



# Enforcement Policy

## 1. Introduction

This Enforcement Policy informs traders of what to expect from the Trading Standards as it carries out its enforcement duties. The Policy applies to any activity carried out by Guernsey Trading Standards to make sure a business or individual is keeping to the legislation Trading Standards is authorised to enforce.

## 2. Statement of Purpose

Trading Standards' Statement of Purpose is:

**“To support and protect a fair and competitive trading environment for consumers and businesses alike”**

Trading Standards knows that effective and well-targeted enforcement is essential to achieving this. The purpose of enforcement by Trading Standards is to make sure that businesses meet at least the minimum requirements of legislation, preventing economic harm to consumers and other businesses.

We will encourage businesses to follow the law by:

- Helping and encouraging businesses and individuals to understand the law.
- Responding proportionately to breaches of the law.

## 3. Application of our Enforcement Policy

All officers working for Trading Standards will take this Policy into account when making enforcement decisions.

An enforcement decision is anything we do that is meant to help a business follow the law. Formal enforcement action, where we have a specific power, would include giving out legal notices, seizing equipment, goods or documents, carrying out an investigation and considering prosecution. The decision to prosecute will always be made by the Law Officers of the Crown. Informal enforcement action is anything else that we might do, for instance verbal and written warnings, advice and guidance and making use of the media to promote good practice.



## 4. Principles of Good Enforcement

This part describes the principles of good enforcement<sup>1</sup> followed by officers as they carry out their duties. If there is any legislation or guidance from within the Bailiwick of Guernsey this will be followed. However, where there is no local guidance we will consider UK legislation and guidance as best practice. In particular this will include the UK's Legislative and Regulatory Reform Act 2006 and the Regulator's Code<sup>2</sup>. When writing this Policy we have taken into account that:

- (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent. We recognise that there may be several satisfactory solutions to any alleged breach.
- (b) regulatory activities should be targeted only at cases in which action is needed. This will include routine inspections, which are often the first sign of any issues.
- (c) regulatory activities should be carried out impartially and objectively and should not be influenced by race, gender, politics, sexual orientation, disability or religious beliefs.
- (d) positive feedback should be given where appropriate to encourage compliance and good practice.
- (e) except in serious cases, or where advice has been ignored, we will take a step by step approach. We will give the opportunity to rectify any issue before taking more serious action. Any enforcement action will be proportionate to the alleged breach, and the harm it has caused.
- (f) we will have regard to the Human Rights (Bailiwick of Guernsey) Law 2000.

### 1. Risk Assessment

We will direct our resources where they will be most effective by considering the risks of non-compliance with the law. We will always consider:

- **Production/usage risk:** some businesses will carry a greater risk of significant harm if something goes wrong;
- **Turnover profile:** a breach by a business with a larger turnover is likely to have a greater impact on more consumers;
- **History of the business:** in particular previous breaches and willingness to follow the law;
- **Management controls:** for instance management effectiveness and the systems the business has in place.

### 2. Advice and Guidance

We recognise that prevention is better than cure and will actively work with businesses and the public to give advice on, and assist with, following the law.

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<sup>1</sup> s23 Legislative and Regulatory Reform Act 2006 Chapter 51 (UK)

<sup>2</sup> Regulators' Code, Department for Business Innovation and Skills, Better Regulation Office (UK) April 2014

We will make sure that:

- Anything that businesses are legally required to do will be clearly and promptly told to them;
- The information we provide will be in clear, concise and plain English, and in a form appropriate to the audience;
- Advice will be confirmed in writing where necessary;
- We will make clear the difference between legal requirements and advice about best practice.

### 3. Inspections and Other Visits

All inspections and other visits to businesses will be done after consideration of the risk the business poses if it fails to follow the law. However, even businesses that pose a very low risk may be visited from time to time.

Inspections may also take place when a business has asked for advice or when information suggests that an inspection or visit is appropriate.

We will focus our time on businesses where a risk assessment shows that there is a high risk of a failure to follow the law and that this failure would pose a serious risk of public harm. Where we carry out inspections we will give feedback to the business on what the officer has found. This will include positive feedback to encourage and reinforce good practice. Serious concerns will be followed up in writing.

Some inspections may also be carried out to test our risk assessments or to see how effective any action we have taken has been.

### 4. Criminal proceedings

We recognise that most businesses and individuals wish to follow the law. However, firm action will be taken against those who do not follow the law or act irresponsibly.

All criminal proceedings in the Bailiwick of Guernsey are brought in the name of the Law Officers of the Crown who act as Prosecutors. Prosecutors are not investigators but in the course of an investigation may offer advice about matters connected to it, such as possible lines of inquiry that an investigator might pursue to help establish whether an offence has been committed, the evidential requirements in relation to specific offences and the likely admissibility of evidence.

We are accountable for our enforcement actions, and will make sure any enforcement action is carried out without delay in a transparent and proportionate way. Officers have discretion to use their judgement in individual cases but we have arrangements in place to promote consistency. Trading Standards will liaise with the Prosecutor at a level appropriate to the complexity of the case.

An investigation is more likely to be pursued if the alleged act:



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- Was fraudulent;
- Involved the deliberate or persistent breach of legal obligations, (e.g. disregarding warnings and/or legal notices), in circumstances which caused, or were likely to cause, loss or harm to others;
- Caused, or was likely to cause, loss or harm to others through negligence or extreme carelessness;
- Endangered the health, safety or well-being of people or the environment;
- Involved obstruction of an authorised Officer carrying out their duties

Once Trading Standards has prepared the investigation file it will be given to the Law Officers of the Crown for consideration and their final decision on whether a prosecution should go ahead.

When considering whether to prosecute a case submitted to them, the Law Officers review it against the criteria described in The Decision to Prosecute – Code of Guidance<sup>3</sup> document.

These criteria are known as the Evidential Test and the Public Interest Test. Trading Standards will take the requirements of these tests into account when conducting investigations and preparing a report for the Law Officers.

In appropriate circumstances and where there is no public interest in prosecution, the Law Officers may decide to issue a formal caution to the defendant. The purpose of a formal caution is to prevent an unnecessary court action where the defendant admits the offence, and agrees to it being referred to in court should a successful prosecution for a similar offence occur in the future. No court proceedings are involved in issuing a formal caution.

Trading Standards will consult with the Law Officers when, in the course of an investigation, information comes to light that makes it unlikely that a decision to take enforcement action will be reached. For example, if the investigation does not gather enough evidence of an offence, or extenuating circumstances apply, such as serious illness of the person being investigated.

## 5. Economic Development

We will consider the impact our actions may have on businesses, including consideration of costs, effectiveness and fairness<sup>4</sup>.

## 6. Information Requirements

We will only ask businesses for information that is necessary after considering the cost and benefit of getting the information. Where possible we will share this information with our

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<sup>3</sup> The Decision to Prosecute – Code of Guidance: Crown Law Officers

<sup>4</sup> Regulators' Code, Department for Business Innovation and Skills, Better Regulation Office (UK) April 2014



partners, (taking account of data protection), to prevent the need for the information to be given more than once.

## 5. Accountability

We shall be accountable for the efficiency and effectiveness of what we do, while remaining independent in the decisions we take. We shall provide businesses and individuals with effective opportunities for discussion and feedback on our service.

Officers will be courteous and fair at all times, and will identify themselves by name.

We take complaints against officers of Trading Standards seriously. If you have a complaint please write to Mr. Ruari Hardy, Head of Law Enforcement, Guernsey Police Headquarters, Hospital Lane, St Peter Port, Guernsey, GY1 2QN, or report your complaint through [www.gov.gg/reportit](http://www.gov.gg/reportit)

## 6. Legislation enforced by Guernsey Trading Standards

The Weights and Measures (Guernsey and Alderney) Law 1991 and subordinate legislation made thereunder.

The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009 and subordinate legislation made thereunder (there is currently no legislation made under this law)