

Our Enforcement Policy

This Enforcement Policy has been published in order to explain what happens when we find infringements of Trading Standards law. It has also been designed to help promote an efficient and effective approach to enforcement, - one that will improve regulatory outcomes without imposing unnecessary burdens on businesses. This is in accordance with the good practice principles set out in the Regulators' Code*.

We recognise that for enforcement to be fair it is important that we are open and clear about the basis on which we take action. This document seeks to explain how we make our decisions.

What you can expect from our staff

You are entitled to expect our staff to:-

- Be courteous and helpful
- Identify themselves by name and produce ID if requested
- Provide a contact point for any further dealings
- Give clear and simple advice
- Clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- Require proportionate action to achieve compliance with the law
- Notify you if the matter is to be reported for legal proceedings
- Maintain confidentiality except where we have a legal obligation to disclose information
- If requested, advise you of our procedure for making a complaint or representations where there is a case of a dispute
- Conduct our investigations in line with the principles of good enforcement practice; price transparency; accountability; proportionality and consistency

How do infringements come to the attention of Trading Standards Service?

- Complaints made by members of the public.
- Complaints made by traders
- Inspections of trade premises carried out by Trading Standards Officers
- Targeted investigation of individual traders, trade sectors or practices
- Matters referred by other agencies
- Other sources of information and intelligence

Action we take if the law is contravened?

This will depend on each individual case. In the majority of cases the most appropriate action will be a discussion with the trader with suggestions and advice about how things can be improved. In more serious cases a formal investigation is conducted. At the conclusion of

that investigation the case is reviewed and a decision taken as to the appropriate enforcement outcome.

This will usually be one of the following:-

- A Written Warning
- A Formal Caution
- A Formal Undertaking
- A Recommendation to prosecute or commence other legal proceedings, including injunctive action

In deciding what action to take, a number of factors will be taken into consideration, including:

Firstly we must be satisfied that there is sufficient evidence to show that an offence or other infringement has been committed. We also must be satisfied that the alleged offender is unlikely to be able to sustain a statutory defence.

If both of these criteria are met we then consider a number of other factors before making our final decision:

- The seriousness of any alleged offence
- The monetary value and economic detriment involved
- The vulnerability of consumers affected
- The previous history of the business
- Age and health of the offender
- The actual or potential amount of economic loss deriving from the offence
- Action taken to prevent recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business
- What course of action will best suit the public interest
- If the trader has established a "Primary Authority" (PA) or "Home Authority" (HA) relationship with a Trading Standards Department in the United Kingdom, the views and actions of that authority.
- Breach of an undertaking

Factors that tend to favour prosecution

- Evidence of deception, or fraud or intent
- Unwillingness to put things right
- Significant level of negligence or carelessness
- Ignoring repeated advice or warnings
- Likelihood of future perceived non-compliance
- Adverse impact on vulnerable person or persons
- Behaviour likely to give unfair commercial advantage or damage commercial interest of other traders
- Prevalence of offending practice
- Obstruction of officers

Factors that tend to weigh against prosecution

- A minor systems failure occurred and we are satisfied that real steps have been taken to remedy that failure
- Exceptional, unusual or one off circumstances that are very unlikely to be repeated and, if possible, steps have been taken to prevent reoccurrence
- Whether the person(s) affected have been fairly and promptly compensated
- Willingness to put things right
- Commitment to future compliance

All relevant factors are taken into account and given appropriate weight depending on the facts of the case. This means that even if one or more factors favour prosecution this is not necessarily the outcome. The contrary also applies.

The process leading to a decision to prosecute or commence other legal proceedings

After the investigation is completed senior officers of the Service (unconnected with the original enquiry) consider any recommendation to commence legal proceedings. This involves a careful review of the alleged offences, admissible evidence, and all the relevant circumstances of the case. If they conclude that prosecution or other legal proceedings is appropriate a file is then submitted to the Public Prosecution Service (PPS) or the Departmental Solicitor's Office (DSO) with that recommendation.

Who takes the decision to prosecute?

The Public Prosecution Service (PPS) is independent of any Government Department or Service. They review and check all files they receive.

The final decision to prosecute or not rests with the PPS.

In the case of civil proceedings the decision to go to court rests with the Department for the Economy in consultation with the Departmental Solicitor's Office.

Good Enforcement Practice

Northern Ireland Trading Standards Service has given its commitment to the Government's Regulators' Code* to demonstrate its commitment to open, proportionate and consistent enforcement practices. (copy available on request or visit

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/300126/14-705-regulators-code.pdf (external link).

We endeavour to serve the people of Northern Ireland by working with the business community to ensure fair trading.

We will carry out our duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. Trading Standards Service Managers continually review the actions of enforcement staff to ensure that both findings of non-compliance and consumer/business complaints are effectively investigated.

Comments

Anyone wishing to make any comments about the contents of this policy or the manner of its application by any officer is invited to address them to :-

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Your comments will assist us in the continual monitoring and review of our Enforcement Policy.

* 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 will be properly reasoned and based on material evidence.