

WIRRAL COUNCIL

SUSTAINABLE COMMUNITIES OVERVIEW AND SCRUTINY COMMITTEE

23RD NOVEMBER 2011

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| SUBJECT: | CONSUMER LANDSCAPE REVIEW |
| WARD/S AFFECTED: | ALL |
| REPORT OF: | THE DIRECTOR OF LAW HR AND ASSET MANAGEMENT:- REGULATION |
| RESPONSIBLE PORTFOLIO HOLDER: | COUNCILLOR BRIAN KENNY |
| KEY DECISION? | NO |

1.0 EXECUTIVE SUMMARY

- 1.1 This report seeks to inform members of the proposed changes, for the Trading Standards Service, following a major review of consumer protection by the Department of Business Innovation and Skills (BIS).
- 1.2 BIS proposes radical changes to the provision of consumer information, advice, education, advocacy and enforcement. The new proposals aim to simplify the confusing and overlapping provision of consumer protection, strengthening the effectiveness of consumer enforcement, with more cost-efficient delivery that is closer to the consumer front line.
- 1.3 The Department of Business, Innovation and Skills (BIS) issued its consultation paper on 'Empowering and Protecting Consumers' on 21 June 2011. Wirral's Trading Standards Service participated in Trading Standards North West (TSNW) regional response to the BIS consultation which closed on the 21st September 2011.
- 1.4 The consultation sets out a number of key proposals and options for stakeholders to consider, these being: Information, advice and education, consumer codes approvals, consumer advocacy and enforcement of consumer protection legislation.
- 1.5 This report reports on the Trading Standards North West response to the reforms and focuses on the changes in enforcement and responsibilities within the proposals.
- 1.6 Corporate Priorities
Your Family:
 - Ensure vulnerable people in Wirral are safe and protected
 - Ensure that vulnerable people and those in later life can get the care and support they need at an early stage to prevent problems getting worse

2.0 RECOMMENDATION/S

2.1 Members note the proposed changes for the Trading Standards Service following the consultation: Empowering and Protection Consumers.

3.0 REASON/S FOR RECOMMENDATION/S

3.1 The consultation closed on the 21st September 2011 and as yet no decision has been made as to the preferred option for reform. A further report of the proposals will be brought to members following the Government's decisions following the consultation.

4.0 BACKGROUND AND KEY ISSUES

4.1 The recent National Audit Office report concluded that 4.8 billion (73 per cent) of consumer detriment from unfair and rogue practices arises as a result of threats that span more than one local authority area but trading standards are overwhelmingly funded by local authorities. The government proposes to deploy national funding to facilitate a more integrated approach to national and cross-boundary threats. This activity would be more effectively coordinated at national level by Chief Trading Standards Officers to ensure that enforcement gaps do not arise and that activity overall is better targeted.

4.2 The government's intentions can be summarised from the report as:

4.2.1 CONSUMER INFORMATION, ADVICE AND EDUCATION

Citizens Advice (CA) should in future have responsibility for publicly-funded national advice and education of consumers, working with other organisations as needed. If you need information or advice, go to Citizens Advice. Consumer advice currently delivered by the OFT under the banner 'Consumer Direct' would be transferred to Citizens Advice from April 2012. Consumer Direct currently provide a national telephone helpline and on-line self help facility to members of the public to assist with any consumer problems. The telephone helpline has been adopted by the overwhelming majority of local authority trading standards services in the UK as their first point of contact. They will continue to refer civil and criminal intervention, enforcement and support to Local Authority Trading Standards Services (LATSS).

4.2.2 CONSUMER ADVOCACY

Citizens Advice should be the lead national, publicly-funded consumer advocate, building on its very well known brand and high levels of public trust. Accordingly, the Government proposes that Consumer Focus should be abolished.

4.2.3 ENFORCEMENT

The government proposes to strengthen consumer enforcement by improving the national leadership and coordination capability of local authority trading standards services and by clarifying their responsibility to tackle cross-boundary threats. It also seeks to ensure that there is more effective partnership working and prioritisation of activity between trading standards

services and a new Competition and Markets Authority (See 4.2.6 below). The government's preferred approach to enforcement is as follows:

- 4.2.4 A new Trading Standards Policy Board (TSPB) would be created, made up of Chief Trading Standards Officers to provide leadership and coordination of Trading Standards in identifying and tackling regional and national threats. A proportion of the current OFT enforcement budget and BIS funding for national enforcement programmes would be combined and made available to LATSS through the TSPB.
- 4.2.5 National and cross-boundary issues concerning unfair, unsafe or rogue trading practices, other than those arising from structural market problems, would be tackled by expanded regional trading standards teams or by designated lead authorities with particular areas or sectors of expertise.
- 4.2.5 In order to reduce the disincentive for individual authorities to take on more complex or risky cases, some provision for an indemnity fund or other mechanism for underwriting risk would be provided. The TSPB would be accountable to BIS for the way it spends national government money but there would also need to be appropriate political accountability through the Local Government Group.
- 4.2.6 A new Competition and Markets Authority (CMA) would have responsibility for investigating and tackling enforcement in markets in which there are structural market problems. This would include the retention of consumer law enforcement powers as an option in these cases. The CMA would have significant discretion to determine when such structural problems exist. Trading Standards' professional body, the Trading Standards Institute (TSI), would take on responsibility for consumer enforcement guidance, training, international liaison and policy functions, reporting to TSPB and thereby to BIS. LATSS will bid to TSPB for funds to tackle market-wide problems and pursue nationally significant enforcement cases. It is proposed that what remains of the OFT function will form part of the new CMA.
- 4.3 THE VIEWS OF TRADING STANDARDS NORTH WEST
(Professional body representing local authority trading standards services in the northwest.)
 - 4.3.1 TSNW believes that Trading Standards departments have the skills, experience and willingness to deliver the outcomes the Government wants to see. However, TSNW feel very strongly that local funding has to accompany the proposals, including funding for regional co-ordination.
 - 4.3.2 TSNW has consulted CA and has met with directors of BIS and CA. They have been very transparent in emphasising that the transfer of CD to CA will be done with savings and therefore will be operated with a reduced budget. There will be no additional capacity and it is expected that LATSS, who deliver local advice, education and support to consumers, will continue to do so, in partnership with CABx.

- 4.3.3 TSNW agree with the Government principles for the operation of the new TSPB and would want to see the Board comprised of Heads of Trading Standards from every region, able to take a strategic view and agree on the best national solution for each area of work.
- 4.3.4 While TSNW accept that decisions made by the TSPB are final and binding, TSNW would assume that does not preclude or affect an individual LA's ability to opt in or out of a piece of work i.e. all may not want to participate and this is not necessary to ensure delivery. TSNW also recommend that a key strand of the TSPB must be to commission a strategic assessment in order to decide where the priorities lie for tackling cross border detriment. This was in the past provided by the OFT. In addition, TSNW strongly feel that an indemnity fund which recognises the risk to local authorities of taking of large cases is necessary rather than just desirable.
- 4.3.5 TSNW believes there must be effective communication and a good working relationship between the TSPB and CMA to ensure that intelligence can be shared and assurance received that cases can be dealt with appropriately. Consideration of intelligence from CMA and Citizens Advice on consumer detriment will be a vital element of the TSPB's future work on setting enforcement priorities and this should feed in to the Strategic Assessment and Control Strategy to be discussed at each TSPB meeting. However, TSNW do not believe that there should be a duty on the TSPB to automatically take on cases referred to them by the CMA.
- 4.3.6 It is anticipated that the CMA will be formed by April 2013 and that the proposed changes following the consultation will be implemented by this deadline.

5.0 IMPACT OF CHANGES FOR WIRRAL

- 5.1 The impact of changes for Wirral will be dependant upon the Government's adoption of the proposals set out in this report. The proposals do not seek to usurp the current level of trading standards work which is funded through Areas Based Grant and aimed at delivering local needs and priorities. It does however seek to consolidate funding which currently goes to bodies like the Office of Fair Trading (OFT) or is administered through grants by the Department of Business, Innovation and Skills (BIS) to be used to collectively enforce consumer law against national and regional threats.
- 5.2 These Government proposals will build on the regional and national teams such as the Illegal Money Lending Team, Scambusters Teams , Illicit Tobacco teams dealing with particular rogue trader activity. The proposals will adopt these principals and further ringed fenced funding is being identified to create other national specialisms, such as: internet enforcement, e crime, international scams, estate agency regulation amongst others. These activities will build on existing functions and will require closer partnerships. They will not replace locally funded activities. The consultation specifically draws attention to the risk of local authorities abrogating their funding responsibilities in light of these developments.

5.3 Wirral Council's trading standards service already works closely to deliver regional coordination with Trading Standards North West (TSNW) on funded projects, such as tobacco test purchasing work, national rogue trader days, fertiliser and animal feed, food standards work, etc. Also, in sharing regional intelligence. This work will continue but in addition, bids for specific projects may be made to the TSPB to fund identified work streams.

5.4 Close links have been developed and maintained with the local CABx and it is anticipated that greater partnership working and trading standards support will be provided to this service, whilst maintaining the complex cases and support given to vulnerable consumers.

6.0 **RELEVANT RISKS**

6.1 There are no risks associated with this report

7.0 **OTHER OPTIONS CONSIDERED**

7.1 No other options for consideration

8.0 **CONSULTATION**

8.1 This report reflects Wirral Trading Standards partnership work and consultation with the 23 Trading Standards Authorities forming TSNW

9.0 **IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

9.1 No implication at this time

10.0 **RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

10.1 No resource implications at this time

11.0 **LEGAL IMPLICATIONS**

11.1 None

12.0 **EQUALITIES IMPLICATIONS**

12.1 No equality implications at this time

12.2 Equality Impact Assessment (EIA) is not required at this time

13.0 **CARBON REDUCTION IMPLICATIONS**

13.1 No implications from this report.

14.0 **PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

14.1 None arising from this report

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APPENDICES

<http://www.bis.gov.uk/Consultations/empowering-and-protecting-consumers>

REFERENCE MATERIAL

Department for Business Innovation and Skills, (BIS), "Empowering and Protecting Consumers": Impact Assessment, June 2011

BIS "Empowering and Protecting Consumers": Consultation on institutional changes for provision of consumer information, advice, education, advocacy and enforcement
TSNW response to the consultation, June 2011

Protecting consumers - the system for enforcing consumer law, National Audit Office, June 2011.

SUBJECT HISTORY (last 3 years)

| Council Meeting | Date |
|-----------------|------|
| No History | |