



Brighton & Hove

Trading Standards – Enforcement Policy

1. Introduction

- 1.1 This document details the enforcement policy of the Trading Standards Service.
- 1.2 The policy compliments the general provisions of the Corporate Enforcement Policy that applies to all the regulatory services, activities and functions discharged by the Council.
- 1.3 The primary function of this document is to set out the functions covered by Trading Standards and details of specific activities within the overriding principle of considering each case on its own merits.

2. Policy Statement

- 2.1 It is intended that the highest levels of protection are afforded to the residents of, and visitors to, the City of Brighton & Hove in respect of issues relating to trading standards, consumer assurance and community safety, through a fair and proportionate approach to enforcement and effective partnership working.
- 2.2 The policy is designed to help promote efficient and effective approaches to regulatory inspection and enforcement, which improves regulatory outcomes without imposing unnecessary burdens on businesses. This is in accordance with the Regulators Compliance Code.
- 2.3 In certain circumstances it may be concluded that that a provision of the Code is either not relevant or is outweighed by another provision. In those circumstances any deviation from the Code will be properly reasoned and documented.
- 2.4 The powers and sanctions available will be used to secure the principle aim when they are deemed to be the most appropriate means of securing immediate or long term and sustainable outcomes.
- 2.5 The general principles of enforcement as set out in the Corporate Policy, within the limitations imposed by Statute and/or the need to conduct an investigation in a particular way, will be observed in every case.
- 2.6 Trading Standards is committed to the delivery of services that support the Council's obligations under Section 17 of the Crime & Disorder Act 1998.

2.7 The rights and freedoms given to an individual under the Human Rights Act, particularly Article 6 and 8, will be observed, as will the provisions of the Regulation of Investigatory Powers Act.

3. Enforcement Strategy

3.1 The primary aim of any enforcement action is to secure necessary and sustainable improvements, as quickly as possible, on a risk-based approach. It is recognised that there is a need for a balanced approach to enforcement, based on advice, education and support, such that our enforcement actions encourages economic progress.

3.2 Formal action will generally reflect the severity of the offence, or any worsening compliance history. Any action taken must adequately protect the public interest and provide an appropriate deterrent to offending. Any action must reflect the individual circumstances of the case and have regard to current guidance.

4. Enforcement Options

4.1 The full range of sanctions available under various statutes, regulations and orders will be utilised to secure compliance. The selection of enforcement approach will be determined on a case-by-case basis but will include:

- Education and training
- Advice provision
- Compliance checks
- Warning letters
- Written Assurances

4.2 Direction, guidance or advice from other agencies, or legal services, may result in a deviation from this policy.

4.3 The enforcement actions available are -

- **Advice:** All advice issued will be given in writing and specify the nature of the breach or offence, and the actions required to remedy the issue. An informal warning may be included with the advice, and may accompany higher-level actions, such as Suspension Notices, Seizures or Voluntary Surrender.
- **Formal Warning:** This is a higher level of warning after consideration by the Head of Service.
- **Suspension Notices:** Will be used in appropriate cases to remove unsafe products from retail sale. They may be used in conjunction with other action, such as prosecution, as appropriate.
- **Anti Social Behaviour Orders/Criminal ASBO:** Will be used where there is a need to deter or control repeated behaviour that affects community safety or economic well-being.
- **Seizure, Voluntary Surrender or Forfeiture Application:** Will be used where infringing goods may be subject to forfeiture by a court.

This action may be used in conjunction with other enforcement action, such as Simple Cautions and Formal Warnings. Goods are seized to prevent further offences being committed or to be held as evidence. Goods will be returned to their lawful owner, as soon as practicable once they are no longer needed. Counterfeit goods or stolen goods will not be returned.

- **Simple Caution:** The issue of a Simple Caution by the Head of Service may be considered as an alternative to prosecution where it is considered unnecessary to involve the court's, and the offender's response to the problem makes repeat offending unlikely, or the offender's age or health make it appropriate. Cautions may only be issued where the offender makes a clear and reliable admission of guilt and understands the significance of acceptance.

Prosecution: A prosecution is appropriate where there is a breach of a legal requirement, such that public safety, health, economic or physical well-being or the environment is adversely affected.

The Crown Prosecutor's Code of Evidential and Public Interests tests must be met in all cases. Factors supporting immediate prosecution and mitigating factors are listed in Appendix 1. However, certain circumstances will normally justify prosecution to prevent the undermining of the Service's regulatory responsibilities. These include

- Failure to comply with a Suspension Notice
- Declining a Simple Caution
- Continued, reckless, negligent or pre-meditated non-compliance.
- Failure to pay a fixed penalty.
- Non-cooperation, acts of obstruction or threats of physical harm or abuse.

Injunctions: Injunctive action as a means of preventing an activity or course of action likely to result in significant risk to public or community safety or economic wellbeing of consumers and businesses.

- **Assurances and Formal Undertakings:** May be used to stop activities which harm the general interests of consumers and are the first steps towards an Enforcement Order or Injunction.
- **Financial Investigations:** These will be considered when the perpetrator has benefited financially from their involvement in the crime and their assets are realisable. A civil investigation should be undertaken in an attempt to recover those assets.
- **Fixed Penalty Notices/Penalty Notices for Disorder:** May be used in relation to specific offences, stipulated by statute, where there is either a local or current need to address a particular issue through their deterrent effect.
- **License Review:** Where the fitness of the management of licensed premises is questioned or there is evidence that they are not meeting their obligations to protect children from harm.
- **Refusal, termination or variation of licenses or registrations:** Where the condition of a license, registration or membership have not been met.

5. Shared Enforcement Role

5.1 For some legislation there is a shared enforcement responsibility with the Police, the Office of Fair Trading, and Environmental Health etc. The following paragraphs give guidance on how that responsibility is to be shared.

5.2 The Food Safety Act is administered by Trading Standards and Environmental Health. The demarcation of responsibility is as follows

- Food Standards, Compositional Labelling and descriptions - Trading Standards.
- Food hygiene or foreign bodies - Environmental Health.

5.3 The Licensing Act creates a shared duty between the Police and Trading Standards in relation to the sale of alcohol to minors. Trading Standards will take the primary enforcement role for all sales but the police will take a lead role in detecting non-compliance through test purchasing which may result in the issue of Penalty Notices for Disorder.

5.4 There is a shared role alongside other qualifying bodies under the Unfair Terms in Consumer Contracts Regulations 1999. Trading Standards will only act if a complaint is made in relation to a business for which it acts as the 'home authority' or the circumstances reveal a particular local concern. Other complaints or incidents which have a national dimension should be referred to the Office of Fair Trading.

5.5 There is a shared role with the Office of Fair Trading under the Enterprise Act. Action under this legislation will be taken by in accordance with the agreed protocol.

5.6 Information is often received which will be of relevance to other regulators investigating criminal offences. Such information should be provided to those regulators in good time and following data protection principles, and providing the officer disclosing commits no offence in the provision of that information.

6. Equalities & Diversity

6.1 Trading Standards is committed to delivering all operational activities in accordance with the Council's Equalities and Diversity Policies and will imbue the principles in its approach to service development and delivery.

6.2 Officers are committed to work flexibly to meet individual service user's needs as far practicable, particularly where those users are from a disadvantaged or vulnerable group. This revised Policy has been subject to a review as part of an Equality Impact Assessment.

7. Service Standards

7.1 We want to ensure that you are treated fairly, equally, with respect and courtesy. As a customer you have the right to expect decent, good quality and easily accessible services and information.

7.2 The Customer service Policy and Service standards apply across all services and Directorates. The promise is summarised in the [customer service charter](#).

8. Monitoring and Review

8.1 Formal enforcement decisions will be recorded and a report explaining those decisions produced annually. This report will be subject to overview by the Cabinet Member for Environment.

8.2 The policy will be reviewed every two years or in the event of changes in legislation or in the Codes of practice, national standards or good practice. Any changes will be subject to Cabinet Member approval.

9 Complaints Procedure

9.1 Any concern about your treatment by any Trading Standards Officer should be addressed initially with that officer. If he or she cannot resolve the matter then the issue will be referred to the Head of Service.

9.2 If you are not satisfied with their response you can use the Council's Complaints procedure which is attached to this document as Appendix 3. Alternatively it can be found on the Council's website www.brighton-hove.gov.uk.

Appendix 1

Decision to Prosecute

Aggravating Factors

- The impact, or potential impact of the offence is so serious that prosecution is the only suitable option
- The offence has continued over along period or involves a series of offences against the same or different victims
- The degree of pre-planning
- The age and/or vulnerability of the victim
- The amount of gain for the offender or loss to the victim relative to their status.
- The impact of the crime on the victim
- The prevalence of the offence and its impact on the community or society
- Where there is evidence of the crime being motivated by hate.
- Any attempt by the offender to conceal their identity, directly or indirectly, such that the victims or the authorities cannot easily trace them.
- Lack of remorse
- The offenders antecedents, including advice, warnings, cautions or convictions
- Evidence of significant and/or continuing consumer or public detriment
- Significant risk to public health, safety or the environment
- Fraudulent, reckless or negligent actions
- Deliberate obstruction of investigating officers

Mitigating Factors

- Prompt acknowledgement of guilt
- Appropriate, timely compensation to the victim
- Good character
- Degree of culpability
- Other factors tending to extenuate the gravity of the crime