



Trading Standards Service Enforcement Policy

Policy revised: May 2019

Introduction

The main aim of the Trading Standards Service is, as far as possible within the allocated resources, to ensure a safe and fair trading environment in Northamptonshire.

Trading Standards is the major regulatory service of the County Council enforcing over 200 statutory duties under national and European laws through both civil law and criminal law processes. In addition to enforcement and regulatory responsibilities, the Service provides advice and information to consumers (in association with the Citizens Advice consumer service and other partners) and businesses to encourage compliance and to support economic growth.

This document is about the approach of Northamptonshire County Council Trading Standards Service to dealing with non-compliance. It provides information on:

- 1) The purpose of our enforcement policy.
- 2) Our principles of inspection and enforcement.
- 3) Provision of advice to businesses.
- 4) Compliance with the 'Primary Authority' principle.
- 5) Our approach to dealing with non-compliance.
- 6) Conduct of investigations.
- 7) The range of enforcement actions available to us.
- 8) What you can expect from us.
- 9) Complaints, compliments, appeals, and comments etc.

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Regulators' Code, and Powers of Entry Code of Practice 2014.

Within the context of this Policy, 'enforcement' includes any action taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions may range from providing advice, information and issuing public warnings, to cautioning and instituting legal proceedings.

Compliance with this policy will help to ensure that we are fair, impartial, independent and objective and we will not be influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions will not be influenced by improper or undue pressure from any source.

We will wherever possible avoid placing unnecessary regulatory burdens on businesses.

1. The Purpose of our Enforcement Policy

1.1 The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, proportionate and consistent manner. The role of Trading Standards is to promote and maintain a safe and fair trading environment and to protect the interests of consumers and businesses. We enforce a wide range of business and consumer protection legislation relating to the quality, quantity, safety, unfair trading practices, misleading business marketing, commercial animal welfare and the prices of goods and services. We carry out our duties in various ways including: inspection, sampling, test purchasing, investigation and prosecution, but also by informing, advising and educating businesses and consumers.

1.2 We recognise that prevention is better than cure and that most businesses want to comply with the law. We will endeavour to help businesses and others to meet their legal obligations without unnecessary burdens. When a business does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate.

2. Our Principles of Inspection & Enforcement

2.1 Targeting

We aim to prioritise and direct our regulatory effort effectively using intelligence and relevant risk assessment schemes. We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

2.2 Proportionality

We will ensure that enforcement action is proportionate to the risks involved and the sanctions applied are meaningful.

2.3 Accountability

We will be accountable for the efficiency and effectiveness of our activities, as outlined in the Regulators' Code. This will include an appeal process and complaints procedure.

2.4 Fairness and Consistency

We will treat all businesses fairly. The compliance record of those we regulate will be taken into account when making a decision on appropriate action. We aim to give positive feedback to businesses where it is due.

We will ensure that our enforcement practices are consistent; this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines in our decision-making processes.

2.5 Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible and easily understood. We will publish relevant information including our service standards; performance targets and information; charges; and enforcement action taken.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law and those which we recommend as best practice, as best practice advice is not compulsory for a business to follow.

Where businesses have acted against the law we may use publicity, in order to raise awareness, to increase compliance and to improve the monitoring of trade practices.

2.6 Supporting the local economy

We recognise that a key element of our activity will be to facilitate and encourage economic growth, whilst ensuring protection for consumers and legitimate businesses. Wherever possible, we will work in partnership with businesses, to assist them with meeting their legal obligations without unnecessary expense.

2.7 Sharing information with other regulators

If there is a shared enforcement role with other agencies, e.g. Department for Environment, Food and Rural Affairs (Animal Health) Food Standards Agency (Food and Animal Feed standards), Environmental Health Officers, the Police, Fire and Rescue Service, or HMRC, we will consider co-ordinating with these agencies, to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Provision of Advice to Businesses

3.1 We will provide advice to businesses based in Northamptonshire in accordance with our Business Advice Policy. Basic “Compliance Advice” will be offered free of charge to all businesses regardless of size, as required by the Regulators’ Code. More detailed ‘Comprehensive Advice’ may be subject to a fee.

3.2 In appropriate cases, the advice provided to businesses will be given or confirmed in writing.

3.3 We will respect any advice that has been given by another regulator or enforcement agency, which could lead to an amendment of our advice in appropriate cases. This includes Primary Authority Assured Advice which all Enforcing authorities should respect when regulating a business. We are always prepared to open up dialogue, in order that we may try to resolve any difference in advice and/or problems being caused.

3.4 We welcome requests for advice from businesses and if a business is found to be non-compliant, this will not always mean enforcement action will be taken, although consideration will need to be given in respect to the seriousness and the effects of any non-compliance, which may mean we will need to take enforcement action but your approach to us will be a mitigating factor.

4. Compliance with the Primary Authority Principle

4.1 The Regulatory Enforcement and Sanctions Act 2008 introduced Primary Authority Partnerships. A Primary Authority is a local authority registered by Regulatory Delivery (RD), as having responsibility for providing advice and guidance to a particular business or organisation and this business is subject to regulation by more than one local authority.

4.2 We will give due consideration to any business, that wishes to enter into Primary Authority Partnership arrangement with Northamptonshire Trading Standards Service.

4.3 We are committed to communicate with other Primary Authorities at an early stage whenever the circumstances require it.

4.4 If we come to a decision to take enforcement action against a business that has a Primary Authority Partnership with another regulator; we will notify the Primary Authority of the action we propose to take or have taken.

4.5 The Primary Authority has the right to object to our proposed action and they or we may refer the matter to the Regulatory Delivery Team for their adjudication.

5. Our approach to dealing with non-compliance

5.1 In deciding what action to take in regards to a non-compliance, we will try and achieve one or more of the following outcomes:

- To change the behaviour of the business.
- To eliminate any financial gain or benefit from non-compliance.
- To restore the harm caused by non-compliance, where appropriate.
- To deter future non-compliance.
- To deal firmly with those that deliberately or persistently fail to comply.
- In suitable cases refer breaches to another enforcement body.

5.2 We will clearly explain the non-compliance, we will provide an opportunity for dialogue and/or appeal in regards to any advice provided, action required, or decisions taken. We will be proportionate, when considering what is the most appropriate sanction for any non-compliance and we will consider such factors as the harm caused or the risk of harm and the size and nature of the business.

6. Conduct of Investigations

6.1 Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with our statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act 1984 (PACE)
- Criminal Procedure and Investigations Act 1996 (CPIA)
- Regulation of Investigatory Powers Act 2000 (RIPA)
- Human Rights Act 1998 (HRA).
- Protection of Freedoms Act 2012 (Code of Practice Powers of Entry)

6.2 Some legislation permits our officers to seize goods and documents that may be required as evidence. When we seize goods, we will give a receipt to the person from who they are taken. On some occasions we may ask the person to voluntarily surrender the goods.

6.3 As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible:

- Be formally interviewed in accordance with PACE.
- Be given the opportunity to demonstrate that a statutory defence is met.
- Have the opportunity to give an explanation or make any additional comments about the alleged breach.

6.4 Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated. A report will be compiled and it will be reviewed by a senior manager within Trading Standards Service. We will have regard to any statutory time limits relating to the commencement of proceedings. We will also take into account the views of any victim, Primary Authority, injured party or relevant person, to establish the nature and extent of any harm or loss, including potential harm and loss.

6.5 Our officers have a wide variety of powers, which include the power to enter premises and inspect goods, to require the production of books, documents or records, the power to seize and detain such goods, books and documents, which may be required as evidence. If required we will provide at least 48 hours written prior notice of an inspection, unless it is considered inappropriate to do so.

6.6 Officers may also take with them such other persons and/or equipment, as may be necessary when exercising powers of entry. In certain cases, they may exercise an entry warrant issued by a Magistrate, in order to gain access into premises. If individuals or businesses obstruct officers, they may well be liable to prosecution for such obstruction.

6.7 Before any legal action is taken, there will be an opportunity to discuss the case, although if we are considering a prosecution, it will usually be discussed as part of a formal PACE interview. Where a right of appeal against a formal action exists (other than through the courts), advice on any appeal mechanism will be clearly set out in writing at the time the enforcement action was taken.

7. The range of enforcement options available to us

7.1 Indirect action

This is the referral to another Trading Standards authority and/or enforcement agency for their information or action.

7.2 Verbal or written warning

Where an offence has been committed but it is not deemed appropriate to take any further action, in which case the suggested corrective action and a timescale will be given.

7.3 Penalty Notices for Disorder (PNDs)

PND's are prescribed by certain legislation, as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PND will result in the offender being pursued in the County Court for non-payment of the debt. A PND does not create a criminal record and we may choose to issue a PND without first issuing a warning.

7.4 Statutory Notice

These include improvement notices, prohibition notices and suspension notices (they usually require offenders to take specific action or to cease certain activities).

7.5 Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

7.6 Undertakings & Injunctive action under the Enterprise Act 2002

The range of actions under this legislation are as follows:

- Informal Assurances
- Formal Undertakings
- Enhanced Consumer Measures
- Interim Orders
- Court Orders
- Contempt Proceedings

7.7 Tobacco Restriction Orders

Where an offender persistently breaks the law by selling tobacco products to young people, we may make a complaint to the court and apply for a restricted premises order or a restricted sale order. The effect of such an order is to prohibit a premise or a person from selling tobacco for a period of time up to one year.

7.8 Review of Licences

Where there is a requirement for a business to be licensed e.g. Licensing Act, a review of the licence may be sought where the activities and/or fitness of the licence holder is in question.

7.9 Taking animals into possession

Under the Animal Welfare Act 2006, if a veterinary surgeon certifies that 'protected animals' are suffering or are likely to suffer if their circumstances do not change, we may consider taking them into possession and applying for Orders for re-imbursment of expenses incurred and subsequent disposal.

7.10 Caution in accordance with the current Home Office circular

To deal quickly and simply with some offences and to avoid any unnecessary appearances in criminal courts, a 'simple caution' may be issued. A written 'simple' caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction, although it may be cited in court in certain circumstances.

7.11 Prosecution

A prosecution will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice which is available at: <https://www.cps.gov.uk/publication/code-crown-prosecutors>

We recognise that most businesses wish to comply with the law. However, there are occasions when action, including prosecution, will be taken against those who flout the law or who act irresponsibly. Those matters which involve intentional, repeated or reckless acts and those concerned with public safety will be specifically reported and considered for prosecution.

7.12 Proceeds of Crime

The purpose is to recover the financial benefit the offender has obtained from their criminal conduct. Applications may be made under the Proceeds of Crime Act 2002 for the confiscation of assets in appropriate cases.

We will continually review our position regarding the use of enforcement options and additional sanctions

8. What You Can Expect of Us

8.1 You are entitled to expect our staff to:

- Adhere to Northamptonshire County Council's published service standards which can be found on the link: [Service Standards](#)
- Be courteous and helpful.
- Give at least two working days between the date of receipt of written notice and the date of entry, unless it is inappropriate to do so.
- Identify themselves by name and produce identification if requested.
- Provide a contact point for any further dealings.
- Give clear and simple advice.
- Confirm advice in writing when appropriate and upon request.
- Clearly distinguish between what you must do to comply with the law and what is recommended as best practice.
- Try to minimise the cost of compliance by requiring proportionate action.
- Give you a reasonable time to comply (unless immediate action is necessary in the interest of health, safety or to prevent evidence being lost).
- Notify you if the matter is to be reported for legal proceedings.
- Advise you of the procedure for you to discuss matters further, appeal or to make a complaint.
- Maintain confidentiality (subject to exchange of information in accordance with statutory information disclosure gateways).

8.2 This Policy and all associated enforcement decisions, take account of the provisions of the Human Rights Act 1998. In particular, due regard is had to the following:

- Right to a fair trial
- Right to respect for private and family life, home and correspondence

We are committed to providing open, equal and timely access to our services. All officers will abide by this policy when making enforcement decisions.

The Enforcement Policy is freely available on request and published on Northamptonshire County Council's website at [Policies and Plans](#)

9. Complaints, Compliments, Appeals and Comments etc.

9.1 Complaints

If you feel that you have not received the standard of service you expect, you may contact us to make your complaint, or discuss your concerns. If you would like more information on how to complain about our services you can complete an on-line form via our website: [Make a Compliment, Comment or Complaint](#)

9.2 Appeals

If you want to appeal against a decision we have taken, please contact us by any of the methods below.

9.3 Commenting on this policy

Anyone wishing to make any comment about the content of this policy is invited to address them to us by any of the methods outlined below.

Your comments will assist us in monitoring and reviewing the effectiveness of the policy. Your comments are important, as they help us to ensure that the policy remains up to date and reflects the views of our communities and businesses. Please contact us if you require any further information on how we can carry out our work or can be of any further assistance to you.

9.4 Contacting us

By post: Northamptonshire County Council, Trading Standards Service, Wootton Hall Park, Northampton, NN4 0GB or The Complaints and Compliments Team, One Angel Square, Angel Street, Northampton, NN1 1ED

By telephone: 0300 126 1000

By fax: 01604 362425

By e-mail: tradedstd@northamptonshire.gov.uk Or via the corporate team:

- complaints@northamptonshire.gov.uk
- compliments@northamptonshire.gov.uk

Via our website: <https://www3.northamptonshire.gov.uk/councilservices/business-and-economy/trading-standards/Pages/default.aspx>

[Make a Compliment, Comment or Complaint](#)

9.5 We want everyone to understand us

In appropriate circumstances we will arrange (so please ask):-

Language interpreters, including for sign language Translation of written materials into other languages Materials in large print, on tape or in Braille.

9.6 Review of the Enforcement Policy

This Enforcement Policy will be reviewed regularly. Amendments will be made if there are any changes in legislation or in local needs.