



## Enforcement Policy

This enforcement policy was written with regard to the principles of the UK Regulators Code, available [here](#).

The Trading Standards Service (TSS) recognises that most traders on Guernsey run honest, legitimate enterprises that wish to comply with their legal obligations. TSS sees its primary role as helping traders to comply. Where there is non-compliance, TSS will act in a fair, appropriate and proportionate way. We will be transparent about how we operate and what you can expect from us.

Our enforcement activities will be intelligence-led and focus our resources on the areas of greatest detriment to consumer, traders, and the island as a whole.

### **Routine inspections**

We run routine inspection cycles of 3 years. We identify schedules for routine inspections by a risk assessment method that scores traders in the following areas:

- The number of consumers that can be affected by the actions of the trader
- The level of financial loss a consumer can suffer by the actions of the trader
- Contacts TSS has had with the trader over the previous 3 years
- The confidence of TSS in the trader's compliance with the legislation
- Whether the trader is considered a producer or distributor for the purposes of product safety
- Whether the trader has obligations under weights and measures legislation
- Whether the trader enters on-premises, off-premises, or distance contracts (and therefore the level of their obligations under Part III of the Ordinance)
- How complex contracts are (and therefore the level of terms and conditions)

Traders are scored in 3 bands, with routine inspections scheduled to take place every 1, 2 or 3 years.

Routine inspections are separate from visits or any other contact in relation to a complaint or enquiry.

Where the nature of the business is such that a physical inspection is not possible or appropriate TSS will use alternative methods. For example, for an online trader, TSS may look at the website. TSS may also contact traders to ask for information about their business activities to enable TSS to keep information up to date.

### **Test purchasing**

For purposes of market surveillance and to ascertain compliance, TSS may carry out both covert and open test purchasing activities.

## **Consumer advice**

TSS operates an independent, free, and confidential consumer advice service. TSS may act on information received through this service but will do so in compliance with data protection requirements and our duty of care to callers.

## **Trader advice**

TSS provides free advice to traders both through guidance available on our website and to traders who contact us directly. TSS also provides tools it considers appropriate to help traders comply with the legislation (e.g. checklists to help traders fulfil their Part III information requirements). TSS will provide advice that is clear, and jargon free.

Where practicable and appropriate, TSS will liaise with other relevant agencies to ensure we take a joined-up approach (subject to data protection legislation).

## **Dealing with non-compliance**

Where appropriate, TSS will seek to deal with non-compliance by offering advice and guidance on how the issue can be rectified within an agreed timescale. TSS will seek to confirm that the matter has been dealt with, via visits to premises or requests for information.

If the matter is serious, urgent, or a repeated instance, TSS may commence initial enquiries with a view to more formal enforcement action. Depending on the specific matter, enforcement action may be:

- Securing an undertaking from the trader that they will comply with their obligations
- Commencing action to secure an enforcement order from the court, compelling the trader to comply with their obligations
- Including enhanced consumer measures in undertakings or enforcement orders to provide redress, increase consumer's informed choice and improve compliance
- Seeking injunctions from the court relating to unfair terms, breaches of Part III requirements
- Prosecuting offences
- Issuing safety notices, such as suspension, withdrawal or recall notices or notices requiring warning or marking of products
- Applying to the court for forfeiture of unsafe products

When deciding on appropriate action we will consider the following:

- What will change the behaviour of the trader?
- Has the trader made a financial gain from the practice?
- What is proportionate to the nature of the offence and the harm caused?
- What will deter future non-compliance?

## Prosecutions

The decision of whether to prosecute is a serious one and will be taken with regard to the following:

- The evidential test – TSS must be satisfied that it has enough evidence to provide a realistic prospect of conviction, and that the proper procedures were followed in collecting the evidence to allow it to be presented in court.
- The public interest test – TSS must be satisfied that it is in the public interest to proceed with a prosecution. We would consider the following matters when making this decision:
  - Fraudulence, deliberateness, negligence, or carelessness
  - Failure to act on previous advice given specifically to that trader
  - Likelihood of substantial loss to others
  - Risks to safety, wellbeing, or health of the public
  - Disregard for the law
  - History of previous offending
  - Likelihood of offending continuing if no action taken
  - Unjustifiable or unjustified delay in TSS bringing the action
  - Whether the same outcome could be achieved by a different course of action
  - Obstruction of TSS officers acting in their duties
  - Circumstances of those affected by the practice
  - Circumstances of the defendant
  - Whether the defendant has put right the loss or harm caused