

## **Buckinghamshire & Surrey Trading Standards Enforcement Policy**

### **1.0 Introduction**

1.1 Buckinghamshire 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 and Surrey Trading Standards enforcement officers

1.2 Surrey County Council is also the host for by the National Trading Standards Scams Team. This Team's investigations are subject to the same best practice principles found in legislation and codes that are outlined within this Enforcement Policy.

1.3 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.

1.4 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.

1.5 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.

1.6 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.

1.7 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.

1.8 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.

1.9 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

1.10 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 (NTS) 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
- Issuing financial penalties

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 All enforcement activity undertaken under this policy will have regard to the Human Rights Act 1998 and Equality Act 2010.

2.8 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**

Examples of aggravating factors that the Trading Standards Service will take into account include, but are not limited to, the following:

- 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) i.e. 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**

Examples of mitigating factors the Trading Standards service will take into account include, but are not limited to, the following:

- 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. The decision on appropriate action will be taken by an officer delegated by the County Council to do so. The investigating officer will not be involved in the legal decision-making process.

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
- whether 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 when appropriate to do so.

### **Penalty notice for disorder**

5.5 A penalty notice for Disorder (PND) is a statutory disposal introduced by the Criminal Justice and Police Act 2001. A PND is a type of fixed penalty notice for specified low level offences e.g. sale of alcohol to a minor. There is no admission of guilt required to give a PND but there must be sufficient evidence to support a successful prosecution. Where the PND is paid in full that discharges any liability to be convicted of the penalty offence but the paying of the penalty is not an admission of guilt.

### **Issuing financial penalties and Fixed Penalty Notices**

5.6 When legislation allows, we, as the enforcement authority, can issue financial penalties and/or fixed penalty notices to offender.

### **Financial investigations under the Proceeds of Crime Act 2002**

5.7 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.

5.8 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**

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

5.10 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**

5.11 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**

5.12 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**

5.13 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**

5.14 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**

5.15 In the case of the illegal sale of alcohol and/or tobacco to a person aged under 18 years, consideration will be given to instituting a review of the premises licence.

5.16 In the case of persistent sales of alcohol and/or tobacco from a single premises (two sales within three months), consideration will be given to the issue of a closure notice.

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

5.18 In the case of the illegal sale of any age restricted products to persons under the legal age prescribed by the relevant legislation, the Trading Standards Service will take action in accordance with the options detailed above taking into account all necessary legislation.

## **6.0 National Enforcement**

6.1 The Trading Standards Service act as the prosecuting authority for investigations carried out by the Advertising Standards Authority (ASA) via commissioning from National Trading Standards (NTS) covering England and Wales.

6.1.1 The role of ASA is to ensure responsible advertising. Where ASA is faced with advertisers who persistently break the **Advertising Codes**, it will refer these cases to the Trading Standards Service.

6.1.2 The Trading Standards Service uses its own legal powers to assess, investigate and take action (where appropriate) on any matters ASA refers to it,

subject to the same best practice principles found in legislation and codes that are outlined within this Policy.

6.1.3 The purpose of the Trading Standards Service in undertaking this work is to ensure that breaches of the law are addressed and that the integrity of the ASA system is supported by taking appropriate formal action against those who do not comply via the self-regulatory means.

6.1.4 Referrals from ASA are limited to areas of the law covered by the NTS grant as outlined in the grant agreement.

6.2 The Trading Standards Service may make agreements with other Primary Authority businesses to act as the host and prosecuting authority for offences which impact on the economic prosperity and consumer confidence in that businesses brand.

6.2.1 The geographical coverage for each agreement may include provisions for England, Scotland and/or Wales.

6.2.2 Investigations initiated by referrals under any such agreements are subject to the same best practice principles found in legislation and codes that are outlined within this Enforcement Policy.

## **7.0 National Trading Standards Scams Team**

7.1 The National Trading Standards Scams Team covers the United Kingdom and is financed by Government grant via National Trading Standards.

7.2 The National Trading Standards Scams Team targets criminals involved with scams, mass marketing and consumer fraud and related crime. They investigate cases which have regional or national significance. In such cases the team will provide evidence to relevant local authorities, which may include Surrey County Council, or other enforcement bodies who will make a decision on how to proceed based on their own enforcement policies.

## **8.0 Partnership working**

8.1 Wherever practicable we will endeavour to liaise with other relevant agencies that have a joint or complementary enforcement role to ensure a consistent and coordinated approach.

8.2 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, Energy and Industrial Strategy (BEIS) Primary Authority Principle

8.3 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (in accordance with the requirements of the Data Protection Act 1998, and any other relevant legislation)

8.4 Data sharing will be conducted through appropriate information gateways.

## **9.0 Complaints procedure**

9.1 The Trading Standards Service operates a two stage complaints procedure, administered by the Customer Relations Team for Surrey County Council.

9.2 Details of the [Surrey procedure](#)

## **10.0 Comments**

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

Buckinghamshire and Surrey Trading Standards  
Woodhatch Place  
11 Cockshot Hill  
Reigate  
Surrey  
RH2 8EF

or email: [trading.standards@surreycc.gov.uk](mailto:trading.standards@surreycc.gov.uk).