

Trading Standards Enforcement Policy



1.0 Purpose of the Enforcement Policy

- 1.1 The purpose of this enforcement policy is to promote an efficient and effective approach to enforcement that is always consistent, fair, transparent, accountable, proportionate and targeted. The aim is to improve compliance with legislation whilst minimising the burden on businesses, individuals and organisations. This is in accordance with the statutory Regulators' Compliance Code "the Code", issued by the Minister of State under section 22(1) of the Legislative and Regulatory Reform Act 2006 and includes the principles contained within the Enforcement Concordat.
- 1.2 In some circumstances we may decide to depart from the Code if we conclude that it is not relevant or it is outweighed by any other relevant consideration. Any decision to depart from the Code will be properly reasoned and based on evidence.
- 1.3 This enforcement policy applies to Cumbria County Council Trading Standards Service. The role of Trading Standards is to protect consumers and legitimate businesses from unfair, illegal and deceptive trading practices. Trading Standards have responsibility for the enforcement of a wide range of consumer protection legislation controlling the advertising, marketing, distribution and supply of goods and services throughout the manufacturing, importation, distribution and service delivery chain.

2.0 Supporting Local Economy and Reducing Burden

- 2.1 Trading Standards recognise that a key element of our activity will be to allow and encourage economic progress and will only intervene when there is a clear case for protection. We will work closely with businesses, individuals and voluntary organisations to help them comply with the relevant legislation. Trading Standards will provide advice and support to local businesses to help them thrive in a fair and equitable trading environment.
- 2.2 We will work in partnership with other enforcement agencies and where possible we will coordinate our activities with those agencies to minimise regulatory burdens and to work more efficiently. We will share data and intelligence with other agencies where it is lawful to do so.

3.0 Standards and Principles

- 3.1 We will ensure that enforcement action is proportionate to the risks involved and sanctions are meaningful.
- 3.2 Whilst we will exercise discretion in individual cases, we will aim to ensure that enforcement is applied consistently and fairly. This means we will adopt a similar approach in similar circumstances to achieve similar outcomes.

- 3.3 We will be accountable for the effectiveness of our enforcement activities.
- 3.4 We will direct our regulatory effort effectively using intelligence and relevant risk assessment schemes. We will target those who persistently or deliberately break the law.
- 3.5 We are committed to the open provision of information and advice in a format that is accessible and easily understood.

4.0 Enforcement Action

- 4.1 In deciding whether to initiate enforcement action, we will have regard to national guidelines and criteria set out in the Code for Crown Prosecutors, Hampton Principles and the Code. Enforcement action will be more, rather than less, likely, where:
- The action can be expected to act as a deterrent
 - The defendant has previous convictions for similar offences or is continuing to offend
 - Advice, warnings, simple cautions or other enforcement actions have been ignored
 - The alleged offence (s) constitute negligence, recklessness, fraud, dishonesty or disregard for the law
 - The alleged offence creates a risk to public safety and/or animal welfare
 - A conviction is a pre-requisite to other enforcement action such as an order banning a person from having charge of animals

5.0 Sanctions and Penalties

- 5.1 Our sanctions and penalties will:
- aim to change the behaviour of the offender
 - aim to eliminate financial gain or benefit of non-compliance
 - aim to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
 - aim for the action to be proportionate to the nature of the offence and the harm/potential harm caused
 - aim to restore the harm caused by regulatory non-compliance, where appropriate
 - aim to deter future non-compliance
- 5.2 Sanctions and penalties open to the Service include:
- Advice** - Where the infringement is minor or of a technical nature and the detrimental impact is very low, and is unlikely to be repeated, advice will be provided to the business.

Written Warnings - Where an offence has been committed but is not thought appropriate to take more formal action, in which case a suggested corrective action and a timescale will be given.

Seizure - Certain legislation allows for the seizure of goods, equipment and documents that may

be required as evidence. On some occasions we may ask a person to voluntarily surrender the goods.

Statutory Notices - Use of legal notices in accordance with relevant legislation which require offenders to take specific action or cease certain activities. Examples include improvement notices, prohibition notices and suspension notices.

Forfeiture - Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

Undertakings and Injunctive action - Where a business fails or appears unlikely to comply with an obligation under law, an undertaking or injunction may be sought. Injunctions are used to deal with repeat offenders, dangerous circumstances or significant consumer detriment.

Review of Licences – To carry on certain activities a business may require a licence. The department is able to make representations concerning the fitness of the licence holder which can result in a licence being refused, revoked, suspended or issued with conditions.

Fixed Penalty Notices - Some legislation allows for Fixed Penalty Notices (FPN) to be issued as a means of ensuring compliance. It is the offender’s opportunity to avoid a conviction. Non payment of a penalty notice is generally not an offence in its own right and should a recipient not pay the penalty offered, prosecution will be necessary for the actual offence.

Simple Caution - A formal or ‘Simple’ caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. A record of the caution will be recorded on the national sanctions database and will be passed to any other bodies that are required to be notified. Cautions are issued following Home Office guidance.

Prosecution – We will carefully consider all the evidence and have regard for national policies and the public interest test before deciding whether to initiate a prosecution.

A prosecution is more likely when:

- The offence is serious or where there is harm arising from the breach (including financial harm)
- The victim is vulnerable or there is considerable consumer detriment
- Others may be deterred from offending
- The defendant has previous convictions or has not complied with previous advice

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.

Proceeds of Crime Actions – Where appropriate, an application may be made under the Proceeds of Crime Act for confiscation of assets to recover the financial benefit the offender has obtained from a criminal conduct. Proceedings are carried out in accordance with the civil standard of proof and applications are made after a conviction has been secured but before the offender has been sentenced.

Publicity - Where individuals or businesses have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of trade practices. We may also publish the results of court proceedings and certain undertakings.

6.0 Compliments, Comments and Complaints

6.1 Cumbria County Council is committed to providing high quality services. Your feedback is essential to this and we welcome all compliments, comments and complaints. These help us to review and improve our services so we can provide the best possible services for our customers.

To contact us:

- Call in to one of our council offices where a member of staff will be happy to help you
- Visit our website www.cumbria.gov.uk
- Tel: **0800 121 8800**
Email: complaints@cumbria.gov.uk

7.0 Review of the Enforcement Policy

7.1 This policy will be regularly reviewed and updated in response to changes in legislation or changes in Service delivery.

7.2 For further information about this policy please contact:

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Kendal
LA9 4RQ
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