

Compliance Policy

Introduction

The Trading Standards service exists to promote and maintain a fair and safe trading environment, and to protect the interests of consumers and legitimate businesses. We have a duty, on behalf of the local authority, to seek compliance with a wide range of business and consumer protection legislation relating to quality, quantity, safety, description and price of goods and services. Information on the legislation we enforce can be found at:

http://www.derbyshire.gov.uk/business/trading_standards/business/business_legislation/required_legislation/default.asp

We deal with a range of business sectors and have contact with the complete business spectrum ranging from public and private limited companies to partnerships, sole traders and charitable organisations.

This policy has been developed to provide a framework that ensures we operate in a manner that has regard to the five principles of good regulation, as provided by the *Legislative and Regulatory Reform Act 2006* and demonstrates a commitment to the requirements of the Regulators Compliance Code.

Available at <http://www.berr.gov.uk/files/file45019.pdf>

We believe that by following our compliance policy, we can protect consumers without imposing unnecessary burdens on legitimate businesses and thus help to promote a thriving national and local economy.

The effectiveness of legislation in protecting consumers and businesses depends on the compliance of those regulated. We recognise that most businesses want to comply with the law. We will endeavour to help these businesses and others to meet their legal obligations without unnecessary expense.

This policy covers all aspects of Trading Standards enforcement and is intended to provide guidance for officers, businesses, and consumers.



DERBYSHIRE
County Council
Improving life for local people

TSGen06 04/10



CUSTOMER SERVICE EXCELLENCE



INVESTOR IN PEOPLE

It does not affect the discretion of the authority to take action in any case where it is deemed to be in the public interest to take proceedings in a court of law. In implementing this policy account is taken of "The Code for Crown Prosecutors".

Available at www.cps.gov.uk/victims_witnesses/code.html

or in hard copy from:

CPS Publicity, 50 Ludgate Hill, London, EC4M 7EX. Tel: 020 7796 8442
Fax: 020 7796 8351. Email: publicity.branch@cps.gsi.gov.uk

Purpose

The purpose of this policy is to demonstrate that we are **accountable** for our actions in enforcing the law. That we do so in a **fair** and **consistent** manner, using guidelines which are unambiguous, **transparent** and designed to ensure that the action we take is **proportionate** to any wrong doing and **targeted** at particular areas of concern.

The policy will apply equally where there is a shared enforcement role and details what action the service may take against traders and businesses that are not complying with Trading Standards legislation.

Approach to Seeking Compliance

Derbyshire Trading Standards will utilise each of the following methods in seeking to fulfil its duty to ensure businesses comply with consumer protection legislation:

- undertake inspection of businesses based on risk assessment or as part of a specific project based activity which may also include taking samples and making test purchases;
- direct resources to undertake investigation of complaints received from members of the public and others;
- gather intelligence to enable the **targeting** of resources at "rogue trading" activities and other areas of threat to the citizen, environment or animal welfare;
- seek to educate businesses and consumers so as to promote voluntary compliance and understanding of the rights and responsibilities of businesses and consumers;

- conduct investigations to establish the circumstances surrounding potential breaches of consumer protection legislation.

During the course of these activities, businesses and traders will be notified in writing of all infringements identified, except where it is inappropriate to do so.

Where it is reasonable to do so the service will make provision for the particular interests of consumers, business owners (and their employees) and the public.

Depending on the severity of non compliances identified and the particular legislation concerned, there are several potential courses of action open to the service. These include:-

- the issuing of an enforcement notice or improvement notice
- providing letters of advice
- taking action under the Home Authority Principle
- seeking a written assurance or undertaking in relation to future conduct
- seeking a written agreement to a course of action designed to improve compliance
- seeking a review of licence conditions (e.g. to sell alcohol)
- issuing a written warning
- suspending, seizing or arranging the voluntary surrender of goods
- taking injunctive action
- giving notice to mark, warn, withdraw and/or recall
- issuing a caution in compliance with Home Office Circular 30/2005 Available at <http://www.homeoffice.gov.uk/about-us/publications/home-office-circulars/circulars-2005/030-2005/> (Home Office Circular 30/2005 is available in alternative formats on request)
- instituting legal proceedings (prosecution).

In appropriate circumstances the service, working in partnership as necessary, will seek other penalties/sanctions such as:

- recovery of assets from convicted offenders under the *Proceeds of Crime Act 2002*
- disqualification of directors under the *Company Directors Disqualification Act 1986*
- victim compensation

- revocation of licences
- forfeiture of infringing goods
- issue of fixed penalty notices.

In making decisions about enforcement action, we will ensure that any action taken is **proportionate** having regard to all the circumstances.

It should be noted that the service is not acting on behalf of an individual complainant, but is exercising a wider responsibility to further its primary aim of supporting local businesses and helping consumers by tackling unfair and unsafe trade practices. In so doing we are **accountable** for the efficiency and effectiveness of our activities whilst remaining independent in the decisions we take.

Any decision regarding enforcement action will be **fairly and consistently** applied and will not be influenced by the race, gender, sexual orientation or religious beliefs of any offender, victim or witness.

Where Derbyshire Trading Standards engages in any joint enforcement action this service will liaise with the agencies concerned to determine the appropriate action to achieve compliance and have due regard for their enforcement policy.

This authority has adopted the Home Authority Principle under which it will positively support businesses within Derbyshire by means of advice on regulation, good practice and remedial action and will provide a link between these businesses and other enforcement authorities.

Available at

www.derbyshire.gov.uk/business/trading_standards/business/home_authority_advice/ (The Home Authority Principle is available in alternative formats on request).

This authority is a signatory to the Enforcement Concordat, which sets out principles of good enforcement. Available at

<http://www.berr.gov.uk/files/file10150.pdf> (The Enforcement Concordat is available in alternative formats on request).

This authority recognises and supports the obligations placed on it by the *Human Rights Act 1998*.

We do not take our enforcement responsibilities lightly. Any decision to institute legal proceedings is taken having full regard to the Code for Crown Prosecutors.

Prosecution/Formal Action

The Code for Crown Prosecutors recommends that the decision to prosecute should be approached in two stages. The first stage is the evidential test. No matter how serious or important a case may be, a prosecution may not proceed if it fails the evidential test. The second stage is the public interest test. The service will only proceed with a prosecution if the case has passed both tests. The evidential and public interest tests, extracted from the code for Crown Prosecutors, are set out below:

The Evidential Test

Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

When deciding whether there is enough evidence to prosecute, Prosecutors will consider whether the evidence can be used and is reliable.

Prosecutors will not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

The Public Interest Test

The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will only take place when it is considered that it is in the public interest to do so – in other words the factors in favour of a prosecution outweigh those against.

Factors for and against prosecution must be balanced carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the potential defendant. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Prosecutors will decide how important

each factor is in the circumstances of each case and go on to make an overall assessment.

Public interest factors that will be examined when considering prosecution include the following (these are not exhaustive lists):

Aggravating factors

- where injury has resulted;
- there is a significant risk to public health or safety to the environment;
- the offender, by action or inaction, risks causing suffering to animals or has increased the risk of the spread of animal disease;
- the offence involves the threat of violence against any person;
- for serious matters where there has been recklessness or negligence;
- the offender deliberately obstructs an officer of the authority carrying out his or her duties;
- fraudulent or reckless practice or the threat of significant economic disadvantage to consumers or businesses is involved;
- the victim is part of a vulnerable group e.g. children, elderly persons;
- the offender has relevant previous convictions;
- the previous history of the potential defendant with regard to similar offences or failures;
- previous responses to advice, warnings and enforcement action;
- those who flout the law or act irresponsibly;
- there are grounds to believe that the offence is likely to be continued or repeated;
- there is a widespread disregard of the law and appropriate notice has been given to the business community that legal proceedings will be considered for future breaches.

Mitigating factors

- a conviction is likely to result in a very small or nominal penalty;
- the offence resulted from a genuine mistake and the offender is prepared to rectify the problem;
- the loss or harm caused was minor;
- there has been undue delay in bringing the matter to court (unless the delay was the fault of the offender);
- a prosecution is likely to have a detrimental effect on the victim's physical or mental health;
- the offender is elderly or a minor, or was, at the time of the offence, suffering from significant mental or physical ill health;
- the views of a relevant 'home authority', i.e. a Trading Standards Service in the offender's home area.

Case Review

Each investigated case will be subjected to continuing process of review to ensure that the appropriate level of enforcement action is taken.

Availability of this policy

This Compliance Policy is to be made easily available to the public, and will additionally be published on the Derbyshire County Council Trading Standards Website.

www.derbyshire.gov.uk/business/trading_standards/About_us/enforcement/ (The Compliance Policy is available in alternative formats on request).

Commenting on this policy

Anyone wishing to make any comments about the content of this policy or the manner of its application is invited to address them to us by any of the methods listed below.

These comments will assist us in the continual monitoring and review of the policy. This is important to ensure that the policy remains up to date and reflects changes in legislative requirements. Please contact us should you require any further information on how we carry out our work or can be of any further assistance to you.

Contacting Us

By post:

Derbyshire County Council
Trading Standards Service
Chatsworth Hall
Chesterfield Road
MATLOCK DE4 3FW

By telephone:

If you are a consumer:	Consumer Direct	08454 04 05 06
If you are a business:	Call Derbyshire	08 456 058 058

By fax: 01629 536197

By email: trading.standards@derbyshire.gov.uk

Via our website: www.derbyshire.gov.uk/tradingstandards

We want everyone to understand us. On request, we will arrange:

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

If for any reason you have a complaint about our service we have a specific complaints procedure details of which can be found at:

http://www.derbyshire.gov.uk/council/policies_plans/complaints_procedure/default.asp