

## NORTH LINCOLNSHIRE TRADING STANDARDS SERVICE

# **ENFORCEMENT POLICY**

### **1. Introduction**

This Policy sets out the general principles that form the enforcement functions throughout the Trading Standards Service.

The service enforces a wide variety of legislation using powers that enable officers, amongst other things, to issue verbal advice, send letters, serve formal notices, issue formal cautions or prosecute in the courts.

Officers frequently find contravention's of the law but have to choose the most appropriate method of achieving compliance with the law from the range of possible actions available.

Trading Standards staff will carry out their enforcement functions efficiently and effectively and in a way that is open, clear and helpful to businesses and members of the public.

The enforcement action chosen by an officer must be informed by this Policy, which promotes consistency, proportionality, transparency and fairness.

This Policy is available for examination by any party affected by enforcement decisions made by the Service.

Where the Service becomes aware of a situation for which it is not the enforcing Authority, it will contact the relevant enforcement body. Similarly where there is a shared role with other enforcement bodies, officers shall liaise accordingly.

### **2. General Principles**

Trading Standards staff seek to secure compliance with the relevant legislation.

When officers find contraventions of the law they will warn and advise those involved (orally or in writing, on request) of the steps needed to put things right and the time scale for this, unless more formal enforcement action is the most appropriate way of dealing with the matter.

Any action required must be proportionate to the risks and, as far as the law allows, will take account of the circumstances of the case and the attitude of the alleged offender. Particular care will be taken when working with small businesses and voluntary and community organisations so that they can meet their legal obligations with the minimum expense.

Where immediate action is considered necessary, an explanation of why such action is required will be given at that time and confirmed in writing, usually within 5 working days and always within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken.

All communications will be clear and in plain English, translated where appropriate, and will distinguish between advice and legal requirements.

Officers will endeavor to discuss fully, with a responsible person, any compliance failures or difficulties and will give full consideration to their views before deciding on the most appropriate course of action.

Officers will seek to secure compliance with legislation whilst conforming to the spirit of the European Convention on Human Rights (as implemented by the Human Rights Act 1998); the Central/Local Government Enforcement Concordat, which this Authority has adopted; and the Code for Crown Prosecutors.

They will also have due regard to all necessary procedural requirements contained in legislation such as the Criminal Procedure and Investigations Act 1996, the Regulation of Investigatory Powers Act 2000, the Police and Criminal Evidence Act 1984 and the Data Protection Act 1998.

The gender, ethnic origin or sexual orientation of the offender will not influence the choice of enforcement action.

Staff will, so far as is possible, endeavor to foster a good working relationship with all stakeholders.

### **3. Enforcement Options**

There are a number of options available when infringements are detected:

#### **a) Prosecution**

The decision to institute formal prosecution proceedings will only be taken if one or more of the following criteria apply:

The infringement involves fraud

The infringement involves deliberate or persistent breach of legal responsibility (for example choosing to disregard written warnings or advice, or where a formal caution indicates previous criminal activity) and

causes, or is likely to cause, significant loss or prejudice to another individual

The infringement results from gross negligence or carelessness and causes, or is likely to cause, significant loss or prejudice to another individual

The infringement leads to the health, safety or well-being of people, animals or the environment being seriously compromised

The infringement involves the obstruction of an authorised officer in carrying out his or her duties.

Furthermore, a prosecution will only be considered if the sufficiency of evidence and the public interest requirement fall within the guidelines as laid down by the Attorney General and Crown Prosecution Service Code for Crown Prosecutors.

Before making a decision whether or not to prosecute, consideration should also be given to the following:

The seriousness of the offence and whether it is likely to cause substantial loss or prejudice to others

The history of the alleged offender (e.g. number of complaints and convictions, or extent of previous advice given)

The willingness of the alleged offender to prevent a recurrence of the infringement

Whether the alleged offender has offered a remedy – e.g. redress, compensation

The likelihood of the alleged defendant being able to establish a statutory defence

The calibre and reliability of witnesses

The probable public benefit of a prosecution and the importance of the case – e.g. the possibility of establishing legal precedent

(It may not be in the public interest to prosecute for matters that could be seen as technical infringements where there is no obvious prejudice to others)

Whether a formal caution may be more appropriate or effective (see below)

Cost effectiveness – a need to balance likely overall cost against the “value” of the likely outcome

Whether the infringement indicates evidence of unfair competition with other traders.

b) **Formal Caution**

A formal caution can only be considered when all the appropriate prosecution criteria are met, but the circumstances surrounding the infringement are such that a more lenient approach to prosecution is appropriate. Any formal caution must follow the criteria as laid down in the Home Office Guidelines. If a decision to offer a formal caution is rejected by the alleged offender, then a prosecution is appropriate.

c) **Court Order**

Under the Enterprise Act 2002 action can be taken in the civil courts to prevent rogue traders from harming the collective interests of consumers. Proceedings can be taken to stop infringements, prohibit likely infringements, and to refrain persons including directors and managers, from consenting, conniving or engaging in conduct constituting an infringement.

Written undertakings will be entered into with those who voluntarily agree to refrain from infringing courses of conduct.

If a written undertaking cannot be obtained then a Court Order (Enforcement Order) will be sought in the County or High Court.

Except in exceptional circumstances attempts will be made to stop or prevent any infringement through consultation and advice.

Officers will adhere to the guidance issued by the Office of Fair Trading.

d) **Formal Notice**

Notices can be served to require offenders to cease contravening activities, or to give them reasonable time to rectify a contravention. Notices may require immediate cessation of infringing activities where safety or nuisance, demand it. In other circumstances, any time allowed to put things right must be reasonable, but must take into account the safety and nuisance implications of the contravention.

d) **Written Warnings and Advice**

For some contravention's, the offender will be sent a firm but polite letter clearly identifying the infringement involved, giving advice on how to put them right and a deadline by which to do it. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. Time allowed for rectifying infringements must be reasonable, but must recognize the safety and nuisance implications of the contravention.

e) **Verbal Warnings and Advice**

These will be used in the majority of cases as a means of resolving minor offences and technical infringements that are capable of immediate rectification and are unlikely to be repeated. Failure to heed verbal warnings or advice may result in more serious enforcement action being taken.

f) **Referral to Another Agency**

Sometimes the infringement may be more appropriately dealt with by means of referral to another agency, e.g. through the LACORS Home Authority Principle.

g) **No Action**

In exceptional circumstances, contravention's may not warrant any action. This can be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community. A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well-being. A decision to take no action must be recorded in writing and must take into account the safety and nuisance implications of the contravention.

4. **References**

The Code for Crown Prosecutors. Crown Prosecution Service, 2000  
Crown Prosecution Service, 50 Ludgate Hill, London, EC4M 7EX  
Tel: 020 7796 8351 (also available on their website)

The Enforcement Concordat. Better Regulation Unit, March, 1998  
Better Regulation Unit, Cabinet Office, Horse Guards Parade, London, SW1P  
3AL  
Tel: 020 7270 6928 (also available on their website)