

DERBYSHIRE COUNTY COUNCIL**MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES****11 November 2014****Report of the Strategic Director, Health and Communities****COMPLETED PROSECUTIONS UNDER TRADING STANDARDS LEGISLATION****1. Purpose of the report:**

To inform the Cabinet Member, Health and Communities of prosecutions concluded during the first half of the year.

2. Information and analysis:

- 2.1. The Trading Standards Division enforces a wide range of legislation made by Parliament with the intention of protecting both consumers and businesses from unfair and unsafe trading practices. The vast majority of the legislation the authority has a duty to enforce. 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 available. In addition, for some forms of mischief we can apply to the Civil Court 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.
- 2.2. The appendix to this report provides a brief summary of cases concluded during the first half of this financial year and reflects the wide range of legislation for which the Division is responsible for. The majority of cases (10) related to the supply and sale of counterfeit tobacco in Derbyshire. There were three cases of failing to dispose of animal by-products in accordance with Animal Health legislation; two cases relating to unsafe furniture; one involving an HGV breaching the weight restriction along Swarkestone Causeway; two involving mis-selling of goods (mobility products) and services (repair of electrical products); and there were also three hearings relating to 'Proceeds of Crime'. Depending on the severity of the crimes, the cases were either heard at Magistrates Court or more serious offences were referred to the Crown Court. The sanctions available to the Courts range from a fine through to a Community Order for unpaid work and/or prison sentence. The Court may also order the offender to pay compensation.

2.3. During the period in question 21 defendants were prosecuted resulting in the courts imposing a total of £11,219 in fines; £22,188 in compensation, £11,603 in prosecution costs and £112,456 'Proceeds of Crime'. This latter figure was paid over a number of years. In addition, two defendants were ordered to carry out 300 and 160 hours respectively of unpaid community work. Full details are available in the appendix.

3. Legal Considerations:

The Head of Trading Standards, and named senior officers, have authorisation to institute legal proceedings, and are required to prepare regular reports to the Cabinet Member in order to keep him informed of those matters which have been subject to legal proceedings and are now completed.

4. Other Considerations:

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

5. Background papers:

Authorisation to Carry Out Enforcement Responsibilities; Cabinet 30th July 2013
http://www.derbyshire.gov.uk/images/2013-07-30%20Authorisation%20Carry%20Out%20Enforcement_tcm44-228685.pdf

6. Key Decision:

No

7. Call-in:

Is it required that call-in be waived for any decision on this report?
No

8. Officer's recommendation:

That the Cabinet Member, Health and Communities notes the report.

David Lowe
Strategic Director
Health and Communities

Appendix – Completed Prosecutions April to September 2014-2015

COURT DATE	COURT	DEFENDANT	DESCRIPTION OF OFFENCE	NATURE OF REPORT	RESULT	FINE	COMPEN-SATION	COSTS	POCA
07/04/2014	Derby MC	Ilkeston Market Trader	Proceeds of Crime Act 2002 (POCA)	Proceeds of crime hearing following earlier conviction for selling counterfeit clothing and cosmetics on Ilkeston Market	Case concluded with repayment of £49279.23	£0	£0	£0	£49,279
07/04/2014	Derby MC	Former owner of Long Eaton based mobility company	Proceeds of Crime Act 2002	Proceeds of crime hearing following earlier conviction for fraud in relation to mis-selling of mobility aids to older adults.	Case concluded with repayment of £63,176.48	£0	£21,233 repaid to victims	£0	£63,176
10/04/2014	Derby MC	Tenant of general store in Ilkeston	Trade Marks Act 1994 x 4 offences. General Product Safety Regulations 2005 x 2 offences	Sale and possession for sale of counterfeit and unsafe cigarettes. Charges related to a sample of 103 packs of fake cigarettes. These cigarettes were also unsafe due to failed Reduced Ignition Propensity test.	12 month Community Order, 300 hours unpaid work. Forfeiture of all seized tobacco.	£0	£0	£1,800	£0
16/04/2014	Buxton MC	Seller of counterfeit hand rolling tobacco from discount store in Glossop	Trade Marks Act 1994 x 1 offence	Had in possession for supply counterfeit hand rolling tobacco	Fine. Forfeiture of all seized tobacco.	£144	£0	£250	£0
16/04/2014	Buxton MC	Seller of counterfeit hand rolling tobacco from discount store in Glossop	Trade Marks Act 1994 x 1 offence	Sold counterfeit hand rolling tobacco	Fine. Forfeiture of all seized tobacco.	£120	£0	£250	£0

COURT DATE	COURT	DEFENDANT	DESCRIPTION OF OFFENCE	NATURE OF REPORT	RESULT	FINE	COMPEN-SATION	COSTS	POCA
08/05/2014	Buxton MC	Employee of company disposing of Animal By-Products	Animal By-Products (Enforcement) (England) Regulations 2011 x 2 offences	Failed to dispose of animal by-products without undue delay as required under conditions which prevent risks arising to public or animal health - waste stored for 6 months.	Fine	£300	£0	£200	£0
08/05/2014	Buxton MC	Owner of company in Chapel-en-le-Frith disposing of Animal By-Products	Animal By-Products (Enforcement) (England) Regulations 2011 x 1 offence	Failed to dispose of animal by-products without undue delay as required under conditions which prevent risks arising to public or animal health. Stored animal by-products on land which was not approved for the storage of such material.	12 months Conditional Discharge	£0	£0	£100	£0
09/05/2014	Derby Crown Court	Owner of appliance repair business based in Old Whittington, Chesterfield	Consumer Protection from Unfair Trading Regulations 2008 x 7 offences	Failed to act with professional diligence in accordance with the level of honest market practice expected from a bona fide appliance repairer. Left repaired appliance in an unsafe condition, charged for work not done and repaired gas appliances when not legally competent to do so.	Community Order 160 hours unpaid work to be completed in 12 months. Ordered to pay £955 compensation to 7 victims	£0	£955	£3,000	£0
15/05/2014	Derby MC	Food Distributor from Tyne and Wear	Road Traffic Regulation Act 1984	Used a heavy commercial vehicle on Swarkestone Causeway in contravention of the 7.5 tonne weight restriction.	Fine	£265	£0	£115	£0

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21/05/2014	Derby MC	Tenant of general store in Belper	Trade Marks Act 1994 x 9 offences	Had in possession for sale counterfeit cigarettes. Charges relate to a sample of 333 packs of cigarettes taken from a larger seizure which were being sold from a private dwelling and a shop in Belper	12 months Community Order for 200 hours unpaid work. Forfeiture of all seized tobacco.	£0	£0	£500	£0
25/06/2014	Chesterfield MC	Joint owner of Newsagents in Killamarsh	Children & Young Persons Act 1933 x 2 offences. Fireworks Act 2003 x 1 offence	Sold tobacco to a person under the age of 18 years x 2. Did not display the required tobacco notice on premises where tobacco was sold x 1. Supplied fireworks outside the permitted sales period.	Fined 2 x £230 Fined 1 x £115 Fined 1 x £345	£920	£0	£85	£0
25/06/2014	Chesterfield MC	Joint owner of Newsagents in Killamarsh	Children & Young Persons Act 1933 x 2 offences. Fireworks Act 2003 x 1 offence	Sold tobacco to a person under the age of 18 years x 2. Did not display the required tobacco notice on premises where tobacco was sold x 1. Supplied fireworks outside the permitted sales period.	Fined 2 x £230 Fined 1 x £115 Fined 1 x £345	£920	£0	£85	£0
25/06/2014	Chesterfield MC	Proprietor of an off licence in Shirebrook	Licensing Act 2003 x 2 offences	On 2 occasions sold alcohol to a person under the age of 18 years.	Fined 2 x £115.00	£230	£0	£85	£0
26/06/2014	Derby Crown Court	Manager of Timeshare resale business in Chesterfield	Proceeds of Crime Act 2002	Proceeds of crime hearing following earlier conviction for failure to provide the promised timeshare transfer service to eight customers	Ordered to repay £15,000 by Dec 2014 or face 9 months in jail	£0	£0	£0	£0

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15/07/2014	Buxton MC	Employee of a Chapel-en-le-Frith company disposing of Animal By-Products	Road Traffic Act 1988 x 13 offences	Used vehicles to transport animal by products which were overloaded. Found guilty of 9 offences, not guilty of 3 with 1 charge withdrawn.	Fine	£510	£0	£550	£0
07/08/2014	Derby MC	Person delivering counterfeit tobacco to shop in Heanor	Trade Marks Act 1994 x 3 offences	Had possession for sale of counterfeit cigarettes. Charges based on a sample of 121 packs of cigarettes taken from a larger seizure.	Combined penalty 24 month conditional discharge. Forfeiture of all seized tobacco.	£0	£0	£411	£0
21/08/2014	Derby MC	Employee at a Long Eaton Newsagents	Trade Marks Act 1994 x 3 offences	Had possession for sale of counterfeit tobacco and cigarettes which were being supplied from a shop in Long Eaton	Fined 3 x £100. Forfeiture of all seized tobacco.	£300	£0	£250	£0
26/08/2014	Derby Crown Court	Tenant of Swadlincote shop	Trade Marks Act 1994 x 4 offences;	Had possession for sale of counterfeit tobacco and cigarettes. Charges based on sample of 24 packs of cigarettes and 24 pouches of tobacco taken from a larger seizure.	Fine 4 x £50.00. Ordered to repay £5,000 by Feb 2015 or face 3 months in prison. Forfeiture of all seized tobacco.	£200	£0	£0	£0
03/09/2014	Chesterfield MC	National discount supermarket retailer - Chesterfield store.	Consumer Protection Act 1987 x 2 offences	Supplied a chair bed which didn't meet the flammability and labelling requirements of the Furniture and Furnishings (Fire) (Safety) Regulations 1988.	Fined 1 x £2,400 for flammability. Fined 1 x £800 for labelling	£3,200	£0	£1,988	£0

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15/09/2014	Derby MC	Employee of shop in Long Eaton	Trade Marks Act 1994 x 2 offences. Children and Young Persons Act 1933 x 2 offences.	Sold and had in possession for sale packets of counterfeit cigarettes, also sold cigarettes to people under the age of 18 years on 2 occasions.	Fine. Forfeiture of all seized tobacco.	£110	£0	£240	£0
22/09/2014	Derby MC	Furniture suppliers in Stourport-on-Severn, Worcestershire	Consumer Protection Act 1987 x 2 offences	The act or default of the defendant caused a Derbyshire retailer to supply a sofa with cover fabrics which failed to meet the flammability requirements of the Furniture and Furnishings (Fire) (Safety) Regulations 1988. Also faced an additional charge for failure to provide Trading Standards with information specified under the Regs when formally required to do so.	Fined 2 x £2000.00	£4,000	£0	£1,694	£0