

THE WORK OF TRADING STANDARDS

1.0 EXECUTIVE SUMMARY

- 1.1 This report on the work of the Trading Standards Division and related legislation has been prepared in response to a request from Councillor Reisdorf made at the Sustainable Communities Overview and Scrutiny Committee on Wednesday, 20th January. The report relates the work of the Trading Standards Division to the relevant Strategic Objectives.

2.0 BACKGROUND

- 2.1 The Trading Standards Division has responsibility for discharging a wide range of statutory duties regulating the manner in which businesses provide goods and services to their customers and to ensure that they are safe, correctly described, nutritionally wholesome, comply with specified legal requirements (such as agreements regulated by the Consumer Credit Act) and sold to the appropriate age group.
- 2.2 These duties are discharged through a range of interventions with traders ranging from general publicity campaigns and targeted advice through to prosecution in the Magistrates Court or Crown Court or injunctive action in the County Court. Enforcement action will be taken in accordance with the Regeneration Department's Enforcement Policy.
- 2.3 The Division is staffed by 17.5 staff organised in two teams, one team with responsibility for investigating breaches of criminal and civil law and resolving consumer complaints and the other with responsibility for advising and monitoring business practices. This report demonstrates how the fulfilment of those statutory duties contributes towards the Council's strategic objectives.

3.0 STRATEGIC OBJECTIVE 1 - TO CREATE MORE JOBS, ACHIEVE A PROSPEROUS ECONOMY AND REGENERATE WIRRAL

- 3.1 National policy expects Trading Standards Services to forge relationships with local businesses through, for example, trader recognition schemes. The Wirral Trader Scheme, launched in 2003, was one of the first of its kind in the Country. The scheme is a member of the Local Authority Assured Trader Scheme Network, which is supported by the Office of Fair Trading.
- 3.2 The Scheme creates a trading environment where consumers can buy goods or services with confidence. To join the scheme traders must demonstrate a commitment to trade fairly and honestly, and to deal effectively with any dissatisfaction expressed by their customers. They also have to meet minimum standards of quality set out in our Code of Practice. Applicants are audited by Trading Standards to determine their consumer

complaint history, court proceedings and business practices. The scheme currently has expanded from 70 to 82 members, with a further 7 applications in the pipeline.

- 3.3 The public can now give direct feedback on scheme members on-line at <https://www.traderregister.org.uk>. This feedback is also accessible to the public and acts as a real incentive to members to give excellent customer service.
- 3.4 In 2010/11 the scheme will expand as the Housing Improvement team have agreed to encourage membership in the building sector to bolster the preferred contractor scheme
- 3.5 The Business Protection from Misleading Marketing Regulations 2008 protects businesses from misleading claims. Small and medium businesses in particular can fall victim to a number of scams purporting to be from official bodies seeking a "registration" fee or seeking payment for unsolicited services. Examples include;
- Health and Safety registration
 - Data protection registration
 - Internet domain name registration
 - Fax/internet directories
 - Business rate reduction
- 3.6 The Regulations can prevent or minimise such misleading marketing practices. The Trading Standards Division works closely with the Companies Investigation Branch, who can initiate High Court action to wind up limited companies in the public interest, and Merseyside Police Economic Crime Unit, who conduct investigations and prosecute under the Fraud Act. Detailed advice is available to businesses to help them reduce the risk of falling for these scams.
- 3.7 The most effective form of intervention with businesses is to provide them with help and advice to avoid either consumer disadvantage or the trader breaking the law. The Trading Standards Division will act as Home Authority to local businesses which gives them the advantage of a named officer to provide tailored advice and to act as a contact point if queries are received from other local authorities.
- 3.8 An example of this type of intervention concerns a small local business designing and importing leisure wear. The business has been provided with detailed advice concerning the application of European standards which impact on their designs and corrective advice to ensure that their advertising is not misleading.
- 3.9 The recession has caused a difficult trading environment which has lead to officers having to act as referees in inter trade disputes. Depending on the alleged mischief we will seek to advise the business and give them the opportunity to correct any errors or omissions. However the complaining businesses unreasonably expect that we should take a hard line and "close down" the competitor, despite having no powers to close a business down and before the process to resolve disputes has been completed.
- 3.10 The Enterprise Act 2002 gives local authorities powers to seek court orders against businesses that breach consumer protection laws. Before taking court action (i.e. seeking an Enforcement Order), enforcement authorities will always invite the trader concerned to respond to the allegations against them, and the trader will be able to give binding agreements (undertakings) to Trading Standards instead of going to court. If a trader breaches an undertaking an enforcement order will be sought in the County Court. If a trader breaches an Enforcement Order they will be in contempt of Court and liable to a fine or imprisonment.

- 3.11 The Trading Standards Division and Legal Services are currently seeking enforcement orders against two traders, a building company and an electrical repair business, which have continually breached their legal responsibilities to consumers.
- 3.12 Product counterfeiting misleads consumers and gives dishonest traders an unfair advantage over the competitors who provide the public with genuine products. Counterfeit products are still being detected at all stages of the supply chain - 3 individuals are facing trial later this year at Liverpool Crown Court concerning the importation of counterfeit clothing - but counterfeiters are making increasing use of the internet to sell their wares.
- 3.13 The Trading Standards Division has invested in a stand alone computer system which enables officers to visit suspect websites and to order goods, without leaving a digital fingerprint which can be traced to an enforcement agency. This facility has been used to test compliance with tobacco control legislation - see 5.8 below.

4.0 **STRATEGIC OBJECTIVE 2: TO CREATE A CLEAN, PLEASANT, SAFE & SUSTAINABLE ENVIRONMENT**

- 4.1 The Consumer Protection from Unfair Trading Regulations came into force in May 2008. The regulations replaced the Trade Descriptions Act and also implemented the provisions of the Unfair Commercial Practices Directive into UK law.
- 4.2 The regulations extend prohibitions concerning misleading practices and also prohibit aggressive practices (defined as practices which intimidate or exploit consumers, restricting their ability to make free or informed choices). A trader who now engages in aggressive practices can face prosecution. These new measures will be particularly helpful in protecting the vulnerable from high pressure doorstep selling. Trading Standards are taking advice from Cumbria County Council Trading Standards who have wide experience in prosecuting doorstep callers, usually roofing or gardening contractors, who prey on the elderly and vulnerable.
- 4.3 Trading Standards work with local communities to set up No Cold Calling Zones which are designed to reduce instances of businesses making unsolicited approaches to consumers on their doorstep.
- 4.4 The Wirral Trader Scheme (paragraph 3.1) offers an alternative to cowboy builders by offering the services of local traders vetted by Trading Standards and with a proven record of excellent customer feedback.
- 4.5 The establishment of the Consumer Direct regional call centre, which provides first line advice, has allowed the Trading Standards Division Fair Trading Officers to provide increased consumer intervention to vulnerable consumers with a complex case.
- 4.6 In one example of a complex case an elderly couple, one of whom suffered from Parkinson's disease, employed a company to tarmac their drive. The original job was unsatisfactory causing water to pool and flow into airbricks. This fault could lead to dampness, odours and rot of the flooring timbers. The consumers complained to the trader who carried out remedial work but it was unsuccessful. Trading Standards attempted to negotiate but the trader reneged on the agreement.

- 4.7 The couple then took the case to mediation in the Small Claims court and, with assistance from a Fair Trading Officer, the couple won their case and were awarded £3785.
- 4.8 In 2009 intervention by Fair trading Officers in complex cases resulted in £131, 744 redress being obtained on behalf of consumers
- 4.9 The safety of consumer goods is controlled through either regulations specific to certain types of goods, for example Toy Safety Regulations, or if there are no specific controls, the General Product Safety regulations (GPSR). GPSR provides for a general requirement to sell safe goods. The regulations encourage enforcement authorities to work with businesses to assess risk and to effect the withdrawal of unsafe products from the market. Powers to seize, forfeit or prosecute are also available.
- 4.10 Examples of products which have been examined under the GPSR have been a carry cot stand and a mirror. In both instances an example of the product failed in use. Protracted discussions took place with the importers of the goods and their relevant Home Authorities. In both cases the importers were able to identify technical improvements to their products.
- 5.0 **STRATEGIC OBJECTIVE 3 - TO IMPROVE HEALTH & WELL BEING FOR ALL, ENSURING PEOPLE WHO REQUIRE SUPPORT ARE FULL PARTICIPANTS IN MAINSTREAM SOCIETY**
- 5.1 Cardio Vascular Disease (CVD) is the biggest contributor to the health inequalities in Wirral. To address this Trading Standards recognises that improving nutrition and reducing the harm from tobacco are the key modifiable lifestyle factors in reducing not only CVD but other non-communicable diseases such as cancer, diabetes and chronic respiratory disease.
- 5.2 Trading Standards works to reduce risks caused by tobacco, diet and alcohol. (This report deals with tobacco and diet. A separate report on alcohol is also being presented to the committee).
- 5.3 Tobacco control work for Trading Standards falls into the following areas;
- (a) Preventing the sales of tobacco or tobacco products to those under 18 by advisory visits or under age sales enforcement campaigns
 - (b) Preventing the supply of illicit tobacco, whether illegally imported or counterfeit
 - (c) Ensuring that the packaging of tobacco products is sold with the correct UK health warnings.
- 5.4 There is no statutory responsibility for the local authority to enforce legislation to prevent the sale of tobacco or tobacco products to persons under 18, but there are statutory responsibilities to enforce legislation preventing the sale of counterfeit products and requiring legible health warnings on cigarette packaging.
- 5.5 The Trading Standards Division contributed to a North West regional survey to demonstrate the ease with which young people could buy cigarettes from vending machines in licensed premises.

- 5.6 Thirteen premises were visited and the under age volunteer was able to buy cigarettes from vending machines in five premises.
- 5.7 As a result of this evidence the Secretary of State for Health has now laid draft regulations (The Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010 prohibiting the sales of tobacco from vending machines. It is not clear from the draft regulations what enforcement mechanisms are available but these concerns will be addressed with the Department of Health. The regulations are due to come into force on the 1st October 2011.
- 5.8 The Trading Standards Division took the lead for 22 local authorities in the North West and conducted a series of test purchases and website inspections to check for compliance with tobacco advertising restrictions and to ascertain how easily people can purchase tobacco online. From the work carried out Wirral Trading Standards noticed that all sites did not comply with the advertising requirements under the Tobacco Advertising and Promotion Act 2002 and most did not display any health warnings or age restrictions. A national report detailing the findings is currently being prepared.
- 5.9 Between April and September 33 attempted test purchases of tobacco products were made by under age volunteers and sales were made in 9 cases. This equates to a failure rate of 27% which compares broadly to the North West failure rate of 25%. However, due to intensive work carried out to reduce the risk of alcohol being sold to minors, this should be contrasted with the failure rate for alcohol sales from off licences now running at 0%.
- 5.10 In joint visits with H M Revenues and Customs Trading Standards seized over 10,000 illegally imported cigarettes and 1.5 kilos of hand rolling tobacco from two shops in Birkenhead.
- 5.11 In addition to the tobacco evading UK duty, which enables them to be sold cheaper than legitimate retailers, they do not carry the legally required health warnings. Investigations are continuing. Trading Standards can now use an electronic scanner to test cigarette packaging to determine whether or not it is counterfeit.
- 5.12 One trader was prosecuted and was fined £600, with £490 costs for selling 20 Lambert & Butler to a fifteen year old volunteer. This penalty can be compared with fines of £100 each against two off licences detected selling alcohol to children. Legal proceedings have commenced against a retailer who sold 20 Mayfair to a fifteen year old volunteer in August.
- 5.13 Two retailers received a formal caution for selling cigarettes to minors. Staff in two "head-shops" received a caution for selling cigarette papers - legally defined as a tobacco product. There are concerns that these premises sold the cigarette papers in circumstances that may encourage cannabis use.
- 5.14 On the 28 January 2009 the Director of Regeneration presented a report to the Environment Overview and Scrutiny Committee detailing a project to identify nutritional risks associated with take way food and the results of a sampling exercise. The survey highlighted the high salt, saturated fat and calorific levels of common take way food.

5.15 National research indicates

- A third of CVD deaths are thought to be diet related
- Excess saturated fat increases cholesterol
- Excess salt increases blood pressure
- 2 in 5 men and 1 in 3 women have high blood pressure
- High blood pressure or high cholesterol substantially increases the risk of CVD and Stroke

5.16 Officers have been working with food standards colleagues in the North West, the Food Standards Agency, health bodies such as Heart of Mersey and representatives of the take away sector to identify simple tips to reduce the risks associated with their meals. The take way sector is unusual in that the majority of businesses are small family run concerns who cook the meals on the premises from a variety of raw ingredients. Examples of some of the information given to takeaway businesses to reduce health risks include;

- Use low fat alternative ingredients
- Change to a mono-unsaturated oil
- Use olive oil rather than butter as a glaze
- Ensure that deep frying takes place at 175C.
- Reducing portion size will automatically reduce calorie, fat and salt content.
- Use reduced salt or double dark soy sauce- only half the amount is needed

5.17 Weights and Measure legislation is still the bedrock of all commercial transactions but in 2009 the Trading Standards Division completed the second phase of a national survey into the accuracy of weighing equipment in hospitals, used to measure body weight and decide drug dosage. Working with local hospital trusts officers reported an increase in accuracy in hospital weighing equipment from 79% in 2008 to 88.5% in 2010. (In a more traditional arena officers visited the gold buying centres that have sprung up to ensure that when consumers sell gold that the equipment used to calculate the price meets strict tolerances)

6.0 **FINANCIAL IMPLICATIONS**

6.1 Development of more effective ways of preventing and investigating doorstep crime incidents could lead to additional costs for setting up No Cold Calling Zones and investigation and legal costs.

7.0 **STAFFING IMPLICATIONS**

7.1 Current activity levels can be maintained with existing staff resources.

8.0 **EQUAL OPPORTUNITIES/EQUALITY IMPACT IMPLICATIONS**

8.1 The new provisions concerning the prohibition of aggressive sales techniques in the Consumer Protection from Unfair Trading Regulations will provide better protection to vulnerable and elderly members of the community.

8.2 Equality impact assessments for under age sales prevention activity, advice to businesses and consumers, the take away project and enforcement policy have been completed.

9.0 LOCAL AGENDA 21 IMPLICATIONS

9.1 There are no local agenda 21 implications arising from this report.

10.0 LOCAL MEMBER SUPPORT IMPLICATIONS

10.1 There are no local member support implications arising from this report.

11.0 HUMAN RIGHTS IMPLICATIONS

11.1 All enforcement action is taken in accordance with the Council's enforcement and Licensing policies. Directed surveillance will be authorised and conducted in accordance with the requirements of the Regulation of Investigatory Powers Act

12.0 COMMUNITY SAFETY IMPLICATIONS

12.1 Effective enforcement and preventative measures such as No Cold Calling Zones and the Wirral Trader scheme will give vulnerable people more confidence.

13.0 PLANNING IMPLICATIONS

13.1 There are no planning implications arising from this report.

14.0 BACKGROUND PAPERS

14.1 There are no background papers.

15.0 RECOMMENDATIONS

15.1 That Members note the report.

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This report was prepared by John Malone, Trading Standards Manager who can be contacted on 691 8640.