

TRADING STANDARDS SERVICE

Enforcement Policy

This document is about the enforcement policy of Leicestershire County Council Trading Standards Service. It provides information on:

- the purpose of our enforcement policy
- our principles of inspection and enforcement
- our compliance with the 'Home Authority' and 'Primary Authority' principle
- our enforcement actions
- what you can expect of us
- our accessibility and advice details (currently not included)
- our commitment to you
- complaints, compliments and comments about our Service
- how we can help consumers and businesses.

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, the Enforcement Concordat, the Regulators' Compliance Code and the Food Law Code of Practice (England) 2008

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 offering advice, information and issuing public warnings, to cautioning and instituting legal proceedings/prosecutions.

Compliance with this policy will ensure that we will strive to be fair, impartial, independent and objective and 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.

1. The Purpose of our Enforcement Policy

The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner. The role of Trading Standards is to promote and maintain a fair and safe trading environment and thereby protect the interests of consumers and businesses. We enforce a wide range of business and consumer protection legislation relating to the quality, quantity, safety, description, commercial animal welfare and price of goods and services. We carry out our duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses and consumers.

We recognise that prevention is better than cure and 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. When a business does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate. A prosecution will only be brought if it is in the public interest to do so.

2. Our Principles of Inspection & Enforcement

Targeting

We aim to prioritise and direct our regulatory effort effectively using intelligence and relevant risk assessment schemes. Such risk assessments will have regard to all available, relevant and good quality data.

We will give due consideration of the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities as outlined in the Regulators' Compliance Code.

Fairness and Consistency

We will treat all consumers and businesses fairly.

We aim to give positive feedback to businesses where it is due.

We will ensure that our enforcement practices are consistent, this means that we will adopt a similar approach in similar circumstances to achieve similar ends. We will have regard to national guidelines in our decision-making processes.

Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible and easily understood.

We will ensure that there is always a clear distinction between those actions necessary to comply with the law, and those which we recommend as best practice but which are not compulsory.

Where businesses have acted against the law we may use publicity in order to raise awareness, to increase compliance and to improve monitoring of trade practices.

We may also publish the results of court proceedings and certain undertakings.

Supporting the local economy

We recognise that a key element of our activity will be to facilitate and encourage economic progress against a background of protection.

Wherever possible, we will work in partnership with businesses, particularly small traders and with voluntary/community organisations, to assist them with meeting their legal obligations without unnecessary expense.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. the Office of Fair Trading (OFT), Animal Health, the Environmental Health Service or the Police, we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Compliance with Home Authority and Primary Authority Principles

The Home Authority Principle means that Leicestershire based businesses, where they trade or provide services that impact beyond Leicestershire, are able to get advice and support from us on matters such as legal requirements, changes to the law and so forth. This usually takes the form of a semi-formal relationship. In Leicestershire, we support the Home Authority Principle, which has been developed to promote good enforcement practice and reduce burdens on business. The primary objective is to create a partnership, which will provide positive benefits to both parties.

We will therefore:

- provide businesses for whom we are the 'Home Authority' with appropriate guidance and advice
- maintain records of our contacts with 'Home Authority' businesses to reduce the amount of information they have to provide to us
- support efficient liaison between local authorities
- provide a system for the resolution of problems and disputes

The Regulatory and Enforcement Sanctions Act 2008 introduced the Primary Authority Principle – in contrast to the Home Authority Principle, this is a formal relationship. A Primary Authority is a local authority registered by the Local Better Regulation Office (LBRO) as having responsibility for giving advice and guidance to a particular business or organisation that is subject to regulation by more than one local authority. We will give due consideration to any business, based in Leicestershire, who wishes to enter into such an arrangement.

4. Our Enforcement Actions

In deciding what enforcement action to take against an offender we will have regard to the following aims:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- for the action to be proportionate to the nature of the offence and the harm/potential harm caused
- to restore the harm caused by regulatory non compliance, where appropriate
- to deter future non-compliance

The range of enforcement options available to us include the following:

i. Indirect action

Including referral to another authority or agency for information or action.

ii. Verbal or written warning

Where an offence has been committed but is not thought appropriate to take any further action, in which case the suggested corrective action and a timescale will be given.

iii. Fixed Penalty Notices

Certain offences are subject to Fixed Penalty Notices (FPN) - they are recognised as a low-level enforcement tool.

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN), we may choose to administer a FPN on a first occasion, without issuing a warning. This avoids a criminal record for the defendant.

iv. Penalty Charge Notices

Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach.

Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt.

A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.

v. Statutory Notice

These are used as appropriate in accordance with relevant legislation (they usually require offenders to take specific action or to cease certain activities). Examples include improvement notices, prohibition notices and suspension notices.

vi. Seizure

Some legislation permits our officers to seize goods and documents that may be required as evidence.

When we seize goods, we will give an appropriate receipt to the person from who they are taken.

On some occasions we may ask the person to voluntarily surrender the goods.

vii. Forfeiture

Some legislation allows us to apply to the court to seek forfeiture of goods, either in conjunction with a prosecution, or separately.

viii. Undertakings & Injunctive action under the Enterprise Act

The range of actions under this legislation include the following:

- informal assurances
- formal undertakings
- interim orders
- court orders
- contempt proceedings

ix. Review of Licences

Where there is a requirement for a business to be licensed by a local authority e.g. Licensing Act, or other body e.g. Office of Fair Trading, then a review of the licence or permit may be sought where the activities or fitness of the license holder is in question.

x. Anti-Social Behaviour Orders and Criminal Anti-Social Behaviour Orders

Where the non compliance under investigation amounts to anti-social behaviour, then, following liaison with the Council's Anti-Social Behaviour Unit where applicable, an Anti-Social Behaviour Order (ASBO) or a Criminal Anti-Social Behaviour Order (CRASBO) may be sought to stop the activity.

xi. 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.

xii. Caution in accordance with the current Home Office circular

To deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts. A formal or '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. A record of the caution will be sent to the Office of Fair Trading and to other bodies that are required to be notified.

xiii. Prosecution

A prosecution will only be undertaken when the evidence passes the 'Evidential Test' and when it is in the public interest to do so – we will have regard to the Crown Prosecution Service Code of Practice which is available at:

www.cps.gov.uk/publications/docs/code2010english.pdf

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 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).

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible,

- be formally interviewed in accordance with PACE
- be given the opportunity to demonstrate that a statutory defence is available
- have the opportunity to give an explanation or make any additional comments about the alleged breach.

Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated. A report will be compiled and reviewed by senior managers.

We will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, including potential harm and loss and its significance in making the decision.

xiv. Proceeds of Crime Actions

The purpose is to recover the financial benefit the offender has obtained from their criminal conduct. Applications may be made under the Proceeds of Crime Act 2002 for the confiscation of assets in appropriate cases.

We will continually review our position regarding the use of enforcement options and additional sanctions under the Regulatory Enforcement and Sanctions Act 2008.

5. What You Can Expect of Us

You are entitled to expect our staff to:

- be courteous and helpful
- 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 on request, explaining why action is required and over what time-scale
- clearly distinguish between what you must do to comply with the law and what is recommended as best practice
- minimise the cost of compliance by requiring proportionate action
- give you 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 making a complaint or representations in cases of dispute
- maintain confidentiality (subject to exchange of information with our enforcement partners through statutory information gateways)

Officers' Powers

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 and, when necessary, the power to seize and detain such goods, books and documents that they believe may be required as evidence.

Officers may also take with them such other persons and 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 to premises. If individuals or businesses obstruct officers, they may be liable to prosecution.

Legal Action

Before any legal action is taken there will be an opportunity to discuss the case, although if we are considering a prosecution it will be a formal interview. Where a right of appeal against a formal action exists other than through the courts, advice on the appeal mechanism will be clearly set out in writing at the time the action was taken.

6. Our Commitment to You

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

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

As we are continually seeking to improve our standards, this policy is subject to regular review.

The Enforcement Policy is freely available on request and published on the Leicestershire County Council's website - www.leics.gov.uk

7. Complaints, Compliments and Comments

Complaints

If you feel that you have not received the standard of service you expect, you may contact us to make your complaint or discuss your concerns. If you would like more information on how to complain about our services you can ask us to send you further details or you can complete an on-line form via our website - www.leics.gov.uk

Commenting on these policies

Anyone wishing to make any comment about the content of these policies or the manner of their application is invited to address them to us by any of the methods outlined below. These comments will assist us in monitoring and reviewing the effectiveness of the policies. This is important to help ensure that they remain up to date and reflect the views of our community and changes in legislation. Please contact us should you require any further information on how we can carry out our work or can be of any further assistance to you.

Contacting us

By post: Leicestershire County Council, Trading Standards Service, County Hall, Glenfield, Leicester LE3 8RA

By telephone: 0116 305 8000

By fax: 0116 305 7353

By e-mail: trading-standards@leics.gov.uk

Via our website: www.leics.gov.uk - *search for Trading Standards*

By Appointment

If you feel that you have not received the standard of service you expect, you may contact us to make your complaint or discuss your concerns. If you would like more information on how to complain or comment on our services you can ask us to send you further details or you can complete an on-line form via our website: www.leics.gov.uk

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.