

Cabinet
22nd November 2012
Trading Standards Service Enforcement Policy
and Civil Law Advice Policy

Recommendation

It is recommended that Cabinet endorse the reviewed and revised Enforcement Policy and Civil Law Advice Policy

1.0 Introduction

- 1.1 The Enforcement Policy is reviewed annually or when there is significant change in the legislative landscape, to ensure that it accurately reflects a robust and fair decision making policy in relation to regulatory non-compliance and to ensure that it is in line with national, regional and local priorities.
- 1.2 The Civil Law Advice Policy is reviewed annually or when there is significant change in the consumer landscape, to ensure it accurately describes the process in place for dealing with customer demand.

2.0 Changes to the Enforcement Policy

- 2.1 It is simplified to improve its relevance and to make it easier to apply
- 2.2 It incorporates the updated Code for Crown Prosecutors, February 2010
- 2.3 Statutory Notices, Penalty Charge Notices and Forfeitures have been added to the list of enforcement options now available to ensure compliance

2.4 It includes an updated reference to requirements in relation to businesses which have registered a Primary Authority Partnership with a local authority outside Warwickshire under the Regulatory Enforcement and Sanctions Act 2008

2.5 The principles of the Enforcement Policy remain unchanged and are as follows:

2.6 The Enforcement Policy continues to be based on the five principles of good regulation: consistency, accountability, proportionality, transparency, targeting.

2.7 Decisions on what level of enforcement action is appropriate continue to be based on the below although each case is considered on its own merits.

2.8 The presence of any of the following factors is likely increase the severity of enforcement action taken:

- Deliberate, pre-meditated or fraudulent acts for gain, including those calculated to provide a commercial advantage
- Negligence or carelessness that caused, or has the potential to cause, significant and/or widespread detriment to others
- Persistent breaches, particularly where previous advice or enforcement actions have been disregarded
- Breaches that caused, or have the potential to cause, physical harm or suffering to people, animals or the environment
- Practices targeted at, or significantly affecting, vulnerable individuals/ groups such as children, the disabled or elderly
- Offences that are likely to be repeated

2.9 The following factors may reduce the severity of enforcement action taken:

- The offence was the result of a genuine mistake or misunderstanding, or occurred due to factors outside the trader's control

- Previous advice has been sought and acted upon (including advice given by others)
- Prompt action is taken to ensure compliance with the law in future
- Prompt action is taken to remedy any problems experienced by consumers, for example by carrying out remedial work or offering compensation

2.10 When considering sanctions or penalties available for non-compliance our aims are:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- to be proportionate to the nature of the offence and the harm caused
- to restore the harm caused by regulatory non-compliance, where appropriate
- to deter future non-compliance.

3.0 Changes to the Civil Law Advice Policy

3.1 The Civil Law Advice Policy has been renamed. 'Civil Law Advice' replaces the previous title of 'Consumer Advice'. This is to reflect the fact that sometimes businesses act as consumers.

3.2 The Civil Law Advice Policy has been simplified to improve its relevance and to make it easier to apply

3.3 The principles of the Civil Law Advice Policy remain unchanged and are as follows:

3.4 The Trading Standards Service provides an advice service on civil law issues to anyone based in Warwickshire. Assistance can be in the form of advice, guidance, support and/or signposting to other sources of help.

3.5 'First stage advice' is verbal advice explaining the caller's legal rights and providing practical guidance as to how they can go about resolving a civil law issue for themselves

3.6 'Second Stage Advice and Assistance' is verbal advice, negotiation, letter writing, drafting documents for the small claims Court, or any other assistance reasonably necessary to help resolve a civil law issue

3.7 Requests for civil advice or assistance received by telephone or email will be directed to the Citizens Advice (CA) national consumer helpline 08454 04 05 06. CA deal with requests from consumers and businesses. CA operate a Trading Standards referral process where there may be criminal breaches or other matters of concern.

3.8 Requests for civil advice received by letter or from anyone calling in to the office in person will be allocated to an officer within the Trading Standards Service for first stage advice

3.9 The Trading Standards Service will provide second stage advice and assistance to consumers or businesses who are most vulnerable at the time they contact us for help

3.10 There may be circumstances when the Trading Standards Service may not be able to advise or assist, for instance when there are insufficient resources available to provide the level of support required or where the relevant law falls outside the scope of Trading Standards.

4.0 Proposal

- 4.1 Endorse the reviewed and amended Enforcement Policy and Civil Law Advice Policy

5.0 Timescales associated with the decision/Next steps

- 5.1 No timescale restrictions. If endorsed, publish Enforcement Policy and Civil Law Advice Policy.

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Enforcement Policy

1. Introduction

This document provides guidance as to what businesses and other regulated entities can expect from Warwickshire County Council's Trading Standards Service.

The Legislative and Regulatory Reform Act 2006 requires regulators to have regard to the Principles of Good Regulation, namely that our regulatory functions should be carried out in a way that is transparent, accountable, proportionate, consistent and targeted to situations which need action. We fully support these principles.

The primary function of the Trading Standards Service is to create a fair and safe trading environment; both in order to encourage the economic progress of legitimate businesses and to protect consumers.

We believe that prevention is better than cure and that our role involves actively working with business to advise on and assist with compliance. We will nevertheless take firm action against negligent, persistent or deliberate non-compliance.

We use an intelligence-led approach to target our limited resources to the areas that most require our attention. Enforcement actions are prioritised in accordance with the criteria listed in section 4.

This Policy has been prepared having regard to:

Regulators' Compliance Code: Statutory Code for Regulators (Dec 2007)

Enforcement Concordat (Mar 1998)

Code for Crown Prosecutors (Feb 2010)

Regulatory Enforcement & Sanctions Act 2008

Human Rights Act 1998

2. General Principles

The Trading Standards Service provides general information, advice and guidance to make it easier for businesses to understand and meet their regulatory obligations. We will carefully consider the impact of any regulatory intervention to ensure that our action is proportionate.

Before formal enforcement action is taken we will provide an opportunity to discuss the circumstances of the case and take these into account when deciding on the best approach. However this will not apply where immediate action is required to prevent or respond to a serious breach or where to do so is likely to defeat the purpose of the proposed enforcement action. Where the Trading Standards Service is conducting an investigation into possible criminal offences, any discussion of the case may need to be by way of formal interview in accordance with the Police and Criminal Evidence Act 1984.

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, and its significance, in making the decision to take formal action. This may include the actual harm or loss or the impact on the well being of the individual or potential or actual harm to the environment.

In considering enforcement action against businesses based outside Warwickshire that have registered a Primary Authority Partnership with another local authority we will, in accordance with the requirements of the Regulatory Enforcement & Sanctions Act 2008, notify the Primary Authority of the action we propose to take.

The criteria applied in enforcement decisions will be fair, independent and objective. They will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the offender, victim or any witness. Such decisions will not be affected by improper or undue pressure from any source.

Officers taking enforcement decisions will use this Policy as a guide, but every case must be decided on its own facts.

3. Overview of the Enforcement Actions Available

When considering sanctions or penalties available for non-compliance our aim(s) are:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction
- to be proportionate to the nature of the offence and the harm caused
- to restore the harm caused by regulatory non-compliance, where appropriate
- to deter future non-compliance.

A variety of enforcement options are available to help us secure compliance, from advice through to proceedings in Court. Examples of the main types of action that may be considered are summarised below.

Informal action and advice

Advice and assistance may be provided, either as a one-off or over a period of time, in order to bring businesses to compliance. Our advice will distinguish between legal requirements and things that we simply recommend as best practice.

Refusal, review or revocation of licences

Licences are often granted by the local authority subject to certain conditions. For example petrol filling stations are licensed to store petroleum provided appropriate safety measures are put in place; off-licence shops are licensed to sell alcohol subject to proper controls to prevent sales to underage children. Where the conditions have not been complied with we may take action to review whether the terms of the licence should be changed, or in serious cases, whether the licence should be refused or revoked.

Injunctive actions & other civil actions

We can take action under the Enterprise Act 2002 against traders whose breaches of the law harm the collective interests of consumers.

Action can range from Undertakings through to Court Orders requiring the trader to stop breaking the law. Failure to comply with a Court Order will lead to further legal proceedings being brought for Contempt of Court, which can lead to a fine or imprisonment. It is our policy to publicise Undertakings and Court Orders to help us ensure that their terms are being complied with.

Anti Social Behaviour Orders and Criminal Anti Social Behaviour Orders prohibit certain types of conduct which may not necessarily amount to criminal conduct. For example a rogue trader may be ordered not to cold-call at consumers' homes. Breach of this type of prohibition is a criminal offence, which can result in a fine or imprisonment.

Statutory Notices

This service may serve under certain legislation, statutory notices; these will require the receiver to undertake specific actions. A notice could be served after a non-compliance has been identified that requires immediate action to rectify it. For example, require a farmer that has moved animals whilst under a legal standstill restriction to comply with the restriction; or require a business to recall a dangerous product they have distributed.

Fixed penalty notices & penalty charge notices

These are notices that apply a fixed penalty for specific offences, such as selling alcohol to a child. If an offender refuses to accept or pay this type of penalty we will consider other enforcement options.

Prosecution

Prosecution may have serious consequences for a business or individual; a criminal record, adverse publicity, an adverse effect on a business's trading position and in some cases even loss of liberty.

In deciding whether or not to prosecute we apply the two-stage test laid down in the Code for Crown Prosecutors:

- i. Is there enough evidence against the defendant? We must consider that the evidence is reliable and that it can be used in Court.
- ii. Is it in the public interest for us to bring the case to Court? We consider a number of factors to help us conclude whether or not the serious consequences of prosecution are in the public interest – these are listed in the next section.

Simple caution

In some circumstances a Simple Caution may be offered as an alternative to prosecution. There must be sufficient evidence to prove the alleged offence and we must be satisfied that it is in the public interest to proceed with the case. The issue of a Simple Caution is subject to the offender's admission of the offence. Where there is no admission of the offence the option to prosecute remains.

A simple caution is an admission of guilt, and will be stored on the Office of Fair Trading's Central Register of Convictions (CRC). It may influence how that person/business is dealt with, should they come to the attention of the Trading Standards Service again. It may also be cited in court in any subsequent proceedings.

Forfeiture

This procedure allows us to ask the Court to allow us to dispose of goods seized as evidence during the course of an investigation. For example, we may request forfeiture of counterfeit goods to prevent them re-entering the market place.

Proceeds of Crime

Following a criminal conviction we may apply for an order under the Proceeds of Crime Act 2002. This allows the benefits of an offender's wrongdoing to be confiscated in cases where it can be shown that the offender has profited from his/her crime.

4. Deciding what Level of Action is Appropriate

Each case will be considered on its own merits.

The presence of any of the following factors is likely increase the severity of enforcement action taken:

- Deliberate, pre-meditated or fraudulent acts for gain, including those calculated to provide a commercial advantage
- Negligence or carelessness that caused, or has the potential to cause, significant and/or widespread detriment to others
- Persistent breaches, particularly where previous advice or enforcement actions have been disregarded
- Breaches that caused, or have the potential to cause, physical harm or suffering to people, animals or the environment
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The following factors may reduce the severity of enforcement action taken:

- The offence was the result of a genuine mistake or misunderstanding, or occurred due to factors outside the trader's control
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- Prompt action is taken to ensure compliance with the law in future
- Prompt action is taken to remedy any problems experienced by consumers, for example by carrying out remedial work or offering compensation

5. How to Comment or Complain

We welcome comments, compliments and complaints about our services as they are seen as an opportunity to develop and improve the way we work.

If you would like to make a comment, compliment or complaint, please contact us using one of the following methods:

Tel: 01926 414040

Fax: 01926 414014

Email: tradingstandards@warwickshire.gov.uk

Or write to us at:

Trading Standards Service
Old Budbrooke Road
Warwick
CV25 7DP

An Equality Impact Assessment was undertaken on this Enforcement Policy on 30 October 2012 and a review will take place in October 2013.

Civil Law Advice Policy

Scope

The Trading Standards Service provides an advice service on civil law issues to those based in Warwickshire. Assistance can be in the form of advice, guidance, support and/or signposting to other sources of help.

Definitions

“First Stage Advice”	Verbal advice explaining the caller’s legal rights and providing practical guidance as to how they can go about resolving a civil law issue for themselves
“Second Stage Advice & Assistance”	Verbal advice, negotiation, help with letter writing and help with drafting documents

Policy

1. First Stage Advice

Requests for advice and assistance are received by telephone, email, letter or personal visit.

Requests for civil advice or assistance received by telephone or email will be directed to the Citizens Advice consumer helpline, *08454 04 05 06*, or to the Citizens Advice website, *www.adviceguide.gov.uk*. Citizens Advice will provide first stage advice to both consumers and businesses on civil law issues.

Requests for civil advice received by letter or from anyone calling in to the office in person will be allocated to an officer within the Trading Standards Service for first stage advice.

2. Second Stage Advice & Assistance

The Trading Standards Service will provide second stage advice and assistance to consumers who are most vulnerable at the time they contact us for help.

The assessment of the consumer’s vulnerability will be based on the following factors:

- the consumer’s ability to understand advice given and to take necessary remedial action themselves
- the use of oppressive or otherwise unacceptable trading practices likely to result in severe harm or detriment to consumers
- the impact of the harm or detriment in fact caused, taking into account the consumer’s own personal circumstances

- previous history indicating that a detrimental outcome is likely from the trader concerned

Issues relevant to the consumer's ability to help themselves may include:

- age, gender, race or illness
- economic deprivation or social exclusion
- disability, whether physical or mental, including mobility
- lack of basic skills such as numeracy, literacy or fluency in English language

Elements that may be relevant to the severity of harm or detriment include:

- value of the transaction & financial status of the consumer
- effects on the consumer's private/family life
- emotional effects such as fear, anxiety or social stigma

Considerations that may be relevant to previous trading history include:

- history of non-compliance
- aggressive behaviour
- persistent nuisance, harassment or victimisation
- otherwise inappropriate conduct towards consumers or Trading Standards Officers

3. Limitations

There may be circumstances under which the Trading Standards Service may not be able to advise or assist. In such cases we will signpost the caller to another agency.

Examples include:

- When there are insufficient resources available to provide the level of support required
- In areas of law which fall outside the scope or professional expertise of the Trading Standards Service, including:
 - claims above the financial limit of a small claim in the County Court
 - claims that do not relate to monetary losses, such as claims for personal injury, mental distress, loss of enjoyment
 - complex claims, such as professional negligence
- Where a solicitor or other agency is better placed to advise the caller about the same matter or signposting to another agency would be more appropriate.

An Equality Impact Assessment has been undertaken on this Civil Law Advice Policy.