Trading Standards Service

Enforcement Policy

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This policy is subject to regular review and is available in other formats (large print, audio and Braille). Telephone 01482 300 300
1 **Introduction**

1.1 This policy describes how the Kingston upon Hull City Council Trading Standards Service, by using enforcement activities and enforcement actions, makes sure that the laws it enforces are complied with.

2. **Our aim**

2.1 To ensure a fair and safe trading environment and to protect the interests of consumers and businesses within the City.

2.2 That this policy and all associated enforcement decisions take account of the provisions of the Human Rights Act 1998. In particular, due regard is given to the:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

2.3 In carrying out its functions the Trading Standards Service will be even handed, practical and consistent. The decision to take enforcement action will be fair, independent and objective and will not be influenced by issues such as ethnicity, national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender.

3. **Our Areas of Work**

3.1 We inform, advise and educate businesses and consumers and undertake enforcement activities and enforcement action on a wide range of trading laws, including.

- **Animal Health and Welfare** – Animal imports, animal by-products disposal
- **Consumer Credit** - unlicensed credit trading, incorrect/ misleading advertisements and agreements
- **Consumer Product Safety** - new and second-hand and hired goods.
- **Environmental Safety** - Chemical labelling, packaging, explosives, petroleum and poisons
- **Food and Feed Standards** - product descriptions, ingredients, additives, adulteration
- **Intellectual Property** – Trade mark, copyright and associated matters.
- **Under-age Sales** – the sale or supply of goods which have a legal minimum age limit
- **Unfair Trading** - aggressive selling techniques, misinforming and misleading people about products or services.
- **Weights and Measures** – Accuracy checks of equipment used in serving or packing goods, including fuel pumps at filling stations, monitoring factory production to check the weight of goods.

4. **Meaning of ‘Enforcement Activities’ and ‘Enforcement Actions’**

4.1 ‘Enforcement Activities’ means the steps we take to assess whether the laws we enforce are being complied with and can include:

- Test purchasing and/or sampling of goods and services - un/announced visits;
- Project work where a specific hazard is investigated,
- Compliance checks where activities are monitored and test purchases may be made but there is no physical visit made to the business premises e.g. Internet businesses, mail shots, mail order, telesales.
- Partnership working - joint action and advice visits with officers of other agencies
- Information sharing with those agencies with whom we have an enforcement role e.g. environmental health services ,police, HM Revenue and Customs etc
- Providing general information/ advice and targeted, practical advice to help businesses etc understand and comply with the laws which affect them.
4.2 ‘Enforcement Actions’ means the steps we can take when the laws we enforce have been broken

5. Our Commitment

5.1 We are committed to the principles of good enforcement, as set out in:

- Legislative and Regulatory Reform Act 2006,
- Regulatory Enforcement and Sanctions Act 2008
- Primary Authority Principle as set out in the above Act and the associated Local Better Regulation Office (LBRO) guidance document
- Regulators’ Compliance Code – Which aims to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on businesses, voluntary sector, etc.
  
  In some cases we may properly find that a provision of the Regulators’ Compliance Code is either not relevant or is outweighed by other relevant issues. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.
- Enforcement Concordat - where the legislation we enforce is not covered by the Regulators Compliance Code, we also subscribe to the Enforcement Concordat.

5.2 We will consider the impact our enforcement activities may have on economic progress, including through consideration of the costs, effectiveness and perceptions of fairness of regulation. And will keep our enforcement activities and the enforcement actions available to us under review to reduce their burden on businesses, especially smaller ones, as much as possible

5.3 We recognise that most businesses want to comply with the law, in view of this:

- 5.3.1 We will try, where possible and taking account of all relevant issues, to help businesses and others, with their responsibility to comply with the law without unnecessary expense
- 5.3.2 We will provide information, advice and guidance, where possible when it is requested by businesses, and to do so proactively where this is practicable in clear, concise and accessible language, using a range of appropriate formats and media. When offering compliance advice, we will distinguish between statutory requirements and advice or guidance aimed at improvements above minimum standards. Advice will be confirmed in writing, if requested.
- 5.3.3 We will develop 'home authority' and/or 'primary authority' relationships with businesses based within Hull to provide advice and support
- 5.3.4 We will only require data and information from businesses when it is strictly necessary for us in carrying out our enforcement activities
- 5.3.5 we aim to prioritise and target our enforcement activities using sound, relevant intelligence and risk assessment on the areas that need them most, that is, where risk assessment shows that both:
  
  - a compliance breach or breaches would pose a serious risk to a fair and safe trading environment and
  - There is high likelihood of non-compliance.

to accurately identify persistent offenders quickly.
6. **What you can expect of our staff**

6.1 You are entitled to expect our staff:

- To be courteous and helpful
- To identify themselves by name and produce identification if requested
- To provide a contact point for any further dealings
- To give clear and simple advice
- To confirm advice in writing on request, explaining why action is required and over what time-scale
- To clearly distinguish between what you **must** do to comply with the law and what is recommended as best practice
- To minimise the cost of compliance by requiring proportionate action
- To give you reasonable time to comply (unless immediate action is necessary in the interest of Health, Safety or to prevent evidence being lost)
- To notify you if the matter is to be reported for legal proceedings
- In cases of dispute to advise you of the procedure for making a complaint or representations
- To maintain confidentiality except where we have a legal obligation to disclose information.

7 **Enforcement Actions**

7.1 When a business does break the law we will ensure that any enforcement action we take or require to be carried out by a business is proportionate to the risks.

7.2 Unless immediate enforcement action is necessary there will usually be opportunity for businesses to discuss the case before any enforcement action is taken. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

7.3 Where immediate enforcement action is necessary an explanation will be given at the time and confirmed in writing, usually within 5 working days, and always within 10 working days.

7.4 If we believe a formal investigation is necessary any discussion concerning the offence and any relevant issues will take the form of a formal interview, under caution, as set down by the codes of practice issued under the Police and Criminal Evidence Act 1984.

7.5 Depending upon the provisions of the particular legislation, we are able to take a range of enforcement actions these are listed below

- Where any of the following actions provide for appeal and review processes before or following their imposition the affected business will receive full written details of their rights.
8 **Types of Enforcement Action We can Take**

8.1 The options available to us include:
- No Action
- Indirect action
- Verbal or Written Advice or Verbal or written warning
- Statutory Notice
- Forfeiture Proceedings
- Seizure
- Fixed Penalty Notices and actions relating to the sale of alcohol to under 18s
- Sanctions relating to persistent sale of tobacco products under 18s
- Penalty Charge Notices
- Refusal, Suspension and Revocation of Licences, approvals or registrations
- Action under the Enterprise Act
- Simple Caution
- Prosecution
- Proceeds of Crime Actions

8.2. **No Action**

8.2.1. In certain cases, contraventions of the law may lead us to taking no action. This may occur for example when
- the cost of compliance for the business outweighs the negative impact of the contravention,
- where formal enforcement action is inappropriate in the circumstances we will advise the business of the reasons for taking no action.

8.3. **Indirect action**

8.3.1. This could include asking another authority or agency for information or passing information to such an organisation or requesting them to take action.

8.4. **Verbal or Written Advice or Verbal or written warning**

8.4.1. We would use this option where a relatively minor offence has been committed but it is not thought appropriate to take any further action. We will suggest a course of corrective action an we will give a timescale.

8.4.2. Failure to comply with a Verbal or written warning could result in an escalation of Enforcement Action.

8.5. **Statutory Notice**

8.5.1. These are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities) e.g. suspension, withdrawal, recall or voluntary surrender of goods /documents.

8.6. **Forfeiture Proceedings**

8.6.1. This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem. In appropriate circumstances, we will make an application for forfeiture to the Magistrates Courts.

8.7. **Seizure**

8.7.1. Certain legislation enables authorized Officers to seize goods, equipment or documents for example unsafe products or any goods that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.
8.8. Fixed Penalty Notices and Actions Relating to the Sale of Alcohol to Someone Under 18

8.8.1. Where alcohol is sold to someone under the age of 18, the offence can now be dealt with by a fixed penalty notice being issued by Humberside Police.

8.8.2. Instead of facing prosecution, the person selling the alcohol, which could be
- a sales assistant,
- member of bar staff or
- the licensee, will now be given a fixed penalty notice.

8.8.3. We can still prosecute the seller when a fixed penalty notice is not a suitable option e.g. repeat sales by the same person.

8.8.4. The licensee will also face serious consequences if a sale takes place on their premises. In the first instance they will be called before a licensing panel and be asked to account for why the sale took place they will also be asked to explain what measures had been put in place since the sale, to prevent further occurrences.

8.8.5. Licensees will face a review of their licence if subsequent illegal sales occur. One of the options open to a review committee is the revocation of the licence. Prosecution of the licensee will still remain an option in certain circumstances.

8.8.6. Where there are persistent sales of alcohol to persons under 18, the police or ourselves may issue a closure notice as specified in the Licensing Act 2003

8.8.7. It is up to the premises licence holder to decide whether or not to accept the closure notice or to elect to be tried for the offence

8.9. Sanction for persistent sale of tobacco products to someone under 18

8.9.1. If a person is convicted of a selling tobacco products (including a sale from a vending machine) to a person under 18, and has committed other similar offences (whether we have prosecuted or not) on two or more other occasions within a 2 year period, in relation to the particular premises we can apply for: a

9.9.1.1. A Restricted Premises Order prohibits the sale of tobacco on the named premises

9.9.1.2. A Restricted Sale Order prohibits any person named in the order
- from selling tobacco or cigarette papers to any person,
- from keeping a cigarette vending machine, or
- from having any management functions in relation to the named premises as far as those functions relate to the sale of tobacco.

8.10. Penalty Charge Notices

8.10.1. Penalty Charge Notices (PCN) are set out by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach.

8.10.2. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt.

8.10.3. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.
8.11. Refusal, Suspension and Revocation of Licences, approvals or registrations

8.11.1. We are responsible for licensing, approving and or registering a number of business activities including:

- Petroleum
- Explosives – Fireworks storage and supply
- Poisons
- Second-hand goods
- Specified Animal Feed Business Operations
- Depending on the law relating to the licence etc in question there may be
- Conditions which must be complied with
- Powers for us to refuse to issue the licence, or
- power to suspend or revoke the licence
- power to modify the conditions of Licence
- power to exclude a Licensable activity from the scope of the Licence

8.12. Action under the Enterprise Act

8.12.1. The stages in this process are:

8.12.1.1. We must consult with infringing business to try and get the infringement stopped. We can accept an informal undertaking from the business that it will stop the offending conduct

8.12.1.2. If after a minimum two week consultation period, the business will not give an undertaking, we can apply for an Enforcement Order to the High Court

8.12.1.3. The court can order the business to stop, and not repeat, the infringing conduct. Alternatively, the court can accept undertakings that the infringement will stop. We can apply for an interim order in urgent cases

8.12.1.4. Breach of the court order or court undertaking by repeating the infringement, means he or she is in contempt of court and can be fined and/or imprisoned.

8.13. Simple Caution

8.13.1. Where a prosecution could succeed, and the offender admits their guilt, but the circumstances of the case suggest that a more lenient approach is appropriate, consideration will be given to dealing with the case by way of a simple caution in accordance with the current Home Office circular (Circular 016/2008)

8.13.2. A simple caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction; however it may be cited in court in certain circumstances. The caution will be recorded on the Office of Fair Trading Central Register of Convictions and we will notify other bodies as required.

8.14. Prosecution (Please see section 9 below)

8.15. Proceeds of Crime Actions

8.15.1. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

8.15.2. Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Proceedings are conducted according to the civil standard of proof.

8.15.3. Applications are made after a conviction has been secured.
9. Prosecution

9.1. When prosecution is considered, the case will be objectively and impartially judged on its merits. We will assess the circumstances and the evidence separately in relation to each potential defendant and each alleged offence, having due regard to mitigating factors and any evidence pointing towards a statutory (or other) defence.

9.2. If a prosecution is mounted, allegations will be selected which adequately reflect the seriousness of the offence and give the court adequate sentencing power, whilst not overburdening the administrative process or making the case unnecessarily complex.

9.3. If, during the course of the prosecution process, new information becomes available or the defendant’s circumstances alter, a re-assessment of the course of action will be made and, if necessary, a prosecution withdrawn or a different allegation put to the court.

9.4. The following are some specific criteria which will be taken into account whenever a prosecution is contemplated, to ensure that a prosecution is brought only where it is appropriate to do so and to ensure consistency in the decision making process:

- The seriousness of any alleged offence
- The value involved
- The age and vulnerability of consumers affected
- Age and health of the offender
- The business’s previous level of compliance with legal requirements, statutory codes and industry codes and principles of best practice
- Any statutory defence available
- Action taken to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business towards compliance and the investigators.
- What course of action will best serve the community interest
- 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, including potential harm and loss and its significance in making the decision to take formal action.

9.5. Prosecution will always be considered in cases which involve:

- Human safety, animal welfare or endangering the environment.
- Serious offences involving fraud, deceptive or misleading claims or actions
- Significant (actual or potential) financial impact.
- Evidence of ‘intent ‘guilty knowledge’, recklessness or negligence
- The offender having a previous similar conviction / caution.
- Previous widespread publicity raising awareness of the infringement.
- The deliberate targeting of vulnerable people.
- Other appropriate sanctions not being available.
- The offer of a caution has been rejected or a caution is unlikely to be heeded.
- Obstruction of an officer, giving false or misleading information or failing to provide reasonable assistance
- Where the community interest is detrimentally affected to a significant extent.

9.6. The decision to prosecute is taken by a senior manager:

- in accordance with all relevant statutory requirements and Codes, e.g. the Code for Crown Prosecutors
- in accordance with all other best practice guides, and
- without any unnecessary delay

9.7. If convicted details of the conviction will be recorded on the Office of Fair Trading Central Register of Convictions and we will notify other bodies as required.
10 Your Views on the Trading Standards Service

10.1 If you are unhappy with the service you have received, or we have failed to live up to our promises, managers are always willing to discuss with you the cause of your dissatisfaction, and will try to find a solution.

10.2 If you wish to make compliment us or comment about our service you can:
   - Contact the City Trading Standards Officer at the address above, or
   - Visit any of our Customer Service Centres or
   - Telephone 300300.

10.3 If you wish to make a complaint about our service you can contact us as above:
   - We will acknowledge your complaint, send you a leaflet explaining what will happen and will also give you the details of the person handling the complaint
   - The person handling your complaint will reply within 14 days.
   - They will write to you regularly to let you know the progress of the investigation into your complaint.
   - We will reply to all your complaints. We will call you back to see if you are satisfied with the outcome of your complaint within 14 days of our reply to your complaint.
   - If you are not satisfied with how we have dealt with your complaint, tell us and we may review your complaint or suggest you appeal to the Local Government Ombudsman.

10.4 For further information about when and how the Local Government Ombudsman may be able to help you, please either contact them by:

   Telephone: 0845 602 1983 or 024 7682 1960.
   Letter: Local Government Ombudsman
   Beverley House,
   17 Shipton Road,
   York
   YO30 5FZ