



# Skipton Town Council

## **MARKET CODE OF CONDUCT**

When a market trader does not comply with their consent to trade agreement (CTTA) or the market policy there is need to carry out enforcement in order to ensure improvement in conduct or, if necessary, termination of the licence to prevent further lack of compliance.

*It is essential that the requirements of natural justice are ensured in the process as the removal of a trader's ability to earn a living is a serious matter.*

### **ENFORCEMENT PROCEDURE: FOR CTTA AND MARKET POLICY**

#### 1. Introduction

- 1.1. The Council, as the market authority has a responsibility for ensuring that the market is run in a proper and efficient manner for the benefit of all users of it. This includes customers, visitors, traders etc, this procedure attempts to assist in this aim.
- 1.2 This procedure is designed to deal with allegations of breaches of the CTTA conditions and/or Market Policy in force from time to time and its purpose is to ensure that such allegation are dealt with promptly and fairly.
- 1.3 The procedure applies to all CTTA of the Market.
- 1.4 The procedures are not aimed at providing a remedy or a forum to resolve dispute between traders or between traders & customers/users of the market except where the dispute involves a breach of the CTTA conditions/market regulations.

#### 2. The Procedure

- 2.1 Following a minor breach of the CTTA conditions Market Officers may issue an oral informal warning to the Trader responsible (which is not recorded) or refer the matter to the next stage.
- 2.2 Following an allegation of a breach of a CTTA condition or Regulation, the Market Officer, or equivalent (terms the Investigating Officer) will conduct an

informal investigation in whatever form deemed appropriate by the Investigating Officer to determine whether there is a case to answer. This may involve interviews with relevant persons (including the Trader), consideration of documents etc.

2.3 Where the investigating officer is satisfied that there is a case to answer she/he may take the following steps: -

- 1) Issue a verbal warning in the case of a minor infringement. No note will be kept on file and there will be no right of appeal against the decision.
- 2) Issue a written warning, detailing the incident investigated. There will be no right of appeal against this.
- 3) Invoke Stage I of the formal procedure.

## STAGE 1

### 2.4 Formal Enforcement Procedure

The Chief Officer, or officer of equivalent seniority will preside over this stage of the hearing. If the Chief Officer deems it necessary they may refer the issue directly to the Market and Events Committee. Any advisors, deemed by the Chief officer to be desirable will be invited to attend the hearing and assist an appropriate.

The sanctions available to the presiding officer are detailed below.

The Trader will be given: -

- (i) At least 7 working days (from the date the letter is posted or handed to the Trader), notice of the hearing.  
Details of the allegations and incidents to be relied upon will be provided to the Trader at this stage (subject to the exception below).
- (ii) The Trader will have a right to have a representative at the hearing, and the Trader should inform the Chief Officer, in writing, at least 2 working days before the hearing who that person is
- (iii) Where the allegation is so potentially serious as to carry with it the prospect of sanction 3 and/or 4 (see below), this will be stated in the letter initiating the procedure.
- (iv) The Trader will be given an opportunity to make written representations, instead of attending the hearing. However it will be that person's duty to provide the Chief Officer with such representations before the hearing.
- (v) The Chief Officer will consider the allegation/breach against the Licensee and any other witnesses, statements, letters etc deemed to be relevant. The Trader will be given an opportunity to put his/her case forward and to call any witnesses he/she wishes and who can provide evidence relevant to the issue under consideration.

- (vi) If the case is proved, the Chief Officer will consider the appropriate sanction to apply, in accordance with paragraph 3, after having due regard, if appropriate, of the perpetrator's previous breaches recorded on file during the last 12 months, for verbal and written warnings and 36 months for more serious sanctions.
- (vii) A written decision detailing the hearing's findings and sanction to be applied (if any), with reasons will be communicated to the Trader as soon as reasonably practicable. (This communication will have details of any right of appeal, and details of how this right is to be executed). In determining the sanction, the Chief officer may have regard to relevant sanctions imposed and noted on the Trader's file (on a rolling 12 month basis).

**NOTE:** If either one of the parties to the procedure to not make an appearance without good cause, the Chief Officer will adjourn the hearing, and if after making enquiries as to the parties whereabouts or the parties intention to make an appearance, will have the option to: -

- (1) Reconvene the meeting with the attendance of both parties; or
- (2) Reach a conclusion on enforcement action based on representations of the person's present and written representations and/or relevant documents/letters of persons not present.

### 3. SANCTIONS

- 1. VERBAL WARNING – no note on file, (No right of appeal).
- 2. WRITTEN WARNING – note on file, (No right of appeal) – kept on file for 12 month period.
- 3. SUSPENSION on any day at any market stall held by the Trader for a number of market days or in certain cases until the breach has been rectified (Right of Appeal).
- 4. TERMINATION of relevant CTTA. (Right of Appeal).

In both cases 3 and 4 above the Chief Officer will consider and determine the use of the stall during the appeal period. Should it be decided that suspension of the right to trade will be applied during the appeal period, this will be communicated, in writing, to the Licensee and the reasons why this course of action has been taken.

### 4. EXCEPTIONS

In cases involving serious breaches that may have safety implications for staff, customers, other traders, or cases that in the view of a manager of directorate level would seriously threaten the proper functioning/management of the market, the Chief officer will have the option of suspending the CTTA with immediate effect and to disallow trading during the appeal period. However, if this action is to be applied the Chief Officer must clearly communicate this verbally and/or in writing to the Trader and the reasons for the decision.

If the Chief officer's decision is overturned at appeal, compensation for loss of income during the suspension period may be payable to the Trader. The appeal panel will consider the circumstances and quantify the level of this.

For Section 6, (conduct of Traders) of the Market Policy will differ in that it will be permissible to issue warnings uncorroborated complaints (i.e. those complaints made without independent witnesses) as long as there is compliance with the following criteria:

1. The formal enforcement procedure is followed: -

Formal Enforcement Procedure

The Market Officer, or officer of equivalent seniority (the presiding officer) will preside over this stage of the hearing. Any advisors, deemed by the Chief officer to be desirable will be invited to attend the hearing and assist an appropriate.

The sanctions available to the Chief officer are detailed below.

The Licensee will be given: -

- (viii) At least 7 working days (from the date the letter is posted or handed to the Licensee), notice of the hearing. Details of the allegations and incidents to be relied upon will be provided to the Trader at this stage (subject to the exception below).
- (ix) The Trader will have a right to have a representative at the hearing, and the Trader should inform the Chief officer, in writing, at least 2 working days before the hearing who that person is
- (x) Where the allegation is so potentially serious as to carry with it the prospect of sanction 3 and/or 4 (see below), this will be state in the letter initiating the procedure.
- (xi) The Trader will be given an opportunity to make written representations, instead of attending the hearing. However it will be that person's duty to provide the Chief Officer with such representations before the hearing.
- (xii) The Chief officer will consider the allegation/breach against the Trader and any other witnesses, statements, letters etc deemed to be relevant. The Trader will be given an opportunity to put his/her case forward and to call any witnesses he/she wishes and who can provide evidence relevant to the issue under consideration.
- (xiii) If the case is proved, the Chief officer will consider the appropriate sanction to apply, in accordance with paragraph 3, after having due regard, if appropriate, of the perpetrator's previous breaches recorded on file during the last 12 months, for verbal and written warnings and 36 months for more serious sanctions.
- (xiv) A written decision detailing the hearing's findings and sanction to be applied (if any), with reasons will be communicated to the Trader as soon as reasonably practicable. (This communication will have details of any right of appeal, and details of how this right is to be executed). In determining the sanction, the presiding officer may have regard to

relevant sanctions imposed and noted on the Licensee's file (on a rolling 12 month basis).

**NOTE:** If either one of the parties to the procedure to not make an appearance without good cause, the Chief Officer will adjourn the hearing, and if after making enquiries as to the parties whereabouts or the parties intention to make an appearance, will have the option to: -

- (1) Reconvene the meeting with the attendance of both parties; or
  - (2) Reach a conclusion on enforcement action based on representations of the persons present and written representations and/or relevant documents/letters of persons not present.
- 2) The investigating officer must be satisfied that the complaint is upheld on the balance of probabilities prior to issuing a disciplinary sanction and that if:
  - b) If the trader has no existing uncorroborated complaints on file then the disciplinary sanction can be no more severe than a verbal warning
  - c) If the trader has one existing uncorroborated complaint on file then the disciplinary sanction can be no more severe than written warning
  - d) If the trader has two existing uncorroborated complaints on file as above than a suspension of the trader
  - e) If the trader has three or more existing uncorroborated complaints on file then the disciplinary sanction of termination of the trader's license may be granted
  - f) For the purpose of the Code of Conduct, an uncorroborated complaint will remain live on a traders record for a period of twelve months.

## **APPEALS PROCEDURE**

### **1. GENERAL**

- 1.1 The appeals procedure is designed to be conducted in the form of a hearing and can only be invoked where there is a specific right of appeal from a decision of the presiding officer at Stage 1.
- 1.2 This procedure can only be invoked by a relevant Trader.
- 1.3 An appeal will be presided over by the Market and Events Committee & Committee Chairman. Any advisers, deemed by the Committee Chairman to be desirable will be invited to attend the hearing and assist as appropriate.'

### **2. FORMAL APPEAL PROCEDURE**

#### **PRIOR TO THE HEARING**

- 2.1 An appeal must be lodged, in writing, within 14 days of receipt of the written decision at Stage 1. (The Appellant will be deemed to have received the written

decision 3 days after it is posted to him/her by 2nd class post).

- 2.2 The Appellant will, at this stage, submit a full written statement of case, which will give the circumstances; together with supporting documents and details of witnesses the appellant desires to call to give evidence.
- 2.3 The Appellant will have the right to be represented at the hearing but must give details to the Committee Chairman of that person at least 2 clear days before the hearing.
- 2.4 The Markets Officer/ Chief Officer shall within 7 days of being notified of the appeal will provide the Committee Chairman with a copy of the Appellant's statement of case together with supporting documents and details of witnesses to be called.

#### THE HEARING

- 2.5 Both the Appellant and the Markets Officer/ Chief officer will be given at least 7 days notice of that hearing date.
- 2.6 The Committee Chairman will explain at the outset the structure to the meeting.
- 2.7 The Committee Chairman, at the conclusion of both parties' Representatives, will if possible communicate the decision orally to the parties at the hearing or if this is not possible communicate the decision to both parties within 7 days or as soon as reasonably practicable after this.
- 2.8 The Events & Market Committee will have the power to:
  - (1) Uphold the Appeal (in full or part).
  - (2) Dismiss the Appeal, (in full or part).
  - (3) If (2) above, reduce or confirm the sanctions applied by the Chief Officer (the Appeal will NOT be able to increase the sanctions).
  - (4) In appropriate cases consider the issue of compensation, in circumstances where action was taken in accordance with Section 4 of the Enforcement Procedure.

Note No new evidence will be accepted at the appeal hearing unless in exceptional cases where the evidence has come to the parties attention after the enforcement action.

It will be a matter entirely for the discretion of the Events & Market Committee whose decision on this matter will be final.

If the Appellant is not satisfied with the finding of the Events & Market Committee they may request that the appeal be heard by Full Council. This appeal of the

decision of the Events & Market Committee decision must be made in writing within 14 days of receipt of the written decision of the Events & Market Committee.

#### Examples of misconduct

The following list contains some examples of misconduct: The list is not exhaustive.

- poor timekeeping
- misuse of the market issued parking permits
- inappropriate behaviour
- refusal to follow reasonable instructions
- breach of health and safety rules.

#### Examples of gross misconduct

Gross misconduct is misconduct that is so serious that it is likely to lead to suspension from trading on the market without notice. The following list contains some examples of gross misconduct: The list is not exhaustive

- bullying, discrimination and harassment
- incapacity because of alcohol or drugs
- violent behaviour
- fraud or theft
- gross negligence
- serious breaches of council policies
- serious and deliberate damage to property
- not ensuring you are adequately insured
- disclosure of confidential information.