

Agenda Item No. 3(a)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

6 February 2017

Report of the Strategic Director – Economy, Transport and Communities

**COMPLETED PROSECUTIONS UNDER TRADING STANDARDS
LEGISLATION APRIL TO DECEMBER 2016**

(1) **Purpose of Report** To inform the Cabinet Member of prosecutions concluded during the first nine months of the year.

(2) **Information and Analysis** The Trading Standards Division enforces a wide range of legislation with the intention of protecting both consumers and businesses from unfair and unsafe trading practices. Most of the legislation the Authority has a duty to enforce, in other words, Parliament requires the Local Authority to enforce the provisions of the legislation within their geographic area. The Division has a range of enforcement tools available to help gain compliance. This can range from advice and information to the public to enable them to protect themselves from rogue trading practices and information and advice to local businesses on what they need to do to comply. The vast majority of businesses do indeed want to comply; however, there is a small minority of businesses that are opportunist and willing to cut corners putting profit before the interests of their customers and others who have no intention of complying. Verbal and written warnings, Improvement and Prohibition Notices, Formal Cautions (known now as ‘Simple Cautions’) are other sanctions that are available. In addition, for some forms of mischief, the enforcement authority can apply to the Civil Courts for an injunction or to the Licensing Authority for a licence suspension, additional requirements or revocation. Arguably, the most significant deterrent is that of prosecution through the criminal courts, and the adverse publicity and loss of reputation that may ensue.

The Appendix to this report provides a brief summary of cases concluded during the first nine months of this financial year and reflects the wide range of legislation for which the Division is responsible for. Compared to the previous report of enforcement activity, there were no convictions for the sale of illicit tobacco, but a newsagent from New Mills was prosecuted for selling cigarettes to a trading standards volunteer under the age of 18. There were also 16 convictions for HGV lorry drivers and/or the haulier companies for breaches of

environmental weight restrictions which resulted in Magistrates issuing fines and costs totalling a little over £5,000.

Other prosecutions included a second-hand car dealer from Rotherham who sold two vehicles to Derbyshire residents (one from Bolsover and the other from Dronfield) that breached trading standards requirements. One vehicle was falsely described as having a full service history and was not declared as an insurance write-off and the other vehicle was found to be unroadworthy. Although the car dealer was not fined by the Court, he was given a Conditional Discharge and ordered to pay a total of £1,169 compensation to the two Derbyshire residents and to contribute £400 towards the prosecution costs.

A former Derbyshire Trusted Trader member was prosecuted for continuing to display the Trusted Trader logo when he was no longer a member of the Scheme. The trader, who ran a garden business and lives in Chesterfield, had been a member but chose not to renew his subscription. Despite numerous warnings, he continued to display the logo on his vehicle and so the decision was taken to instigate legal proceedings. Ensuring the credibility of the Derbyshire Trusted Trader Scheme is a priority for the Division as thousands of local people regularly seek to engage local traders because they are members. Falsely claiming to be a member not only deceives local residents but also represents unfair competition to the 1,200 legitimate members of the scheme.

The highest fine was imposed on a Hardware importer from Hereford. This business had imported a consignment of 'telescopic' ladders from China which were described as complying with the relevant European and British Safety Standard. However, upon testing commissioned by Derbyshire Trading Standards, the ladder was found to fail the safety standard and was deemed unsafe. The business pleaded guilty and was ordered to pay a total fine of £10,000 and £2,000 costs.

In total, during the period in question, 22 defendants were prosecuted resulting in the courts imposing a total of £14,941 in fines and awarding £5,705 Prosecution Costs.

(3) **Legal Considerations** The Head of Trading Standards, and named senior officers, have delegated authorisation to institute legal proceedings, and are required to prepare regular reports for the Cabinet Member in order to keep him informed of those matters which have been subject to legal proceedings.

(4) **Social Value Considerations** The Local Authority has a duty to enforce, on behalf of local citizens, businesses and other stakeholders, a wide range of legislation that can be categorised as 'trading standards' or public

protection. Active enforcement of legislation, in accordance with the Authority's Compliance Policy, which was agreed by Members and takes into account the requirements of the Regulators' Code, ensures that local businesses can compete on a fair and equitable basis and that local consumers are protected from unfair and unsafe trading practices. Failure to enforce legislation could lead to local citizens being taken advantage of by unscrupulous traders and would leave the Authority at risk of complaints to the Local Government Ombudsman that it had failed to carry out a statutory duty.

In preparing this report the relevance of the following factors has been considered: financial, prevention of crime and disorder, equality and diversity, human resources, environmental, health, property and transport considerations.

(5) **Key Decision** No.

(6) **Call-In** Is it required that call-in be waived in respect of the decisions proposed in the report? No.

(7) **Background Papers** Held on file within the Economy, Transport and Communities Department. Officer contact details – Robert Taylour, extension 39830.

(8) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the report.

Mike Ashworth
Strategic Director – Economy, Transport and Communities

Appendix – Completed Prosecutions April to December 2016

No.	Court Date	Court	Defendant	Location	Description of offence	Fine / Outcome	Costs
1	28/04/2016	Derby	HGV driver from Leamington Spa	Moirs Road, Woodville	Breach of weight restriction Road Traffic Regulation Act 1986	£274	£115
2	28/04/2016	Derby	HGV driver from Grimsby	Stanton by Dale	Breach of weight restriction Road Traffic Regulation Act 1986	£80	£115
3	28/04/2016	Derby	HGV driver from Poole	Swarkestone Causeway	Breach of weight restriction Road Traffic Regulation Act 1986	£80	£115
4	28/04/2016	Derby	HGV driver from Brigg	Swarkestone Causeway	Breach of weight restriction Road Traffic Regulation Act 1986	£307	£115
5	28/04/2016	Derby	HGV driver from Tamworth	Moirs Road, Woodville	Breach of weight restriction Road Traffic Regulation Act 1986	£307	£115
6	25/05/2016	Rotherham	Car dealer from Rotherham	Rotherham	Sold a second-hand Audi - falsely described the car as having "full Audi history", failed to tell customer that it was a category D write off and supplied service book containing 10 false dealer stamps. Sold a second-hand Fiat which was unroadworthy due to corrosion of both front suspension arms. Consumer Protection from Unfair Trading Regulations 2008 x 3 offences. Road Traffic Act 1988 x 1 offence	Conditional Discharge - £1,169 (£500 for Audi car, £669 for Fiat) compensation awarded	£400
7	14/07/2016	Chesterfield	Newsagent from New Mills	New Mills	Sold cigarettes to a person under 18 years of age. Children and Young Persons Act 1933	£200	£400
8	14/07/2016	Derby	HGV driver from Essex	Swarkestone Causeway	Breach of weight restriction Road Traffic Regulation Act 1986	£700	£115

9	04/08/2016	Derby	Fashion retailer from Alfreton	Alfreton	Possession for sale of counterfeit goods at high street shop in Alfreton. Products include Michael Kors bags and purses, Ugg boots and Chanel scarves. Trade Marks Act 1994 x 6 offences	Community Service: 6 week curfew, forfeiture of 137 seized counterfeit items.	£720
10	04/08/2016	Derby	HGV driver from Leeds	Stanton by Dale	Breach of weight restriction Road Traffic Regulation Act 1986	£296	£115
11	04/08/2016	Derby	HGV driver from Normanton	Moir Road, Woodville	Breach of weight restriction Road Traffic Regulation Act 1986	£370	£115
12	04/08/2016	Derby	HGV driver from Manchester	Moir Road, Woodville	Breach of weight restriction Road Traffic Regulation Act 1986	£150	£115
13	01/09/2016	Derby	HGV driver from Sheffield	Breadsall	Breach of weight restriction Road Traffic Regulation Act 1986	£140	£115
14	01/09/2016	Derby	HGV driver from Glasgow	Swarkestone Causeway	Breach of weight restriction Road Traffic Regulation Act 1986	£300	£115
15	28/09/2016	Chesterfield	HGV Driver from Mexborough	Main Street, Winster	Breach of weight restriction Road Traffic Regulation Act 1986	£383	£115
16	28/09/2016	Chesterfield	HGV driver from Tewkesbury	West Bank, Winster	Breach of weight restriction Road Traffic Regulation Act 1986	£438	£115
17	28/09/2016	Chesterfield	Gardener from Chesterfield	Chesterfield	Displayed the logo of Derbyshire County Council's Trusted Trader scheme on his vehicle when not a member of the scheme. Consumer Protection from Unfair Trading Regulations 2008	£500	£240

18	12/10/2016	Chesterfield	Handyman from Eckington	Chesterfield	False representation about work done re-boarding elderly customer's loft. Fraud Act 2006 (1 offence) and Consumer Protection from Unfair Trading Regulations 2008 (x 2 offences) Aggressive commercial practice and professional diligence charges in respect of a second customer - demanding payment and for poor quality repairs to outhouse and paving slabs.	Caution and undertaking as to future conduct. Agreed to pay £6,800 compensation	£214
19	03/11/2016	Chesterfield	HGV driver from Alfreton	West Bank, Winster	Breach of weight restriction Road Traffic Regulation Act 1986	£216	£115
20	10/11/2016	Derby	Hardware Importer from Hereford	Matlock	Imported and sold an unsafe telescopic ladder. Falsely described the ladder as complying with EN 131 - the relevant safety standard. General Product Safety Regulations 2005 and Consumer Protection from Unfair Trading Regulations 2008	£10,000	£2,006
21	17/11/2016	Derby	HGV driver from West Midlands	Main Street Stanton by Dale	Breach of weight restriction Road Traffic Regulation Act 1986	Not guilty - case withdrawn	N/A
22	07/12/2106	Chesterfield	HGV driver from Derby	West Bank, Winster	Breach of weight restriction Road Traffic Regulation Act 1986	£200	£115
Total Fines and Costs						£14,941	£5,705

*Magistrates Court unless otherwise indicated.