



TRADING STANDARDS ENFORCEMENT POLICY



The Moray Council

Trading Standards Enforcement Policy

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Purpose of Enforcement

Our Vision

- Business is well informed about consumer law.
- The enterprise and innovation of responsible business is encouraged by a 'light touch' enforcement approach.
- Rogue and reckless traders are inhibited and disrupted by accurately targeted enforcement action.
- Citizens have the information they need to make informed consumer choices and vulnerable citizens are protected from those who would prey on them.

Our Mission

- To provide mainstream business with valued advice on consumer law.
- To eliminate unnecessary enforcement activity that impacts on responsible business and generally to implement the Government's regulatory reforms.
- To take effective action against rogue and reckless traders to prevent, or minimise, the harm caused by consumer malpractice.

The Enforcement Concordat

The Moray Council has adopted the 'Enforcement Concordat', which sets out the Council's commitment to the principals of good enforcement. "Enforcement" includes advisory visits and assisting with compliance, as well as licensing and formal enforcement action.

Openness

We provide information and advice in plain language. We are open about how we do our work, including any charges made. We take account of business, consumer and other stakeholders' views.

Helpfulness

We believe that prevention is better than cure and in working with businesses, especially small and medium sized businesses, to advise on and assist with compliance. Our staff identify themselves by name. We encourage businesses to seek advice / information from us. Applications for licences, registrations etc. are be dealt with efficiently and promptly.

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Complaints about service

We have an effective and timely complaints procedure. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

We minimise the costs of compliance for businesses by ensuring that any action we require is proportionate to the risks. As far as the law allows, we take account of the circumstances of the case and the attitude of the operator when considering action. We take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

We carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies using the 'Home Authority' principle operated by the Local Authorities Coordinators of Regulatory Services (LACORS)

Enforcement Procedures

Scope

1. These procedures cover the administration and enforcement of Trading Standards legislation; including enforcement visits, investigation of alleged offences, advice to businesses, investigation of criminal complaints, test transactions and sampling. It does not include advice on civil rights and obligations.

General

2. Enforcement effort is be risk based and targeted, using intelligence from consumer complaints, results of previous enforcement activity, the 'Consumer Direct' complaints database, information from other enforcement agencies and other sources.

Staff Competence

3. Officers only take on tasks they are competent to perform. All staff participate in the Council's Employee Review and Development Programme. This ensures that officers are properly equipped to carry out their enforcement functions.

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Business Advice

4. Business advice is available on request. Business training on Trading Standards issues is offered according to demand. Information is available via the Trading Standards 'Business Services' page at: -

http://www.moray.gov.uk/moray_standard/page_1559.html

Business Risk Assessment

5. All trading premises, which are subject to inspection by Trading Standards, are risk assessed as high, medium or low risk using the Local Authorities Coordinators of Regulatory Services risk assessment scheme. The risk rating is used to programme inspection visits as follows: -

Risk Rating	Inspection Programme
High	Annual Inspection
Medium	Bi-annual Inspection
Low	5% of businesses inspected annually (chosen at random)

Service Standards and Performance Reporting

6. The following service standards apply: -

Service Standard	Performance Target
Respond to and complete business advice requests within 10 working days.	98%
Business inspection and business advice service – business satisfaction rating.	94%
Percentage of High Risk premises inspected within time.	90%
Percentage of Medium Risk premises inspected within time.	90%

7. Performance is reported on the Moray Council website at: -

www.moray.gov.uk/tradingstandards

and via the Council's corporate public performance report.

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Planned Inspections

8. Trading Standards carry out a programme of planned inspections. Businesses are not generally given advance notice of inspections. However, Trading Standards will test pre-arranged inspections of medium risk businesses in 2007/08. If this is effective, pre-arranged inspections will become the norm from April 2008. It is stressed that a proportion of inspections will continue to be unannounced and that Trading Standards reserve the right to carry out inspections without notice. Officers offer advice and assistance to help businesses comply with statutory requirements during inspection visits.
9. Officers are given powers of entry, inspection and seizure under a variety of statutes. Persons should not attempt to stop an officer who is properly exercising any of these powers; as such action may be an offence. In general an authorised officer can: -
 - (a) Enter any premises at all reasonable hours
 - (b) Inspect any goods, food or articles
 - (c) Take samples of any goods, articles or substances
 - (d) Make covert test transactions, e.g. age-related sales
 - (e) Inspect any documents, where an offence is suspected
 - (f) Seize, remove and detain food, articles, substances, goods and documents, when it is believed that an offence has been committed
 - (g) Direct that premises, or anything within premises, are left undisturbed
 - (h) Take photographs, measurements and recordings.
10. In the course of an inspection, businesses can expect: -
 - (a) To be shown all due courtesy
 - (b) To be informed of the purpose of the visit
 - (c) To be shown photo identification
 - (d) To be given advice
 - (e) To receive feedback on compliance levels
 - (f) To be given guidance on what the law is
 - (g) To be given advice on any action required to remedy any points of non-compliance
 - (h) To receive reasonable time to take remedial action
 - (i) To be told of procedures for appealing against any enforcement action taken.

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Enforcement Action

11. Enforcement action includes reports, letters, statutory notices, formal warnings, reports to the Procurator Fiscal and civil action under the Enterprise Act against undesirable trading practices. Action taken is proportionate to the scale of the identified problem and to other relevant factors, including: -
 - (a) The public interest.
 - (b) Significant contraventions resulting in real or potential danger to the public or persons at work.
 - (c) Previous correspondence on the issue, or where there is a history of similar contraventions.
 - (d) Detriment to consumer rights.
 - (e) Detriment to business rights; e.g. intellectual property rights.
 - (f) Wilful breach of legislation or failure to comply in full or in part with requirements of statutory notice.
12. Before formal enforcement action is taken, officers provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for example, in the interests of health and safety or to prevent evidence being destroyed).
13. Where immediate action is considered necessary, an explanation of why such action was required is given at the time and confirmed in writing, in most cases within 5 working days and, in all cases within 10 working days.
14. Where there are rights of appeal against formal action, advice on the appeal mechanism is clearly set out in writing at the time the action is taken (whenever possible this advice is be issued with the enforcement notice).
15. Advice from an officer is put clearly and simply and is confirmed in writing, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.
16. All statutory notices, reports, letters, and formal warnings are followed up to ensure required remedial action is taken.
17. Trading Standards use discretion when considering making a report to the Procurator Fiscal and only do so when it is in the public interest. All reports are referred to the Service Manager prior to submission to the Procurator Fiscal. Reports will be submitted within four months of the date the offence came to light, unless external factors make this impossible.

Complaints About the Service

18. Where a business, or other member of the public, makes a complaint or expresses dissatisfaction with the service, the officer receiving the complaint notifies the Service Manager as soon as possible. The complainant will be advised of the option of

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referring the matter to the Service Manager. On receipt of a complaint, the Service Manager reviews all relevant facts and report the findings to the complainant. Complaints and expressions of dissatisfaction are seen as opportunities to improve service delivery. The Council's Complaints procedure is followed.

Home Authority Principle

19. The section adheres to the Home Authority Principle of Local Authorities Coordinators of Regulatory Services (LACORS). The Home Authority Principal encourages efficiency, promotes uniformity, reduces duplication and assists enterprises to comply with the law. It ensure that: -
 - (a) Local authorities place special emphasis on the surveillance of goods and services originating in their areas.
 - (b) Enterprises are able to depend upon a specific home authority for preventative guidance and advice.
 - (c) Enforcing authorities liaise with the relevant home authority on issues that affect the policies of an enterprise.
 - (d) Machinery exists for monitoring and resolving disputes in appropriate cases.

Publicity

20. This policy will be made widely available to trade bodies and others who may have an interest. It will be published on the Council's Internet pages. The policy will be reviewed in the light of any comments and feedback received.

External Policy Requirements

21. The Food Standards Agency (FSA) food law code of practice: -
www.food.gov.uk/multimedia/pdfs/scottishcop.pdf
22. The Health and Safety Commission policy statement on enforcement: -
www.hse.gov.uk/pubns/hsc15.pdf
23. Crown Office and Procurator Fiscal Service guidance for specialist reporting agencies.