

London Borough of Lambeth

Trading Standards - Enforcement Policy

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1.0 Introduction

- 1.1 The London Borough of Lambeth (LBL) Trading Standards Team aim is to create a fair and safe trading environment in order to encourage the economic development of legitimate businesses as well as to protect consumers and the environment.
- 1.2 We aim to achieve this by proactively working with businesses to advise and assist with compliance. We will use an intelligence led approach to target our limited resources to the areas that most require our attention.
- 1.3 The purpose of this policy is to detail the various matters that all officers working in the Trading Standards Service will take into consideration when deciding what action to take whilst carrying out their regulatory duties and functions.
- 1.4 This policy covers the enforcement work of the Trading Standards Service for all premises within the London Borough of Lambeth and, where the law permits and when considered appropriate, for those businesses based outside the Borough.
- 1.5 This Policy should be read in conjunction with:
 - The Code for Crown Prosecutors
 - Criminal Procedure and Investigations Act 1996
 - Police and Criminal Evidence Act 1984 (PACE)
 - The Enforcement Concordat and any relevant codes of practice under the Regulatory Reform Act 2006
 - Statutory Code of Practice for Regulators (December 2007): Department of Business Enterprise and Regulatory reform
 - Regulatory Enforcement and Sanctions Act 2008
 - Regulators' Code

2.0 Purpose of enforcement

- 2.1 Trading standards provide general information, advice and guidance to make it easier for businesses to understand and meet their regulatory obligations. We will carefully consider the impact of any regulatory intervention to ensure that any action we take is proportionate. Where appropriate, we will seek to achieve compliance through early engagement, mediation, education and advice. Where this is not deemed by officers as the most appropriate route, their decisions will be recorded and justified.
- 2.2 Prior to taking any enforcement action, we will provide an opportunity to discuss the circumstances of the case and take these views into account when deciding on the best approach. This will not apply to circumstances where we need to prevent or respond to a serious breach, or where to do so is likely to defeat the purpose of the proposed action. When Trading Standards is conducting an investigation into possible criminal offences, any discussion of the case may need to be by way of a formal interview in accordance with the Police and Criminal Evidence Act 1984.
- 2.3 In considering formal action, we will take into account the views of any victim, injured party or other relevant person/s to establish the nature and extent of any harm or loss and its significance. This may include:
 - the potential or actual harm or loss
 - the impact on the well-being of the individual
 - the potential or actual harm to the economic interest of consumers and businesses resulting from unfair trading practices and anti-competitive behaviour.
- 2.4 When considering any enforcement action against businesses based outside the London Borough of Lambeth that have registered a Primary Authority partnership with another local authority, we will in accordance with the requirements of the Regulatory Enforcement & Sanctions Act 2008, notify the Primary Authority of the action we propose to take.
- 2.5 When making our enforcement decisions we will ensure we are fair, independent and objective. There will be no influence by issues such as race, disability, socio-economic factors, age, politics, gender, sexual orientation or religious beliefs of any Council employee, offender, victim or witness. However, where a victim has been targeted by an offender by virtue of their status, for example ethnicity, age or vulnerability, consideration will be given to this when deciding on any course of action. These decisions will not be affected by improper or undue pressure from any source.
- 2.6 When taking enforcement decisions all Officers in the Trading Standards Team will use this policy as a guide, but every case will be decided on its own facts.

3.0 Method of Enforcement

3.1 LBL will use its discretion in deciding whether any incidents or complaints should be investigated. Investigations will be undertaken in order to:

- determine causes
- establish whether action has been taken or needs to be taken to prevent a recurrence
- secure compliance with the law
- identify lessons to be learnt to influence the law and guidance
- decide what response is appropriate to a breach of the law

3.2 To maintain a proportionate response, resources available for investigation of incidents will be devoted to the more serious complaints and breaches, i.e. complaints and breaches involving the protection of children from harm, vulnerable members of the public or the impact of the illegal activity in terms of the number of potential victims and amount of financial detriment.

3.3 If no breaches of legislation are discovered, or if the Service believes that a complaint or contravention does not warrant investigation or action, then we may decide to take no further action.

3.4 Following a Trading Standards investigation the following sanctions are available to the Council:

- Informal warnings
- Fixed / Variable Penalty / Monetary Notices
- Refusal, revocation or suspension of licence
- Statutory Notices
- Stop / Prohibition Notices
- Simple Cautions
- Undertakings / Injunctive Proceedings
- Prosecution
- Confiscation / Forfeiture

3.5 Any sanctions and penalties imposed will be consistent, balanced, fairly implemented and relate to common standards which ensure that individual safety and welfare, public safety, financial security and the environment is adequately protected. Where it is clear that jurisdiction for enforcing any matter or imposing any form of sanction rests with another regulator, the matter will be referred to them in accordance with our statutory powers and/or under the General Data Protection Regulation 2018 (GDPR). However this will not preclude an investigation from taking place to ascertain relevant facts.

3.6 The aim of using sanctions and penalties is to:

- Protect the public and other businesses from harm
- Stop the infringing conduct immediately
- Change the behaviour of the offender

- Deter future non-compliance and reassure the community
- Restore the harm caused by the regulatory non-compliance
- Eliminate any financial gain or benefit from non-compliance
- Be proportionate to the nature of the offence and the harm, or risk of harm caused whilst giving appropriate consideration as to the public stigma that might come with receiving a criminal conviction

3.7 In deciding which sanction is appropriate, the Trading Standards Service will have particular regard to the following criteria:

- Whether the breach was pre-meditated, committed deliberately or recklessly, or without due diligence;
- Whether there are any prior complaints and convictions or other information relevant to the individual or trader's history;
- Inadequate mitigation or explanation given by the individual or trader;
- The individual's or trader's attitude and, in particular, whether they were obstructive or co-operative;
- The prevalence of the type of breach and whether a particular sanction could act as a deterrent and encourage compliance generally;
- The effect of the breach on the victim or affected person, in particular where the victim or affected person is in some way vulnerable or the infringement resulted in death or serious injury.

3.8 Where appropriate, the Council will seek to recover all costs incurred in carrying out any proceedings (including staff time) from relevant parties to ensure that the financial burden of the infringement is not borne by the Authority and ultimately the tax-payer.

3.9 In appropriate cases the Council will also seek to recover compensation for consumers at the successful conclusion of criminal proceedings where they have suffered financial losses through the illegal activities of the defendants.

4.0 Publicity

4.1 The London Borough of Lambeth may make arrangements for the publication of the names of the defendants who have been convicted of breaching trading standards legislation with particulars of the case.

4.2 The Council will in all cases also consider drawing media attention to factual information about charges which have been laid before the Courts, but will exercise all reasonable care to avoid any publicity which could prejudice a fair trial.

5.0 Responsibilities and Competency

5.1 The Council's Head of Community Safety Services is responsible for the reviewing and monitoring of this policy.

5.2 Only Officers authorised by the Head of Community Safety Services may undertake trading standards enforcement duties in accordance with the Council's

Scheme of Delegation. The Head of Community Safety Services will only authorise Officers when satisfied with their level of qualification, training and experience. Newly appointed or transferred Officers will also be assessed by the Trading Standards Manager for competency and referred for training where necessary.

6.0 Complaints

6.1 Complaints about Trading Standards and/or individual Officers will be addressed through our corporate complaints procedure, which can be found on our website.

Date of issue: 26 March 2019

Signed by:

Head of Community Safety Services