

Revision History

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Worcestershire Trading Standards Service **Enforcement Policy**

1. Introduction

The Trading Standards Service is provided by Worcestershire County Council.

The primary aim of the Trading Standards Service is to ensure compliance with the legislative framework within which it operates so that, consumers, businesses, employees, individuals, and the environment are protected, and transactions are fair and equitable. Fair proportionate and effective enforcement is essential to protecting the health, safety, and economic interests of residents, businesses, and visitors.

We will provide advice and support to those seeking to comply, whilst tackling the minority who choose not to comply, using proportionate enforcement action.

This Enforcement Policy explains our approach to regulatory activity, how we expect to deal with businesses and what happens when we find infringements of the law. For enforcement to be fair it is important that we are open and clear about the basis on which we act. It also sets out what residents can expect from us when we are investigating complaints.

The Service must also have regard to the various general duties imposed on the partner authorities e.g. section 17 of the Crime and Disorder Act, and the general powers given to local government for the promotion of well being under the Local Government Act. We are obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

2. Policy Scope

We are committed to providing an effective service with officers carrying out their duties in an equitable, practical, and consistent manner. To achieve this, we have adopted the principles of the following:

- [The Regulators Code \(BIES\)](#)
- [NAO – Good Practise Guidance – Principals of effective regulation](#)
- [Office Product Safety and Standards Primary Authority Principle](#)
- [The Crown Prosecution Service Code for Crown Prosecutors \(as amended\)](#)
- [The Food and Feeds Code of Practices](#)
- [Human Rights Act 1998](#) and the [European Convention on Human Rights.](#)
- [Regulatory Enforcement & Sanctions Act 2008](#)
- [Code of Practice for Victims of Crime \(October 2015\)](#)

- [Regulation of Investigatory Powers Act 2000](#) and the [Codes of Practice made thereunder](#)
- [Criminal Procedures Investigations Act 1996](#) and the [Codes of Practice made thereunder](#)
- [The Police and Criminal Evidence Act 1984](#) and the [Codes of Practice made thereunder](#)

We will comply with any statutory requirement placed upon us and seek to align our procedures with best practice.

The Policy applies to all the legislation enforced by the Service and any enforcement action taken to ensure compliance. Enforcement action is defined as any action taken by officers aimed at ensuring that individuals or businesses comply with the law.

3. General Principles

We will take all reasonable steps to ensure that a business complies with the law, including offering advice and assistance, and access to Home Authority and Primary Authority Schemes. Where compliance cannot be achieved, we will consider what formal action is necessary. Each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

Enforcement decisions will be fair, 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. Such decisions will not be affected by improper or undue pressure from any source. 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, and its significance, in making the decision to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the service can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity.

4. Risk

We will ensure that our resources are targeted where they will be most effective. We will ensure that intelligence and risk assessment inform all aspects of our approach to regulatory activity, including:

- Data collection and other information requirements.
- Inspection programmes.
- Advice and support programmes.
- Enforcement activity and sanctions.

We will use appropriate risk assessment schemes to inform any inspection programme, but, where these do not exist, we will consult and involve businesses and other interested parties in designing any risk methodologies that are created within the Authority, and publish the details. In the absence of other factors, when determining risk, we will consider:

- Compliance history and potential future risks
- The existence of effective management systems
- Evidence of recognised external accreditation
- Management competence and willingness to comply

We will also use intelligence to direct inspection-based projects, targeting goods or businesses where there are known issues. A complaint may also trigger a visit if that is the most appropriate response. We will review our approach to regulatory activities from time to time, to remove any unnecessary burdens from businesses.

5. Advice and Guidance

We will provide general information, advice, and guidance to make it easier for businesses to understand and meet their obligations. This will be provided in clear, concise and accessible language, using appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of those changes including leaflets, letters, bespoke advice packs, newsletters, press releases. Such information will, where appropriate, be available on our website.

We will provide practical advice during inspections and other visits and promote self service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between statutory requirements and advice, or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, if requested.

Where a business knows it has a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems. However, the responsibility to comply will always remain with the business and Trading Standards reserves the right to take appropriate enforcement action if compliance cannot be achieved.

Where appropriate we will consider Primary Authority partnership with businesses as a mechanism to deliver advice. Primary Authority is a means for businesses to receive assured and tailored advice on meeting regulations such as environmental health,

trading standards or fire safety through a single point of contact. This ensures start-ups get it right at the outset and enables all businesses to invest with confidence in products, practices, and procedures, knowing that the resources they devote to compliance are well spent.

We will publish our approach to business advice and engage with local businesses to assess the effectiveness of our information and advice services by asking them how effective our work is in raising businesses' awareness and helping them to understand legal requirements, including the extent to which they incur additional costs from obtaining external advice to understand and comply with legal requirements.

6. Inspection

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except where visits are requested by businesses, or where we act on relevant intelligence. We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance, which pose a more serious risk to regulatory outcomes or affect a larger number of people, such as large-scale manufacturers. These are the areas where we will focus our inspection resources.

Where appropriate, and where required by legislation including the Protection of Freedoms Act or Consumer Rights Act, we will give a minimum of 48 hours notice prior to a routine inspection. However, there is a general requirement in some Codes of Practice for example the Food Law Code of Practice, that notice is not provided prior to a routine inspection.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business, we will work together to ensure that our activities can be rationalised to minimise the burden on the business, where such action is both of benefit to the business and does not harm the standard of enforcement for either regulator.

We will also take account of the circumstances of small, businesses, including any difficulties they may have in achieving compliance.

7. Information Requirements

The Trading Standards Service does not require large quantities of information from businesses on a routine basis. When determining what data, we may require, we will consider the costs and benefits of data requests to businesses and,

- Limit the data that we request to that which is either appropriate, or required by statute e.g., food registration, licensing applications, etc,

- Minimise the frequency of collection and seek the information from other sources where relevant and possible.

We will work with our fellow local regulators to minimise the information we request from businesses, and we will seek to maximise our data sharing within the provisions of the Data Protection Act. We will seek to use compatible collection methods to give consistency.

We will involve businesses in vetting data requirements and form design for clarity and simplification. We will also ensure that, where possible, data can be returned electronically.

Sanctions Information Database is hosted by the National Anti-Fraud Network (NAFN). Trading Standards is the data controller for any data entered on the database for the purpose of fulfilling our statutory notification obligations. Any such data will be treated in accordance with our data retention policy.

You can view our Privacy Notice [Here](#)

You can review our Retention Schedule [Here](#)

8.0 Enforcement Action

In accordance with good practice, we will:

- Publish our Enforcement Policy.
- Report on our enforcement activities year on year to interested parties through an Annual Report.
- Follow-up enforcement actions where appropriate.
- Be transparent in the way in which we enforce requirements and, apply and determine penalties (when such powers are made available.)

When considering what action should be taken, we will look to:

- Be proportionate to the nature of the offence and the harm caused.
- Change the behaviour of the offender.
- Eliminate any financial gain or benefit from non-compliance.
- Address the harm caused by regulatory non-compliance, where appropriate.
- Deter future non-compliance.
- Be responsive and consider what is appropriate for the offender and regulatory issue, and
- Avoid perverse incentives that might influence the choice of sanctioning response.

When considering formal enforcement action, we will, when appropriate, discuss the circumstances with those suspected of a breach (usually by way of formal interview) and take these comments into account when deciding on the best approach, (unless immediate action is required to prevent or respond to a serious breach or where to do so would be likely to defeat the purpose of the proposed enforcement action).

We will ensure that clear reasons for any formal enforcement action are given to the person or entity at the time the action is taken. These reasons will be confirmed in writing at the earliest opportunity. Complaints and relevant appeals procedures for redress will also be explained at the same time.

8.1 Covert Surveillance

The Regulation of Investigatory Powers Act 2000 and Investigatory Powers Act 2016 provide a framework for certain public bodies, including local authorities, to use "covert surveillance" to gather information about individuals without their knowledge and to access Communications Data, for the purposes of undertaking statutory functions in connection with the prevention or detection of crime.

Communications data includes the 'who', 'when', 'where', and 'how' of a communication but not the content i.e., what was said or written.

Covert surveillance pursuant to the Regulation of Investigatory Powers Act 2000 is used very infrequently in cases where it is important to obtain information to support potential criminal proceedings.

No officer may seek the acquisition of any form of communication data or conduct covert surveillance unless he is authorised to do and only where that information cannot be obtained by any other means.

Regulation of Investigatory Powers Act 2000 activity and authorisations are governed by [Codes of Practice and Guidance](#) and the [Investigatory Powers Commissioner's Office](#).

How the authority monitors the use of these powers can be found in the [corporate policy](#).

8.2 Deciding what enforcement action is appropriate

In assessing what enforcement action is necessary and proportionate, consideration will be given to:

- The seriousness of compliance failure.
- The business's past performance and its current practice.
- The risks being controlled.
- Legal, official, or professional guidance.

There are many potential enforcement options. The level of the action taken varies from no action through to proceedings in Court. Examples of the main types of action that can be considered are shown below:

- No action.
- Informal Action and Advice.
- Fixed penalty Notice.
- Statutory Notice.

- Seizure of goods/equipment.
- Injunctive Actions.
- Refusal/revocation of a licence.
- Simple Caution.
- Prosecution.

8.3 No Action

There will be circumstances where a contravention may not warrant action, or it may be inappropriate. Many minor contraventions can be dealt with via advice and/ or assistance.

8.4 Informal Action and Advice

For minor breaches of the law we will give advice on how to put them right, including a deadline by which this must be done. The time allowed will be reasonable and take into account the seriousness of the contravention and the implications of the non-compliance. Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will be provided in writing. Failure to comply could result in an escalation of enforcement action.

Wherever possible we will advise offenders about 'good practice', but we will clearly distinguish between what they *must do* to comply with the law and what is recommended best practice.

8.5 Statutory Notices

Officers of the Service have the power under various pieces of legislation to issue notices that:

- Prohibit the sale or distribution of goods where relevant provisions may have been breached,
- Require a business to take specific actions to remedy an identified problem,
- Require a business to desist from activities that may not comply with legal requirements.

Notices may require immediate action where, for example, there are risks to public safety. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

All notices issued will contain details of any Appeals process that may be available to the recipient. Where applicable we will have due regard to any national guidance.

8.6 Fixed Penalty Notices

Certain offences are subject to fixed penalty notices were prescribed by legislation. These notices are recognised as a low-level enforcement tool and avoid the defendant obtaining a criminal record. 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. They will be used in appropriate circumstances to give a fast and measured response to the situation.

8.7 Tobacco Restriction Orders

Where an offender persistently 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 premise or a person from selling tobacco for a period up to one year.

8.8 Tenant Fees Act 2019

The TFA 2019 prohibits the charging of fees in respect of a tenancy other than those which are specifically permitted.

The TFA 2019 provides that enforcement authorities may impose financial penalties of up to £30,000 depending on the breach as follows:

- In respect of Prohibited Payments under Sections 1 & 2 of the TFA 2019 a financial penalty not exceeding £5,000 for a first breach.
- Under section 12 of the TFA 2019 a second or subsequent breach within 5 years of the previous breach provides for a financial penalty not exceeding £30,000 and there is power to prosecute in the Magistrates Court where an unlimited fine may be imposed.

View the [full Government guidance](#).

More about how we will apply the Tenant Fees Act can be found in Policy and process for the determination of penalties under the Tenant's Fees Act 2019 and associated legislation.

8.9 Instigation of Legal Proceedings

Once an officer has completed his/ her enquiries, they will submit a case report to a senior officer who is independent of the investigation, the case will also be reviewed by the authority's Legal Services officer or person appointed to act as the Council's legal advocate. Both reviews will consider the two-stage test set out in the Crown Prosecution Service Code for Crown Prosecutors (as amended). The evidential test, if the case does not pass the evidential test, it must not go ahead, and the public interest test.

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.

Before any legal action is taken, there will be an opportunity to discuss the case, although if we are considering a prosecution, it will usually be discussed as part of a formal PACE interview. Where a right of appeal against a formal action exists (other than through the

courts), advice on any appeal mechanism will be clearly set out in writing at the time the enforcement action was taken.

8.10 Proceeds of Crime Applications

Some cases taken by the service can lead to applications being made under the Proceeds of Crime Act 2002 (POCA) for confiscation of assets. These are the most serious cases or where there is persistence of offending over a long period of time or where the offences are deemed to be "lifestyle crime" under POCA. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct.

8.11 Simple Cautions

Where the public interest justifies it, we will consider offering a Simple Caution (or Reprimand/ Final Written Warning if the offender is below the age of 18.) In offering a Simple Caution, we will take account of the Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors. Where the offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Simple Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

8.12 Injunctions

Some legislation includes provisions for obtaining enforcement orders against traders. This process involves the civil courts rather than the criminal courts. The purpose of these provisions is to prevent traders from continuing with conduct that harms the collective interests of consumers, but it is only available for specific criminal and civil legislation.

The enforcing authority is required to follow a procedure involving consultation with the trader before proceeding to formal action. An order can proceed without consultation where the CMA (Competition and Markets Authority) feels that action should be brought without delay; however, notification to the CMA is required to instigate proceedings in all cases.

Generally, we will attempt to obtain undertakings that the offending conduct will cease before moving to the formal stage. The conduct will normally be identified from recurring complaints. In determining whether the number of complaints is sufficient for action, consideration will be given to the seriousness of the complaints, the size of business, and whether it trades locally, regionally or nationally. Action may also be considered after a single complaint where the conduct is seriously detrimental, and repetition must be prevented.

Where the Service fails to gain written undertakings from the trader, or where such undertakings are breached, action to obtain an enforcement order through the civil courts will be considered, using a process similar to that described above for other formal actions.

8.13 Anti Social Behaviour

Many of the provisions in the Anti-social Behaviour and Policing Act 2014 are not available to County Councils, however, where investigation reveals behaviour or activity that may be best addressed using the provisions of this legislation, the service will liaise with the relevant partner, be this the Police or relevant district council.

8.14 Disclosure of Evidence to HMRC

The amendments to the Tobacco Products (Traceability and Security Features) Regulations 2019 (“2019 Regulations”) were effective from 20 July 2023, giving officers of the local weights and measures authority the power to examine tobacco products for compliance with Reg.6(1). Where such product is found not to comply with Reg.6(1), those findings can be disclosed, by virtue of Reg.24(A)(2), to the Commissioners of His Majesty’s Revenue and Customs (“HMRC”).

HMRC can then use the information referred by Trading Standards to apply the sanctions available under the legislation. Without this, many businesses would go unsanctioned. It also further enables HMRC to share with local Trading Standards services, information regarding those businesses that receive sanctions, to inform subsequent local enforcement activity.

9.0 Additional Information

The Senior Managers involved in making the more serious decisions will also have regard to legal advice from the Head of Legal Services. Once the Service reaches a decision to prosecute, or to instigate civil proceedings, the Legal Services Department must authorise the action before implementation.

9.1 Standards and Accountability

We will, in consultation with businesses and other interested parties, set and publish clear standards and targets for our service and performance. These will include:

- Regulatory outcomes (e.g., proportions of businesses that comply, and case outcomes);
- A commitment to ensuring costs to businesses of regulatory interventions are proportionate; and
- A commitment to dealing with any negative perceptions of businesses and other interested parties relating to these issues.

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses. We will enable them to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

9.2 Liaison with other regulatory bodies and enforcement agencies

Where appropriate, enforcement activities within the Trading Standards Service will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

Where an enforcement matter affects a wide geographical area beyond the County boundaries or involves enforcement by one or more other local authorities or organisations; where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

The Trading Standards Service will share intelligence relating to wider regulatory matters with other regulatory bodies and enforcement agencies, and examples include:

- Government Agencies
- Police Forces
- Fire Authorities
- Other Statutory Bodies
- Local Authorities

9.3 Further Information

The Enforcement Policy is freely available on request by contacting us using any of the methods below and it is published on our website [Here](#).

This policy will be reviewed on a regular basis. Anyone wishing to make any comment about the content of this policy is invited to address them to us by any of the methods 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.

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 complete an on-line form via our website: [Make a Compliment, Comment or Complaint](#)

Appeals If you want to appeal against a decision we have taken, please contact us by any of the methods below.

Anyone requiring further information on this policy should contact the Trading Standards Service by writing to:

Trading Standards Service
Wyre Forest House
Finelight Way,
Kidderminster,
Worcestershire
DY11 7WF

Email: TSEnquiries@worcestershireTS.gov.uk,
Telephone: 01905 822799