

Notice of Meeting

Buckinghamshire County Council and Surrey County Council Joint Trading Standards Service Committee

**Date & time**

Wednesday, 1 April
2015 at 2.30 pm

Place

Council Chamber,
Mole Valley District
Council (MVDC),
Pippbrook, Dorking,
Surrey, RH4 1SJ

Contact

Vicky Hibbert
Room 122, County Hall
Tel 020 8541 9229

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This meeting will be held in public. If you would like to attend and you have any special requirements, please contact Vicky Hibbert on 020 8541 9229.

Members of the Committee

Mrs Helyn Clack (Surrey County Council) and Councillor Martin Phillips (Buckinghamshire County Council)

Advisory Members:

Mrs Kay Hammond (Surrey County Council) and Councillor Margaret Aston (Buckinghamshire County Council)

AGENDA

1 APOLOGIES FOR ABSENCE

2 DECLARATIONS OF INTEREST

To receive any declarations of disclosable pecuniary interests from Members in respect of any item to be considered at the meeting.

3 PROCEDURAL ITEMS

3a Members' Questions

The deadline for Member's questions is 12pm four working days before the meeting (26 March 2015).

3b Public Questions

The deadline for public questions is seven days before the meeting (25 March 2015).

4 PETITIONS

The deadline for petitions was 14 days before the meeting, and no petitions have been received.

5 TERMS OF REFERENCE AND SCHEME OF DELEGATION FOR OFFICERS

(Pages 1
- 10)

Surrey County Council and Buckinghamshire County Council have established a Joint Committee to take responsibility for executive Trading Standards functions of both authorities. The Joint Committee takes effect from 1 April 2015. It will be necessary to ensure that the Joint Committee acts within its agreed terms of reference and that powers that are exercised by officers are properly delegated to them. Prior to the formation of the Joint Committee this was done by the respective local authorities.

This report enables the Joint Committee to agree the draft terms of reference and relevant scheme of delegation that will be needed as a result of the new joint arrangements.

6 A NEW JOINT TRADING STANDARDS SERVICE - PRIORITIES AND PERFORMANCE MEASURES

(Pages
11 - 16)

Surrey and Buckinghamshire County Councils have decided to build on the success of their Trading Standards teams to create a new joint Trading Standards Service.

This report summarises the rationale for this new approach and outlines the benefits for residents and businesses in both counties.

The Joint Committee has a responsibility to provide strategic leadership and direction, effective governance and oversight of the joint service. In doing so it needs to consider and agree the performance measures for the joint service for the year ahead.

7 ENFORCEMENT POLICY AND SERVICE CRITERIA - UPDATED FRAMEWORK

(Pages
17 - 40)

The Trading Standards Joint Committee is asked to endorse an updated Enforcement Policy and Service Criteria for use by the Buckinghamshire and Surrey Trading Standards Service (the Trading Standards Service).

The proposed policy and criteria provides an updated framework to ensure that the Trading Standards Service promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary regulatory burdens.

8 DATE OF NEXT MEETING

The next meeting of this committee will take place on 7 October 2015.

David McNulty
Chief Executive

Published: 24 March 2015

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**BUCKINGHAMSHIRE COUNTY COUNCIL AND
SURREY COUNTY COUNCIL**

JOINT TRADING STANDARDS SERVICE COMMITTEE

DATE: 1 APRIL 2015

**LEAD OFFICER: STEVE RUDDY
HEAD OF TRADING STANDARDS**

**SUBJECT: TERMS OF REFERENCE AND SCHEME OF DELEGATION FOR
OFFICERS**



SUMMARY OF ISSUE:

Surrey County Council and Buckinghamshire County Council have established a Joint Committee to take responsibility for executive Trading Standards functions of both authorities. The Joint Committee takes effect from 1 April 2015. It will be necessary to ensure that the Joint Committee acts within its agreed terms of reference and that powers that are exercised by officers are properly delegated to them. Prior to the formation of the Joint Committee this was done by the respective local authorities. This report enables the Joint Committee to agree the draft terms of reference and relevant scheme of delegation that will be needed as a result of the new joint arrangements.

RECOMMENDATIONS:

It is recommended that:

1. The Scheme of Delegation attached as Annex 1 is approved by the Joint Committee
2. The draft Terms of Reference attached as Annex 2 are approved by the Joint Committee

REASON FOR RECOMMENDATIONS:

As a result of the new joint arrangements between Surrey County Council and Buckinghamshire County Council for the discharge of their executive trading standards functions through the Joint Committee, it is necessary to establish Terms of Reference for the Committee and a scheme of delegation authorising officers to exercise specific powers.

DETAILS:

1. Surrey County Council and Buckinghamshire County Council have agreed to establish joint arrangements for the provision of their executive Trading Standards functions, and have set up this Joint Committee for that purpose. Relevant decisions were made by Surrey's Cabinet on 21 October 2014 and Buckinghamshire's Cabinet on 20 October 2014.

2. Terms of Reference for the Joint Committee have been drafted to set out the remit that it will cover and this is attached as Annex 2 for approval.
3. Previously, both local authorities operated their own schemes of delegation for officers to carry out various responsibilities relating to these functions. Given that these functions are to be discharged by the new Committee from 1 April 2015 it is necessary for the Joint Committee to determine the extent to which any responsibilities should be exercised by officers. Following the establishment of these arrangements, all officers dealing with Trading Standards functions across the two Councils will be employed by Surrey County Council, but will be carrying out responsibilities relating to both Councils. The Scheme therefore delegates functions to Surrey County Council staff.
4. The attached Scheme of Delegation is based on the Scheme previously maintained by Surrey County Council and which has applied to its staff prior to 1 April 2015. It is also generally consistent with the approach adopted by Buckinghamshire County Council until 1 April 2015. It is updated to reflect new joint service structure.
5. It sets out a general delegation for the Strategic Director for Customers and Communities and the Head of Trading Standards (previously the Surrey County Council Community Protection Manager) to exercise the executive trading standards functions unless covered by the specific limitations detailed in part 3. It also then sets out details of specific delegations that apply to other officers, providing clarity of the level at which various decisions can be made.
6. Any subsequent amendments to the terms of reference and scheme of delegation will need to be determined by the Joint Committee.

CONSULTATION:

7. The new joint arrangements have been the subject of extensive consultation with relevant officers and members in both local authorities, The consultation has been overseen by the Joint Project Board including: Phil Dart, Service Director, Buckinghamshire; Yvonne Rees, Strategic Director, Surrey; Helyn Clack, Cabinet Member, Surrey; and Martin Phillips, Cabinet Member, Buckinghamshire.

RISK MANAGEMENT AND IMPLICATIONS:

8. These decisions are necessary to ensure that there is continuity of authority for officers to make decisions in relation to trading standards functions. Without this there would be a risk of challenge as a result of a lack of proper authority.

Financial and Value for Money Implications

9. There are no financial implications arising from this decision.

Legal Implications

10. This Joint Committee has been established by section 101(5) of the Local Government Act 1972- taken together with section 9EB of the Local Government Act 2000 and the relevant regulations. Section 101(5) and (2) of

the 1972 Act additionally makes provision for such a joint committee to arrange for the discharge of its functions by officers. By putting in place an appropriate scheme of delegation officers will be given the necessary powers to discharge the various regulatory functions entrusted to the Joint Committee.

Equalities and Diversity

11. There are no equalities implications arising from this decision.

WHAT HAPPENS NEXT:

- The scheme of delegation for officers will have immediate effect and will be communicated to officers in the shared trading standards service.
- Arrangements will be made for any necessary changes to each Council's Constitution as a result of this decision.

Contact Officer:

Steve Ruddy, Head of Trading Standards

Consulted:

Allan Wells – Lead Manager Legal Services, Surrey County Council

Linda Forsythe – Deputy Head of Legal Services, Buckinghamshire County Council

Annexes:

Annex 1: Scheme of Delegation of Officers

Annex 2: Terms of Reference for the Joint Committee

Sources/background papers:

None

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Buckinghamshire and Surrey Trading Standards Scheme of Delegation

This scheme of delegation (“the Scheme”) relates to the arrangements made by Surrey County Council (“Surrey”) and Buckinghamshire County Council (“Buckinghamshire”) to discharge their executive Trading Standards functions jointly through a joint committee as agreed by Surrey County Council Cabinet on 21 October 2014 and by Buckinghamshire County Council Cabinet 20 October 2014.

The Scheme is established by the Buckinghamshire and Surrey Trading Standards Joint Committee (“the Joint Committee”) in accordance with section 101(5) and 101(2) Local Government Act 1972, Section 9EB Local Government Act 2000 and Regulation 9 Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012. The officers identified in the Scheme are employed by Surrey County Council.

Part 1 General Delegation

- 1.1 The Joint Committee delegates to the Strategic Director for Customers and Communities and the Head of Trading Standards (or any successor post holder subsequent to any reorganisation) Surrey and Buckinghamshire’s executive trading standards functions and authorises them, subject to the limitations and reservations set out in Part 3 of the Scheme to exercise these functions
- 1.2 Where any of these officers is absent for any period Surrey’s Chief Executive or Strategic Director, may nominate in writing another officer to act in his or her place during any such absence and shall make a record of all such nominations.
- 1.3 The officers referred to in 1.1 above may also exercise all the specific delegations identified in Part 2 of the Scheme
- 1.4 Where any officer listed in Part 2 is absent for any period any of the officers referred to in 1.1 above may nominate in writing another officer to act in his or her place and shall make a record of all such nominations.

Part 2 Specific delegations

The specific executive functions of Surrey and Buckinghamshire (“the Councils”) set out in column 3 below are delegated to the corresponding officers listed in column 2 subject to the limitations and reservations set out in Part 3.

No	TITLE OF POSTHOLDER	FUNCTIONS DELEGATED
TS1	Strategic Director for Customers and Communities	To make appointments of Chief Inspectors of Weights and Measures
TS2	Head of Trading Standards	To exercise all the executive powers and functions of Page 5

No	TITLE OF POSTHOLDER	FUNCTIONS DELEGATED
	Assistant Head of Trading Standards Policy and Operations Manager Legal and Governance Manager Investigations and Enforcement Manager Business Development Manager Public Health and Compliance Manager Intelligence and Prioritisation Manager	the Councils relating to Trading Standards, weights and measures, consumer protection, public safety and other related legislation including powers of enforcement, issuing suspension notices, fixed penalty notices, penalty charge notices, penalty notices for disorder, licensing and registration, prosecution and civil action
TS3	Head of Trading Standards Assistant Head of Trading Standards Policy and Operations Manager	To appoint inspectors, enforcement, sampling and other officers
TS4	Head of Trading Standards Assistant Head of Trading Standards Policy and Operations Manager Investigations and Enforcement Manager Business Development Manager Legal and Governance Manager Public Health and Compliance Manager	A. To institute and/or appear on behalf of the County Council in any proceedings relating to trading standards, weights and measures, consumer protection, public safety and other related legislation before any Court or Tribunal. B. To initiate restraint and/or confiscation proceedings under the Proceeds of Crime Act 2002 in the Crown Court C. (Head of Trading Standards only) To authorise trading standards officers to appear in any proceedings relating to trading standards, weights and measures, consumer protection, public safety and other related legislation before any Court of summary jurisdiction or in the County Court

No	TITLE OF POSTHOLDER	FUNCTIONS DELEGATED
	Intelligence and Prioritisation Manager Senior Legal Officer	
TS5	Head of Trading Standards Assistant Head of Trading Standards Policy and Operations Manager Investigations and Enforcement Manager Business Development Manager Legal and Governance Manager Public Health and Compliance Manager Intelligence and Prioritisation Manager	Signing any document authorised or required to be given, made or issued in accordance with section 49(3) Food Safety Act 1990.

Part 3 Reservations and limitations

3.1 The exercise of functions delegated to officers under the Scheme must comply with: -

- 3.1.1 any legal requirements or restrictions;
- 3.1.2 the Councils' Constitutions and the governance arrangements of the Joint Committee;
- 3.1.3 the inter-agency agreement between Surrey and Buckinghamshire relating to the joint arrangements for their trading standards functions;
- 3.1.4 the Councils' policy framework and any other relevant plans and strategies approved by the Councils or the Joint Committee;
- 3.1.5 the in-year budget;

- 3.1.6 Surrey's Human Resources (HR) policies and procedures including those relating to employment and any other relevant corporate Codes of either Council;
 - 3.1.8 the Code of Recommended Practice on Local Authority Publicity;
 - 3.1.9 the statutory Best Value requirements;
 - 3.1.10 relevant Procurement Standing Orders, Financial Regulations and Financial Instructions;
- 3.2 Officers in the exercise of functions delegated by the Scheme may not:
- 3.2.1 make "key decisions" as defined in each Council's Constitution
 - 3.2.2 change or contravene relevant policies or strategies approved by the Joint Committee or by either Council or Cabinet
 - 3.2.3 create or approve new policies and strategies;
 - 3.2.4 take decisions to withdraw public services;
 - 3.2.5 take decisions to significantly modify public services without consultation with the Joint Committee members before exercising the delegated power;
 - 3.2.6 take decisions on significant new powers or duties arising from new legislation before the new powers or duties have been reported to the Joint Committee, (except in cases of urgency and in consultation with the Joint Committee members if reasonably practicable);
 - 3.2.7 provide formal responses to any Government White Paper or Green Paper or other consultation likely to lead to policy changes or have significant impact upon services (except in cases of urgency and in consultation with the Joint Committee members if reasonably practicable);
- 3.3 Consultation with Joint Committee members
- 3.3.1 Where an officer takes a decision under delegated authority on a matter which has significant policy, service or operational implications or is known to be politically sensitive, the officer shall first consult with the Joint Committee members before exercising the delegated powers.
 - 3.3.2 An officer may at his/her discretion consult Joint Committee members before exercising delegated powers, or may decide not to exercise delegated powers but refer the matter to the Joint Committee for a decision.
 - 3.3.3 In exercising delegated powers, officers will keep local members informed of matters affecting their divisions in accordance with any relevant protocols.

**BUCKINGHAMSHIRE COUNTY COUNCIL AND SURREY COUNTY COUNCIL
JOINT TRADING STANDARDS SERVICE COMMITTEE**

Membership

1 county councillor from each authority, who must be a Cabinet Member. In addition each authority can appoint 1 county councillor to undertake a non-voting advisory role.

Terms of reference

The Joint Trading Standards Service Committee will:

- (a) to provide strategic leadership and direction, effective governance and oversight of the joint service.
- (b) oversee working arrangements of the joint service.
- (c) promote good joint working practice.
- (d) approve budget variations.
- (e) approve performance measures.
- (f) approve the enforcement policy.
- (g) approve the investigations criteria.
- (h) approve revisions to the Terms of Reference for the Joint Committee.

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**BUCKINGHAMSHIRE COUNTY COUNCIL AND
SURREY COUNTY COUNCIL**

JOINT TRADING STANDARDS SERVICE COMMITTEE

DATE: 1 APRIL 2015

**LEAD OFFICER: STEVE RUDDY
HEAD OF TRADING STANDARDS**

**SUBJECT: A NEW JOINT TRADING STANDARDS SERVICE – PRIORITIES
AND PERFORMANCE MEASURES**



SUMMARY OF ISSUE:

Surrey and Buckinghamshire County Councils have decided to build on the success of their Trading Standards teams to create a new joint Trading Standards Service.

This report summarises the rationale for this new approach and outlines the benefits for residents and businesses in both counties.

The Joint Committee has a responsibility to provide strategic leadership and direction, effective governance and oversight of the joint service. In doing so it needs to consider and agree the performance measures for the joint service for the year ahead.

RECOMMENDATIONS:

It is recommended that:

1. The Joint Committee considers and notes the reasons for the creation of the shared service and the benefits that will be delivered by the new service.
2. The Joint Committee considers and endorses the new service priorities detailed in paragraph 8 and the new service performance measures set out in Annex 1.

REASON FOR RECOMMENDATIONS:

The new joint Trading Standards service has been created following the decisions of Buckinghamshire Cabinet on 20 October 2014 and Surrey Cabinet on 21 October 2014.

Both local authorities have set out the legal framework for the partnership in an Inter Authority Agreement (IAA). The IAA sets out the role of the Joint Committee which includes providing strategic direction for the service, setting performance measures, and reviewing the performance of the new service.

In fulfilling that role the Joint Committee will help ensure the success of the new joint service, and ensure that the identified benefits for residents and businesses are delivered.

DETAILS:

The new Joint Trading Standards Service

1. The two trading standards teams complement each other well and the new joint service builds on the existing service strengths.
2. Surrey has particular expertise in tackling doorstep crime, protecting vulnerable residents, providing a range of services for businesses and generating income. Buckinghamshire is noted for its food, product safety and animal health work, as well as its success in recruiting volunteers to be the eyes and ears of the service on the ground. The new joint service will provide residents will have greater protection from scams, rip-offs and rogue traders and enhance the services available to local businesses.
3. The new service will operate as a partnership between both local authorities. Service staff will all be employed by Surrey County Council but stay located in the current offices in Aylesbury and Redhill, and will continue to work closely with local partners.
4. The initial term for the partnership is 5 years but the expectation is that it will be a long term ongoing partnership.
5. The financial contributions to the Joint Service at the outset are shared 66% Surrey and 34% Buckinghamshire. This will be reviewed periodically by the Joint Committee and savings and increased income will be shared in the same 66/34 ratio, as will any future budget risks and variation.
6. The joint service will deliver the following benefits for residents and businesses:
 - Share expertise and provide greater resilience to cope with challenges, such as animal disease outbreaks, large scale investigations, complex frauds etc.
 - Reduce costs through operating jointly, sharing resources, including IT and databases, and specialist functions.
 - Eliminate duplication by doing things once rather than twice eg Enforcement Policies, Enforcement Concordat, RIPA, Funding Bids etc.
 - Build on the successes and innovation within the current services e.g. income generation from business services, “systems thinking”, volunteering, use of social media, and specialist investigative skills.
 - Enhance the national and regional profile and impact of the service. Increasing the influence we can have on policy making to ensure residents and local businesses are well represented
 - Increase income generation from specialist services for businesses and in securing additional external funding.

Joint Service Vision

7. In order to help deliver these benefits, the new service, in consultation with staff and Members has developed a new joint service **vision**:

“Buckinghamshire and Surrey Trading Standards working together to protect our communities, delivering excellent public services, locally trusted and nationally recognised.”

Joint Service Priorities

8. The service priorities have also been developed in consultation with staff and Members in both counties and are:

- **Protection – protecting individuals, communities and businesses from harm and financial loss.**
- **Economic Prosperity - Helping businesses to thrive and supporting growth**
- **Improving Health and Wellbeing**
- **Innovation**
- **Customer Focus / Resident Experience**

Joint Service Performance Measures

9. The performance measures to be used for 2015/16 have been developed from the measures used by the two services previously, and in consultation with staff and Members. They are aligned to the Corporate Priorities of both local authorities and support the themes of **Wellbeing, Economic Prosperity** and **Resident Experience**.
10. The performance measures are set out in Annex 1.
11. The Joint Committee is asked to consider the vision, the service priorities, and the new performance measures and to agree the recommendations set out above.

The Future

12. The joint service will create a strong foundation for future development and growth. This will come from developing our services for businesses, from delivering services on behalf of others, and from securing additional funding from other external sources.

CONSULTATION:

13. Staff and members from both local authorities have consulted on the development of the joint service, the vision, the service priorities and the performance measures. The consultation has been overseen by the Joint Project Board including: Phil Dart, Service Director, Buckinghamshire;

Yvonne Rees, Strategic Director, Surrey; Helyn Clack, Cabinet Member, Surrey; and Martin Phillips, Cabinet Member, Buckinghamshire.

RISK MANAGEMENT AND IMPLICATIONS:

14. The report sets out the priorities and performance measures for the new joint Trading Standards Service. There are no risk management implications.

Financial and Value for Money Implications

15. There are no financial implications arising from this decision.

Legal Implications

16. The Joint Committee is established to implement the Cabinet decisions of 20 and 21 October 2014 in Buckinghamshire and Surrey respectively. The Inter Authority Agreement agreed between the Councils sets out the legal framework for the joint service.
17. The Joint Committee has a remit to set strategic direction and to agree and monitor performance measures for the joint service and the proposed measures provide this direction for the delivery of its functions.

Equalities and Diversity

18. An equalities impact assessment has been undertaken for the creation of the shared service. That has been reviewed in the light of this report and remains valid. There are no equalities issues arising as a result of this report.

WHAT HAPPENS NEXT:

- The Joint Service will work to ensure that the anticipated benefits are realised in practice.
- The Joint service management team will consider performance monthly. The Joint Service Board will consider performance quarterly, and the Joint Committee will review performance twice each year.
- Scrutiny or Select Committees in Surrey and Buckinghamshire will also review the overall operation of the joint service.
- The creation of the new service is being communicated widely to partners, customers, residents and local businesses and a communications plan has been agreed with both the Surrey and Buckinghamshire Communications Teams.

Contact Officer:

Steve Ruddy, Head of Trading Standards, 01372371730

Consulted:

Allan Wells – Lead Manager Legal Services, Surrey County Council

Linda Forsythe – Deputy Head of Legal Services, Buckinghamshire County Council

Yvonne Rees – Strategic Director Customers and Communities, Surrey County Council

Phil Dart – Service Director, Buckinghamshire County Council

Helyn Clack – Cabinet Member for Communities, Surrey County Council
Martin Phillips – Cabinet Member, Community Engagement, Buckinghamshire
County Council.

Annexes:

Annex 1: Joint Service Performance Measures

Sources/background papers:

Buckinghamshire Cabinet Report – 20 October 2014

Surrey Cabinet Report – 21 October 2014

Joint Service Performance Measures

Protection - Protecting individuals, communities and businesses from harm and financial loss.

The joint service will provide **better protection** for residents from consumer scams, cons, and rogue traders.

Performance measures:

1. To increase the financial savings for residents as a result of our interventions and investigations.
2. To protect residents by stopping rogue traders operating in Buckinghamshire and Surrey.
3. Prevent residents becoming victims through expanding the use and reach of social media alerts, TSalert, Volunteers, and other preventative initiatives to raise awareness of scams, rogue traders and unsafe products.

Economic Prosperity - Helping business to thrive and supporting growth

The joint service will **improve business advice and support**, and as a result better protect residents.

Primary Authority and Assured Advice helps businesses, supports business growth, and helps protect residents by raising standards and improving compliance.

Trader approval schemes help promote good businesses and provide confidence for residents that they can avoid rogue traders.

Performance measures:

4. To increase the number of Primary Authority Partnerships
5. To increase membership of trader approval schemes

Improve Health and Wellbeing

The joint service will work with Public Health and others to tackle the problems caused by Tobacco, Alcohol, poor nutrition, and to protect vulnerable residents.

Performance measures:

6. Work with partners to tackle illegal sales of age restricted products; to explore new ways to reduce harm from the use and consumption of unsafe products; to tackle poor food quality and nutrition; and to protect vulnerable residents.

**BUCKINGHAMSHIRE COUNTY COUNCIL AND
SURREY COUNTY COUNCIL**

JOINT TRADING STANDARDS SERVICE COMMITTEE

DATE: 1 APRIL 2015

**LEAD OFFICER: STEVE RUDDY
HEAD OF TRADING STANDARDS**



**SUBJECT: ENFORCEMENT POLICY AND SERVICE CRITERIA – UPDATED
FRAMEWORK**

SUMMARY OF ISSUE:

The Trading Standards Joint Committee is asked to endorse an updated Enforcement Policy and Service Criteria for use by the Buckinghamshire and Surrey Trading Standards Service (the Trading Standards Service).

The proposed policy and criteria provides an updated framework to ensure that the Trading Standards Service promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary regulatory burdens.

RECOMMENDATIONS:

It is recommended that the Trading Standards Joint Committee endorses the updated Enforcement Policy and Service Criteria.

REASON FOR RECOMMENDATIONS

The introduction of a new Enforcement Policy and Service Criteria will provide an updated framework to ensure that the Trading Standards Service protects the residents and legitimate businesses of Buckinghamshire and Surrey and helps to promote and enable local and national economic growth.

DETAILS:

Background

1. From 1 April 2015 Buckinghamshire County Council and Surrey County Council will operate a joint trading standards service (the Trading Standards Service).
2. The Trading Standards Service recognises that the vast majority of businesses that operate within Buckinghamshire and Surrey are honest, legitimate enterprises. The Trading Standards Service will work with those businesses, helping and encouraging them to understand and comply with their regulatory obligations.
3. The Trading Standards Service aims to create an environment of confident consumers and trusted traders by providing advice and guidance to consumers and businesses. However there will be occasions when a range of different

actions may be necessary to deal with cases where trading standards laws have been breached by businesses or others.

4. The main purpose of the Trading Standards Service enforcement activity is to protect the public and legitimate businesses. The policy and criteria sets out how we will undertake to regulate businesses and others in a fair, practical and consistent manner.
5. Every year Buckinghamshire and Surrey County Council's trading standards service receives thousands of complaints and requests for assistance. Unfortunately, The Trading Standards Service are unable to investigate every individual complaint, nor respond to all requests for assistance.

Service Criteria

6. The Service Criteria explains how service demand is managed with individual contacts assessed and prioritised according to a range of factors. This ensures resources are targeted effectively and focuses activity on those traders who cause the greatest harm to consumers and legitimate businesses.
7. The Criteria also aims to manage expectations by explaining the process and circumstances whereby a complaint may not be investigated.

Enforcement Policy

8. The Enforcement Policy details the decision making process for applying appropriate and proportionate responses to cases where an issue is identified and investigated.
9. The policy details the range of sanctions available and how they will be applied taking into account the specifics of the circumstances and the associated risk.
10. It details the aggravating and mitigating factors to be considered when deciding upon appropriate and proportionate action.
11. Aggravating factors include impact of the crime, victim profile, criminal benefit, offender antecedents and prevalence of the offence.
12. Mitigating factors include degree of culpability, previous good character, willingness to compensate victims and actions likely to extenuate the gravity of the crime.
13. The range of disposal options available and in what circumstances they can be applied are also detailed. These range from written warnings and licence variations to injunctive relief and prosecution.
14. These available documents will inform the public as to what businesses and others being regulated can expect from their Trading Standards Service, together with the decision making process for how the service will apply the law in a proportionate and transparent manner and how this influences the choice of enforcement action.
15. Application of this policy and criteria will ensure resources are targeted effectively and focussed on those rogue elements causing the most severe detriment and economic harm.

16. The policy and criteria will be reviewed on an ongoing basis by the Trading Standards Service Legal Team and be submitted for approval to the Head of Trading Standards.
17. Where a significant amendment is necessary it will be referred to the Joint Committee for consideration and approval.

CONSULTATION:

18. Consumers, businesses and other stakeholders have been proactively encouraged to offer views and contribute to the development of this Policy and Criteria.
19. Consultation has been undertaken with both Buckinghamshire and Surrey County Council Legal Officers and their observations/amendments implemented Legal Services, Buckinghamshire County Council.

RISK MANAGEMENT AND IMPLICATIONS:

20. The adoption of this Enforcement Policy and Service Criteria will manage expectations of businesses and consumers who contact the Trading Standards Service. It will reduce the risk of any action relating to allegations of inappropriate or disproportionate enforcement action or alternatively allegations of deliberate inaction.
21. The policy and criteria sets a framework for fair, consistent and transparent decision making when considering enforcement action and disposal.
22. The policy and criteria will demonstrate our compliance with statutory guidance and relevant operating models such as those relating to intelligence handling and data sharing.
23. The policy and criteria will be reviewed on an ongoing basis by the Trading Standards Service Legal Team and be submitted for approval to the Head of Trading Standards in conjunction with the Strategic Directors annually.

Financial and Value for Money Implications

24. The revised policy will be administered by the Trading Standards Service within existing resources and budgets. There are no financial implications arising from this report.

Legal Implications

23. Under the Legislative and Regulatory Reform Act 2006, regulators (such as the Trading Standards Services) are required to comply with any codes of practice produced by central government. The Regulators Code, published by the Department for Business Innovation and Skills in April 2014, states that regulators should ensure that their approach to regulation is transparent. By adopting the proposed Service Criteria and Enforcement Policy the Trading Standards Service will be meeting this requirement and establishing the framework within which it will discharge the regulatory functions of the Joint Committee.

Equalities and Diversity

24. The proposed amendments to this policy and protocol will not have a significant impact on residents or staff with different protected characteristics, however as a influence has been identified in relation to individuals classified as vulnerable an EIA is attached as Annex 3.

WHAT HAPPENS NEXT:

25. The Enforcement Policy and Service Criteria will be introduced and all Trading Standards officers made aware of the guidance.
26. The Enforcement Policy and Service Criteria will be published online.
27. Consultation with business, consumers and other stakeholders will be ongoing.
28. The Enforcement Policy and Service Criteria will be subject to ongoing review by the Trading Standards Service Legal Team.
29. The Enforcement Policy and Service Criteria will be reviewed annually by the Head of Trading Standards in conjunction with the Strategic Directors.
30. Where a significant amendment is necessary to either document it will be referred to the Trading Standards Joint Management Committee for consideration and approval.

Contact Officer: Steve Ruddy, Head of Trading Standards, tel: 01372 371730, Lee Ormandy, Legal and Governance Manager, tel: 01372 832997

Consulted:

Allan Wells – Lead Manager Legal Services, Surrey County Council
Linda Forsythe – Deputy Head of Legal Services, Buckinghamshire County Council

Annexes:

Annex 1: Trading Standards Enforcement Policy
Annex 2: Trading Standards Service Criteria
Annex 3: Equality Impact Assessment

Sources/background papers:

- Code of Practice for Crown Prosecutors made under the Prosecution of Offences Act 1985
- Code of Practice for Regulators made under the Legislative and Regulatory Reform Act 1996.
- Primary Authority Scheme made under the Regulatory Enforcement and Sanctions Act 2008

Buckinghamshire & Surrey

trading standards

Enforcement Policy

1.0 Introduction

1.1 Buckinghamshire County Council and Surrey County Council operate a joint trading standards service (The Trading Standards Service). This policy sets out what businesses and others being regulated can expect from Buckinghamshire & Surrey Trading Standards enforcement officers

1.2 The Trading Standards Service aims to create an environment of **confident consumers and trusted traders** by providing advice and guidance to consumers and businesses. However there will be occasions when a range of different actions may be necessary to deal with cases where trading standards laws have been breached by businesses or others.

1.3 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary regulatory burdens including consideration for social, environmental and economic outcomes.

1.4 The Trading Standards Service recognises that the vast majority of businesses that operate within Buckinghamshire and Surrey are honest, legitimate enterprises. The Trading Standards Service will work with those businesses, helping and encouraging them to understand and comply with their regulatory obligations.

1.5 The main purpose of the Trading Standards Service enforcement activities is to protect the public and legitimate businesses. To achieve this aim we will undertake to regulate businesses and others in a fair, practical and consistent manner helping to support or enable local and national economic growth for compliant businesses and other regulated entities.

1.6 The Trading Standards Service subscribes to 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 and proportionate.

1.7 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code is properly reasoned, evidence based and documented.

1.8 Included in the term enforcement are the ways we deal with businesses and others in an advisory capacity in addition to licensing and formal enforcement action

1.9 The Trading Standards Service aims to apply the law in a proportionate and transparent manner and in all our choices of enforcement actions we will comply with the principles of the regulators code.

2.0 Enforcement Policy

2.1 The Trading Standards Service has adopted the principles of the National Intelligence Model and operates an intelligence led approach to enforcement activities.

2.2 Following the National Trading Standards Board (NTSB) Intelligence Operating Model (IOM) Service demand is managed through a tactical tasking process designed to target resources effectively and focus activity on those businesses who cause the greatest harm to consumers and legitimate business. Regular tasking meetings ensure a timely response to emerging issues and efficient monitoring of actions taken to deal with rogue traders and businesses causing the most consumer and business detriment.

2.3 Where an issue is identified and investigated, consideration will be given to the most appropriate and proportionate intervention for dealing with the case.

2.4 A range of sanctions will be considered according to the associated risk and seriousness and of the matter.

2.5 Options include:

- Securing an undertaking from the business that they will comply with their legal obligations.
- Commencing action in the civil courts under the Enterprise Act 2002 to seek an enforcement order.

- Issuing cautions and warnings.
- Prosecuting offenders in the criminal courts.
- Restraint, Confiscation and Forfeiture of assets under the Proceeds of Crime Act 2002
- Seizing goods, documents or other items that may be required as evidence, for testing or for other lawful purposes
- Issuing Suspension Notices, Improvement Notices or other such statutory documents.
- Issuing of Penalty Charge Notices
- Instituting a license review (e.g. alcohol sales).
- Instituting a product recall.

2.6 The aim of any intervention is to:

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

2.7 Consideration will be given to matters which aggravate or mitigate the seriousness of the case so that the most appropriate and proportionate method of disposal is chosen.

3.0 Aggravating factors

- The impact, or potential impact, of the offence is so serious that prosecution is the only suitable method for disposal.
- 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 and/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.
- Where there is any evidence of the crime being motivated by hate (hate crimes) ie racial hatred.
- Any attempt by the offender to conceal his 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 antecedents including previous advice, warnings, cautions and convictions.
- There is evidence of significant and/or continuing consumer or public detriment.
- There is significant risk to public health and safety or to the environment.
- The offender has acted fraudulently, or is reckless or negligent in their activities.
- The offender deliberately obstructs an officer.
- The offender disregards the needs for animal health and welfare or disease control legislation.

4.0 Mitigating factors

- Prompt acknowledgement of guilt.
- Making timely and appropriate compensation to the victim(s).
- Previous good character.
- Age of the defendant.
- Degree of culpability.
- Any other factor which, considered objectively in relation to the offence, tends to extenuate the gravity of the crime even though it does not provide a defence to it.

5.0 Forms of actions:

Prosecution

5.1 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.

5.2 We will have regard for this policy and the Code for Crown Prosecutors. Consideration will also be given to the Compliance Code made under the Legislative and Regulatory Reform Act 2006, in particular:

whether there is sufficient evidence that a criminal offence has been committed and there is a realistic prospect of conviction; and whether the prosecution is in the public interest.

5.3 In some cases prosecutions may be taken concurrently with civil proceedings eg prosecution in the criminal court may be reinforced and supported by action in the civil courts under the provisions of the Enterprise Act 2002.

Simple caution

5.4 Where a prosecution could succeed and the offender admits their guilt consideration will be given to dealing with the case by way of a caution.

Fixed penalty notice or a penalty notice for disorder

5.5 Where a prosecution could succeed and or the offender admits their guilt, if available, the offender may be offered a fixed penalty notice or penalty notice for disorder.

Financial investigations under the Proceeds of Crime Act 2002

5.6 The Trading Standards Service will consider and if appropriate utilise powers under the Proceeds of Crime Act 2002 (POCA), to ensure the recovery of criminal benefit or financial gain following conviction. Where investigations identify money laundering offences, we will consider prosecuting for those offences.

5.7 The Trading Standards Service will consider using restraint powers under POCA to prevent the dissipation of assets from satisfying a confiscation order and to compensate victim(s).

Undertaking

5.8 The Trading Standards Service takes a staged approach to civil redress.

5.9 Where the matters complained of are not so serious as to justify immediate civil or criminal proceedings and the offender is willing to enter into an undertaking within the meaning of the Enterprise Act 2002 not to do or continue to do the matters complained of, a formal undertaking may be sought from the offender in these terms. A breach of the undertaking will normally result in proceedings being issued.

Injunctive relief

5.10 Where an individual or business operates in such a way that it harms consumers generally, application may be made to the civil courts for an injunction to stop the detrimental activities.

Written warnings

5.11 Where consideration of the case and this enforcement policy suggests that future compliance can be achieved without resorting to

legal proceedings The Trading Standards Service will consider issuing a written warning or specific instructions as appropriate.

Suspending goods from sale

5.12 Where it is necessary to protect the public, unsafe goods will be suspended from sale using existing legislative powers.

Refusal, termination or variation of a licence/registration

5.13 The refusal, termination or variation of a licence or registration will be considered where the conditions attached to a licence or registration have not been met.

Dealing with age restricted sales

5.14 In the case of the illegal sale of alcohol to a person aged under 18 years consideration will be given to instituting a review of the premises licence.

5.15 In the case of persistent sales of alcohol from a single premises (two sales within three months) consideration will be given to the issue of a closure notice.

5.16 In the case of persistent sales of tobacco (three sales in two years) consideration will be given to either a restricted premises order and/or a restricted sale order.

6.0 Partnership working

6.1 Wherever practicable we will endeavor to liaise with other relevant agencies that have 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 Department for Business Innovation and Skills (BIS) Primary Authority Principle

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 operates a two stage complaints procedure, administered by the Customer Relations Team for Buckinghamshire County Council and the Customer Relations Team for Surrey County Council.

7.2 Details of the Buckinghamshire procedure can be found at:

<http://www.buckscc.gov.uk/about-your-council/contact-us/feedback-and-complaints/>

7.3 Details of the Surrey procedure can be found at:

<http://new.surreycc.gov.uk/your-council/complaints-comments-and-compliments/how-to-make-a-complaint>

8.0 Comments

If you have any comments concerning this policy, please write to the Head of Trading Standards at:

Buckinghamshire & Surrey Trading Standards
Consort House
5-7 Queensway
Redhill
Surrey
RH1 1YB

or email: trading.standards@surreycc.gov.uk

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Buckinghamshire & Surrey

trading standards

Service Criteria

Every year Buckinghamshire and Surrey County Council's trading standards service receives thousands of complaints and requests for help. Unfortunately, we cannot investigate every complaint, nor respond to all requests, so we prioritise the most serious cases and use the others to help us to plan our prevention work.

We look at a number of issues to help us to decide which complaints we will investigate and which requests for help we will respond to:

- Amount of money involved and number of customers or businesses affected.
- Vulnerability of the victim.
- Risk to safety.
- Complaints involving food and a risk to public health and wellbeing.
- Significant breaches of animal health and welfare legislation with a risk of disease outbreak or affecting farm animals.
- Failure to comply with a statutory notice, written advice or other formal commitment to comply with the law.
- Complaints that relate to organised criminal activity such as doorstep crime.
- Helping good local businesses to thrive.

In addition we consider the overall harm that a trading practice or product might cause. We also need to be sure that we can get enough evidence to use in court and that the investigation would be in the public interest.

What happens if we investigate or respond to a request for help?

Not all investigations lead to a prosecution or court case. Sometimes other steps, such as issuing advice or a statutory notice, are more appropriate.

When responding to requests for help we will consider the most appropriate action to support and help the most vulnerable in our community.

What happens if we don't investigate or respond to a request for help?

Unfortunately we cannot investigate every complaint, nor respond to every request for help, but all information received is reviewed regularly and this helps us to decide the priorities for our prevention work.

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1. Topic of assessment

EIA title:	Enforcement Policy and Service Criteria
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EIA author:	Lee Ormandy, Legal & Governance Manager
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2. Approval

	Name	Date approved
Approved by¹		

3. Quality control

Version number	Version 1	EIA completed	
Date saved	22/03/2015	EIA published	

4. EIA team

Name	Job title (if applicable)	Organisation	Role

¹ Refer to earlier guidance for details on getting approval for your EIA.

EQUALITY IMPACT ASSESSMENT

5. Explaining the matter being assessed

<p>What policy, function or service is being introduced or reviewed?</p>	<p>The Trading Standards Committee is asked to endorse an updated Enforcement Policy and Service Criteria for use by the Buckinghamshire and Surrey Trading Standards Service (the Trading Standards Service).</p> <p>The proposed policy and criteria provides an updated framework to ensure that the Trading Standards Service promotes efficient and effective approaches to regulatory inspection and enforcement without imposing unnecessary regulatory burdens.</p>
<p>What proposals are you assessing?</p>	<p>The introduction of a new Enforcement Policy and Service Criteria will provide an updated framework to ensure that the Trading Standards Service protects the residents and legitimate businesses of Buckinghamshire and Surrey and helps to promote and enable local and national economic growth.</p>
<p>Who is affected by the proposals outlined above?</p>	<p>The policy amendment has no significant implications for</p> <ul style="list-style-type: none"> • Service users, their carers or families. • Council staff. • External organisations we commission to deliver services on behalf of the Council or in partnership with it. • Local businesses <p>Service users, their carers or families who fall within the definition of vulnerable will be affected positively in that they will be subject to an enhanced level of support and service</p>

6. Sources of information

<p>Engagement carried out</p>
<p>Consumers, businesses and other stakeholders have been proactively encouraged to offer views and contribute to the development of this Policy and Criteria. Consultation has been undertaken with both Buckinghamshire and Surrey County Council Legal Officers and their observations/amendments implemented.</p> <p>Engagement and scrutiny in relation to protected characteristics will be a continuing process.</p>
<p>Data used</p>
<p style="text-align: center;">N/A Page 32</p>

EQUALITY IMPACT ASSESSMENT

7. Impact of the new/amended policy, service or function

The proposed amendments to this policy and protocol will not impact on residents or staff with protected characteristics, neither will it positively or negatively influence:

- equal opportunities;
- discrimination; or
- foster good relations between people that share protected characteristics and those that do not.

The amendment is procedural rather than operational in nature

The potential impact on the Public Sector Equality Duty is therefore negligible.

EQUALITY IMPACT ASSESSMENT

7a. Impact of the proposals on residents and service users with protected characteristics

Protected characteristic ²	Potential positive impacts	Potential negative impacts	Evidence
Age	Increased support and protection for those defined as vulnerable	No significant implications identified arising from this report	
Disability	No significant implications identified arising from this report	No significant implications identified arising from this report	
Gender reassignment	No significant implications identified arising from this report	No significant implications identified arising from this report	
Pregnancy and maternity	No significant implications identified arising from this report	No significant implications identified arising from this report	
Race	No significant implications identified arising from this report	No significant implications identified arising from this report	
Religion and belief	No significant implications identified arising from this report	No significant implications identified arising from this report	

² More information on the definitions of these groups can be found [here](#).

EQUALITY IMPACT ASSESSMENT

Sex	No significant implications identified arising from this report	No significant implications identified arising from this report	
Sexual orientation	No significant implications identified arising from this report	No significant implications identified arising from this report	
Marriage and civil partnerships	No significant implications identified arising from this report	No significant implications identified arising from this report	
Carers³	No significant implications arising from this report	No significant implications identified arising from this report	

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7b. Impact of the proposals on staff with protected characteristics

Protected characteristic	Potential positive impacts	Potential negative impacts	Evidence
Age	No significant implications identified arising from this report	No significant implications identified arising from this report	

³ Carers are not a protected characteristic under the Public Sector Equality Duty, however we need to consider the potential impact on this group to ensure that there is no associative discrimination (i.e. discrimination against them because they are associated with people with protected characteristics). The definition of carers developed by Carers UK is that 'carers look after family, partners or friends in need of help because they are ill, frail or have a disability. The care they provide is unpaid. This includes adults looking after other adults, parent carers looking after disabled children and young carers under 18 years of age.'

EQUALITY IMPACT ASSESSMENT

<p style="text-align: center;">Disability</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Gender reassignment</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Pregnancy and maternity</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Race</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Religion and belief</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Sex</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	
<p style="text-align: center;">Sexual orientation</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	<p style="text-align: center;">No significant implications identified arising from this report</p>	

EQUALITY IMPACT ASSESSMENT

Marriage and civil partnerships	No significant implications identified arising from this report	No significant implications identified arising from this report	
Carers	No significant implications identified arising from this report	No significant implications identified arising from this report	

EQUALITY IMPACT ASSESSMENT

8. Amendments to the proposals

N/A

Change	Reason for change

9. Action plan

N/A

Potential impact (positive or negative)	Action needed to maximise positive impact or mitigate negative impact	By when	Owner

10. Potential negative impacts that cannot be mitigated

N/A

Potential negative impact	Protected characteristic(s) that could be affected

11. Summary of key impacts and actions

Information and engagement underpinning equalities analysis	Engagement and scrutiny will be a continuing process.
Key impacts (positive and/or negative) on people with protected characteristics	

EQUALITY IMPACT ASSESSMENT

Changes you have made to the proposal as a result of the EIA	N/A
Key mitigating actions planned to address any outstanding negative impacts	N/A
Potential negative impacts that cannot be mitigated	N/A

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