

## Trading Standards Service Enforcement Policy Statement (With effect from 6<sup>th</sup> April 2008)

This enforcement Policy explains our approach to regulatory activity, how we expect to deal with businesses and what happens when we find infringements of Trading Standards law. For enforcement to be fair it is important that we are open and clear about the basis on which we take action.

### Our Service

The Isle of Wight Trading Standards Service is committed to maintaining fair trading for all businesses and protecting the public, particularly those who may be vulnerable. The Trading Standards Service covers the following areas of law:

- Animal Health and Welfare (on agricultural premises)
- Animal Feedstuffs and Fertilizers
- Consumer Credit e.g. misleading and incomplete advertisements
- Environmental safety e.g. packaging and explosives
- Fair Trading e.g. false descriptions and misleading prices
- Product Safety
- Under-age sales
- Weights and Measures

We use advice as the main method of ensuring that businesses comply with legal requirements. We inspect business premises, test products and make test purchases where appropriate to test compliance with the law. We give talks and provide learning opportunities to consumer and business groups, and publish a range of leaflets.

When we receive an enquiry we aim to respond within 2 working days to phone messages, and 5 working days to letters, e-mails. Complex matters may take longer and we will give a full reply or progress report within 20 working days. (For full details of our service standards see Isle of Wight Council leaflet "Customer Service Standards", available from our information Centres or Isle of Wight Council website: <http://www.iwight.com/council/documents/consultation/csc.pdf>)

We believe that prevention is better than cure. The service operates a '**Buy With Confidence**' scheme that is intended to raise standards of fair trading by approving local businesses and recommending them to consumers. Please contact us for further information. (See contact details at the end of this policy) or log on to [www.iwbuywithconfidence.info](http://www.iwbuywithconfidence.info)

### Our approach to regulatory activities

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without

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imposing unnecessary burdens. This is in accordance with the Regulators' Compliance Code.

In certain circumstances we may conclude that a provision of the Code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the Code will be properly reasoned, based on material evidence and documented.

In planning and carrying out our activities we will always have regard to the principles in the Regulators' Compliance Code. It should be noted that our officers may need to move outside the principles of the Code where individual operational circumstances necessitate them doing so.

We also subscribe to the Enforcement Concordat where the legislation we enforce is not covered by the Regulators' Compliance Code. For businesses, our regulatory activities are focussed upon allowing and encouraging economic progress. As part of that we will:

- Keep our regulatory activities and interventions under review to reduce their burden on businesses, especially smaller ones, as much as possible;
- Risk assess our regulatory activities so as to target our resources where they will have greatest effect;
- Carry out inspections only where there is a reason for doing so, for example, as a response to intelligence or as part of our risk assessment process;
- Provide advice when it is requested by businesses, and to do so proactively where this is practicable;
- Develop 'home authority' and/or 'primary authority' relationships with businesses based on the Isle of Wight to provide advice and support;
- Only require data and information from businesses when it is strictly necessary for us in carrying out our regulatory activities; and
- Consult with businesses in designing, reviewing and improving our risk methodology.

The Trading Standards Service has a duty to enforce a wide range of legislation. This does not automatically mean that formal (civil or criminal) enforcement action will be taken in respect of each and every infringement. Instead, the duty obliges us to take steps to promote compliance by the most appropriate means, in line with our enforcement priorities and consistent with available resources.

### **What you can expect of our staff**

You are entitled to expect our staff:

- To be courteous and helpful;
- To identify themselves by name and produce identification if requested;
- To provide a contact point for any further dealings;
- To give clear and simple advice;

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- To confirm advice in writing on request, explaining why action is required and over what time-scale;
- To clearly distinguish between what you **must** do to comply with the law and what is recommended as best practice;
- To minimise the cost of compliance by requiring proportionate action;
- To give you reasonable time to comply (unless immediate action is necessary in the interest of Health, Safety or to prevent evidence being lost);
- To notify you if the matter is to be reported for legal proceedings;
- In cases of dispute to advise you of the procedure for making a complaint or representations; and
- To maintain confidentiality except where we have a legal obligation to disclose information.

### **Action we take if the law is contravened**

When we find a breach of the law, in the majority of cases we deal with the matter by advice. However, there may be more serious cases which can only effectively be dealt with in a more formal manner.

Dependent upon the provisions of the particular legislation, we are able to take a variety of actions, including:

- Verbal or written warnings
- Fixed Penalty Notices and Penalty Notices for disorder
- Indirect action e.g. referral to another authority for action or, in the case of sales of alcohol to underage persons, to the Licensing Authority
- Suspension, seizure or voluntary surrender of goods
- Improvement Notices
- Simple Cautions
- Injunction – Enforcement Orders, Undertakings
- Prosecution and/or forfeiture of goods

Where immediate enforcement action is necessary an explanation will be given at the time and confirmed in writing, usually within 5 working days, and always within 10 working days.

Before any enforcement action is taken there will be an opportunity for businesses to discuss the case, although when we are considering a prosecution this will be at a formal interview. Where the circumstances would normally justify prosecution, but there has been a clear admission of the offence, we will consider offering the offender the option of signing a Simple Caution. This is an alternative to prosecution which can be referred to in court should the business re-offend.

We will always observe the strict legal codes on the way investigations are to be conducted and legal action taken.

Some of the actions above provide for appeal and review processes before or following their imposition. When this is the case the affected business will receive

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full written details of their rights. Where English is not the first language of the representative of the business we will endeavour to provide translations of our documents.

In some instances we share an enforcement role with other agencies e.g. environmental health department for food matters; police for under-age sales of alcohol etc. and in such situations we will share information on our activities with our partner organisations.

### **Taking Legal Action**

To ensure any action we take is proportionate and targeted only at cases in which action is needed, a number of factors will be taken into consideration, including:

- The seriousness of any alleged offence
- The value involved
- The age and vulnerability of consumers affected
- The previous history of the business
- Any statutory defence available
- Action taken to prevent any recurrence
- Any explanation offered and, as far as the law allows, the circumstances and attitude of the business
- What course of action will best serve the public and community interest
- The Human Rights of all concerned

Prosecution will be our likely course of action in cases that involve:

- Serious offences affecting the health, safety or morality of the public;
- Serious offences relating to animal health and welfare;
- Serious offences involving fraud;
- Continued or gross negligence;
- Obstruction or wilful non-compliance;
- Deceptive or misleading claims or actions;
- Breaking statutory prohibitions;
- Breaking court orders;
- Where national policies indicate such a course of action; or
- Where the community interest is detrimentally affected to a significant extent.

The decision to prosecute is taken by a senior manager:

- In accordance with all relevant statutory requirements and codes, such as the Code for Crown Prosecutors;
- In accordance with all other best practice guides; and
- Without any unnecessary delay.

### **Good Enforcement Practice**

## ISLE OF WIGHT TRADING STANDARDS SERVICE POLICIES

As with many other regulators, The Isle of Wight Council Trading Standards Service has a responsibility to comply with the Regulators' Compliance Code. In addition The Isle of Wight Council has signed the Government's Enforcement Concordat (copy available on request or visit: [www.berr.gov.uk/consumers/enforcement/enforcement-concordat/index.html](http://www.berr.gov.uk/consumers/enforcement/enforcement-concordat/index.html)) to show its commitment to good enforcement practices, in those areas of activity to which the Concordat applies.

We endeavour to serve the people of the Isle of Wight by working with the business community to ensure fair and safe trading and a thriving economy. We take particular care to help small businesses, voluntary and community organisations meet legal obligations with minimal expense.

All of our staff are bound by this policy to ensure we take a consistent approach to our work.

The operation of this policy is monitored by the Trading Standards Manager and Trading Standards Team Leaders by processes under the National Performance Framework for Trading Standards Services and in accordance with the Local Authority Co-ordinators of Regulatory Services' Guide to Good Practice in Trading Standards.

If you have any comments on the Enforcement Policy or would like further information then please contact us.

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[www.tradingstandards.gov.uk/iow](http://www.tradingstandards.gov.uk/iow)

[www.iwbuywithconfidence.info](http://www.iwbuywithconfidence.info)

This policy is available in large print and alternative languages on request.

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