businesscompanion
trading standards law explained

Part 2. Investigation and powers

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Information Notices

When an enforcer like Trading Standards is investigating whether there is a breach of relevant law or whether they need to exercise their powers under the civil enforcement regime, they have various powers under Schedule 5 to the Consumer Rights Act 2015 (CRA). See 'Trading Standards: powers, enforcement and penalties' for more information on these powers.

The Digital Markets, Competition and Consumers Act 2024 (DMCCA) strengthens the power for Trading Standards and other regulators to request information from businesses, individuals and third parties, by serving an Information Notice. This power already existed under the CRA, but the new Act has strengthened these powers by introducing monetary penalties if an Information Notice is not complied with.

An Information Notice will set out details such as the information that an enforcer is requesting, the reason why they want the information, the format they would like the information provided in and the time limit for providing the information. Information Notices can also be served on people outside of the UK, if they have a UK connection. It is important that you engage with Trading Standards at an early stage if you have

any questions about an Information Notice that you receive; seek independent legal advice if you need to.

Consequences for your business

If an Information Notice is not complied with without a reasonable excuse, then Trading Standards can apply to the court to require the person who has been served the notice to take whatever action that the court believes is reasonable. The court can also impose a monetary penalty. The monetary penalty can either be a fixed amount, a daily amount or a combination of both:

- the fixed amount can be up to £30,000
    - if higher, it can be up to 1% of the annual business turnover
- the daily amount can be up to £15,000 a day
    - if higher, it can be up to 5% of the daily turnover of the business

The person or business can also be required by the court to cover the legal costs of this action.

Consultation stage

An early stage in most civil enforcement cases under the DMCCA will involve Trading Standards consulting with the business.

The purpose of the Consultation stage is to:

- stop any breaches of law and prevent any future breaches from happening
- prevent any further breaches where a breach of consumer protection law has already taken place
- prevent a breach of law from taking place if it hasn't happened yet

At this stage, Trading Standards will explain to the business what the breach of consumer protection law is and provide advice on how to comply with the law. The officers will also explain the civil enforcement regime and the Consultation stage of the process. The hope is that the advice and guidance provided during this stage will be sufficient to achieve compliance and no further action will be needed.

Minimum Consultation periods

In most cases, the Consultation period will last for a minimum of 14 days before Trading Standards will consider applying for an Enforcement Order.

If Trading Standards are applying for an Interim Enforcement Order, they can reduce this time period to seven days.

In an urgent case, Trading Standards can obtain permission from the Competition and Markets Authority, which can authorise an application to be made immediately, without the need to complete the Consultation stage.

Where a business has signed up to an Approved Code, the Consultation period is extended to a minimum of 28 days.

These are the minimum time periods set out in law. In practice, where a Consultation is being fully engaged with by the business or relevant person, the Consultation period is likely to last longer than these

time periods.

Undertakings given to Trading Standards

If the Consultation stage does not achieve compliance or is not required, and Trading Standards believe that a breach of consumer protection law has happened, is happening or will happen, they can apply for an Enforcement Order and/or a monetary penalty against the relevant person or business. They can also choose to offer the person or business the opportunity to sign an Undertaking instead of applying for an Enforcement Order and/or monetary penalty.

What is an Undertaking?

An Undertaking is a formal promise to comply with the law. Undertakings can be given to enforcers such as Trading Standards, but can also be given to the court in some situations. An Undertaking can also include the requirement to introduce Enhanced Consumer Measures into the business. These are discussed in more detail further on in this guidance. Undertakings do not have to be offered by Trading Standards, but may be an option for businesses that are committed to complying to consumer law.

Benefits of agreeing to sign an Undertaking

If an Undertaking is offered by an enforcer such as Trading Standards and agreed to by the business or relevant person, then there may be no need for an application to court for an Enforcement Order and/or monetary penalty. If the Undertaking is complied with and not breached, then no further action will need to be taken.

Consequences of breaching an Undertaking

If a business breaches an Undertaking, Trading Standards can apply to the court for an Enforcement Order and/or a monetary penalty. Monetary penalties are new penalties introduced by the DMCCA and apply as of April 2025.

The monetary penalty can either be a fixed amount, a daily amount or a combination of both:

- the fixed amount can be up to £150,000
    - if higher, it can be up to 5% of the annual business turnover
- the daily amount can be up to £15,000 a day
    - if higher, it can be up to 5% of the daily turnover of the business

The person or business can also be required by the court to cover the legal costs of this action.

Enforcement Orders and Undertakings given to the court

If consumer protection law or Undertakings are breached, enforcers like Trading Standards may apply to the court for an Enforcement Order and/or monetary penalty.

What are Enforcement Orders?

Enforcement Orders are Orders issued by the County Court or High Court in England and Wales, or by the Sheriff Court or Court of Session in Scotland. They require the business or relevant person to comply with consumer protection law and the terms of any Order made against them. An enforcer like Trading Standards, can apply to the court for an Order where a business breaches certain consumer protection law.

Enforcement Orders can also include Enhanced Consumer Measures (see below) and a monetary penalty. An enforcer can also apply for an Interim Enforcement Order where there is an urgent need for an Order to be in place to prevent a breach of consumer protection law from taking place, continuing or re-occurring.

What are Undertakings given to the court?

In some circumstances, a court may accept Undertakings given by the business or relevant person instead of granting an Enforcement Order. However, the court will take into account factors such as whether an Undertaking was offered by Trading Standards, whether it was agreed to and, if so, whether it was breached by the business or relevant person.

Consequences of an Undertaking or Enforcement Order being granted by the court

If a court accepts an Undertaking given to the court or grants an Enforcement Order, Trading Standards can also seek a monetary penalty in some circumstances. Monetary penalties are new penalties introduced by the DMCCA and apply as of April 2025.

For breaches of consumer protection law, the monetary penalty can be a fixed amount, which can be up to £300,000 or, if higher, 10% of the annual business turnover.

Breaching Enforcement Orders and Undertakings given to the court

If an Enforcement Order has been granted, or an Undertaking accepted from a business or relevant person and it is breached, an enforcer like Trading Standards can enforce the Order or Undertaking in any appropriate court.

If an enforcer like Trading Standards applies to court for a breach of an existing Undertaking given to the court or a breach of an Enforcement Order, the business or relevant person may have to pay a monetary penalty in some circumstances. The court could also hold the business or relevant person in contempt of court.

Online Interface Orders

Enforcers like Trading Standards can also apply for Online Interface Orders or Interim Online Interface Orders.

What are Online Interface Orders?

These are Court Orders that require businesses to remove or amend online content that is connected to breaches of consumer law, such as a sales listing with false or misleading information about a product. Online Interface Orders can be seen as 'takedown powers' for consumer enforcers like Trading Standards. This new power is used to supplement ongoing informal arrangements to deal with such matters - for example, liaising with the UK's domain name registry Nominet.

When may Online Interface Orders be used?

Trading Standards may only apply for an Online Interface Order if there are no other means by which the breaches relating to the offending content can be effectively ceased. Relevant breaches are the same as those discussed earlier in this guide in the 'Breach of consumer protection law' section. In addition to removing or amending content, an Online Interface Order can require the disabling or restriction of access to a website or selling account, the displaying of a warning to consumers online or even the deletion of a domain name.

Consequences of an Online Interface Order being granted

Any business or relevant person that is subject to an Online Interface Order faces several possible consequences:

- disruption of business through the disabling of online interfaces
- reputational damage from publicity and warnings
- significant legal costs, including those of the body making the application

Businesses can avoid these consequences by co-operating at an early stage with Trading Standards and other enforcers.

Enhanced Consumer Measures

Enhanced Consumer Measures can be included in Undertakings given to enforcers or the court, and in Enforcement Orders. These are just and reasonable measures that you may be asked to carry out to help you comply with consumer protection law, prevent any further or future breaches of law, or to address any loss or harm that the breaches of consumer protection law may have caused to consumers.

What are Enhanced Consumer Measures?

There are three different categories of Enhanced Consumer Measures. These are:

- **Redress Measures.** These Measures may involve compensating consumers who have been harmed or suffered loss due to your actions. This can include allowing consumers to bring their contract with you to an end or providing consumers with a refund, where appropriate
- **Compliance Measures.** These Measures are to prevent or reduce the risk of the breach of consumer protection law from taking place or happening again. This could include, for example, employing a member of staff to deal with complaints made by consumers
- **Choice Measures.** These Measures are intended to help consumers to choose more effectively

between people and businesses seeking to supply them with (or buy from them) goods, services and digital content. For example, requiring you to provide certain information that consumers need to know about you or your goods, services or digital content that may impact on their decision whether to enter into a contract with you

Consequences of not complying with Enhanced Consumer Measures

If you don't comply with Enhanced Consumer Measures included in an Undertaking given to an enforcer or the court, or included in an Enforcement Order, the consequences for non-compliance are outlined earlier on in this guidance. Consequences can include Enforcement Orders, monetary penalties and, in some cases, being held in contempt of court.

What businesses need to do

You can avoid being subject to civil enforcement action if you comply with your responsibilities under consumer law. To support businesses to do this, as well as free Business Companion guidance being made available for businesses, local Trading Standards Services work with businesses in numerous ways. This can include providing business advice, offering Primary Authority partnerships (see 'Primary Authority' for more information on the scheme), and some even offer approved trader schemes.

By complying with your responsibilities under consumer law, you can help to protect consumers and create a fair playing field for businesses, including your own.

< Part 1. How civil enforcement is used

> Part 3. Stages of the civil enforcement regime

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