

PROCEDURES FOR RISK MANAGED ENFORCEMENT, LEADING TO PROSECUTION

HMI/COMPLIANCE DIRECTORATE PROSECUTION POLICY

The Horticultural Marketing Inspection's (HMI) main objective is to ensure compliance with the Community Marketing Rules for fresh fruit and vegetables. The first step towards achieving this is the presence of Inspectors at key points in the marketing chain. Through inspection of produce and engagement with the trade, they raise awareness of the legally binding specifications that the Community Marketing Rules apply.

The HMI has a stated aim that prosecution is generally a last resort, and all other avenues of seeking compliance will usually be pursued before consideration is given to building a prosecution case. Certain circumstances should give rise to immediate consideration, such as broken undertakings or Stop Notices, blatant offences, or obstruction.

These avenues will include advice, education, verbal and written warnings in an attempt to change the behaviour of a trader. The provision of a comprehensive website and free information leaflets is also seen as supporting this aim. However the HMI has limited staff resources and expects errant traders to respond positively in a timely and responsible way to any increased visits, advice given or any other methods used to gain compliance.

It is the usual intention of the HMI that any trader who is prosecuted will have received information and opportunity to avoid the situation in which they find themselves.

The HMI applies a targeted and risk-based approach when planning enforcement visits, making use of intelligence to assess the frequency of calls made upon traders. Those traders with good records of compliance will be likely to receive less frequent visits. It is reasonable that traders with poor

records of compliance will receive increased HMI attention in an attempt to reverse this trend.

The HMI will normally continue the targeted approach through to heightened enforcement and any eventual prosecution visits by the use of a “traffic light” guidance procedure.

As a guide it can be summarised as:

<u>Green Phase</u>	Acceptable compliance by the trader, resulting in low risk inspection visits guided by a risk assessment system
<u>Amber Phase</u>	Poor or failing compliance will result in increased action/visits by the RPA to reverse this trend and seek a change in behaviour. Where defects are found, meaningful undertakings will be required regarding corrective action and to ensure offences do not re-occur
<u>Red Phase</u>	Any trader who fails to respond satisfactorily will be visited with the purpose of evidence collection, forming the basis of a prosecution case. The trader will have received advice and opportunity to avoid this situation. They will have been written to inviting them to take steps to avoid prosecution and to make them fully aware of the position they are in

Prior to instigating the Red Phase, any persistent trader should be written to so they are fully aware of the position they are in and invited to immediately take responsibility to avoid prosecution. Blatant offenders may however, receive no such warning. The objective when pursuing a prosecution is that it should act as a deterrent to the offender with the hope that in future they will be compliant with the necessary standards and regulations. Prosecution should also be exemplary and send a message to the rest of the trade that the Agency is prepared to exercise its ultimate sanction to change behaviours. In this way it is intended that prosecution will be used uniformly and fairly across the country as an effective enforcement tool to bring about better compliance. Any prosecution submitted to Defra/RPA Legal Division will be subject to their scrutiny, and has to meet the “Public interest” criteria that they administer. Defra/RPA has an Enforcement Policy statement, approved by the Attorney General.

This sets out the general principles Defra/RPA intends to follow in relation to regulation and its enforcement options when legal obligations are breached. It is available to all stakeholders via the following link to the Defra Public website:

<http://www.defra.gov.uk/corporate/policy/enforcement/index.htm> It is the role of the court to apportion guilt and set the level of any punishments within the appropriate scale. The HMI will ask Defra/RPA Communications Division to seek publicity in trade and/or national press for any successful cases in order to assist with the overall objective of greater compliance within the industry generally.