

DERBYSHIRE COUNTY COUNCIL

MEETING WITH CABINET MEMBER, HEALTH AND COMMUNITIES

26 May 2015

Report of the Strategic Director, Health and Communities

UNFAIR TRADING PROJECT REPORT 2014-2015

1 Purpose of the report:

To inform the Cabinet Member, Health and Communities of activities undertaken by the Fair Trading Team to support local consumers and traders from unfair trading practices.

2 Information and analysis:

- 2.1 The Trading Standards Team is responsible for enforcing a wide range of legislation that is intended to ensure that consumers are protected from unfair and unsafe trading practices. Local business are also potentially vulnerable to rogue traders, both in terms of being victims themselves and also in terms of a loss of business from unfair competition. Whilst the Division is no longer able to provide comprehensive advice and assistance to all consumers, we do still try to intervene if the consumer is potentially vulnerable.
- 2.2 The range of sanctions available to the Trading Standards Division ranges from informal advice to local businesses through to formal undertakings under the Enterprise Act and enforcement action leading to prosecution in the criminal courts. The Enterprise Act provides a framework to 'bring businesses into compliance', hopefully, without the necessity of going to court. The process requires local authority trading standards to monitor complaints lodged with the Citizens Advice Consumer Service (CACS – formerly Consumer Direct) and then to engage with local businesses that are generating complaints to encourage them to improve their relationship with their customers. If insufficient improvement is evident then we can apply to the County Court (responsible for administering civil law) for the business in question to give an 'Undertaking' to improve their trading and not to breach civil or criminal law. Failure to comply with a formal undertaking could warrant contempt of court which could ultimately result in imprisonment. Although quite a lengthy process, it does provide leverage to encourage businesses to improve their standards of trading.
- 2.3 Much of the work of the Fair Trading Team is to provide routine advice to local businesses and to assist those local consumers who are considered to be vulnerable in some way. Examples of the types of activity are detailed in the appendix to this report. Quantifying the value of the assistance given to local consumers and businesses is not easy to determine. It is possible to identify the

amount of money refunded or value of goods and services rectified and in the past 12 months we know we have identified approximately £100,000 of consumer redress as a result of our interventions. Academic research carried out on behalf of the Office of Fair Trading (OFT) which, at the time, was the Government Department responsible for key elements of consumer economic protection, has devised a 'Fair Trading Impact Assessment Calculator'. The Calculator takes the number of consumer complaints received in the 12 months up to our intervention. It then looks at the number of complaints in the following 12 months, starting three months after intervention (to allow the business to adjust its activities). The calculator also multiplies up the number of complaints to reflect the percentage of disgruntled consumers who actually complain, based on the OFT's experience within various sectors. According to the Calculator, the overall benefit to Derbyshire consumers as a result of our intervention amounts to some £2m.

2.4 Further details are provided in the appendix to this report.

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:

None

5 Key Decision:

No

6 Call-in:

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 activities of the Fair Trading Team to support local consumers and businesses.

David Lowe
Strategic Director
Health and Communities

Appendix – Project Report Tackling unfair trading in Derbyshire

This project provides details of activity to support local consumers and businesses and to tackle unfair trading practices identified during the past year 2014-15 and includes the following examples:

- All Enterprise Act work.
- Advice to consumers.
- Advice to traders.
- Significant outcomes for consumers.
- Successful investigations.
- Potential savings for consumers using the OFT calculator.

Enterprise Act

This year we have looked at 28 traders under the Enterprise Act. All complaints were assessed to judge their seriousness and look for trends. Some complaints were found to be unjustified, minor or duplicate and therefore deemed not to be worth pursuing at this stage. Those traders justifying action were visited, advised, in some cases agreed actions were obtained and all were monitored after to assess the effectiveness of our action.

Examples of traders who were engaged were:

A Chesterfield spas and hot-tubs supplier. We had several complaints about faulty goods and their failure to respond. Also a complaint from a competitor that the spas were dangerous and infringed a trade mark. These allegations were found to be false. The trader was visited and advised about consumer rights and distance selling.

A Bolsover car dealer. This is a relatively small car pitch generating a disproportionately high number of complaints about unsafe and unroadworthy vehicles, the proprietor is reluctant to provide consumer remedies. He was visited and advised then asked to sign agreed actions about his future conduct. The number of complaints has now drastically reduced.

A High Peak based bespoke baby clothes supplier via Facebook. For a one person business we had too many complaints about delays and non-supply. During the investigation the trader closed the business having realised they had taken on too much and could not cope.

An Erewash home improvement company. This trader had been scoped and advised previously and had signed agreed actions following complaints about their double glazing business. They had recently started doing drives and were using possible rogue traders as sub-contractors giving rise to new complaints. They were also using misleading advertising and not complying with the new cancellation regulations. The old EA activity was reopened, they were given comprehensive advice and since we have received no further complaints.

Advice to Consumers

We have recorded 383 instances of giving advice to consumers. Although we no longer offer a comprehensive advice service we will still intervene when a consumer is identified as vulnerable, the enquiry is about an obvious scam we can prevent, it is a live doorstep incident or it concerns a trader/trade sector we have an interest in.

Typical pieces of advice have been:

- To a timeshare owner - not to attend a presentation offering to dispose of their timeshare, advising them of the issues with such traders.

- To a scam victim who had signed up to a “free” sample of slimming pills but had charges made for unwanted supplies – the trader is based abroad, they should cancel their bank card and be wary of such offers in the future.
- A consumer who had paid a deposit on a car then realised they could not afford the credit payments – as the car was to be on credit and they had not yet signed the agreement they could withdraw from the contract and were entitled to their deposit back.
- A personal caller had a faulty cooker and was being fobbed off by the shop and told to contact the manufacturers – they were advised that it was the shop’s responsibility and they should persevere with their complaint with them.

Advice to Traders

We offer advice to Derbyshire traders when they have issues with consumers or are the victims of scams themselves. This year we have seen an increase in car dealers contacting us for advice on customer complaints. The other significant tranche has been on-line and direct sellers querying the new cancellation regulations. We have given 205 pieces of advice including:

- Advice to traders in **Ripley, Hatton and Ashover** not to pay a fee being demanded by a German based registration scam. Traders receive an official looking letter asking for basic details so their VAT number can be registered. In the small print it states there is a fee for this service. Such scammers have never been known to pursue these alleged debts so our advice is to ignore the demands and don’t pay.
- A car dealer in **Foston** received a complaint that the water pump had failed on a recently purchased car. The dealer was willing to do the repair in his workshop, however, the consumer lived over 150 miles away and was not willing to return the vehicle. We advised that the trader had offered all that was required of him – he cannot control where his customers live.
- An **Erewash** trader wanted to call an anti-fouling paint containing metals ‘ECO xxxx’ meaning it was an economical product. We said most consumers would take it to mean ecological and therefore a green product so the name should not be used.
- Another **Erewash** trader had sold vouchers for craft lessons on specific dates listed on the vouchers. A consumer was adamant that as they couldn’t make any of the dates the trader had to have an extra session to accommodate her. We advised that consumers could not alter the terms and conditions unilaterally.
- A manufacturer in **Chesterfield** was making jerseys to their own design but from imported fabric and wanted to label them “Made in the UK”. We advised that, even if the fabric was imported, they were made in the UK so this was a truthful statement.

Significant Outcomes

A significant outcome is recorded when we obtain something for a complainant through our intervention. This is usually a refund but it can also be the trader fulfilling the contract by supplying the goods or service or getting the contract cancelled altogether and having the goods removed or the service stopped.

This year 80 significant outcomes have been recorded including:

- A **Worksop** company– misled consumers into believing the FIT from solar panels would pay for them and signed them up to credit deals unawares. Following our intervention four Derbyshire consumers had their credit paid off, three agreed to roof-rental

agreements and one agreed a discounted cash price for their system. Total redress **£43,414**.

- A **Bonsall** package travel operator significantly altered a consumers itinerary as they did not have arrangements with the airline and hotel they were advertising. Following our intervention they paid **£2,004** compensation.
- A **Redditch** company contracted to provide a new bathroom with a walk-in shower for a vulnerable consumer. There were unacceptable delays and extras were added to the invoice. We intervened and obtained a **£721** refund – about 10% of the total cost.
- A **Sheffield** trader provided a rise and recline chair for a consumer which was unsuitable. The company refused cancellation claiming the chair was bespoke, we argued that it was not and obtained a **£1,105** refund.
- A **Warrington** based renewable energy company, installed a totally unsuitable system, including ground source heat pumps, at a pensioners' bungalow. We persuaded the company to remove the system and refund the **£14,500** paid.
- A firm in **Doncaster** charged an elderly consumer from New Houghton an extortionate amount for writing a will and setting up a dubious trust then refused to cancel. We intervened and obtained a **£850** refund.
- A **Derby** based business provide monitored security systems and electrical servicing. They sell these by a hard sell in the consumers' home. We have intervened on behalf of consumers living in Long Eaton, Belper, Ashbourne and Darley Dale and obtained over **£4,000** in refunds.

Successful Investigations

- **Euromarketing**, which had its office in Hasland, offered to “dispose of” consumers' timeshares, taking a fee but failing to do so. The manager pleaded guilty to eight charges of failing to meet the requirements of professional diligence. He was sentenced to 120 hours community service and ordered to pay £15,000.
- **Dominic Spooner**, who lives in Old Whittington, ran a one-man business repairing domestic appliances. He generated a disproportionate number of complaints about inadequate repairs, no paperwork, failing to deal with complaints and illegally working on gas appliances. We took action under the Enterprise Act against him. He was repeatedly advised but seemed incapable or unwilling to act on our advice. As complaints continued we started a criminal investigation resulting in him pleading guilty to seven charges of failing to meet the requirements of professional diligence. He was given 160 hours community service and ordered to pay £955 compensation. He has since given up business.
- **Helen Gregory**, who had offices in Matlock & Bakewell, pleaded guilty to three separate charges of knowingly engaging in an unfair commercial practice in her capacity as Director of three different companies. In each she mishandled tenancy deposits by not securing them as required and using the money instead to pay landlords rent and other business expenses. Sentencing was adjourned to 29th April to give Gregory the opportunity to raise money to compensate victims but ongoing financial investigations indicate she is acquiring money but not depositing it with the court. Derby Crown Court took a dim view of this type of trading activity and sentenced her to 10 months imprisonment.

Reduction in Consumer Detriment

The purpose of the Enterprise Act and other action taken by the Trading Standards Division is to prevent detriment to consumers. Detriment could be a subjective concept in that it could

include bad service, inconvenience, delays, faulty goods (or no goods) or unexpected expenses. However the most obvious and practical measure of detriment is monetary value. This year all our interventions have been put through the Office of Fair Trading Impact Assessment Calculator.

The calculator takes the number of consumer complaints received in the 12 months up to our intervention. It then looks at the number of complaints in the following 12 months, starting three months after intervention (to allow the business to adjust its activities). The calculator also multiplies up the number of complaints to reflect the percentage of disgruntled consumers who actually complain, based on the OFT's experience within various sectors.

Whilst not all of our interventions result in a reduction and hence a saving, most have this year (24 out of 34) resulting in estimated consumer savings of **£1,955,448**.

Conclusions

- The Enterprise Act is useful for introducing ourselves to low level non-compliant traders, complaints which can be presented to them enable us to do an inspection with a purpose and offer advice in context.
- For traders who will not accept advice or continue to cause problems contravening the requirements of professional diligence should be considered as an alternative to escalating EA activity.
- One way of measuring our efficacy is by looking at the sums we have obtained for consumers as compensation or refunds and recorded as significant outcomes, this year this has totalled **£100,953**. However, not all significant outcomes have a monetary value attached to them – improving quality of life, stopping unwanted contacts, reassurance that help is available, empowering consumers by advising them of their rights and signposting to appropriate alternative help are all worthwhile outcomes that are difficult to quantify or record.