

### 1. 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 Service.
- 1.2. The Trading Standards Service mission is -  
  
"Working with businesses and developing partnerships to drive Kent's economic growth and protecting 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. When a business requests advice we provide authoritative, understandable and accessible information. We may make a charge for this.
- 1.4. We recognise that most businesses wish to comply with the law, however we also recognize that some will operate outside the law (both intentionally and unintentionally).
- 1.5. 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.
- 1.6. This policy is intended to promote effective regulatory inspection and enforcement, improving outcomes without imposing unnecessary burdens on business.

### 2. Enforcement policy

- 2.0 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.
- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 Where we intervene in a matter, we will always consider the most justified, appropriate, and proportionate methods for dealing with the issues raised.

- 2.5 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.
- 2.6 A range of sanctions are considered according to the associated risk and seriousness of the matter which are covered in the 'Actions that can be taken' section detailed below
- 2.7 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
  - To protect animals, people and the environment
- 2.8 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 enforcement is chosen.

### 3. Aggravating Factors

- The impact or potential impact of the offence is so serious that prosecution is the only suitable method for enforcement.
- 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.
- If there is any evidence of the crime being motivated by hate (hate crimes).
- Any attempt by the offender to conceal their 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, animal health and welfare 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. 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. Action that Can be Taken

- **No Further Action**

- Contraventions with little detrimental impact on the community and required action is not in the public interest

- **Indirect Action**

- The Trading Standards Service may make a referral to another authority or agency for information, or collaborative action.
- For persistent illegal sales or possession of illegal products for sale from a single premises consideration will be given to working with partner agencies to secure a closure order.

- **Advice**

- Whether verbal or in writing or in the form of a cease and desist or departmental warning letter.

- **Issuing Statutory Notices or Documents**

- Where an individual or business fails to comply with legal requirements we will consider issuing a statutory notice. A notice may specify actions that must be taken to achieve compliance or additionally prohibit the business/individual from carrying out certain operations, using certain premises or certain equipment etc.

- **Suspending goods from sale**

- Where it is necessary to protect the public, goods suspected of being unsafe or dangerous will be suspended from sale and a withdrawal notice may be issued.

- **Seizing and detaining goods**

- Where it is necessary to protect the public, the environment or animal health, goods suspected of being unsafe, dangerous, or which otherwise fail to comply with legal requirements, may be seized, detained or suspended on the premises.

- **Forfeiture of Goods**

- For non-surrendered goods we will apply to court for forfeiture whether or not we start prosecution or other proceedings. The Trading Standards Service reserves the right to recover the expense of storage, disposal and court costs.
- For unsafe/ illegal products detained at the border, if there is insufficient evidence of the importers identity or other circumstances which do not allow any other course of action, the goods may be considered to have been abandoned after 28 days. The goods will then be destroyed.
- For unsafe/ illegal seized products where there is insufficient evidence of the legal owner or

other circumstances which do not allow any other course of action, the goods will be considered to have been abandoned after 28 days. The goods will then be destroyed.

- **Written Warnings and Cease & Desist**

- If there is reliable evidence to support an assertion of offending, compliance advice can be provided in the form of a Cease & Desist letter, written warning letter and/or specific instructions as appropriate.
- In these letters we will clearly explain what should be done to rectify the problem and how to prevent re-occurrence.
- Written Warnings and Cease and Desists cannot be cited in court as a previous conviction but may be presented in evidence.

- **Criminal Financial Penalties**

- Where there is a specific power to do so the Trading Standards Service may, as a means to provide effective and visible way to respond to less serious offences without going to court, and where there is sufficient evidence to provide a realistic prospect of conviction, issue the offender a Fixed Penalty Notice (FPN) or Penalty Charge Notice (PCN).
- An FPN and PCN are notices offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty.
- Examples of where legislation provides that the Trading Standards Service can issue an FPN is provided for under various relevant Animal Health legislation (for example The Animals (Penalty Notices) (England) Regulations 2023) or Licencing legislation (for example The Licencing Act 2003 for the sale of alcohol to persons under the age of 18).
- If any of the above notices are rejected the Trading Standards Service reserves the right to prosecute for the initial offence. Where prosecution is brought, an assessment will be made of other offences that may have been committed in order that those charges may be considered at the same time.

- **Civil Financial Penalties**

- When legislation allows, the Trading Standards Service may issue the offender with a financial penalty.
- Guidance is published separately about the enforcement of these penalties, when they are used and how representations can be made or they can be appealed. In most cases, the penalty is set by law. In some cases, a maximum amount is set in legislation.
- Examples of where legislation provides that the Trading Standards Service can issue a financial penalty is provided for under various Letting Agency legislation (for example The Tenant Fees Act 2019). The Service can issue a financial penalty up to £5,000 for a single breach of the legislation and up to £30,000 for subsequent breaches within a five-year period.

### **Enforcement Policy and Financial Penalties available under the Tenant Fees Act 2019 and Consumer Rights Act 2015**

- The enforcement policy for The Tenant Fees Act 2019 and Consumer Rights Act 2015 can be found [here](#).
- Examples of where legislation provides that the Trading Standards Service can issue a financial penalty is provided for under various relevant environmental legislation (for example The Single Use Carrier Bags Charges (England) Order 2015 or The Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023).

### **Carrier Bag Charging**

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

### **Single Use Plastics**

- The enforcement policy for The Environmental Protection (Plastic Plates etc. and Polystyrene Containers etc.) (England) Regulations 2023 can be found [here](#).
- The payment of financial penalties is not a criminal conviction.
- The Trading Standards Service reserves the right to recover unpaid penalties as a civil debt, by registering a claim with the County Court, or by applying to a court for an order so that we can enforce the payment by way of a warrant of control, charging order or third-party debt order.
- **Simple caution**
  - 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.
  - If a simple caution is rejected the Trading Standards Service reserves the right to consider instigating prosecution proceedings.
- **Animal Health and Welfare**
  - When a veterinary surgeon certifies that an owner/keeper of an animal has subjected it to unnecessary suffering and this behaviour is likely to continue, we will consider taking the animals into our possession and applying to the Court for orders for the treatment, giving up, reimbursement of expenses incurred and subsequent disposal of the animals.
  - We may also look to other legislation where appropriate to ensure that similar standards of care and/or control of animals is properly maintained.
  - In some circumstances, such as animals illegally landed in the UK and required to be

quarantined, we will also consider applying to the Court to deprive person(s) of the seized animals and/or disqualify them from keeping animals on the grounds of welfare. We would also expect the owner to pay for the quarantine.

- Where a person is convicted for an offence under the Animal Welfare Act for causing distress or unnecessary suffering to an animal, or for failing in their duty of care to provide for the needs of an animal, we will consider applying for an order disqualifying that person from owning, keeping or participating in the keeping of animals, or a particular type or number of animals.

- **Prosecution**

- 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. Where the nature of the offending is sufficiently serious or persistent, a prosecution will be taken without the prior use of alternative sanctions.
- The decision to prosecute is made under the Officers' Scheme of Delegation within the Kent County Council Constitution (articles 10 and 11.21(i)) and in accordance with 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?
- Consideration will also be given to the Code made under the Legislative and Regulatory Reform Act 2006.
- We will apply to the court to recover the full prosecution costs to mitigate the burden to Council taxpayers of the cost of enforcement.
- Upon conviction, ancillary orders such as Director Disqualification, Criminal Behaviour Orders and orders under the Proceeds of Crime Act 2002 may be made by the Court.
- In some instances, prosecutions may be taken concurrently with civil proceedings.

- **Financial investigations under the Proceeds of Crime Act 2002**

- The Trading Standards Service will consider whether it is appropriate to utilise powers under the Proceeds of Crime Act 2002 (POCA).
- If £1000 or more cash is located at a property during an investigation, that is suspected of being recoverable property or intended to be used by any person for unlawful conduct, an appropriate officer can seize that cash. An appropriate Officer would either be a Police Officer at the premises, or an Accredited Financial Investigator (AFI) with the relevant qualifications. The AFI will apply to the Magistrates Court to detain the seized cash for an initial period of 6 months, to allow investigations of the derivation of the cash to be undertaken. An AFI will apply to the Magistrates Court for forfeiture of the cash when/if applicable.

- If assets such as watches, artistic works, stamps, precious stones or metals of a value more than £1000 are located at a property during an investigation, that are suspected of being recoverable property or intended to be used by any person for unlawful conduct, an appropriate officer can seize those assets. The AFI will apply to the court to retain those assets for the investigation and may apply for subsequent forfeiture of the assets.
- Where investigations identify money laundering offences, we will consider prosecuting for these. A financial investigation will commence and run parallel to a criminal investigation. A financial investigation may include Production Order applications to the Court requiring financial institutions to provide information about the offenders' finances. This could include bank statements, account opening documents and notes the financial institution have made on the account.
- Following a successful conviction, we may apply to the Court for a confiscation order under POCA to deprive the defendant of their benefit from their criminal conduct. The final decision on confiscation is made by the judge after hearing arguments from both parties.
- An AFI will consider using restraint and account freezing order powers under POCA to prevent the dissipation of assets from satisfying a confiscation order (from which compensation for victim losses, if appropriate, may be ordered to be paid from).

- **Civil Redress**

- We will consider formal civil enforcement action in pursuance of repeated breaches of law which have a detrimental impact on the collective interests of consumers or businesses including injunctive redress to stop the detrimental activity, and undertakings or orders under the Enterprise Act 2002 to stop doing the matters complained of. Breach of these can lead to proceedings being issued for contempt of court.

- **Refusal, termination, or variation of a licence/registration**

- The refusal, revocation or variation of a licence or registration will be considered where the conditions attached to a licence or registration, or the legal requirements to hold such a licence, registration or approval have not been met.

- **Dealing with offences at premises that sell alcohol**

- In the case of offences committed at a licensed premises selling alcohol, including the illegal sale of age restricted and/or counterfeit products, consideration will be given to instituting a review of the premises licence.

## 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 adheres to Kent 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)

# Enforcement Policy

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