

TRADING STANDARDS ENFORCEMENT POLICY

Introduction

1. North Yorkshire County Council Trading Standards Service (the Service) is responsible for enforcing a wide range of trading standards, consumer protection and safety legislation across North Yorkshire. Our aims are to safeguard consumers, so that every adult has a longer, healthier and independent life and every child has the best possible start in life; and to support legitimate traders to ensure that North Yorkshire is a place with a strong economy and a commitment to sustainable growth.
2. North Yorkshire County Council (NYCC) hosts the National Trading Standards e-Crime Team jointly with City of York Council. This policy applies to any enforcement work undertaken by the team under the authorisation of NYCC. The City of York Council (CYC) has its own enforcement policy which will apply in relation to enforcement work undertaken under the authorisation of CYC.
3. This enforcement policy is made in accordance with the Legislative and Regulatory Reform Act 2006 and the [Regulators' Code](#). The Service is committed to good enforcement practice and carries out its enforcement activities in accordance with the [principles](#) set out in the Act. This means that the Service will act in a manner that is transparent, accountable, proportionate and consistent, and that enforcement activities will be targeted only at cases in which action is needed.
4. The Service uses a variety of methods to encourage and support fair and safe trading. This policy sets out the different sanctions we can use when non-compliances put consumers at risk of injury or other detriment, and mean that other businesses cannot compete on a level playing field.

Investigation

5. The Service uses discretion when deciding whether to investigate consumer complaints and other reports or findings of non-compliance. It is recognised that it is neither necessary nor possible for the purposes of the execution of our statutory duties to investigate all issues of non-compliance with the law. When making such decisions, including the level of resources to be allocated, we take the following factors (as applicable) into account:
 - the risk of physical harm or injury;
 - the vulnerability of consumers using a product or service;
 - the use of aggressive practices by a business;
 - the level of financial detriment to consumers and the wider economic impact;
 - the environmental impact;

- the risk to farmed animal welfare;
- the risk of farmed animal disease;
- the wider impact, including public interest/concern;
- the size and trading reach of the business;
- the compliance history of the business.

Methods of Enforcement

6. The Service has regard to applicable Government and other official enforcement guidance. This includes but is not limited to the [Health and Safety Executive Enforcement Management Model](#), the [Food Law Code of Practice](#), the [Feed Law Code of Practice](#), [Age Restricted Products and Services: A Code of Practice for Regulatory Delivery](#) and [Guidance for the Enforcement of the Energy Performance of Buildings \(England and Wales\) Regulations 2012](#).
7. Depending on the legislation being enforced, the Service has a number of sanctions available to it:

Written advice or informal warning

We recognise that most businesses want to comply with the law and minor non-compliances will be dealt with by advice and guidance unless previous advice has been ignored or there is other evidence that a business had deliberately broken the law.

Statutory notices

Some legislation, such as that covering product safety, food or the storage of petroleum, allows the Service to issue a notice requiring action to be taken, or preventing specified actions. Such notices will clearly set out what is required and the timescale in which it must be done. Notices include details of how to appeal against them. In most cases statutory notices may be issued in addition to the investigation and prosecution of criminal offences.

Fixed penalty/monetary penalty

Financial penalties may be issued by the Service in respect of breaches of legislation which set out a monetary penalty framework. Guidance is published separately about the enforcement of these penalties, when they are used and how they can be appealed. Financial penalties are not a criminal conviction and civil enforcement action will be taken if a financial penalty is not paid by the date specified.

In most cases, the penalty is set by law. In some cases, a maximum amount is set in legislation. In setting the penalties in those cases, the Service will have regard to national or other relevant guidance or codes, and will publish the criteria by which fees are set.

[Guidance for Enforcement of Sales and Letting Businesses](#) has been issued by the National Trading Standards Estate and Letting Agency Team, and the Service follows the [Tenants' Fees Financial Penalty Policy](#) associated with that guidance.

Undertaking or enforcement order

Fair trading legislation may be enforced in the civil courts under the regime set out in [part 8 of the Enterprise Act 2002](#). In these circumstances, breaches which harm the collective interests of consumers will be dealt with by seeking an undertaking from a business that it will not engage in specified trading practices or that it will do certain things. Where an undertaking is breached or refused, or where the matter is serious or urgent, an order may be sought from the court. Breach of a court order can result in a term of imprisonment.

Simple caution

When there is sufficient evidence to warrant a prosecution and a business or sole trader admits that an offence has been committed, a simple caution may be offered if it is considered no in the public interest to prosecute. A simple caution may be referred to in court in any subsequent proceedings should a similar offence be committed in the future. The Service follows the [Code for Crown Prosecutors](#) in determining whether there is sufficient evidence ('the evidential test') to warrant prosecution.

Prosecution

Prosecution is a serious, but sometimes necessary and proportionate, response to breaches of the law. The decision to prosecute is made under the Officers' Scheme of Delegation within the [Constitution of North Yorkshire County Council](#) (see paragraphs 4.4 (e), (m) and (n)), and in accordance with the [Code for Crown Prosecutors](#). The Service will not prosecute an individual or a company if the evidential test in the Code is not met nor if the evidential test is met but the public interest test is not met.

Where the nature of the offending is sufficiently serious or persistent, a prosecution will be taken without the prior use of alternative sanctions. Prosecution will generally be considered in, but is not limited to, the following circumstances:

- Offences contrary to regulation 12 of the Consumer Protection from Unfair Trading Regulations 2008 involving the use of [schedule 1](#) commercial practices which are in all circumstances considered unfair.
- Use of [unfair practices](#) within the meaning of [regulation 3 of the Consumer Protection from Unfair Trading Regulations 2008](#) resulting in, or likely to result in, significant consumer detriment. Such detriment may be significant if it is a large sum lost by one or more consumers or a small sum lost by many consumers.
- Offences contrary to the [Trade Marks Act 1994](#) or part I, chapter VI or part III, chapter VII of the [Copyright, Designs and Patents Act 1988](#) involving the manufacture of infringing items, the sale or supply of such items to consumers who were misled about their authenticity, or the sale or possession for sale of such items in significant quantity.
- Frauds contrary to the [Fraud Act 2006](#) or conspiracy to defraud contrary to common law.
- Money laundering offences contrary to [part 7 of the Proceeds of Crime Act 2002](#).

- Offences relating to unsafe products involving risk of a serious or significant injury or health effect, as defined in the [Health and Safety Executive Enforcement Management Model](#), to any person.
- Food safety offences concerning allergens.
- Offences, not already covered above, involving the exploitation by the trader of a vulnerability of the complainant(s).
- Offences involving the sale, including the proxy sale, of age restricted products to minors.
- Failure to treat or otherwise causing unnecessary suffering to livestock, or transporting or causing unfit livestock to be transported.
- Significant or persistent breaches of disease control measures relating to livestock.
- Breach of a traffic regulation order imposing a weight restriction on a road or bridge in North Yorkshire.
- Offending for which a simple caution has been offered but refused.
- Obstruction of authorised officers of the Service in the lawful execution of their duties.

Where an offence has been committed by a body corporate and there is evidence that the offending has taken place with the consent or connivance or due to the neglect of a director or directors, those directors may also be liable to prosecution.

Post-conviction orders

Following conviction the following orders may be used to secure future compliance with the law, compensate victims or forfeit goods and other items.

Forfeiture

Following conviction, a court may order the [forfeiture](#) of goods associated with the offending under section 143 of the Powers of the Criminal Courts (Sentencing) Act 2000. For goods and materials bearing infringing trademarks or items used to make infringing trademarks, a [forfeiture order](#) is sought under section 97 of the Trade Marks Act 1994.

Director disqualification

Where a director has been convicted of an indictable offence (that is one which may be tried either in the magistrates' court or the crown court), on his own account or as a result of his consent, connivance or neglect, [disqualification](#) from acting as a company director under section 2 of the Company Directors Disqualification Act 1986 may be sought.

Confiscation order

Following conviction in appropriate cases, the Service will seek a [confiscation order](#) under [part 2 of the Proceeds of Crime Act 2002](#). In deciding whether to pursue confiscation, regard will be had to the Crown Prosecution Service's [Guidance for Prosecutors on the Discretion to Instigate Confiscation Proceedings](#).

Compensation order

In cases where compensation is not dealt with as part of confiscation proceedings, the court will be made aware of any compensation claim a victim wants to put forward. The court may make a [compensation order](#) under the Powers of the Criminal Courts (Sentencing) Act 2000.

Criminal behaviour order

Following conviction for offending which has caused harassment, alarm or distress, a [criminal behaviour order](#) might be sought under part 2 of the Anti-social Behaviour, Crime and Policing Act 2014.

Animal welfare orders

On conviction for a relevant offence contrary to the Animal Welfare Act 2006, an order might be made by the court preventing a person from owning or otherwise controlling livestock. A [deprivation order](#) under section 33 of the Act deprives a person of their ownership of livestock. A [disqualification order](#) under section 34 of the Act disqualifies a person from keeping, owning or controlling livestock.

Restriction of sales

On conviction for 2 or more offences involving the sale of tobacco products to minors within a two year period, a [restricted sale order](#) or a [restricted premises order](#) under section 12 of the Children and Young Persons Act 1933 may be sought preventing an individual from selling or managing the sale of tobacco products or preventing the sale of tobacco products from particular premises.

Following a conviction for the sale of alcohol to minors, an application will generally be made to the relevant district council under section 51 of the Licensing Act 2003, seeking a [review of the premises licence](#).