

DERBYSHIRE COUNTY COUNCIL

Meeting with Cabinet Member, Health and Communities

06 May 2014

Report of the Strategic Director, Health and Communities

ACTION TAKEN AGAINST 'MOST COMPLAINED ABOUT' TRADERS USING THE ENTERPRISE ACT

1. Purpose of report:

To inform the Cabinet Member, Health and Communities of the use of the Enterprise Act to improve standards of trading of businesses operating in Derbyshire generating the most complaints.

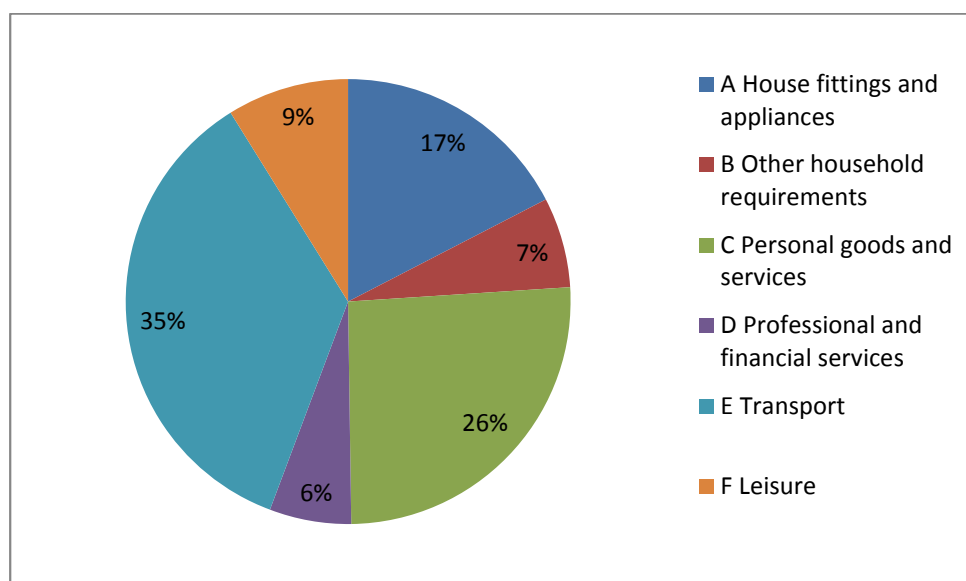
2. Information and analysis:

- 2.1 As well as seeking business compliance with a wide range of legislation intended to protect consumers and legitimate businesses from unfair trading practices, the Division also works in partnership with Citizens Advice and other agencies to provide advice and information to local consumers who may be dissatisfied with goods or services that they have bought. The Citizens Advice Consumer Service (CACS) is available, free of charge, to anyone who needs advice on what to do if they are dissatisfied with something that they have bought because it is faulty, not as described or in some other way doesn't meet the expected requirements.
- 2.2 Derbyshire Trading Standards Service still supports individual consumers who need advice and who are considered to be vulnerable. We also seek to improve the standards of trading of businesses operating in the county through a combination of advice, guidance and if necessary enforcement action leading ultimately to court action. By identifying those businesses that generate the most complaints causing the greatest amount of consumer detriment, the Division can concentrate its efforts on improving the ones that cause the most concern. Not only does this create a better outcome for consumers, but it also encourages good businesses to thrive and supports economic growth.

- 2.3 Most local businesses want to provide a good service to their customers and are keen to comply with the law and put things right when they go wrong. Cash flow problems, mistakes by staff, being let down by suppliers, over ambitious promises – particularly in terms of time (eg how long to complete a job, to deliver goods, etc.), faulty goods, misleading claims are all examples of reasons for consumers being unhappy with the goods or services they receive. The willingness to put things right often distinguishes between traders who value customer goodwill and those that are driven by profit margins regardless of the cost.
- 2.4 Consumer detriment may be caused by breaches of civil law as well as actions that constitute criminal offences and in some cases traders are guilty of doing both. As an alternative to enforcement action under criminal legislation, the Division may also apply the provisions of the Enterprise Act which requires businesses not to act in a way that is detrimental to the interests of consumer. The Act enables the authority to seek an undertaking from a trader to prevent him or her from operating in an unfair way. Failure to comply with such an undertaking can lead to court action. Before applying to the Court, trading standards staff will make contact with the business concerned to discuss the volume of complaints and ways in which they may be resolved and future problems avoided.
- 2.5 Since the enactment of the Enterprise Act, the Division has made increasing use of its powers to engage with those businesses generating the most complaints. Any complaint about the trading practice of a businesses is logged by CACS and a notification sent to both the local trading standards service where the consumer lives and where the trader is based. In this way we can monitor the performance of businesses based in or operating in Derbyshire. Some 28 local traders who between them had generated 655 complaints during the year were approached using Enterprise Act powers. As a consequence of our intervention the total number of complaints from these particular businesses fell by some 24%.
- 2.6 The types of issues identified that contributed to the high complaint levels were many and varied. In some instances these were large businesses operating nationally and so the number of complaints was considered to be proportionate to the size of business. In another example, a small on-line trader seemed to take umbrage at any complaint considering it a personal affront. He was persuaded to take a more reasoned approach to legitimate complaints. Once again complaints about second-hand

cars (transport) tended to dominate the category of goods complained about, but in some instances this was attributable to unreasonable consumer expectation when purchasing older cars with high mileage. A breakdown of the categories of complaints can be seen in the chart below.

Chart showing category of goods and services featured in the 28 ‘most complained about’ businesses based in Derbyshire



- 2.7 The project also highlighted one of the main deficiencies with the Enterprise Act; that the injunctive route to seeking an improvement in trading practice can be cumbersome and ineffective with certain individuals who are unwilling to cooperate. In one instance a relatively small business offering an electrical repair business failed to respond and so the officers concerned felt that they had no option but to seek to bring the matters of non-compliance before the criminal courts.
- 2.8 It has always been difficult to quantify the value of trading standards work to improve standards within the market place. The Office of Fair Trading (now the Competition and Markets Authority) has conducted research into the financial benefit to the economy of a reduction in complaints. Although relatively crude, it does enable some approximation of the value based on the reduction in the number of complaints before and after intervention and the average value of the transactions involved. It also takes into account – based on previous research - that only a minority of consumers will actually take any action if they are dissatisfied with goods or services that they have bought. Based

on the reduction in complaints as a result of our intervention, the benefit to the local economy using the OFT calculator is some £2.6m. Full details of activity undertaken under the Enterprise Act is provided in the appendix to this report.

- 2.9 Officers will continue to target those businesses generating the most complaints and will make use of all compliance tools available to improve standards of trading and reduce consumer detriment.

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. Strategic Director's recommendation:

That the Cabinet Member, Health and Communities notes the Trading Standards Division's use of the Enterprise Act to improve standards of trading of businesses operating in Derbyshire generating the most complaints.

David Lowe
Strategic Director
Health and Communities

Appendix 1

Enterprise Act Enforcement

This project is a continuation of similar previous projects 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 in the Enterprise Act (EA). This year activity levels have been lower than usual due to officers being engaged in other activities, however, 28 EA activities have been opened and action taken. Most of the work has been fairly routine as EA activity has become a standard way of working within the Fair Trading team, however the following matters were of note this year:

We continue to receive many complaints about used cars – four of the opened activities were car dealers. None of the car dealers dealt with has proved to be problem traders. The complaints reflect the nature of the vehicles being sold (older, higher mileage) and ignorance in the trade of their obligations to consumers. After advice visits we have seen the complaints fall away.

One activity was of particular interest as it highlights a problem with the EA process. DS, who repairs domestic appliances, had numerous advice visits. We have intervened with consumers to resolve issues; have provided written advice and the trader has signed agreed actions. Despite this we continued to receive complaints at a level disproportionately high for a one-man business. The procedure laid down by the Enterprise Act had been followed, but the advice had been ineffective. However, the nature of the complaints - low value civil issues - did not justify the next stage of seeking an Enforcement Order from the Courts. The only way forward was to cease EA activity and see if the complaints justified criminal enforcement under the Consumer Protection Regulations (CPR's). In this case we believed they did, so DS was the subject of a criminal investigation which has resulted in him being summoned under the CPRs for contravening the requirements of professional diligence.

Two activities were closed where it was apparent that the level of complaints were insignificant compared with the size of the business, both being national companies who have their HQ in Derbyshire.

A notable success was with a company selling mobile phones online. We had been receiving complaints from consumers who had not noticed or known to "untick" a box thereby purchasing insurance for phones purchased online. The company agreed to reverse the process so consumers had to opt in to any extras before the law changes in April 2014 to make this a requirement.

An innovation this year has been to use the Office of Fair Trading (OFT) calculator to assess the impact of our intervention in monetary terms. The calculator looks at the number of complaints received before and then after

our contact with a trader, the average cost to the consumer of contracting with that trader and, when the complaints have reduced, the financial saving for consumers in general. A full spreadsheet of results is available and notable results are as follows:

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- MA, online retailer of bicycles and spares. MA seemed to take each complaint personally and engaged in email arguments with consumers rather than dealing with their issues. He seemed affronted when we contacted him but having received robust advice he changed his attitude and we have received no complaints since. Consumer saving calculated at £21,312.
- AH, doorstep seller of mobility aids. AH, who are based in South Yorkshire, were targeting vulnerable Derbyshire consumers. We confronted the trader at consumers' homes, advised re aggressive practices and warned about future conduct. AH then decided not to operate in Derbyshire and we have received no further complaints. Consumer saving calculated at £248,429.
- W&C, glazing and conservatory company. We had received a disproportionately high number of complaints about the company which was then liquidated, causing further complaints. A "phoenix" company was formed. We advised the proprietor that any action was against him as an individual, not his company, so he agreed to honour all warranties given by the first company. We are also receiving far fewer complaints about the new company. Consumer saving calculated as £262,552.
- VCS, heating and plumbing engineers. We received several complaints from consumers who had had free boilers fitted under the Warmfront Scheme. The scheme only pays for a replacement boiler and the complaints related to charges being made for eg extra pipework or radiators and failing to make good where the fabric of the house had been disturbed. VCS provided minimal paperwork to consumers which was non-compliant. VCS were advised and so produced a new contract with proper cancellation rights and a full explanation of what was included or not included in the contract. Complaints have significantly reduced. Consumer saving calculated as £25,336.

Significance of Results

Enterprise Act activity has now become the standard way of dealing with our most complained about and problem traders. It works well in that, whilst most activities just require clear and robust advice to the trader that advice is backed up with an escalating programme of legal action if the advice is not heeded. We have also shown that where a trader is impervious to our advice and help we can step out of the Civil Court track and use the Criminal Courts to continue the action.

The purpose of the EA and any activity undertaken is to prevent detriment to consumers. Detriment might be a subjective concept in that it could include

any of the following: 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.

Whilst not all EA interventions result in a reduction and hence a saving most have this year (21 out of 28) resulting in estimated consumer savings of £2,602,059.