

# BUCKINGHAMSHIRE COUNTY COUNCIL TRADING STANDARDS SERVICE ENFORCEMENT POLICY

## Introduction

Buckinghamshire County Council Trading Standards Service has responsibility for enforcing a wide range of criminal and civil legislation dealing with consumer and trade issues. Our aim is to protect consumers by working to achieve a fair and honest trading environment and to safeguard the health and well being of the community.

The majority of traders recognise the benefits of treating their customers fairly and strive to comply with the law. The law can be complex and we much prefer to assist traders to achieve compliance than to take enforcement action.

However there are traders who do not or will not comply and a range of enforcement actions are available to us to deal with such cases. This document sets out what businesses and others being regulated can expect from Buckinghamshire County Council's Trading Standards enforcement officers. It helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. This is in accordance with the Regulators Compliance Code.

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 is properly reasoned, based on material evidence and documented.

The main purpose of our enforcement activities is to protect the public, other businesses and the environment. To achieve this aim we will undertake to regulate businesses and others in a fair, practical and consistent manner helping to promote a thriving local and national economy.

This policy operates within and supports the principles of the **Regulators Compliance Code**. The principles of the **Enforcement Concordat** will be applied where the code does not apply.

## Enforcement Policy

Included in the term 'enforcement' are the ways we deal with businesses and others in an advisory capacity in addition to licensing and other formal enforcement action.

We aim to:

- follow legal enforcement procedures and guidelines
- assist and advise businesses to help them stay within the law and reduce the cost of compliance
- take into account the collective as well as individual interests of consumers and businesses, within the community
- ensure local and national consistency in our enforcement activities, including when there is a shared enforcement role
- ensure that our actions are proportionate to the risk, undertaken without undue delay and within any statutory time limits. Where delays are inevitable we will endeavour when appropriate to keep parties informed
- act in a helpful and courteous manner
- maintain procedures for dealing with complaints about the way we work

### Inspections

Part of our regulatory and enforcement function is to undertake visits and inspections of traders and businesses. By conducting a Risk Assessment of traders and business we aim to target our resources, where practicable, to achieve the appropriate regulatory outcomes. Positive feedback will be given to regulated entities when it is merited and if applicable a change in their risk rating will be made as a result of their performance.

### Breach of Regulations

Where it comes to our attention that there has been a breach of a regulatory provision the breach will be investigated. Consideration will be given to the most appropriate method for dealing with the case following investigation.

Each case will be considered on it's own merits. In deciding on the method of dealing with a case consideration will be given to matters which aggravate or mitigate the seriousness of the case so that the most appropriate and proportionate method of disposal is chosen.

We will follow up any enforcement action in the way most appropriate to the action taken. We will also ensure that when any enforcement notices are served the appeals process is explained to the recipient.

### Aggravating Factors

- The impact, or potential impact, of the offence is so serious that prosecution is the only suitable method for disposal.
- Whether the offence continued over a long period of time or involved a series of offences against the same or different victims.
- Degree of pre-planning
- Age and/or vulnerability of the victim(s)
- Amount of gain for the offender or the amount of loss to the victim relative to the victim's status. Impact of the crime on the victim.
- Prevalence of the offence and its impact on the community.
- Behaviour that caused or was likely to cause harassment alarm or distress
- Where there is any evidence of the crime being motivated by hate (hate crimes) i.e. racial hatred.
- Any attempt by the offender to conceal his identity, whether directly or indirectly, such that the victim, and or investigating agencies, cannot easily identify or trace the person.
- Lack of remorse.
- The offender's antecedents including previous advice, warnings, cautions and convictions.
- There is evidence of significant and or continuing consumer or public detriment.
- There is significant risk to public health and safety or to the environment.
- The offender has acted fraudulently, recklessly, negligently or irresponsibly in their activities or in disregard of the law.
- The offender deliberately obstructs an officer.
- The offender disregards the needs for animal health and welfare or disease control legislation.

### **Mitigating Factors**

- Prompt acknowledgement of guilt.
- Making appropriate timely and appropriate compensation to the victim(s).
- Previous good character.
- Age of the defendant.
- Degree of culpability.
- Any other factors which considered objectively in relation to the offence tends to lessen the seriousness of the crime even though it does not provide a defence to it.

### **Aims of sanctions and penalties**

In accordance with the principles set out in the Macrory review our sanctions and penalties aim to:-

- change the behaviour of the offender.
- eliminate and financial gain or benefit from non compliance.
- be responsive and consider what is appropriate for the particular offender and regulatory issue which can include punishment and the public stigma that should be associated with a criminal conviction.
- be proportionate to the nature of the offence and the harm caused.
- restore the harm caused by regulatory non compliance, where appropriate.
- deter future non compliance.

### **Prosecuting offenders in the courts**

- The decision to prosecute is made by the Head of Public Protection Services (subject to the transformation of such role on 1<sup>st</sup> June 2009 to Head of Localities and Safer Communities) as authorised by the Head of Legal and Democratic Services. Consideration will be given to this policy and the Buckinghamshire County Council's prosecution policy (available on the Council's website) when deciding upon any criminal or civil proceedings to be undertaken.
- In some cases more than one type of enforcement action may be taken.

### **Other Types of Enforcement Actions include**

- Giving advice
- Issuing simple cautions to offenders
- Formal Undertakings under the Enterprise Act 2002
- Taking action in the civil courts (Injunctive Action)
- Give written warnings
- Fixed Penalty Notices and Notices for Disorder
- Seizing and/or detaining goods, equipment or documents
- Suspending goods from sale
- Seeking forfeiture of illegal goods and/or having the ownership of such goods assigned to the Trading Standards Service for disposal
- Refusal, termination or variation of licence/registration
- Applying for a review of a licence under the Licensing Act 2003

### **Publicity**

We publicise our enforcement actions, when appropriate and proportionate as part of our work helping consumers and business avoid similar problems. Factors considered when considering publicity are:

- any legal restrictions on disclosure of information
- public accountability
- monitoring future conduct of a business and facilitating complaints about further breaches
- deterring other businesses from engaging in similar conduct
- warning consumers regarding detrimental practices
- increasing consumer awareness of their rights

### **Partnership Working**

On occasions Trading Standards Officers will work in partnership with officers of other enforcement agencies. Responsibility for dealing with any offences that are discovered will be determined before the start of the operation and dealt with in accordance with the policy of the relevant body or authority.

### **Complaints procedure**

If you have a complaint about the way that you have been treated you should firstly discuss the matter with the investigating officer. If he or she cannot resolve the matter then the issue will be referred to their manager to investigate.

If you prefer you may ask for the matter to be referred to the Trading Standards Head of Service, who will appoint an independent officer to look into the complaint.

We aim to acknowledge complaints against the Service within one working day and to investigate them within seven working days. Where the nature of the complaint requires further in depth investigation we will keep you updated on progress every 20 working days.