

## **PENALTY GUIDANCE & ENFORCEMENT POLICY**

### **PUBLISHED PURSUANT TO SS. 63 & 64 OF THE REGULATORY ENFORCEMENT & SANCTIONS ACT 2008**

#### **1.0 BACKGROUND**

- 1.1 It is the aim of North Yorkshire County Council Trading Standards & Regulatory Services (the service) to impact positively on the fair trading environment of North Yorkshire. This is achieved by education and advice, and by regulating the activities of businesses and other trading entities. Securing compliance with statutory regulatory requirements using enforcement powers and sanctions is a necessary means to achieving this aim.
- 1.2 This guidance is issued by the service pursuant to sections 63 and 64 of the Regulatory Enforcement and Sanctions Act 2008 (the act). It sets out the ways and situations in which criminal and civil sanctions will be used by the service in the course of its relevant regulatory functions. Relevant regulatory functions are those set out in the schedules to the act.

#### **2.0 ENFORCEMENT**

- 2.1 The service will have regard to the act and the Regulators' Code (the code) at all times when establishing and reviewing enforcement policies and procedures. In particular, such policies and procedures will ensure that regulatory activities are carried out in accordance with the 'Principles of Good Regulation' as set out in section 21(2) of the Legislative & Regulatory Reform Act 2006 and the code. This means that the service will act in a manner which is transparent, accountable, proportionate and consistent, and that enforcement activities will be targeted only to cases where action is necessary.
- 2.2 The service will carry out risk assessment based inspections and provide targeted, meaningful and consistent advice to businesses and other regulated entities in line with the 'Hampton Principles' set out in the code. Those traders who persistently breach regulations or whose one-off offending is serious in terms of its detriment, or potential detriment, to consumers or other businesses will be identified quickly and appropriate action taken so that they are subject to proportionate and meaningful sanctions.

### **3.0 AVAILABLE SANCTIONS**

3.1 The following sanctions are available to the service:

- a. informal caution/advice;
- b. fixed monetary penalty/fixed penalty notice;
- c. discretionary requirement (including variable monetary penalty);
- d. stop notice;
- e. enforcement undertaking;
- f. enforcement order;
- g. simple (formerly 'Home Office') caution;
- h. prosecution.

3.2 In deciding which sanction is appropriate, the service will have particular regard to the following criteria:

- i. Whether the breach was committed deliberately or recklessly, or without due diligence.
- ii. Any complaints, previous complaints or other information relevant to the trader's history including any previous advice given.
- iii. The trader's attitude and, in particular, whether he/she was obstructive or co-operative.
- iv. The prevalence of the class of breach and whether a particular sanction could act as a deterrent and encourage compliance generally.
- v. Inadequate mitigation or explanation given by the trader (or the lack of such information).
- vi. The effect of the breach on the victim, in particular where the victim is in some way vulnerable.

### **4.0 INFORMAL CAUTION/ADVICE**

4.1 A written informal caution or note of advice may be given for a minor infringement of any legislation when the service is confident that the business or other regulated entity will immediately take steps to correct the breach. In cases where there is a presumption of prosecution (see below) such action will be taken only where there is an evidential difficulty, such as a key witness who is not prepared to attend court.

### **5.0 FIXED MONETARY PENALTY/FIXED PENALTY NOTICE**

5.1 Fixed penalty notices (FPN) are issued in relation to offences contrary to part 5 of the Housing Act 2004 (home information packs). An FPN imposes a penalty of £200 which is payable within 29 days of its date of issue. There is a right of appeal in the first instance to the service. Following this, unpaid penalties will be pursued in the county court as a civil debt and this venue will allow a further challenge to the notice's validity if the defendant wishes.

5.2 The service will use FPNs only in relation to persistent offenders who have

committed at least two breaches. In all other cases compliance will be encouraged by advice and guidance.

- 5.3 Otherwise, this sanction is only available to the service in circumstances where the relevant Minister of the Crown has created provision for it within secondary legislation in accordance with section 60 of the act. No such provisions exist at present.

## **6.0 DISCRETIONARY REQUIREMENT**

- 6.1 This sanction is only available to the service in circumstances where the relevant Minister of the Crown has created provision for it within secondary legislation in accordance with section 62 of the act. No such provisions exist at present.

## **7.0 STOP NOTICE**

- 7.1 This sanction is only available to the service in circumstances where the relevant Minister of the Crown has created provision for it within secondary legislation in accordance with section 62 of the act. No such provisions exist at present.

## **8.0 ENFORCEMENT UNDERTAKING**

- 8.1 Undertakings may be sought from businesses who breach legislative requirements specified for the purposes of part 8 of the Enterprise Act 2002. This includes most fair trading legislation but does not include animal health, food and agriculture or product safety legislation. Such a sanction will require a business to refrain from certain agreed activities and will be drafted in consultation with the business. Compliance with the undertaking will be monitored, and it may be a condition of the undertaking that its terms be published to allow monitoring to be effective. Undertakings may be used where there is a high level of confidence in the business's willingness and ability (through management control) to correct breaches and where the breach is not so serious as to attract the presumption of prosecution.

## **9.0 ENFORCEMENT ORDER**

- 9.1 Injunctive orders (subject to penal notices for breach) may be sought in the county court in relation to businesses who breach legislative requirements specified for the purposes of part 8 of the Enterprise Act 2002. In most cases an order will be sought from the court in circumstances where a business has given an undertaking which it has subsequently breached. In exceptional circumstances an interim order may be sought without consulting with the business to obtain undertakings in the first instance. This action would only be taken in cases involving civil breaches of legislation leading to significant financial detriment to one or more consumers and where there is risk of continued breaches if the business is not subject to an immediate interim injunction. The precise terms of any order, including the length of imprisonment in the event of breach, will be set by the court after hearing evidence and representations from both sides.

## **10.0 SIMPLE CAUTION**

10.1 A simple caution, where a business admits an offence but receives no penalty, may be administered for minor criminal breaches where there is sufficient evidence to prosecute but it would not be in the public interest to do so. A record of the caution is kept on file and may be cited in a court if further offending occurs. If a trader refuses the offer of a caution the decision on what action to take will be reviewed and it likely that prosecution will follow.

## **11.0 PROSECUTION**

11.1 Prosecution is a serious, but sometimes necessary and proportionate, response to breaches of legislative requirements. The decision to prosecute will be taken in accordance with the Code for Crown Prosecutors. The service will not prosecute when there is insufficient evidence to make a conviction more likely than not and when it is not in the public interest to do so.

11.2 Where offending is of a sufficiently serious or persistent nature a prosecution will be taken without warning and without the use of alternative sanctions. There will be a presumption of prosecution in the following circumstances:

- a. Deceptions or frauds contrary to the Theft Act 1968 or the Fraud Act 2006.
- b. Use of practices specified in schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs).
- c. Use of other unfair practices within the meaning of regulation 3 of CPRs which materially distort, or are likely to, the economic behaviour of the average consumer to the significant financial detriment of consumers. Such detriment may be significant if it is a large sum lost by one or more consumers or a smaller sum lost by many consumers.
- d. Other situations where it is evident that the trader has exploited a vulnerable characteristic of the victim.
- e. Failing to treat or otherwise causing unnecessary suffering to livestock, or transporting or causing unfit livestock to be transported.
- f. Offences committed under the Trade Marks Act 1994 or the Copyright, Designs & Patents Act 1988 involving the manufacture of counterfeit items, the sale of such items to consumers who were misled, or the sale or possession for sale of significant quantities of such items.
- g. Breach of a weight restriction order in relation to a bridge or road situated in North Yorkshire.
- h. Obstruction of authorised officers of the service in the lawful execution of their duties.

11.3 On very infrequent occasions prosecutions may be taken on points of law where

the evidential test is not necessarily met but the public interest in settling the point of law is such that the action is warranted.