

Notice to show cause

Information for individuals and business

Licensing requirements

The Office of Fair Trading administers a range of consumer protection legislation, some of which requires operators in a particular industry to be licensed. The types of licences and certificates Fair Trading issues include real estate agents, conveyancers, property valuers, motor vehicle repairers, pawnbrokers and second-hand dealers, travel agents, motor dealers, trade, builder and electrical.

Disciplinary action

If you have a licence, operate a licensed business or are involved in the operation of a licensed business and Fair Trading forms an opinion that there are reasonable grounds to believe your business has been involved in breaches of the law, then Fair Trading may take disciplinary action against you.

As part of the disciplinary process you will be asked to give reasons why Fair Trading should not take disciplinary action against you.

At any stage during the disciplinary process Fair Trading may decide to take no further action in relation to the matter. However, if Fair Trading decides disciplinary action is appropriate after considering all the relevant circumstances, including any response from you, there are a number of actions Fair Trading may take.

Fair Trading may issue you a formal caution or reprimand, impose a monetary penalty or condition on your licence or, where the conduct is sufficiently serious, cancel your licence and disqualify you from holding or obtaining a licence in the future.

What is a notice to show cause?

A notice to show cause is the starting point for disciplinary action. The particular grounds which may cause Fair Trading to issue a notice to show cause vary but will commonly include acting in a dishonest, unfair or

unlawful manner regarding the operation of the individual or licensed business.

A notice to show cause describes the alleged misconduct, sets out the specific grounds for the disciplinary action and advises how you may respond to the notice.

The show cause process is your opportunity to persuade Fair Trading not to take disciplinary action. You have the opportunity to respond to the matters referred to in the notice by making submissions to Fair Trading.

Submissions must generally be made in writing although in some circumstances you may make verbal submissions.

How long do I have to respond?

A licence holder will generally have 14 days to respond to a notice to show cause although longer periods will often be allowed. The period will be clearly set out in the notice.

If you receive a notice to show cause and are not able to respond within the time specified, you may be granted a longer period by contacting the person who issued the notice. An extension of time may be granted where it is fair and reasonable to do so but it is important that you contact Fair Trading to arrange an extension before the time expires.

How do I show cause?

You should carefully read all of the material provided and make note of the due date. If you do not respond by the date in the notice or the extended date that has been granted, Fair Trading may proceed and take disciplinary action against you.

Submissions must be made in writing unless the particular legislation allows you to make verbal submissions.

The notice to show cause will contain the following information:

- how submissions may be made (either written or verbal)
- the address to which written submissions must be sent
- if there is an opportunity to make verbal submissions and who to contact for an appointment.

If the opportunity to make verbal submissions is consented to by Fair Trading, then those submissions may be recorded on audio tape. If a tape recording is made, you will be supplied with a copy.

You may choose to consult an industry association or legal practitioner for advice and your lawyer may also accompany you during your verbal submissions.

If you agree with the information contained in the notice to show cause, it may assist your case if you are able to identify your circumstances, provide an explanation and advise of any corrective action you have taken.

Fair Trading will only make a decision after considering the relevant circumstances and, if you make submissions or provide evidence, taking that information into account.

What if I don't respond?

If you do not respond within the time specified in the notice or within the extended time period that has been granted, a decision may be made and disciplinary action taken against you without you having had the opportunity to present your case.

You should carefully consider your position and take advice before deciding not to respond to the notice to show cause.

What happens once a decision has been made?

Once a decision has been made, Fair Trading will notify you in writing of the decision, identifying if any

disciplinary action has been taken and giving reasons for the decision.

Can I appeal the decision?

You may write to Fair Trading requesting a review of the decision. The internal review will be conducted by someone other than the original decision maker.

Detailed information about the review process will be provided to you when you are advised that a decision has been made to take disciplinary action against you.

You may also seek a review of the decision by lodging an application with the Administrative Decisions Tribunal. If you have not requested an internal review by Fair Trading, the Tribunal may ask you to do that first.

Where can I get help?

If you are in doubt about any of the material provided to you or unsure how you should handle the process, you may contact the officer identified in the notice. You may also wish to consult a lawyer and, if you are a member of an industry association, you should approach them for advice or assistance.