

TRADING STANDARDS ENFORCEMENT POLICY

Introduction

Trading Standards is a service that has a statutory responsibility to enforce a wide range of criminal consumer and trading legislation. In addition, other non-statutory legislation is enforced where this assists with the statutory responsibilities or where enforcement can contribute to making the London Borough of Richmond upon Thames a fairer and safer place to buy and sell goods and services or which assists legitimate businesses to be successful.

In most cases compliance is achieved through advice and assistance, but there are occasions when further action is required, action that can include prosecution through criminal courts.

Purpose and scope

The leaflet titled, "Enforcement Policy Principles for Development and Street Scene Services" sets out the general principles that apply to all the enforcement policies of that department, including for Trading Standards. The purpose of the Trading Standards Enforcement Policy is to explain the ways in which this service will enforce the law in accordance with the principles adopted by the department as a whole. The policy sets out what businesses and others affected by its regulatory responsibilities can expect from the service and assists staff in exercising enforcement powers. The policy applies to all Trading Standards personnel with enforcement responsibilities, and it will be reviewed as necessary in response to changing circumstances, such as new legislation or guidance.

Service Standards

The basic standards of customer service are set out in the leaflet, "Trading Standards – Our Service Standards" available from our offices and via the Council's web site, (see '*contacts and further information*' below).

With regard to enforcement, the general standards and procedures applicable to the service are set out below.

Inspections and Other Enforcement Visits

Trade premises in the borough will be routinely inspected on the basis of the LACORS risk assess scheme. In this scheme premises are classified as being high risk, medium risk, low risk or no appreciable risk. These inspections will be comprehensive in nature and at the end of the inspection the officer will hand over a Post Inspection Report (PIR) that will summarise the findings of the inspection.

Other visits may be made to premises in order to check on business compliance or otherwise assist traders to comply. These visits may include covert test purchases, sampling visits, visits in response to consumer complaints, etc.

Enforcement Options

When legal breaches are detected the officer has the following range of options available:

- a) Advice
- b) Informal warning
- c) Written warning
- d) Simple caution
- e) Prosecution
- f) Enforcement Order *

** only applicable where there is a persistent course of conduct detrimental to the collective interests of consumers.*

When the offence detected, should in the opinion of the officer be dealt with by way of c) to f) above, then the officer should consult with a Trading Standards Team Leader or the Head of Trading Standards for an initial assessment as to which option is most appropriate. These initial views may be modified as more information becomes available.

For the guidance of officers when offences have been committed in any of the following circumstances then the minimum course of action should be a written warning. The Head of Trading Standards in consultation with a Team Leader will consider any recommendation from the investigating officer in deciding whether more severe action, including prosecution, should be taken:

- Offence was committed recklessly
- Offence was committed knowingly
- Offence was committed deliberately
- Offence was committed fraudulently
- The offence had a significant effect on a consumer
- There have been repeated breaches
- The offence is likely to be repeated
- Violence has been used
- The offender was in a position of trust/authority
- The offender was a ringleader or organiser of others who committed the offences
- There are previous convictions or cautions for similar offences
- A significant penalty is the likely outcome if prosecuted

In considering whether to initiate a prosecution in addition to the above, the following matters will be relevant for consideration by the Head of Trading Standards

- The admissibility and reliability of the evidence and there being a realistic prospect of conviction
- Relevant matters in the Code of Conduct for Crown Prosecutors
- Any expressed views of victim or victims family about the offender
- Whether there has been any wilful obstruction of the officer investigating the offence
- Whether the offender has corrected any harm done to the victim

Where the offence relates to illegally selling, supplying or hiring goods to a minor (underage sale) then notwithstanding anything above the normal course of action should be a prosecution

Criminal proceedings should not normally be taken against an individual if he/she is not involved in the management or supervision of the business nor has any additional responsibility for matters associated with the offence and is acting only in the course of their employment, unless the employee has contradicted the employer's instructions, is being deliberately obstructive or in committing the offence has acted unreasonably.

Where prosecution of offences against a corporate body have been considered, if it is believed the offence was committed with the consent or connivance or was attributable to any wilful neglect on the part of any Director of the body then legal action should be considered against that Director.

Legal action should not normally be taken against private individuals not acting in the course of their employment or in the course of a trade or business even though it may have been their act or default that caused the commission of an offence. However if that act or default was a deliberate act or default committed with a view to deceive or for gain then a prosecution should be considered

In relation to offences of overloading of vehicles or exceeding weight limits on the public highway there should be regard to the following guidelines in determining actions to take

- 0-5% and less than 1 tonne - Written warning
- Over 5% or 1 tonne - Prosecution
- Where proceedings are instituted the operator should normally be prosecuted.
- Where the driver is not the operator then proceedings should only be instituted against the driver if some degree of blame can be placed with him (e.g. he ignored instructions to check weight or he should have realised the vehicle was overloaded).
- Where an axle overloading is solely due to the vehicle being overloaded on the gross weight then information should not also be laid in respect of the axle overloading. If however the vehicle had been loaded unevenly then the additional offence(s) should be considered.

Investigation of Complaints

This service works in partnership with Consumer Direct London. All consumer enquiries are directed to Consumer Direct. Civil law complaints and enquiries are dealt with by Consumer Direct. However when it is apparent that such a complaint or enquiry is particularly complicated or requires examination of documents or the consumer is particularly vulnerable then Consumer Direct may refer the matter to the most appropriate organisation to deal with the matter. This will normally be the local Trading Standards Service to where the transaction took place.

Where the consumer complaint or enquiry is a matter of criminal law, Consumer Direct will refer the matter to the appropriate Trading Standards Service to deal with, that is, the Trading Standards Service where any criminal offences took place. When such criminal referrals are made to this Trading Standards Service the matter shall

be investigated and any offences detected dealt with as above under the heading Enforcement Options.

Notifications

This service will fully comply with any requirements for statutory notifications. This includes the requirement to provide the Office of Fair Trading (OFT) with Notice of Intended Proceedings under some legislation and to provide the Department of Trade and Industry (DTI) with statutory notifications in relation to suspension notices issued under safety legislation

The service will also provide the OFT with information about convictions in order to keep the Central Register of Convictions updated

Shared Enforcement Role

For some legislation there is a shared enforcement role with the Police, the OFT, Environmental Health etc. The following paragraphs give guidance on how that responsibility is shared

Complaints about food standards and descriptions of food shall be passed to Environmental Health to be dealt with as they see fit under the Food Safety Act even though there may also be breaches of the Trade Descriptions Act 1968. Inspections of food premises and the sampling of foods to ensure accurate descriptions shall be the responsibility of Commercial Environmental Health. This will not preclude Trading Standards carrying out checks on the accuracy of descriptions of food products in trade premises where it is practicable and appropriate. For example checking the stated alcohol content of spirits or the checking of spirits for substitution of a different brand.

Any matters related to animal health and welfare, fertilisers and feeding stuffs the Agriculture Act and similar topics will be the responsibility of Commercial Environmental Health and will be referred to them accordingly.

Enforcement of the alcohol underage sales provisions of the Licensing Act 2003 is a shared responsibility between the Police and Trading Standards. Trading Standards will take responsibility for enforcing the provisions in relation to "off sales" (sale is for the purpose of consumption away from the premises) and the Police will take responsibility for enforcing the provisions in relation to "on sales" (sale is for the purpose of consumption at the premises).

Trading Standards have a shared role alongside other qualifying bodies under the Unfair Terms in Consumer Contracts Regulations 1999. This service will accept complaints under the provisions of the regulations if the complaint is in relation to a trader in the borough. Other complaints shall be referred to the Office of Fair Trading or to the Home Authority of the company under the agreed protocol.

Partnership Working and Sharing Information

This service works closely with a number of organisations, in particular with the London Trading Standards Association (LoTSA) and Consumer Direct London (CDL). The DTI funded CDL receives all consumer enquiries on behalf of this

borough and redirects those to Trading Standards which reveal potential criminal offences or which are complicated or where a vulnerable consumer is involved. The referrals are made in form and manner under agreed protocols and by secure electronic communication.

Trading Standards will often receive information that will be of relevance to other regulators investigating criminal offences. The policy is that such information should be provided to those other regulators providing that in doing so trade secrets are not given away and no officer commits any offence in providing that information. Information will be passed to the Police, Customs and Excise, the Medical Devices Agency, the Food Standards Agency, the Inland Revenue, other local Authority Trading Standards Departments, the Royal Pharmaceutical Society the Office of Fair Trading etc.

Powers of Entry

Trading Standards staff have considerable powers to enforce the law conferred on them by legislation. Some legislation grants authority to enter premises to inspect goods and documents. Refusal to permit entry may constitute the offence of obstruction. In particular some legislation enforced by Trading Standards allows, if necessary, entry by force upon production of a warrant issued by a Justice of the Peace. Normally a warrant would only be sought if entry had previously been refused or it is anticipated that entry may be refused and that pre-warning the occupant of entry would defeat the point of entering.

Forfeiture of Goods

When criminal proceedings are instituted in relation to goods which inherently infringe legislation then the normal course of action would be to request the court that such goods should be forfeited. Examples of such goods are compact discs which infringe copyright or contain false trade marks, consumer products which are inherently unsafe in that they breach safety regulations, counterfeit clothing etc. In some circumstances a court can be requested to grant forfeiture of goods even though there is no prosecution of the alleged offender.

As an alternative to seeking a forfeiture order the owner of the goods may be asked to voluntarily sign over ownership of infringing goods to the Trading Standards Service.

When goods are the subject of a forfeiture order or are voluntarily handed over to Trading Standards then normally Trading Standards would arrange for their destruction. Occasionally it may be appropriate to donate goods to a suitable charity if the goods can be rendered legal through, for example, removal of infringing trade marks.

Particular Customer Needs

This service will endeavour to be flexible in responding to customer needs by adapting the method of operation to suit the customer. In particular the following paragraphs apply in this regard

Service leaflets, letters or other documents are willingly translated into other languages utilising the Language Line subscription Service. There is no addition

expense to the customer for this service. We will also arrange for interpreters when necessary

The service supports the Home Authority Principle of the Local Authority Co-ordinating of Regulatory Services (LACORS). The Home Authority Principle is designed to encourage efficiency, reduce duplication, assist enterprises to comply with the law and promote a consistent approach to interpretation of legal matters in the field of Trading Standards. In relation to Home Authority businesses we will act as liaison between the company and other Trading Standards Departments. We will also develop a particularly strong formalised working relationship with the company in order to assist their compliance with Trading Standards legislation

The verification service will be provided to local businesses outside of normal hours, including weekend, evenings and bank holidays, if at all possible. The fees for such provision will be increased to reflect the additional personnel costs involved. Additionally we will try to meet customers at a location and time convenient to them and not be restricted to the office and office hours.

Contacts and Further Information

If you want further information about the services provided or the standards applicable please contact us or look at our website at:

www.richmond.gov.uk/consumer_protection

If you are a trader and want information about trading laws contact us:

T: 020 8487 5487 F: 020 8891 7726

e-mail: tradingstds@richmond.gov.uk

If you are a consumer and want to make a complaint or enquiry please contact Consumer Direct by telephone or through their website:

T: 08454 04 05 06

www.consumerdirect.gov.uk

Visitors who would have difficulty with the stairs to the Parkshot building can be seen in the Magistrates Court next door. Please call at the court reception. Alternatively, please contact us and we will arrange to see you in your home, workplace or other place that is convenient to you.

If you need this leaflet in Braille, large print, audio tape or another language, please contact us on 020 8487 5487 or minicom 020 8831 6006

Trading Standards

7b Parkshot

Richmond

TW9 2RT

www.richmond.gov.uk

اگر آپ کو اس اشاعت کو سمجھنے میں کوئی مشکل ہے تو، براؤزر میں نیچے دیے ہوئے ایڈریس کے استقبال پر جا کر ملیں، جہاں ہم آپ کیلئے ٹیلیفون انٹرپرائزنگ سروس (ٹیلیفون پر ترجمانی کی سروس) کا انتظام کر سکتے ہیں۔

Nese keni veshtersi per te kuptuar kete botim, ju lutemi ejani ne receptionin ne adresen e shenuar me poshte ku ne mund te organizojme perkthime nepermjet telefonit.

إذا كانت لديك صعوبة في فهم هذا المنشور، فنرجو زيارة الإستقبال في العنوان المعطى أدناه حيث بإمكاننا أن نرتب لخدمة ترجمة شفوية هاتفية.

এই প্রকাশনার অর্থ বুঝতে পারায় যদি আপনার কোন সমস্যা হয়, নিচে দেওয়া ঠিকানায় রিসেপশন-এ চলে আসুন যেখানে আমরা আপনাকে টেলিফোনে দোভাষীর সেবা প্রদানের ব্যবস্থা করতে পারবো।

اگر در فهمیدن این نشریه مشکل دارید، لطفاً به میز پذیرش در آدرس قید شده در زیر رجوع فرمایید تا سرویس ترجمه تلفنی برایتان فراهم آورده شود.

જો તમને આ પુસ્તિકાની વિગતો સમજવામાં મુશ્કેલી પડતી હોય તો, કૃપયા નીચે જણાવેલ સ્થળના રિસેપ્શન પર આવો, જ્યાં અમે ટેલિફોન પર ગુજરાતીમાં ઇન્ટરપ્રિટીંગ સેવાની ગોઠવણ કરી આપીશું.

ਜੇਕਰ ਤੁਹਾਨੂੰ ਇਸ ਪਰਚੇ ਨੂੰ ਸਮਝਣ ਵਿੱਚ ਮੁਸ਼ਕਲ ਪੇਸ਼ ਆਉਂਦੀ ਹੈ ਤਾਂ ਹੇਠਾਂ ਦਿੱਤੇ ਗਏ ਪਤੇ ਉੱਪਰ ਰਿਸੈਪਸ਼ਨ 'ਤੇ ਆਓ ਜਿੱਥੇ ਅਸੀਂ ਟੈਲੀਫੋਨ ਤੇ ਗੱਲਬਾਤ ਕਰਨ ਲਈ ਇੰਟਰਪ੍ਰਿਟਰ ਦਾ ਪ੍ਰਬੰਧ ਕਰ ਸਕਦੇ ਹਾਂ।