

DERBYSHIRE COUNTY COUNCIL

MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES

18 February 2016

Report of the Strategic Director, Health and Communities

PROSECUTION OF DERBY TRADER FOR UNFAIR TRADING PRACTICES

1 Purpose of Report:

To advise the Cabinet Member, Health and Communities of a recent prosecution of a Derby based builder for misleading claims.

2 Information and Analysis:

- 2.1 As the Cabinet Member will be aware, the Trading Standards Division works closely with local and regional partners to tackle rogue traders that take advantage of vulnerable consumers. Where a rogue trader operates beyond local boundaries, we can call on the assistance of the regional Scambuster Team which is hosted by Nottinghamshire County Council. A recent investigation involved a Derby based company trading as Energysave Midlands Ltd from premises in Raynesway, Derby. One of the Directors of the company was David Argyle who also traded as 'Aquashield Ltd' and previously as Aquacoat Ltd. All three businesses specialised in providing 'roof treatments' – purportedly to water-proof, protect from fungal growth and to save energy. The investigation followed complaints from householders from across the East Midlands – including Derbyshire – and was referred to the East Midlands Scambuster Team by Derby City Trading Standards Service.
- 2.2 David Argyle from Woodgate Drive, Chellaston, Derby, was sentenced at Nottingham Crown Court on 22 December last year to 12 months imprisonment - suspended sentence for two years - for each of 12 charges. He was also ordered to undertake 250 hours of community work and disqualified as a company director for seven years. The business he operated pressurised victims into paying extortionate sums of money for work to the exterior walls or roofs of their homes, which was often not required or ineffective. It largely targeted older and vulnerable people who were coerced to pay large sums from their savings in advance. The company often failed to return deposits when victims decided to cancel.
- 2.3 In one case a lady – paralysed from the waist down – felt so harassed for payment by the company that she made two trips in her motorised wheelchair over two days to withdraw money from her savings to pay the deposit and the

outstanding balance, all before any works had been carried out to her home. The company's tactics also included:

- The offer of fictitious and time limited discounts in order to induce a complainant to enter into a contract;
- Falsely claiming that a signed cheque, paid as a potential deposit against a seven day 'cooling off period,' would not be cashed immediately;
- Commencing works before the expiration of the contractually agreed 'cooling off period', precluding the customer from cancelling the contract as otherwise permitted under the terms of that agreement;
- Ignoring complaints and requests for redress and assistance once problems arose following the completion of works

- 2.4 In another case involving a Derbyshire couple from Heanor, a female sales representative from the company cold-called the lady of the house asking if she wanted her roof doing which involved replacing tiles and waterproofing. The lady agreed for someone to visit and a (male) salesman called on the Monday to give a price and said she needed to pay half the contract price upfront. The consumer felt uncomfortable paying as she felt she hadn't been given time to think about it. She was told that she had seven days to cancel if she changed their mind and so paid £1,575 by cheque and the money was taken from her account two days later. After discussing with her husband they decided they didn't want to go ahead with the contract so filled out the cancellation form and took it into the office on the Friday of that same week. The person in the office thanked them for bringing in the Cancellation Notice and said that the couple would be refunded. When after two weeks they still hadn't received a refund the lady went in the office again and was told that it can take up to 10 days. After another two weeks in which the deposit still hadn't been returned she went back to the showroom only to be told that the Manager was on holiday. A letter to the company similarly went without reply and so she complained to the Citizens Advice Consumer Service who in return referred the couple's complaint to Trading Standards. A statement was taken and this couple's evidence formed one of the charges put to Argyle and his company.
- 2.5 David Argyle entered guilty pleas to ten offences between May 2012 and February 2014. These related to 'engaging in a commercial practice which materially distorts the economic behaviour of the average customer'. He also entered guilty pleas to further charges over the same period of engaging in an aggressive commercial practice likely to significantly impair the average consumer's freedom of choice or conduct in relation to a product by the use of coercion, harassment or undue influence – including the timings of payment for goods.
- 2.6 Derbyshire Trading Standards had previously received complaints about Mr Argyle when he was director of the company Aquacoat Ltd in 2009. At that time the company was operating by cold calling, particularly vulnerable, elderly

/ retired people offering to clean roofs, spray them with an 'anti-moss treatment', colour the tiles and then treat the roof with a waterproof coating. However, many customers were unhappy with the work and complained about the following issues:

- Consumers were not given details of their cancellation rights;
- Documentation issued by the company did not contain details of the business address;
- The quality of the work was poor and in some cases incomplete;
- Staff carrying out the jet washing did not appear to comply with health and safety requirements when working at height;
- In some instances roof tiles were damaged and water from the jet washing got under the tiles and into the loft;
- Those customers who attempted to cancel did not get their deposits refunded.

2.7 The company were investigated by Derbyshire Trading Standards and both David Argyle as a director and the company AquaCoat Ltd prosecuted in October 2010 for the following breaches of trading standards legislation:

- Failing to tell consumers of their right to cancel (the incorrect paperwork was still being used three months after he'd been interviewed);
- Using incorrectly worded cancellation forms, and
- As an officer of the company, he was also criminally responsible for the business names offence.

On this occasion the company was fined a total of £8,200 and ordered to pay £2,000 Prosecution Costs, whilst Mr Argyle – as a Director of the company – was ordered to pay £2,200 in fines and £1,100 in costs. The company was also ordered to pay a total of £2,766 in compensation to people who had lost money to the business.

2.8 It is feared that victims of the latest fraudulent trading have not been compensated as the company has now gone into liquidation. However, following a complaint in November last year from the son of a Derbyshire resident, the Division has successfully intervened to secure the consumer's money back. In this instance, the elderly lady concerned suffers from dementia and was persuaded by a sales representative from Energysave Midlands Ltd to enter into a contract for £5,400 for chemical wall coating – supposedly to make her house more energy efficient. She paid a deposit of £2,700 – ie half of the contract price. Following our intervention, the lady's carer was able to write to cancel the contract and obtain the return of her deposit.

2.9 In writing to thank the Council for our support, her son commented:

"Thanks for doing an excellent job the service you provide is so vital. I'm convinced [she] is being targeted because she is on some kind of list - it's been one company after another. It was only a matter of time before a firm got

to her. I'm very concerned about my Mother's state of health over all [of] this; she was physically shaking when this individual was told to leave the premises on his initial visit. Then to be told the following day that she had signed some NHS document which turned out to be Energysave again. My Mother's body couldn't stop shaking!!! Well that really did bring it home how low some people will go to gain a sale. When he was specifically told how vulnerable [she] is."

- 2.10 The Division is also making arrangements for the lady concerned to have a Callblocker fitted which will hopefully prevent her falling victim to any further rogue trading in her own home. It is also understood that Derby City Trading Standards Service are seeking an 'Enterprise' action against David Argyle and other individuals associated with Energysave. This is a process under the Enterprise Act whereby individuals can be required by the courts to 'trade fairly'. Failure to comply can result in the individual being in contempt of court and thus face potential imprisonment.
- 2.11 Derbyshire Trading Standards Service will continue to work with partners to tackle rogue traders. We would also strongly advice local householders not to engage with traders who have approached them seeking to do business. It is always better to seek advice from a reliable source and to engage a Derbyshire Trusted Trader. There are over 1,200 Trusted Traders on the Derbyshire Scheme including builders and roofers who can advise on energy saving measures. Testimonials from satisfied customers are published on the County Council's Trusted Trader website which helps local residents make informed choices when choosing a trader to work on their property. See link below.

http://www.derbyshire.gov.uk/community/trusted_trader/default.asp

3 Other Considerations:

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

4 Background Papers:

CabCo Report; Prosecution of a Roof Treatment Company, 1 November 2010¹.

5 Key Decision:

No

6 Call-in:

¹http://www.derbyshire.gov.uk/images/TScm%20164a%20%20trading%20standards%20prosecution_tcm44-150615.pdf

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

7 Officer's Recommendation:

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

**David Lowe
Strategic Director
Health and Communities**