



Enforcement Policy

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Document summary

The East Sussex County Council's Trading Standards Service aims to contribute to the promotion and development of a safe, fair and equitable trading environment for all consumers and businesses in East Sussex.

This document sets out the approach of East Sussex County Council Trading Standards Service to dealing with non-compliance.

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The Trading Standards Service is committed to good enforcement and subscribes to the principles and objectives set out in the statutory Regulators' Code 2014 made under the Legislative and Regulatory Reform Act 2006. A copy of the code is available at: <https://www.gov.uk/government/publications/regulators-code>

We believe that any enforcement activity should only be taken where the circumstances show that it is both justified and proportionate. In some cases, we may conclude that a provision within 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, evidence based and documented accordingly.

Where possible, issues will be dealt with by advice and assistance. We may also ask businesses to give us assurances as to their future compliance with the law. Where appropriate, we will give positive feedback on a business's performance.

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 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 in line with the Regulators' Code.

1. The purpose of our Enforcement Policy

- 1.1. Our enforcement policy provides a framework to ensure that we work in an equitable, proportionate and consistent manner.
- 1.2. The role of Trading Standards is to promote and maintain a fair and safe trading environment and to protect the interests of both consumers and businesses alike.
- 1.3. We enforce a wide range of business and consumer protection legislation relating to quality, quantity, safety, unfair trading practices, misleading business marketing, commercial animal health & welfare, and the prices of goods and services.
- 1.4. We carry out our duties in various ways including inspection, sampling, test purchasing, investigation and prosecution. We also do so by informing, advising and educating consumers and businesses.
- 1.5. We recognise that prevention is important and that most businesses want to comply with the law. We will therefore endeavour to help businesses (and others) to meet their legal obligations without unnecessary burdens. When a business does not comply with

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 use intelligence and relevant risk assessment to prioritise and direct our regulatory effort effectively. In order to focus our resources where they are needed most, we will give due consideration to the combined effect of the potential impact and likelihood of non-compliance. This will also 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 appropriate and meaningful.
- 2.3. Accountability - We will be accountable for the efficiency and effectiveness of our activities. Should you have any reason to raise a concern with us, please refer to Section 9 (Complaints) below.
- 2.4. Fairness and Consistency - We will treat all businesses fairly. We will take the compliance record into account when making a decision regarding appropriate action for those that we regulate. We aim to give positive feedback to businesses where it is appropriate to do so. We will ensure that our enforcement practices are consistent.
- 2.5. Openness and Transparency - We are committed to the provision of guidance in a format that is both accessible and easily understood.

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.

Where appropriate, we will provide guidance to businesses as opposed to formal action; assist them with meeting their legal obligations and thus avoiding future breaches.

- 2.7. Sharing information with other regulators - If there is a shared enforcement role with other agencies we will consider co-ordinating with these agencies, to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Provision of Guidance and Advice to Businesses

- 3.1. Free and impartial business compliance guidance is available via the Business Companion website: <https://www.businesscompanion.info>

This guidance is free of charge to all businesses regardless of size, as required by the Regulators' Code.

Further chargeable advice is available to all businesses.

- 3.2. Where appropriate, the guidance provided to businesses will be given or confirmed in writing.
- 3.3. We will consider any advice that has been given by another regulator or enforcement agency which could lead to an amendment of our advice where necessary and we will always look to engage as appropriate in these circumstances.
- 3.4. We welcome requests for guidance/advice from businesses. If businesses are subsequently found to be non-compliant, we will need to consider the seriousness and impact of non-compliance when determining the appropriate course of action. However, an approach to us will be considered a mitigating factor and enforcement action may not always be necessary.

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 are committed to communicate with other Primary Authorities at an early stage should the circumstances require.
- 4.3. 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.
- 4.4. The Primary Authority has the right to object to our proposed action and they or we may refer the matter to Regulatory Delivery for their adjudication.

5. Investigations

- 5.1. Investigations into alleged breaches of the legislation will be carried out in a fair, equitable and consistent manner and will be proportionate to the risks.
- 5.2. A breach of the legislation will not automatically be the subject of prosecution.
- 5.3. 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)

5.4. Trading Standards 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.

5.5. As part of the investigation process, persons suspected of breaching legal requirements will, where appropriate be interviewed in accordance with Police and Criminal Evidence Act 1984 (PACE).

5.6. Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated. A report will be compiled for review by a senior manager within the Trading Standards Service and the County Council's Legal Services section. 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.

5.7. 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. We will provide at least 48 hours written prior notice of an inspection, unless such a notice will defeat the object of such a visit.

5.8. 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. The Range of Enforcement Actions available

6.1. The range of enforcement actions that will be considered include:

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

- 6.1.2 **Written warnings:** Used where a minor offence has been committed, and it is not deemed appropriate to take any further action. The warning is recorded on the business's and/or individual's record. This would be taken into account if subsequent offences are committed.
- 6.1.3 **Fixed Penalty Notice:** Not available for all breaches of legislation. Could be administered where a prosecution could succeed/and where the offender admits their involvement, e.g. Letting Agents failing to display their fees in accordance with the Consumer Rights Act 2015.
- 6.1.4 **Undertakings & Injunctive action under the Enterprise Act 2002:** The range of actions under this legislation are as follows:
- Informal Assurances
 - Formal Undertakings
 - Interim Orders
 - Court Orders
 - Contempt Proceedings
- 6.1.5 **Injunctive relief:** Where an individual or business operates in such a way that it harms consumers generally, an application may be made to the civil courts for an injunction to stop the detrimental activities.
- 6.1.6 **Suspending goods from sale:** Where it is necessary to protect the public, unsafe goods will be suspended from sale using existing legislative powers.
- 6.1.7 **Dealing with age restricted sales (Alcohol):** In the case of the illegal sale of alcohol to a person aged under 18 years, serious consideration will be given to instituting a review of the premises licence. This could lead to its suspension or revocation.
- 6.1.8 **Dealing with age restricted sales (Tobacco):** Where an offender continually 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 premises or a person from selling tobacco for a period of time up to one year.
- 6.1.9 **Refusal, termination or variation of a licence/registration:** Where there is a requirement for a business to be licensed (e.g. Licensing Act), the refusal, termination or variation of that licence or registration will be considered where the conditions attached to a licence or registration have not been met or where the activities and/or fitness of the licence holder is in question. Licence reviews will always be considered were the business owner or licence owner or those under their control are engaged in criminal activity.

6.1.10 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-imbusement of expenses incurred and subsequent disposal.

6.1.11 Simple Caution: 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.

6.1.12 Prosecution: This will be considered when appropriate as a way to secure and/or to draw attention to the need for compliance with the law or where traders may be deterred from offending through the conviction of others.

A prosecution will only be undertaken when the evidence passes the 'Evidential Test' (there is sufficient admissible evidence to ensure a realistic prospect of conviction, in accordance with the Code for Crown Prosecutors) and when we believe it to be in the public interest to do so.

The Code for Crown Prosecutors is available at:

http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf

The following public interest criteria will normally be taken into account:

- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk to the public/animals
- Whether the victim was part of a vulnerable group
- The failure to comply with a statutory notice or respond to advice
- Obstruction of an authorised officer
- The disregard of legal requirements for financial reward
- Significant financial loss to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes.

Prosecutions will only be instigated with the approval of the Head of Communities.

6.1.13 Financial investigations under the Proceeds of Crime Act 2002: The Trading Standards Service will consider and, if appropriate, utilise powers under the Proceeds of Crime Act 2002 (POCA), to ensure the recovery of criminal

benefit or financial gain following 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 and to compensate victim(s).

7. Partnership Working

- 7.1. To ensure that the local economy is not prejudiced by unfair competition, we monitor the standards of other businesses in the same sector. This work is complemented by joint enforcement and advice initiatives with our eighteen partner local authorities who collaborate under the name of Trading Standards South East (TSSE).
- 7.2. Wherever practicable, our enforcement activities are co-ordinated with other enforcement agencies. This will minimise unnecessary duplication and delays and will increase our overall effectiveness. Joint working may be carried out with agencies such as the Police, DEFRA, Her Majesty's Revenue and Customs (HMRC), District and Borough Councils and Fire and Rescue officers.
- 7.3. All exchanges of information will fully comply with the requirements of the Data Protection Act 1998 and the Enterprise Act 2002.

8. What You Can Expect of Us

8.1. You are entitled to expect our staff to:

- Adhere to East Sussex County Council's published service standards, which can be found: <https://www.eastsussex.gov.uk/contact-us/customer-care/>
- Be courteous and helpful
- Give at least 48 hours written notice for visits unless this defeats the object of the visit
- 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

8.3. We are committed to providing open, equal and timely access to our services.

8.4. All officers will abide by this policy when making enforcement decisions.

8.5. The Enforcement Policy is freely available on request

9. Complaints, Compliments, Appeals and Comments

9.1. If you are unhappy with the service you have received or feel that we have not followed the policy outlined above, you make a complaint through our complaints process. This policy is available to view at:

<https://www.eastsussex.gov.uk/media/5993/escocomplaintpolicy.pdf>

9.2. Alternatively, if you are happy with the service you have received and would like to make a comment on this, please do so using the contact details below.

9.3. Appeals: If you want to appeal against a notice served on you, please contact us as per the details below.

9.4. 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.

9.5. Policy Review: This policy will be reviewed every 12 months.

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