

Enforcement Policy

Introduction

Our purpose is to make Kent a better place in which to live, work and do business by supporting legitimate business enterprises, suppressing unlawful or unfair trading and providing information and assistance to empower consumers.

We operate under the Principles of the National Intelligence Model (NIM), prioritising our work by conducting campaigns based on intelligence to achieve our objectives as stated in our annual operating plan. Our aim is to improve regulatory outcomes without imposing unnecessary burdens on business.

In adopting our Enforcement Policy we have had due regard to the Regulators' Compliance Code published by the Department for Business Innovation and Skills. Kent County Council is also a signatory to the Enforcement Concordat published by the Cabinet Office in 1998

Principles of Enforcement

The purpose of Kent Trading Standards' enforcement activities is to protect the public, legitimate business and the environment. To achieve this aim we will undertake to regulate businesses and others in a fair, practical and consistent manner helping to promote a thriving local and national economy.

If we exercise any legal powers in contemplation of legal proceedings, including the seizure and/or detention of goods, equipment or documents, we will give written notice to a business explaining the extent of those powers and the nature of any equivalent rights which the business may have.

Before reporting for legal action, we will give the business an opportunity to put its point of view (unless circumstances dictate immediate action to ensure safety or to preserve evidence).

A range of options will be considered when legal requirements are breached, including one or more of the following:

- Advice
- Improvement Notice / Suspension or similar notice under consumer safety legislation
- Written warning
- Simple caution
- Penalty notice
- Review of premise licence (alcohol sales)
- Undertaking to comply with the law
- Civil injunction
- Prosecution
- Forfeiture proceedings
- Antisocial Behaviour Order

- Action under the Proceeds of Crime Act

No written warning will be entertained unless there is reliable evidence to support an assertion of offending. No simple caution or prosecution will be entertained unless there is admissible evidence of sufficient weight to suggest that a court would be more likely than not to convict and there are no statutory bars (e.g. in relation to time limits or statutory notices).

When prosecution is considered, the case will be objectively assessed by a senior officer in Kent Trading Standards. We will assess the circumstances and the evidence separately in relation to each potential defendant and each alleged offence, having due regard to aggravating and mitigating factors, any evidence pointing towards a statutory (or other) defence, this Policy and the Code for Crown Prosecutors. Consideration will be given to:

- Whether there is sufficient admissible evidence that a criminal offence has been committed and there is a realistic prospect of conviction.
- Whether the prosecution is in the public interest.

If a prosecution is mounted, allegations will be selected which adequately reflect the seriousness of the offending and give the court adequate sentencing power, but which do not overburden the administrative process or make the case unnecessarily complex.

The following are some specific criteria which will be taken into account where relevant whenever a prosecution is contemplated, to ensure that a prosecution is brought only where it is appropriate to do so and to ensure consistency in the decision making process.

Aggravating Factors

- The impact or potential impact of the offence is so serious that prosecution is the only suitable method for disposal.
- There has been long term or recurring offending.
- Age or vulnerability of the victim(s).
- Amount of gain for the offender or the amount of loss to the victim relative to the victim's status.
- Impact of the crime on the victim.
- Prevalence of the offence and its impact on the community.
- Any attempt by the offender to conceal his/her identity, whether directly or indirectly, such that the victim, and or investigating agencies, cannot easily identify or trace the person.
- Lack of remorse.
- The offender's history including previous advice, warnings, cautions and convictions.
- There is evidence of significant and/or continuing consumer or public detriment.
- There is risk to public health and safety, the environment, animal health and welfare, or a potential impact on disease control and/or traceability.
- The offender has acted fraudulently or is reckless or negligent in their activities.

- The offer of a simple caution has been rejected.
- An officer was obstructed.

Mitigating Factors

- Prompt acknowledgement of guilt.
- Making timely and appropriate compensation to the victim(s).
- Previous good character
- Age of the defendant
- Degree of culpability.
- Other strong mitigation.

If, during the course of the prosecution process, new information becomes available or the defendant's circumstances alter, a re-assessment of the course of action will be made and, if necessary, a prosecution withdrawn or a different allegation substituted.

Issuing Simple Cautions to offenders instead of going to the criminal court

Where a prosecution could succeed and the offender admits their guilt, but the individual circumstances of the case suggest that a more lenient approach may be appropriate, consideration will be given to dealing with the case by way of a simple caution.

There are, however, certain offences which we consider have such a serious and adverse impact on the safety and wellbeing of the community that our presumption will always be to take formal legal action, meaning prosecution, civil injunctive proceedings, use of Penalty Notices for Disorder and/or licence reviews, as appropriate. The offences for which this is relevant are the sale of alcohol to children and offences under the Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008.

Issuing Penalty Notices for Disorder instead of going to court

Where a person who is not a Personal Licence Holder sells alcohol to a person under the age of 18 and a prosecution could succeed, consideration will be given to dealing with the case by way of Penalty Notice for Disorder. This amounts to a fixed penalty fine of £80

Seeking a review of the licence of a premises supplying alcohol

Where alcohol has been supplied to a person under the age of 18, then consideration will be given to seeking a review of the premises licence by the licensing authority.

Formal Undertakings/Civil injunctive proceedings

Where an individual or business operates in such a way as to harm consumers generally, an application may be made to the civil courts for an injunction to stop the detrimental practices. This may be alternative to or in addition to prosecution.

In most circumstances this will have been preceded by the offer of a Formal Undertaking within the meaning of the Enterprise Act 2002 whereby the offender agrees not to do or continue with the matters complained of. Failure to sign or a breach of a signed Undertaking will normally result in an application for a Court Order (injunctive).

Such an application will not be made unless the detrimental practices have been explained (or an attempt has been made to explain them) to the individual or business and they have received advice and guidance on how to operate legitimately, unless the detrimental practices create a threat to human safety in which case an urgent application may be made.

The decision to instigate such action will be made by a senior officer within Kent Trading Standards who will take into consideration the same criteria to those identified for prosecutions.

Proceeds of Crime

Confiscation proceedings will be considered where applicable against criminals who have profited from their crimes.