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# HANDLING TRADING STANDARDS INSPECTIONS



*It's easy to fear the knock of the door when trading standards officers appear. With a number of powers, they have the ability to disrupt business operations. However, understanding their role, what they can do and how they work can smooth the visit.*

Those that are obstructive or who fail to comply with instructions could be destined for a date in court. So, what do firms need to know?

## The role defined

As described by Stuart Ponting, a partner and regulatory law specialist at Walker Morris LLP, trading standards officers (TSOs) advise on and enforce laws that provide protection to consumers and govern the way goods and services are bought, sold, rented and hired. He says that "TSOs are most likely to be checking for product safety compliance and ensuring that the business is trading fairly. This might include confirming that firms are selling products at a fair price and checking that items for sale display the right descriptions together with any safety or product usage warnings." TSO's will also check that

the firm is trading on fair terms and conditions with its customers.

But TSOs have the right to look at other compliance issues within a business too. Here Ponting says that this "might cover checking, for example, if flammables such as chemicals are being stored and that they are being stored correctly. They might also be interested in whether or not the business is infringing intellectual property laws by selling counterfeit goods or ensuring that it is not selling age restricted products to underage purchasers." In short, the TSO's role covers a very wide range of issues.

## Why trading standards officers visit

TSOs visit businesses for a number of reasons, but from experience Ponting

knows that they are usually there to check that the business is complying with the law and to investigate any non-compliance: "Most inspections are routine and are not generated because of a specific complaint or issue so there is no reason to be alarmed by the presence of a TSO, they are most likely to be carrying out a routine inspection."

However, he warns that "it is important that firms understand both their rights and a TSOs powers in the context of a visit and also how to handle them properly." In certain circumstances TSOs may have already begun an investigation. This, he says, "can occur where a consumer has complained about a trader's behaviour or has informed the local authority that they believe the firm to be breaching consumer law."

## What are the TSO's investigation powers?

TSOs have wide powers to conduct criminal investigation:

### **Powers to request information**

TSOs have the power to issue a written notice at any time requiring the trader to produce certain information. "If one of these notices is received," says Ponting, "it should specify the reason why the TSO wishes to obtain the information. It may be that they are investigating an alleged breach of legislation." The notice may require the firm to put information together for the TSO. Receiving a notice requires, advises Ponting, careful consideration of its contents and the production of an appropriate response.

But where the trader does not comply with the notice, Ponting draws attention to the fact that "the TSO can apply for a court order to require compliance, and so in most cases it can be helpful to provide the information at the time it is requested, assuming the firm can do so." That said, he adds that "it should be borne in mind that any information provided could later be used by the TSO to bring enforcement action; whilst that is not a reason to refuse to provide it, careful thought should be given to what is being provided."

### **Powers to enter premises and act as "a consumer"**

Another power to note is a TSO's ability to enter premises during normal hours,



in the same way that a customer would in order, to observe the business. TSO's can also make test purchases and test products, to check, for example, whether the goods being sold are counterfeit. As Ponting explains, "this is a common way for TSO's to establish whether or not the trader is conforming to consumer protection legislation."

### **Powers to enter premises to carry out inspections or conduct on-site investigations**

Lastly, a TSO can visit a firm's premises, but as Ponting points out, "they need to give two days' notice unless they can show that providing notice would be inappropriate. This might be where there is an imminent risk to safety, where giving notice might tip off those engaged in unlawful activity, where they suspect that a breach of the law, or where they are conducting market surveillance." He adds that if a TSO wishes to enter a home or they feel they may need to use force, they will need a court warrant to do so.

Once a TSO has entered, they have a wide range of powers available to enable them to investigate breaches or potential breaches of consumer law. Ponting again offers a warning, namely, that "where TSO's have a suspicion of a breach of the law, they can ask to see documents held, for example receipts or order forms. TSO's can also inspect the products and services offered for sale, break open containers or access USB devices or computers to obtain information, and seize any such products or documents that they have found for use in their investigation." He reminds that TSO's can also



require the trader to assist them in their investigation and it is a criminal offence to intentionally prevent a TSO from carrying out their duties, punishable by a fine.

Despite all of this, TSO's should exercise their powers proportionately and in circumstances where it is unlikely they would have otherwise

received voluntary assistance. The advice from Ponting to those with concerns that a TSO is exercising their powers inappropriately is that they should ask them to wait whilst further advice is obtained, say, from head office or a specialist lawyer.

## Enforcement powers

Ultimately, TSOs have a range of powers available to enable them to ensure compliance with the law and to impose appropriate sanctions where firms do not. Whilst many TSO's will offer support and guidance, where TSOs find breaches of consumer law, they can bring enforcement action. However, this is unusual for minor isolated breaches.

Here Ponting explains that "the exact nature of that enforcement action will depend on the specific circumstances; it is likely to include the TSO seeking an undertaking that the trader will not breach consumer law further, or an enforcement order from a court requiring the same." As a last resort and/or in the most serious of cases, TSOs can also bring a criminal prosecution which can result in imprisonment and unlimited fines.

## The penalties that can be issued for breaches of the law

It's reassuring that TSOs don't have the power to close a business down. Ponting says that they do, though, "have a wide range of options they can use to stop a firm



from breaking the law and/or penalise it for doing so, yet these vary depending on the nature of the breach of consumer law."

In the majority of cases, where businesses are keen to comply with the law, Ponting considers that formal enforcement action can be avoided where firms agree with the TSO that the business will seek to fix any potential breach (for instance by changing products or arranging compensation for customers who have suffered as a result of a breach). This can be done by way of an undertaking, "which is essentially a promise to comply with the law going forward, and/or to provide enhanced

consumer measures which are focussed on achieving redress for affected consumers,

improving compliance and giving consumers more information so that they can exercise greater choice in future."

But where the trader is unable to agree to an undertaking or where the TSO considers it suitable, Ponting says that "TSOs can use their more formal enforcement powers and ask the court for an enforcement order requiring the business to comply with the law going forward, and/or to provide enhanced consumer measures."

And of course, in the most serious of cases, businesses can be prosecuted for breaches of certain consumer laws. As Ponting has seen first-hand, "those that are prosecuted for a breach of consumer law, personally or as a business, may be given a criminal record, ordered to pay an unlimited fine or be sentenced for up to two years in prison." On top of that is the potential to be ordered to pay costs and provide enhanced consumer measures.

### In summary

Consumer rights are not something to be blasé about; enforcement does happen, and action is taken for breaches. The best advice is to seek advice; don't risk damage to a reputation or official action.



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