

Newham Trading Standards Enforcement Policy

The Trading Standards Service has adopted the principles of the National Intelligence Model and operates an intelligence led approach to enforcement activities.

Following the National Trading Standards Board (NTSB) Intelligence Operating Model (IOM) Service demand is managed through a tactical tasking process designed to target resources effectively and focus activity on those businesses who cause the greatest harm to consumers and legitimate business. Regular tasking meetings ensure a timely response to emerging issues and efficient monitoring of actions taken to deal with rogue traders and businesses causing the most consumer and business detriment.

Where an issue is identified and investigated, consideration will be given to the most appropriate and proportionate intervention for dealing with the case.

A range of sanctions will be considered according to the associated risk and seriousness and of the matter.

Options include:

- Securing an undertaking from the business that they will comply with their legal obligations.
- Issuing cautions and warnings.
- Issuing Penalty Charge Notices
- Prosecuting offenders in the criminal courts.
- Restraint, Confiscation and Forfeiture of assets under the Proceeds of Crime Act 2002
- Seizing goods, documents or other items that may be required as evidence, for testing or for other lawful purposes
- Issuing Suspension Notices, Improvement Notices or other such statutory documents.
- Issuing of Penalty Charge Notices
- Instituting a license review (e.g. alcohol sales)
- Instituting a product recall
- Issuing financial penalties

The aim of any intervention is to:

Change the behaviour of the offender;

Eliminate any financial gain or benefit from non-compliance;

Be responsive and consider what is appropriate for the particular offender and regulatory issues which can include punishment and the public stigma that could be associated with a criminal conviction;

Be proportionate to the nature of the offence and the harm caused;

Address the harm caused by regulatory non-compliance where appropriate;

And to deter future non-compliance.

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.

Purpose of the Policy

This policy details the processes all officers will use when deciding what actions are to be taken in fulfilling their statutory duties on behalf of The Trading Standards Service within the London Borough of Newham. This policy should be read in association with the relevant legislation, codes of practice and approved guidance material.

General Introduction

The aim of the Trading Standards is to improve the health, safety welfare and prosperity of the Borough's residents, visitors and traders. To achieve this we will:

- Work within the legal framework and work to apply the law fairly at all times.
- Maintain an easily accessible service
- Always be responsive to the needs of our customers
- Deal with our customers with integrity and honesty
- Work in partnership with groups representing our customers
- Always be ready to admit mistakes and amend activities where needed
- To maximise our resources for the benefit of customers
- Train and develop our staff to ensure their effectiveness.

These objectives will be achieved through education, guidance advice and enforcement action, the latter of which is the major concern of this policy.

The Trading Standards Department (TSD) of the Council will exercise its respective enforcement functions in an equitable, practical and consistent manner and to this end is committed to:

- Producing clear standards which set out the level of service and performance customers can expect to receive;
- Dealing with the public and business community in an open and honest way;
- Providing a courteous, efficient and helpful service;
- responding promptly to service complaints;
- ensuring that all enforcement actions are proportionate with the risk of non compliance;
- Being consistent in the exercise of all duties;
- Where individuals or businesses have particular needs the TSD will endeavour to meet those needs where practicable;
- The TSD will liaise with other statutory and non-statutory bodies and agencies where there is a shared enforcement role.

Although in principle it is expected that all individuals and businesses have to ensure their compliance with the law, the Trading Standards service will assist where possible in providing basic advice on how to meet these legal responsibilities.

All Officers will follow this policy.

This policy supports and supplements specific guidance on enforcement action contained in the statutory Codes of Practice, government guidelines, approved industry guides, co-ordinating bodies such as LACORS and HELA and other approved sources.

Authorisation & Training

Only Officers authorised by the Consumer Protection Manager may undertake enforcement duties in accordance with the Councils scheme of delegation. The Enforcement and Community Safety will only authorise officers where he or she is satisfied with their level of qualification and experience. Newly appointed or transferred officers will be assessed by the relevant section head for competency and referred for training if necessary.

Enforcement Options

All enforcement decisions will be fair, balanced and transparent. The factors which will be examined in each case are as follows:

- The seriousness of the allegation(s).
- Any relevant past history.
- The competence or otherwise of management.
- The degree of wilfulness.
- The consequences of non-compliance.

Having considered all the relevant factors the choices for action are as follows:

- To take no action.
- To take informal action
- To prosecute including the option of a formal caution.

Informal Action

Informal action includes offering advice, verbal warnings, the issue of notices of alleged offences, and issuing letters of caution.

Informal action will usually occur when:

- The act or omission is not serious enough to merit formal action.
- From past history it can be reasonably expected that informal action will achieve compliance.
- Confidence in the individual and/or the organisation is high.
- The consequences of any non-compliance will not pose a significant risk to public health or safety.

When an informal approach is considered appropriate written documentation will:

- Clearly state the nature of the contravention, date, time, and place and any particular personal involved.
- Specify the legislation which has been contravened and where necessary the penalties that may result from further non-compliance.
- Contain all the information necessary to understand what work is to be carried out in order to rectify the problem.
- Be copied to any relevant Primary Authority.

Prosecution

The council recognises that the decision to prosecute is significant and could have far reaching consequences for the offender. Prosecutions will be related to risk and will not be used as a punitive response to minor breaches of legislation.

As a general rule at least one of the following criteria will apply before a prosecution is considered:

- There has been an element of fraud or intent in committing an alleged offence.
- Where an identifiable member of the public has suffered economic loss or physical harm as a result of the offence
- There has been act or a course of conduct, which demonstrates a failure or lack of reasonable precautionary controls.
- There is an immediate serious risk to the public.
- Where a previous warning has failed to resolve that or a related problem.
- Where there is a history of past similar types of offence.
- Where a prosecution is in the public interest.

When circumstances have been identified which warrant a prosecution all relevant information and evidence will be carefully considered to allow a consistent, fair and objective decision to be reached. Before any prosecution proceeds the Trading Standards Manager must be satisfied that there is relevant, admissible and reliable evidence that an offence has been committed. This will also include any explanation by the company or the suspected offender for the commission of the offence. There must be a realistic prospect of conviction; a bare prima facie case is not sufficient.

In addition to being satisfied that there is sufficient evidence to provide a realistic prospect of conviction there must be decision that it is in the public's interest to prosecute. The relevant criteria for this decision can be found in the Code for Crown Prosecutors produced by the Crown Prosecution Service.

All relevant bodies and all witnesses will be advised of prosecutions taken by the authority and their outcome. These bodies would include home and originating authorities.

Formal Cautions

The purpose of a formal caution is:

- To deal quickly with less serious offences.
- To divert less serious offences from the courts.
- To reduce the chances of repeat offences.

To The following conditions must be fulfilled before a caution can be administered:

- There must be evidence of the suspected offender's guilt sufficient to give a realistic prospect of conviction.
- The suspected offender must admit the offence.
- The suspected offender must understand the significance of the caution and must give informed consent.

A formal caution cannot be issued if there is insufficient evidence to warrant a prosecution. Formal cautions will be used in accordance with the Home Office Circular.

The Manager will act as a 'cautioning Officer' in the issue of any formal cautions. Where a person declines the offer of a formal caution, alternative enforcement action will be taken. This will most likely be prosecution but a formal written warning may also be considered as a more appropriate action.

Any relevant bodies and all witnesses will be advised of any cautions issued by the authority and their outcome. These bodies would include home and originating authorities.

Complaints Against the Service

If any person is unhappy with the action taken or advice given by the relevant officer or believe they have not received fair or consistent treatment as outlined in this policy, they will be given the opportunity to discuss the matter with the Trading Standards Manager. Officers approached with such a request will refer them to the Trading Standards Manager, who will listen to their complaints, consider whether the enforcement policy has been breached in this instance and reply in writing. This is without prejudice to any formal appeal mechanism. If the problem cannot be resolved, the person will be informed of the Council's complaints procedure.

References:

Legislative and Regulatory Reform Act 2006

Regulatory Enforcement and Sanctions Act 2008

Primary Authority Principle as set out in the above Act and the associated Local Better Regulation Office (LBRO) guidance document.

Regulators' Compliance Code – Which aims to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on businesses, voluntary sector, etc. In some cases we may properly find that a provision of the Regulators' Compliance Code is either not relevant or is outweighed by other relevant issues. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

We subscribe to the Enforcement Concordat.

The Code for Crown Prosecutors
Enforcement Concordat, Cabinet Office

The Human Rights Act 1998

Council Policies on Equality