

Agenda Item No. 3(a)

DERBYSHIRE COUNTY COUNCIL

MEETING OF CABINET MEMBER – HEALTH AND COMMUNITIES

26 July 2016

Report of the Strategic Director – Economy, Transport and Communities

**TRADING STANDARDS WORK TO TACKLE UNFAIR TRADING  
PRACTICES 2015-16**

(1) **Purpose of Report** To advise the Cabinet Member of activities undertaken by the Trading Standards Division to tackle unfair trading practices during 2015-16.

(2) **Information and Analysis** As well as tackling the minority of rogue businesses and unscrupulous traders that deliberately seek to take advantage of Derbyshire consumers, the Trading Standards Division also has a responsibility to enforce a range of ‘consumer protection’ legislation intended to encourage a fair and equitable trading environment. The Appendix to this report sets out a number of interventions carried out by the Trading Standards Team in response to complaints from local residents, and also requests from local businesses for advice and guidance on Trading Standards Legislation.

Whilst it is always difficult to quantify the financial benefit of such interventions, the application of a central Government assessment tool calculates the potential benefit as being approximately £900,000. Another calculation relating to interventions, carried out by Enforcement Staff with regard to 14 individual complaints, suggests that some £50,000 worth of consumer detriment has been prevented.

Further details are available in the Appendix to this report,

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

(3) **Key Decision** No.

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

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

(6) **OFFICER'S RECOMMENDATION** That the Cabinet Member notes the steps taken by the Trading Standards Division to tackle unfair trading practices during 2015-16.

**Mike Ashworth**  
**Strategic Director – Economy, Transport and Communities**

## Appendix – Trading Standards Unfair Trading Practices Intervention 2015-16

This project is a continuation of a previous project where traders causing problems because of their activities, or identified through a disproportionate number of complaints, are dealt with by using the enforcement tools available within the consumer protection legislative environment.

Derbyshire Trading Standards (DTSS) Fair Trading Section, which comprises of two teams looking at Rogue Trading and Unfair Trading Practices, has been doing a lot of significant work with various projects looking into specific areas, such as Intellectual Property, motor vehicles, doorstep sales, scams and illegal tobacco. However, there is work that does not get captured and this project aims to summarise this activity.

The Unfair Trading Practices Project includes:

- All Enterprise Act work.
- Advice to consumers.
- Advice to traders.
- Significant outcomes for consumers.
- Successful investigations.
- Potential savings for consumers using the Office of Fair Trading (OFT) Impact Assessment calculator.

### Enterprise Act

This year, officers have looked at eight traders under the Enterprise Act 2016. Most were just scoped, that is all complaints about them were audited to judge their seriousness and look for trends. Having discounted unjustified, minor or duplicate complaints, many were recorded for information only pending future complaints of a similar nature. Those traders justifying action were visited, advised and, in some cases, agreed actions were obtained. All were monitored to assess the effectiveness of the intervention.

Examples of traders who were engaged were:

- **Vacuum products servicing business, Melbourne** – Cold calls to establish if homeowner owns a particular type of Vacuum cleaner then offer a service. Concerns about passing themselves off as the manufacturer and delays in providing spare parts. Intervention has taken place and business is now being monitored with an expectation that future complaints will reduce to a figure that is proportionate to the size of the business.
- **Web based appliance business based in Long Eaton** – A number of complaints were received regarding this appliance company where specific products were advertised on a website but without pricing and, in addition,

the cancellation rights were incorrectly worded. Intervention by officers took place whereby our concerns were aired and this resulted in changes to the terms being applied and the business dedicating a member of staff to a role to deal with any consumer complaints. The business is now being monitored with an expectation that future complaints will reduce to a figure that is proportionate to the size of the business.

- **Mobility products, Somercotes** – A company that supplies mobility products had complaints regarding failing to assist consumers after the supply of faulty products and incorrect cancellation details being given to consumers. A plan of action was agreed in a meeting and the trader agreed specific actions to prevent future non-compliance. The business is now being monitored with an expectation that future complaints will reduce to a figure that is proportionate to the size of the business.

### **Advice to Consumers**

DTSS has recorded 359 instances of giving advice to consumers. Although the Division no longer offers a comprehensive advice service, officers still intervene when a consumer is identified as vulnerable, the enquiry is about an obvious scam which can be prevented, is a live doorstep incident, or it concerns a trader/trade sector that are currently under investigation.

Typical pieces of advice have been:

- To advise on terms and conditions in respect of a consumers right to cancel being extended from 7 days to 14 days due to legislative changes.
- To advise a consumer on their right to cancel a contract after an unsolicited call.
- To assist a vulnerable consumer in cancelling a further visit from a mobility company.
- To give specific advice to a consumer on a remedy to reject a faulty sofa under the Consumer Rights Act 2015 and her additional right to claim against her credit card under Section 75 of the Consumer Credit Act 2016.

### **Advice to Traders**

The Division will offer advice to Derbyshire traders when they have issues with consumers or are the victims of scams themselves. DTSS gave over 200 pieces of advice to local businesses including:

- To advise on terms and conditions in respect of a consumers right to cancel being extended from 7 days to 14 days due to legislative changes.
- A trader who wanted to set up a business selling hand-made clothing and wanted textile labelling advice.

- A charity seeking advice regarding any regulation covering the activity of charity collection bags was advised about local licensing provisions and directed towards the local authority covering the area where activity could be undertaken.
- Advice given to several letting agents regarding changes to legislation that require them to register with a redress scheme and to publish a list of their fees.
- A trader who wished to start a business organising motorcycle tours was given detailed advice regarding the requirements for safeguarding monies under the provisions of the Package Travel Regulations 1992.

### **Letters of Warning**

During the report period, officers from the two Fair Trading sections have issued 19 letters of warning, covered by the scope of this project. Most of the letters of warning, from this project area, centred around offences where traders were claiming membership of trade bodies or approval schemes when they had no authority to do so. Examples of these bodies are the Federation of Master Builders, Greendeal, Check A Trade and Trustmark.

A letter of warning was issued to a small letting agency business who had failed to secure a deposit in a protection scheme which would have been a professional diligence offence under the Consumer Protection from Unfair Trading Regulations 2008 (CPRs)

A letter of warning was issued to a trader who was claiming his products offered cures for ailments, some of which were serious, that could not be substantiated. Warnings about breaches of CPR, the Cancer Act 1939 and in addition breaches of E-Commerce Regulations were outlined.

### **Significant Outcomes**

A significant outcome is recorded when the Division obtains something for a complainant through the intervention of an Officer. 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, 90 significant outcomes have been recorded, including:

- Various interventions on behalf of consumers who had been visited by a company offering energy saving products resulted in redress for those consumers.
- The end of a long running case against a letting agent resulted in a compensation order for a further 102 victims amounting to redress of £80,209.
- Assistance was given to a vulnerable elderly widow to resolve an issue with debt collectors chasing payment for a TV licensing dispute. The

Division's intervention enabled the consumer's message to be properly received by TV licensing and resulted in an apology and a new licence being issued.

- A trader had refused to remove a mobility chair after a vulnerable consumer had a change of mind. The Division intervened and correctly argued that the chair was not a bespoke item and as such, the consumer had cancellation rights. The chair was then removed and a refund given.
- A company had signed a consumer up to an expensive contract for home maintenance on the premise of energy savings. The consumer then suffered a bereavement and no longer wished to be in the contract. DTSS's intervention resulted in the trader cancelling the contract and linked credit agreement.
- A trader who cold-called a consumer and misled her into believing that they were Dyson offered to service her vacuum cleaner. They attempted to sign her up to a service agreement but, following the intervention of an Officer, this was prevented and saved the consumer from a contract that would have cost £1,295.
- A large retailer of caravans, based in Derbyshire, had previously been one of the most complained about traders. This year, after significant intervention and advice, the business has now opted to work with DTSS on a Primary Authority Partnership basis.

### **Successful Investigations**

- A Buxton double glazing business was using the Derbyshire Trusted Trader logo on its paperwork despite no longer being a member. The business operator signed a simple caution. (Used to be known as a Formal or 'Home Office' caution).
- A Chesterfield builder failed to provide the consumer with the appropriate right to cancel. The business operator signed a simple caution.
- Matlock and Bakewell Letting Agency – business owner had pleaded guilty in the previous year 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 in April 2015 resulted in the business owner being imprisoned for 10 months and ordered to pay compensation to victims in excess of £80,000
- The Director of an Alfreton based kitchen and bathroom fitting business pleaded guilty to four charges under the Consumer Protection from Unfair Trading Regulations 2008 that he knowingly or recklessly engaged in a commercial practice which contravened the requirements of professional diligence and one charge of failing to provide the correct cancellation rights to consumers. He was fined £7,000

## Reduction in Consumer Detriment

The purpose of the project and other action taken by the Unfair Trading Practices and Rogue Trading teams 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 OFT 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 3 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 OFTs experience within various sectors.

It is too soon to assess whether, as a result of the Division's intervention, there will be no further complaints about the traders concerned. If, over the next 12 months, the intervention results in no further complaints being received, then the value in terms of a reduction in consumer detriment approaches £900,000.

## Conclusions

- The Enterprise Act 2016 is useful for introducing the DTSS to low level non-compliant traders. Complaints which can be presented to them enable the Division 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 Enterprise Act activity.
- Professional diligence has also been a valuable tool in dealing with matters, where otherwise we would face the hurdle of proving Fraud.
- The Division no longer has a comprehensive consumer advice service but continues to prioritise intervening on behalf of vulnerable consumers. Even if the matter is a relatively trivial one or low sums are involved, the idea that they have been conned or scammed and no one can help them can have a detrimental effect on such consumers.
- The Division has, in recent years, provided advice and information to local traders:
  - That want to do the right thing and need to know their obligations under the law.
  - Where the trader is a victim of a scam (we have seen Directory, VAT Registration, Sponsored Publication and Rate Reduction scams this year).

However, due to the need to increase income, the Division is now seeking to charge businesses seeking advice on legal requirements.

- 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 is difficult to monitor and assess as often not all the information is available and/or the final outcome is not known. However, the table below assesses the monetary value of 14 complaints responded to by Trading Standards staff which resulted in the local residents concerned recovering nearly £50,000. 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.

**Table showing value of consumer detriment avoided following Trading Standards (TS) Intervention**

Type of Product/Service complained about	Total Cost of work (£)	Amount Paid by Consumer (£)	Amount Recovered as a result of TS involvement (£)	Amount Consumer Saved overall (£)
Damp Proofing/Wall Coating	5,400	2,700	2,700	5,400
Soffits/Fascia	2,000	197	197	2,000
Bed Sale	2,000	1,000	1,000	2,000
Wall Coating	1,050	200	-	1,050
Driveway work	6,428	4,500	1,928	1,928
Fish	25	25	25	25
Fish	125	125	125	125
Damp Proofing/Wall Coating	1,000	500	500	1,000
Guttering	780	780	-	-
Damp Proofing/Wall Coating	4,600	2,000	1,000	4,600
Stair-lift	3,800	3,800	3,800	3,800
Damp Proof	2,800	2,800	2,800	2,800
Wall Coating/Conservatory/Roof	22,240	11,120	11,120	22,240
Conservatory Roof	10,400	10,400	1,000	1,000
<b>Total</b>	<b>62,648</b>	<b>40,147</b>	<b>26,195</b>	<b>47,968</b>