of assets from satisfying a confiscation order (from which compensation may be ordered to be paid from).

## 5.5 Undertaking

5.5.1 The Trading Standards Service takes a staged approach to civil redress.

5.5.2 Unless the matters investigated are serious enough to justify immediate civil or criminal proceedings, a formal undertaking may be sought from the offender within the meaning of the Enterprise Act 2002 to stop or continue doing the matters complained of, where the offender is willing to enter into an undertaking.

5.5.3 A breach of the undertaking can result in proceedings being issued.

## 5.6 Injunctions

5.6.1 Where an individual or business operates in such a way that it harms consumers generally, an application may be made to the civil courts for an injunction to stop the detrimental activities.

5.6.2 An application will not be made unless the detrimental activities have been explained (or attempted to be explained) to offenders with advice on how to operate legitimately, unless the detrimental practices create a threat to human safety, when an urgent application may be made.

## 5.7 **Written warnings**

5.7.1 If the particulars of a case considered in conjunction with this enforcement policy suggest that future compliance can be achieved without resorting to legal proceedings, this Service will consider issuing a written warning and/or specific instructions as appropriate.

5.7.2 No written warning will be entertained unless there is reliable evidence to support an assertion of offending.

5.7.3 Written warnings can be considered in the event of any future offences.

## 5.8 **Suspending goods from sale**

5.8.1 Where it is necessary to protect the public, goods suspected of being unsafe or dangerous will be suspended from sale.

## 5.9 **Refusal, termination or variation of a licence/registration**

5.9.1 The refusal, revocation or variation of a licence or registration will be considered where the conditions attached to a licence or registration have not been met.

## 5.10 **Dealing with offences at licenced premises**

5.10.1 In the case of offences committed at a licensed premises, including the illegal sale of age restricted products, consideration will be given to instituting a review of the premises licence.

5.10.2 The Service reserves the right to consider other enforcement options.

## 5.11 **Carrier Bag Charging**

5.11.1 The enforcement policy for The Single Use Carrier Bags Charges (England) Order 2015 can be found [here](#).

## 5.12 **Penalty Notices under the Consumer Rights Act 2015**

5.12.1 Where a letting agent has breached their duty to publicise details of their relevant fees, this Service may impose a penalty notice on the agent for the breach.

5.12.2 The amount of a penalty imposed will be set as Kent County Council determines, with regard to guidance from the Secretary of State, but will not exceed £5,000.

5.12.3 Before issuing a letting agent a Penalty Notice, we will give a notice of intent, providing details of the issues, the action that needs to be taken and providing 28 days to comply.

5.12.4 Penalty Notices are used as a last resort.

## 6.0 Partnership working

- 6.1 Wherever practicable we will endeavour to liaise with other relevant agencies with a joint or complementary enforcement role to ensure a consistent and coordinated approach.
- 6.2 Before instigating formal action, the Trading Standards Service will liaise with all relevant agencies where a joint or complementary enforcement role is identified. We subscribe to the principles of the Primary Authority Principle under the Regulatory Enforcement and Sanctions Act 2008.
- 6.3 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (subject to restrictions under the Data Protection Act, and other Trading Standards legislation).
- 6.4 Data sharing will be conducted through appropriate information gateways.

## 7.0 Complaints procedure

- 7.1 The Trading Standards Service follows the County Council's complaints policy which can be found [here](#)

## 8.0 Comments

- 8.1 If you have any comments concerning this policy, please write to the Head of Trading Standards at:

Kent County Council Trading Standards

PO Box 320

Ashford

TN24 8AS

- 8.2 or email: [trading.standards@kent.gov.uk](mailto:trading.standards@kent.gov.uk)