

# 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. Information on the legislation we enforce can be found at:

<https://www.derbyshire.gov.uk/business/trading-standards/business/business-legislation/business-legislation.aspx>

We deal with a range of business sectors and have contact with the complete business spectrum ranging from 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' Code.

Available at <https://www.gov.uk/government/publications/regulators-code>

We believe that by following our compliance policy, we can protect consumers without imposing unnecessary burdens on legitimate businesses and so 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.

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 legal proceedings. In implementing this policy, account is taken of "The Code for Crown Prosecutors".

Available at <https://www.cps.gov.uk/publication/code-crown-prosecutors>

## 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 use each of the following methods in seeking to ensure that businesses comply with consumer protection legislation:

- undertake inspection of businesses based on risk assessment or as part of a specific project based activity. Inspection activity may also include taking samples, making test purchases and checking a business's website for compliance;
- 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;
- use intelligence to identify and take action against the sale of illegal goods online through auction sites and social media platforms.
- 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 any infringements identified, except when it might compromise the current or future investigations or the health and safety of staff or other parties working with or on behalf of the service.

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 Ministry of Justice 'Simple Caution for Adult Offenders' guidelines 2013  
Available at <http://www.justice.gov.uk/downloads/oecd/adult-simple-caution-guidance-oecd.pdf>
- 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 applied **fairly and consistently** and will not be influenced by the race, gender, sexual orientation, religious beliefs, or any other protected characteristics as defined by the Equality Act 2010 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 will have due regard for their enforcement policy.

### **Home Authority and Primary Authority**

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.

Derbyshire also supports the Primary Authority Principle (PAP), established by the Regulatory Enforcement and Sanctions Act 2008. The PAP gives a statutory basis to advice given by a local authority to a business under a PAP agreement. It also establishes the principle of inspection plans which all local authorities must have regard to when deciding what level of surveillance it intends to carry out of businesses operating within their jurisdiction. Further details about the Primary Authority Principle are available via the following link:

<https://www.gov.uk/guidance/local-regulation-primary-authority>

### **Enforcement Concordat and Regulators' Code**

This authority is a signatory to the Enforcement Concordat and has regard to the Regulators' Code, which set out principles of good enforcement practice. Available at:

- <http://webarchive.nationalarchives.gov.uk/http://www.berr.gov.uk/files/file10150.pdf> (The Enforcement Concordat is available in alternative formats on request)
- <https://www.gov.uk/government/publications/regulators-code>

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.

## **Weight restriction Cases**

Where a case involves an allegation that a heavy goods vehicle has breached a weight restriction imposed under the Road Traffic Regulation Act 1984, there are additional criteria (including specific aggravating factors) to be considered. These criteria are included as Appendix 1.

## **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.

<https://www.derbyshire.gov.uk/business/trading-standards/about-us/compliance/compliance.aspx> (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  
County Hall  
Chesterfield Road  
MATLOCK DE4 3AG

**By telephone:**

If you are a consumer: Citizens Advice Consumer Helpline  
03454 04 05 06

If you are a business: Call Derbyshire 01629 533190

**By email:** [trading.standards@derbyshire.gov.uk](mailto:trading.standards@derbyshire.gov.uk)

**Via our website:** [www.derbyshire.gov.uk/tradingstandards](http://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:

<https://www.derbyshire.gov.uk/council/complaints/complaints-procedure/complaints-procedure.aspx>

To ensure that you are looking at the most up-to-date version of this policy, please visit our website at <https://www.derbyshire.gov.uk/site-elements/documents/pdf/business/trading-standards/trading-standards-compliance-policy.pdf>

or telephone us on 01629 536166.

## **APPENDIX 1 - WEIGHT RESTRICTION CASES**

All reports regarding alleged breaches of weight restrictions should be considered individually on the merits of the case. However, to facilitate the decision-making process and further promote consistency and fairness, the following additional circumstances should be considered.

**Drivers:** Breaches by drivers should generally be dealt with by means of a letter of warning in the first instance unless there are aggravating circumstances. In which case, a prosecution would be considered to be the appropriate response.

### **Aggravating circumstances (Driver):**

- Driver has previous convictions for Road Traffic offences;
- Driver has previously been issued with a Written Warning or has accepted a Simple Caution;
- Two or more breaches of the restriction on the same day;
- Breaches of any restriction on two or more occasions within a short period of time;
- Deliberate breaches to gain time or commercial advantage;
- Vehicles with an operating weight of more than 4 times the restricted weight (e.g. 30 tonnes or over for a 7.5 tonne limit);
- Any articulated vehicle on a road where such a vehicle presents a particular hazard to other traffic, pedestrians or parked cars;
- Any other aggravating circumstances, subject to the agreement of the Trading Standards Manager.

**Companies:** Breaches by companies would generally be dealt with by means of an Advisory Letter (if they have systems for the issuing of specific instructions to drivers regarding the need to comply with Road Traffic legislation) or a Written Warning (if they apparently have no such systems in place). Prosecution of companies may be considered an appropriate response under the following aggravating circumstances.

### **Aggravating circumstances (Company):**

- Company has previous convictions for Road Traffic offences;
- Company has previously been issued with a Written Warning or have accepted a Simple Caution;
- Breaches of any restriction on four or more occasions within a short period of time;
- Deliberate breaches to gain time or commercial advantage.