Trading Standards Enforcement Policy

Introduction

Our enforcement policy is based on our approach in providing a Trading Standards Service that supports businesses, achieves compliance and protects consumers. We focus our resources using an intelligence led approach based on the issues and challenges at a national, regional and local level. This includes working with other partners agencies and Trading Standards Services across the UK. Where we are legally permitted to do so, we share information with other organisations to help us assess risks, prioritise our work and minimise duplication.

Trading Standards enforcement activities can include but are not limited to:

- Routine Inspections at business premises with notice given in advance
- Inspections without notice
- Applying to the court for a warrant to enter a domestic property
- Business advice verbally and/or in writing
- Criminal Investigation
- Voluntary Interviews Under Caution
- Test Purchases
- Under Age Sales Test Purchases
- Market Surveillance
- Sampling
- Supporting partner agencies and services such including the Police, Immigration, HMRC, Licensing, Environmental Health, and Public Health
- Applying to the court for RIPA - covert surveillance
- Investigative enquiries to businesses, agencies and other third parties
- Closure Orders
- Prosecution

Underlying Principles of Enforcement

Trading Standards follows 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, transparent and proportionate. All enforcement action is considered in line with the following underlying principles:

Proportionality: Any action that we take will relate to the seriousness of the risk to health, safety or the environment, deliberate fraud or carelessness and to the seriousness of any breach of law.

Consistency: We will try to ensure that our Officers act in a similar way when faced with similar circumstances. We will also work with other Authorities to ensure that this principle is applied at a local and national level.

Transparency: The Council will help people to understand what the law requires of them and make clear what needs to be done, to comply. We will also make clear what businesses and the general public should do if they are not happy about any action we have taken or are proposing to take.

Targeting: Our enforcement efforts will normally be directed against those whose activities pose the most serious risks or those who have a history of non-compliance.

Informative: Enforcement effort will be given to providing information which is timely relevant and helpful to each situation.

In our enforcement activities, we will follow relevant and appropriate enforcement regulation including:

- Consumer Rights Act 2015
- Police and Criminal Evidence Act 1984 and relevant Codes of Practice
- Criminal Procedure and Investigations Act 1996
- Regulatory of Investigatory Powers Act 2000
- Investigatory Powers Act 2016
- Proceeds of Crime Act 2002
- Regulatory Enforcement and Sanctions Act 2008
- Data Protection Act 2018
- Enterprise Act 2002
- Digital Markets, Competition and Consumers Act 2024
- Human Rights Act 1998

The aim of any enforcement action 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
- Deter future non-compliance

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.

Aggravating factors that are taken into consideration when deciding what action, if any, to take:

- The impact of the offending [or potential offending] on the victim, the community and the environment
- Whether the offending has taken place over a long period of time
- Previous warnings, cautions, convictions
- The number of victims involved
- The vulnerability of the victim
- If there the offending is planned / premediated
- If there is evidence of dishonesty
- The financial detriment to the victim and/or the amount gained by the offender
- If there is a lack of remorse
- Failing to provide any mitigation
- Failing to cooperate with the investigation
- Obstructing an officer in their duties
- Risk to the public or environment

Mitigating factors may include:

- Prompt acknowledgement of guilt
- Due diligence defence
- Making timely and appropriate compensation to victims
- Previous good character
- Cooperating with the investigating officer(s)
- Implementing business advice and/or making the necessary changes to ensure compliance
- Engaging with the service
- Lesser degree of culpability
- Age and vulnerability of the offender

Enforcement Options Available to Trading Standards

No Further Action

Contraventions with little detrimental impact or where no offence has been identified will result in no further action; but may be logged for intelligence purposes.

Referral to other service or agency

Portsmouth Trading Standards may refer a complaint or intelligence to another service if deemed more appropriate. Other services or agencies may include:

- Another service within Portsmouth City Council
- Another local authority Trading Standards Service
- National Trading Standards
- Police
- HMRC
- Financial Services Authority

- Environment Agency

Business Advice

Where the breach is minor and can be dealt with by way of advice, this will be the most appropriate route to pursue in the first instance in order to bring the business into compliance. Advice to the business may be provided during a routine inspection and/or will be in writing.

Formal Warning

A formal warning may be issued often in conjunction with business advice following a review of a case whereby the seriousness of the offending does not meet the threshold of either a Simple Caution or a Prosecution.

A formal warning will be kept on record in accordance with our retention policy and may be considered in the event of future offending.

Simple Caution

Where there is sufficient evidence to provide a realistic prospect of conviction (if the offender were to be prosecuted), and the offender admits their guilt, consideration may be given to dealing with the case by way of a caution.

If a simple caution is rejected the Service reserves the right to consider instigating prosecution proceedings.

Prosecution

The council prefers to deal with contraventions of the law in other ways but, on occasions, it will be necessary for businesses and individuals to be prosecuted.

This will only happen when:

- an informal approach by the council has failed to resolve the problem, or
- there is serious risk to safety, the environment or health, or
- there has been a blatant disregard of the law, deliberate act of fraud, or failure to comply with a notice, or
- the offence is so serious that other forms of action would be inappropriate,
- It would be in the public interest to do so

When deciding whether to prosecute we will look at the following:

- the seriousness of the offence
- the history of the person concerned
- the willingness of the person concerned to prevent a repetition
- any explanation given
- the public benefit
- any deliberate actions intended to deceive
- the likelihood of success of the prosecution

Sentencing and orders available to the court upon a conviction:

- Immediate custody
- Suspended sentence
- Community sentence
- Fine
- Compensation Order
- Criminal Behaviour Order
- Forfeiture of Goods
- Disqualification from action as a Company Director

Financial investigations under the Proceeds of Crime Act 2002

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

The Trading Standards Service will consider using restraint powers under POCA to prevent the dissipation of assets from satisfying a confiscation order (from which compensation may be ordered to be paid).

Alternative Enforcement Options

Dealing with age restricted products

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 in addition to other enforcement options available.

Suspending goods from sale

Where it is considered necessary to protect the public, goods suspected of being unsafe or non-complaint with safety legislation will be suspended from sale.

Undertaking

A formal undertaking may be sought in accordance with the Enterprise Act 2002 / Digital Markets, Competition and Consumers Act 2024. An undertaking is essentially an agreement or a promise by the business to comply with the law and to stop engaging in practices which breach legislation and could harm the collective interests of consumers.

An Undertaking will be issued after a period of consultation with the business.

A breach of an undertaking may result in further enforcement action by way of an enforcement order.

Enforcement Order

An Enforcement Order is made under the Enterprise Act 2002 / Digital Markets Competition and Consumers Act 2024 and is a civil order made by a court for infringement of consumer protection legislation. The order will aim to stop the person or businesses from engaging in practices which may harm the collective interests of consumers. The order can include enhanced consumer measures which may require the person or business to provide redress to consumers by way of compensation; pay for the costs of the investigation; and a requirement to publicise the order. A breach of an Enforcement Order is contempt of court, and proceedings can then be initiated in respect of such action.

Community Protection Notice

A Community Protection Notice [CPN] can be issued in accordance with section 43 of the Anti-Social Behaviour Crime and Policing Act 2014 to stop individuals, businesses or organisations from engaging in persistent anti-social behaviour. Failing to adhere to a CPN can result in a Fixed Penalty Notice being issued or a prosecution.

Closure Order

The power to issue Closure Orders is given through the Anti-social Behaviour, Crime and Policing Act 2014 sections 76 through to 93. An application can be made to the court to close a premises that is linked to public disorder or nuisance.

Closure Orders can be applied to a premises for a period of 3 months and extended up to a total period of 6 months.

Financial Penalties

In some cases, Trading Standards can issue a penalty notice, in effect imposing a fine directly on a business without the need for court proceedings. Such notices are available under a range of legislation, including laws relating to letting agents, secondary ticketing, single-use carrier bags, energy performance and single use vapes. The business can usually appeal to the court or a tribunal against the use of such a notice or against the level of penalty imposed.

Financial Penalties - Letting Agents

A letting agent may be served with a Notice of Intent for breaches of either the Consumer Rights Act 2015 or the Tenant Fees Act 2019. The notice must be served within six months of the breach. The notice must state:

- The amount of the proposed financial penalty
- The reasons for proposing to impose the penalty
- Information about the right to make representations

The letting agent is then given a period of 28 days in which to make written representations to the council. After this period, the council will make a decision as to whether to impose the financial penalty or not. If the decision is made to impose a financial penalty a Final Notice is issued and requires the letting agent to paid the penalty within 28 days. The Final Notice must state:

- The amount of the financial penalty
- The reasons for imposing the penalty
- Information about how to pay the penalty
- The period for payment of the penalty
- Information about rights of appeal, and
- The consequences of failure to comply with the notice

Financial penalties can be issued for a breaches of:

- The Consumer Rights Act 2015 - Duty of letting agents to publicise fees etc. A financial penalty of up to £5,000 can be issued.
- The Tenant Fees Act 2019 - The Act details a number of prohibited fees that landlords and letting agents cannot charge prospective and/or existing tenants. A financial penalty of up to £5,000 can be issued in most cases; however, can be up to £30,000 for subsequent breaches within a five year period.

The Ministry of Housing, Communities & Local Government (“MHCLG”) has published guidance for enforcement authorities in respect of the Tenant Fees Act 2019 Tenancy_Fees_Act_-_Statutory_guidance_for_enforcement_authorities.pdf and in respect of Client Money Protection Requirements – Mandatory client money protection for property agents: enforcement guidance for local authorities

This is statutory guidance to which enforcement authorities must have regard to when considering to impose a financial penalty. This statutory guidance recommends certain factors that an enforcement authority should take into account when deciding on the level of financial penalty to impose and further recommends that enforcement authorities develop and document their own Policy on determining the appropriate level of financial penalty in a particular case.

Determining the level of the financial penalty

In accordance with the provisions of the TFA & CMP statutory guidance, the following factors should be considered by an enforcement authority when determining the level of penalty to impose for a breach of relevant letting agency legislation:

- Severity of the breach
- Punishment of the landlord or agent
- Aggravating and mitigating factors
- Fairness and proportionality

Each of these factors are explained in more detail in the statutory guidance which you should refer to for each penalty you consider. For ease, the same considerations will be applied in cases of redress membership and breaches of S.83 Consumer Rights Act 2015.

Although the Council has therefore a wide discretion in determining the appropriate level of financial penalty in any particular case, regard has been given to the statutory guidance when making this policy.

The attached document contains the processes that the Council will use in order to determine the level of financial penalty under the TFA 2019 and other relevant letting agency legislation. All stages subsequent to the issue of a Notice of Intent are subject to statutory time limits and the suspension of the process should an appeal be made to the First Tier Tribunal.

Our commitment to Portsmouth residents and victims of crime

Consumer Advice

Not every complaint can be investigated further by this service. In accordance with this policy, our resources are best directed to the most serious of offending.

This authority cannot provide civil advice to consumers. Consumer advice is provided nationally by the Citizens Advice consumer service. For general consumer advice and to report a problem trader, consumers are encouraged to contact the Citizens Advice consumer service in the first instance.

The Citizens Advice consumer service notifies or refers the complaints it receives to the relevant Trading Standards Services depending on where the consumer resides and where the trader is located. All notifications and referrals that are sent to Portsmouth Trading Standards are reviewed by us; however, we will only contact a consumer if we need to obtain further information about a complaint.

Consumers that report a complaint directly to Portsmouth City Council by telephone will be directed to the Citizens Advice consumer service by the City Helpdesk Team.

Consumers that report a complaint directly to the Trading Standards email address: trading.standards@portsmouthcc.gov.uk will be sent an automated reply with the contact details for the Citizens Advice consumer service.

All emails from consumers are reviewed by the Duty Officer, however, we will only contact you directly if we need further information from you in order to assess the seriousness of the incident.

PCC Trading Standards use an enforcement matrix to 'score' complaints that this service receives in order to best direct resource. The enforcement matrix is based on the above criteria. Our current matrix can be viewed.

Victims of Crime

Portsmouth Trading Standards aims to support victims of crime by following the **Code of Practice for Victims of Crime.**

The Victims Code explains the rights that everyone can expect to receive as a victim of crime:

1. To be able to understand and to be understood.
2. To have the details of the crime recorded without unjustified delay.
3. To be provided with information when reporting the crime.
4. To be referred to services that support victims and have services and support tailors to your needs.
5. To be provided with information about compensation.
6. To be provided with information about the investigation and prosecution.
7. To make a Victim Personal Statement
8. To be given information about the trial, trial process and your role as a witness
9. To be given information about the outcome of the case and any appeals
10. To be paid expenses and have property returned
11. To be given information about the offender following a conviction
12. To make a complaint about your rights not being met.

If you have been contacted by this service as part of a criminal investigation, you will be given a case reference number and the opportunity to provide a witness statement. You will either be visited by a Trading Standards Officer, or provide a statement over the telephone, Microsoft Teams or email.

Most witness statements are provided in a written format; however, there may be occasions when it is more appropriate to conduct a video interview with a witness in order to capture their best evidence. If a video interview is required, a Trading Standards Officer will speak with you further about this.

You will also be asked if you would like to provide a Victim Personal Statement as part of this process. This gives you an opportunity to explain in your own words how a crime has affected you, whether physically, emotionally, financially, or in any other way. You can choose to make a Victim Personal Statement at anytime up until a sentencing hearing.

Trading Standards Officers will also discuss any other needs you may have and if any referrals to partner agencies need to be made such as to Adult Social Care, the Police, and other services with the council.

You will also be given information about how to pursue your own civil action. This can run in parallel with a criminal investigation.

Once a witness statement and the supporting documentation has been obtained, you will be kept updated at various stages of the investigation. Our investigations can take some time to investigate in full depending on the size and complexity of the case, so this authority will aim to update witnesses every six weeks or sooner.

You will also be updated at key milestones including:

- Following an interview under caution with the suspect(s)
- Following the execution of a warrant or inspection
- When a decision has been made as to what action, if any, will be taken [please note if the decision has been made to prosecute, you will be notified following the issuing of summons to the defendant].
- In advance of the first court hearing and after with details of the outcome
- In advance of subsequent court hearings and after with details of the outcome
- In advance of a trial to obtain your availability to attend court
- Following the trial
- In advance of a sentencing hearing

If a decision has been made that no further action will be taken by way of a prosecution, we will write to a witness to advise them of our decision. You will be given the opportunity to discuss the outcome with us further should you wish to.